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WORKING PAPER

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Transport - Intermodal Questions and Networks
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on electronic freight transport information

Delegations will find attached written comments by the Netherlands on the above-mentioned proposal.

Reaction The Netherlands on:

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on electronic freight transport information

This document represents the Netherlands position/reaction towards the proposed eFTI Regulation. This starts with some general comments. In addition, specific comments per article are presented.

GENERAL POSITION AND COMMENTS THE NETHERLANDS

In general The Netherlands has a positive attitude towards the eFTI proposal. The proposal is in line with and supports the following existing Dutch policy intentions i.e.:

- To realize a digital government. In EU perspective The Netherlands explicitly supported the EU eGovernment Action Plan 2016-2020 (to promote the acceptance and use of digital transportation documents) and the Tallinn Declaration on Government in October 2017, in which the member states have called on the Commission to come up with efficient digital government processes in the EU.
- To realize cross-border and streamlined digitization of the multimodal transport chain. The Dutch business community has frequently made it clear to the government that acceptance by governments of digital transport documents yields hundreds of millions of euros in administrative savings. Since 2011, national projects have started to experiment with paperless transport in different transport modalities.
- The Netherlands pursues a digital transport freight policy fostering paperless transport. In this policy the acceptance of paperless transport documents is an important feature. The main object of this policy is to develop an integrated approach towards digitalization within the logistic chain. This should evolve into an streamlined multimodal transport chain.

The Netherlands is of the opinion that the eFTI Regulation lacks an integrated multimodal transport approach and the eFTI proposal could have reached further. The proposed eFTI Regulation is based on a passive system in which competent authorities can access the data via eFTI platforms. The Netherlands fears that based on the current eFTI proposal the inspection authorities invest to comply with the eFTI Regulation to be able to access electronic data from economic operators, while these economic operators keep working with paper documents. That is why The Netherlands is in favour of an active system in which business report electronic data to competent authorities (push). This could be a system comparable with general EC policy approaches i.e. Customs approach, Immigration approach and Directive No 2010/65/EU on reporting formalities for ships. These approaches are based on an active or push based reporting system. Availability of data before physical inspections helps optimizing the inspection processes (for example risk-based inspections), thus leading to less administrative burdens.

The Netherlands recognizes the fact that the implementation of a full active reporting system within the current eFTI Regulation proposal is perhaps too big a step at this initial stage of implementing full digitalization of the logistic chain. So, The Netherlands can agree with the current eFTI proposal, but holds on to the ambition in which a future eFTI Regulation will be based on creating the opportunity for authorities to have access to data before physical inspections.

The Netherlands has serious doubts whether it is possible for Member States to implement the eFTI Regulation in 4 years. The experiences with the implementation of Directive No 2010/65/EU on reporting formalities for ships showed that implementation and coordination on a functional, technical, legal and organizational level took more time than initially planned. Implementing the eFTI Regulation, including the necessary European and national coordination for the working out of the implementing and delegated acts, the coordination with eMSW environment (e.g. use of the same datamodel, syntax) takes time. Based on earlier experiences, The Netherlands thinks that an implementation period of 7 years is a more realistic option. The Netherlands therefore proposes to amend article 17 and change the implementation period to 7 years.

In addition, The Netherlands would like to point out some general remarks regarding legal, technical, administrative and financial aspects:

Legal aspects:

- Most likely, the Regulation will require the adaptation of a number of legal provisions, in the area of the EU legislation and national laws. The Netherlands will take this into account in the assessment of the eFTI proposal and later on in the drafting and adoption of the implementing and delegated acts. (reference is made to the specific comment on Article 1.2 and 1.3).

- The technical translation of the legal information requirements to a minimum common data set offers opportunities to request less (redundant) data from the business sector, than from the legal provisions per specific transport modality and transport flow separately. This could lead to lesser administrative burden for the industry. It is important that the EC, when establishing the common eFTI data set, takes this into account. (reference is made to the specific comment on Article 7).
- The processing of personal data must take place in accordance with the relevant privacy legislations i.e. General Data Protection Regulation (GDPR), and with the Charter of Fundamental Rights of the European Union). The Netherlands will explicitly pay attention to the way in which the Commission's proposals relate to the aforementioned legislations.

Technical aspects:

- In the comitology procedure, attention will have to be given to the technical definition of a common EU data set, in such a way that the data can be exchanged without human intervention.
- In the comitology procedure, the development of functional requirements and technical specifications for data platforms should focus on harmonized data interoperability, aspects such as privacy and information security, high quality of and governance around the maintenance of the meta-dataset and the use of already developed data platforms (by business as well as authorities) possibly also at EU level.
- In the enforcement chain – all involved inspection/enforcement authorities - the monitoring process will have to be set up in such a way that digital data can be incorporated into the business processes. This will delay the swift implementation of the Regulation. (reference is made to the specific comment on Article 17).

Administrative aspects:

- The Netherlands has reservations whether a certification process for eFTI platforms and service providers is the most appropriate means. Certification might result in higher administrative costs which could lead to a demotivating effect on business to provide data available in a digital way. Also, certification could raise extra thresholds for direct delivery (e.g. instead of using a hub) and exchange of information between member states (for example when member states use the same criteria, but assess them differently, so that one Member State may approve an eFTI platform and another Member State does not). The Netherlands invites the EC to clarify the necessity for certifications and to see if, based upon these necessities, perhaps other means than could also be considered. (reference is made to the specific comment on Article 10, 11 and 12).
- In the case of a possible development of a certification procedure The Netherlands strongly advises to work closely together with national Accreditation Councils.
- Attention will have to be paid to the development of a system and possibilities for effective regular monitoring of the EU member states to the EC after the implementation acts have become effective. The Netherlands pleads for a monitoring system that is proportional and does not lead to unnecessary administrative burden.

Financial aspects:

- The costs that have to be incurred in the various administrations for adaptation to paperless transport are often difficult to estimate in advance. That is why, during the negotiations, national and EU frameworks will have to be consulted on a regular and step-by-step basis about the consequences of accepting paperless transport by public authorities on the one hand and certification on the other.
- In some countries, like The Netherlands, or perhaps most countries, the starting point is not a "green field" situation. The Netherlands pleads that in the development of the functional and technical requirements, existing IT legacies will be taken into account, in order to prevent that more costs have to be made than necessary.

SPECIFIC COMMENTS PER ARTICLE THE NETHERLANDS

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CHAPTER I GENERAL PROVISIONS	COMMENTS The Netherlands
<i>Article 1</i> <i>Subject matter and scope</i>	
<p>1. This Regulation establishes a legal framework for the electronic communication of regulatory information related to the transport of goods on the territory of the Union. For that purpose, this Regulation:</p> <p>(a) lays down the conditions under which Member States' competent authorities are required to accept regulatory information when made available electronically by economic operators concerned;</p> <p>(b) lays down rules for the provision of services related to making regulatory information available electronically by the economic operators concerned.</p>	
<p>2. This Regulation applies to regulatory information requirements set out in Union acts laying down the conditions for the transport of goods on the territory of the Union in accordance with Title VI of Part Three of the Treaty, or laying down the conditions for the shipments of waste. In respect of the shipment of waste, this Regulation does not apply to controls by customs offices, as provided for in the applicable Union provisions. The Union acts to which this Regulation applies and the corresponding regulatory information requirements are listed in part A of Annex I.</p> <p>This Regulation also applies to regulatory information requirements set out in Member States' law dealing with matters governed by Title VI of Part Three of the Treaty and requiring the provision of information identical, in whole or in part, to the information to be provided pursuant to regulatory information requirements referred to in the first subparagraph.</p> <p>The national legislation and the corresponding regulatory information requirements referred to in the second subparagraph shall be listed in part B of Annex I, in accordance with the procedure set out in Article 2(b).</p>	<p><u>Question:</u> Is it not fully clear whether this article requires amendments to national legislation and how this affects the planning of the national implementations individually and the overall planning in European perspective as well.</p> <p>Can the EC clarify whether this was taken into account in the Impact Assessment? This is an important aspect in the perspective of defining a realistic implementation period.</p>
<p>3. By [OP insert one year from the entry into force of this Regulation] at the latest, the Member States shall notify the Commission of the provisions of national legislation and corresponding regulatory information</p>	<p><u>Question:</u> Is it not fully clear whether this article require amendments to national legislation.</p>

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requirements referred to in the second subparagraph of paragraph 2, to be included in part B of Annex I. The Member States shall also notify the Commission of any new provision of national legislation subsequently adopted, covered by the second subparagraph of paragraph 2, and which introduces changes to those regulatory information requirements or lays down new relevant regulatory information requirements, within a month from the adoption of such provision.	Can the EC clarify this? This is an important aspect in the perspective of defining a realistic implementation period.
<p><i>Article 2</i> <i>Adaptation of Annex 1</i></p>	
<p>The Commission is empowered to adopt delegated acts in accordance with Article 13, concerning the amendment of Annex I in order to:</p> <p>(a) include a reference to any delegated or implementing acts adopted by the Commission, which establish new regulatory information requirements in relation to Union legal acts governing the transport of goods in accordance with Title VI of Part Three of the Treaty;</p> <p>(b) incorporate references to national legislation and regulatory information requirements notified by Member States in accordance with Article 1(3).</p>	
<p><i>Article 3</i> <i>Definitions</i></p>	
<p>For the purposes of this Regulation, the following definitions apply:</p> <p>(1) 'regulatory information' means information, whether or not presented as a document, related to transport of cargo in the territory of the Union, including by way of transit, which is to be made available by an economic operator concerned in accordance with the provisions referred to in Article 1(2) in order to prove compliance with the relevant requirements of the acts concerned;</p> <p>(2) 'regulatory information requirement' means a requirement to provide regulatory information;</p> <p>(3) 'electronic freight transport information' (eFTI) means any set of data elements processed on electronic support for purposes of exchanging regulatory information between the economic operators concerned and with the competent public authorities;</p>	<p><u>Proposal:</u> The Netherlands proposes to add the following definition of a data element in Article 3: (13) '<i>data element</i>': means the smallest unit of information which has a unique definition and precise technical characteristics such as format, length and character type;</p>

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(4) 'processing' means any operation or set of operations performed on eFTI, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

(5) 'eFTI platform' means any information and communication technology (ICT) based solution, such as an operating system, an operating environment, or a database, intended to be used for the processing of eFTI;

(6) 'eFTI platform developer' means any natural or legal person which has developed or acquired an eFTI platform either for purposes of processing of regulatory information related to its own economic activity, or for putting that platform on the market;

(7) 'eFTI service' means a service consisting of eFTI processing by means of an eFTI platform, alone or in combination with other ICT solutions, including other eFTI platforms;

(8) 'eFTI service provider' means any natural or legal person which provides an eFTI service to economic operators concerned on the basis of a contract;

(9) 'economic operator concerned' means any transport or logistic operator, or any other natural or legal person, who is responsible for making regulatory information available to the competent authorities in accordance with the relevant regulatory information requirement;

(10) 'human-readable format' means a way of representation of the data in electronic form that can be used as information by a natural person without requiring any further processing;

(11) 'machine-readable format' means a way of representation of the data in electronic form that can be used for automatic processing by a machine;

(12) 'conformity assessment body' means a conformity assessment body within the meaning of point 13 of Article 2 of Regulation (EC) No 765/2008, which is accredited in

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accordance with that Regulation to carry out conformity assessment of an eFTI platform or an eFTI service provider.	
CHAPTER II, REGULATORY INFORMATION MADE AVAILABLE ELECTRONICALLY	
<i>Article 4 Requirements for economic operators concerned</i>	
<p>1. Where economic operators concerned make regulatory information available electronically, they shall do so on the basis of data processed in a certified eFTI platform and, if applicable, by a certified eFTI service provider. The regulatory information shall be made available in machine-readable format and, at the request of the competent authority, in human-readable format.</p> <p>Information in machine-readable format shall be made available via an authenticated and secure connection to the data source of an eFTI platform. Economic operators concerned shall communicate the Internet address via which the information can be accessed, together with any other elements that are necessary to allow the competent authority to uniquely identify the regulatory information. Information in human-readable format shall be made available on the spot, on the screen of electronic devices owned by the economic operator concerned or by the competent authorities.</p>	<p><u>Question:</u> Both machine readable and human-readable data are provided at the request of the competent authority?</p>
<p>2. The Member States shall take measures to enable their competent authorities to process regulatory information made available by the economic operators concerned in machine-readable format pursuant to the second subparagraph of paragraph 1, in accordance with the provisions established by the Commission pursuant to Article 7.</p>	<p><u>Proposal:</u> As already stated in our general comment, The Netherlands fears that based on the current eFTI proposal the inspection authorities invest to comply with the eFTI Regulation to be able to access electronic data from economic operators, while these economic operators keep working with paper documents. In order to mitigate this risk, The Netherlands proposes to extend the text in Article 4(2) in such a way that data can be assessed by authorities before physical inspections.</p>
<i>Article 5 Acceptance by competent authorities</i>	
Member States' competent authorities shall accept regulatory information made available electronically by the economic operators concerned in accordance with Article 4.	
<i>Article 6 Confidential commercial information</i>	

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The competent authorities, eFTI services providers and economic operators concerned shall take measures to ensure confidentiality of commercial information processed and exchanged in accordance with this Regulation.	
Article 7 <i>Common eFTI data set, procedures and rules for access</i>	
<p>The Commission shall establish the following by means of implementing acts:</p> <p>(a) a common eFTI data set and subsets in relation to the respective regulatory information requirements, including corresponding definitions for each data element included in the common data set and subsets;</p> <p>(b) common procedures and detailed rules, including common technical specifications, for competent authorities' access to eFTI platforms, including procedures for processing of regulatory information made available electronically by the economic operators concerned.</p> <p>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).</p>	<p><u>Comment:</u> The establishment of a common data set, datamodel, syntax, functional specifications etc. will, based on earlier experience i.e. the implementation of Directive 2010/65 on reporting formalities for ships and procedures including take time. The Netherlands has serious doubts whether it is possible for Member States to implement this within the current implementation period of 4 years.</p> <p>In the establishment of a common data set, redundant/double information should be avoided.</p>
CHAPTER III, EFTI PLATFORM AND SERVICES SECTION 1 REQUIREMENTS FOR EFTI PLATFORMS AND SERVICES	
Article 8 <i>Functional requirements for eFTI platforms</i>	
<p>1. The eFTI platforms used for processing regulatory information shall provide functionalities that ensure that:</p> <p>(a) personal data can be processed in accordance with Regulation (EU) 2016/679;</p> <p>(b) commercial data can be processed in accordance with Article 6;</p> <p>(c) a unique electronic identifying link can be established between the data processed and the physical shipment of a determined set of goods to which that data is related, from origin to destination, under the terms of a single transport contract, irrespective of the quantity or number of containers, packages, or pieces;</p>	

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(d) data can be processed solely on the basis of authorised and authenticated access;

(e) all processing operations are duly recorded in order to allow, at a minimum, the identification of each distinct operation, the natural or legal person having made the operation and the sequencing of the operations on each individual data element; if an operation involves modifying or erasing an existing data element, the original data element shall be preserved;

(f) data can be archived and remain accessible for an appropriate period of time, in accordance with the relevant regulatory information requirements;

(g) data is protected against corruption and theft;

(h) the data elements processed correspond to the common eFTI data set and subsets, and can be processed in any of the official languages of the Union.

Question:

Does this mean that the complete history of mutations of a freight transport document must be recorded and saved? What is the rationale behind this? This is a fundamental design choice ('change mechanism' vs 'replace mechanism') which requires a serious amount of functionality.

Proposal:

The possibility to process the data in all official languages of the Union requires a serious amount of functionality within the eFTI platforms. In addition, this will raise extra thresholds for the exchange of information between member states. The Netherlands proposes to use only English.

2. The Commission shall adopt, by means of implementing acts, detailed rules regarding the requirements laid down in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).

Article 9

Requirements for eFTI service providers

1. eFTI service providers shall ensure that:

(a) data is processed only by authorised users and according to clearly defined user role and processing rights within the eFTI platform, in accordance with the relevant regulatory information requirements;

(b) data is stored and accessible for an appropriate period of time, in accordance with the relevant regulatory information requirements;

(c) authorities have immediate access to regulatory information concerning a freight transport operation processed by means of their eFTI platforms, when this access is given

Question:

Isn't this a requirement for the eFTI platform and should this then be mentioned in article 8?

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to the authorities by an economic operator concerned;	
(d) data is appropriately secured, including against unauthorised or unlawful processing and against accidental loss, destruction or damage.	<u>Question:</u> Isn't this a requirement for the eFTI platform and should this then be mentioned in article 8?
2. The Commission shall adopt, by means of implementing acts, detailed rules regarding the requirements laid down in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14(2).	
SECTION 3 CERTIFICATION	
<i>Article 10 Conformity assessment bodies</i>	
1. Conformity assessment bodies shall be accredited according to Regulation (EC) No 765/2008 for the purposes of performing the certification of eFTI platforms and service providers as set out in Articles 11 and 12 of this Regulation.	
2. For the purposes of accreditation, a conformity assessment body shall meet the requirements laid down in Annex II.	
3. Member States shall maintain an updated list of the accredited conformity assessment bodies, and of the eFTI platforms and eFTI service providers certified by those bodies in accordance with Articles 11 and 12. They shall make that list publicly available on an official government Internet website. The list shall be regularly updated, and by the latest by 31 March each year.	
4. By 31 March each year, Member States shall submit the lists referred to in paragraph 3 to the Commission, together with the address of the website where those lists have been published. The Commission shall publish a link to those website addresses on its official webpage.	
<i>Article 11 Certification of eFTI platforms</i>	
1. Upon request of an eFTI platform developer conformity assessment bodies shall assess the compliance of the eFTI platform with the requirements laid down in Article 8(1). If the assessment is positive, a compliance certificate shall be issued. If the assessment is negative, the compliance assessment body shall inform the applicant why the platform does not comply with those requirements.	

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2. Conformity assessment bodies shall maintain an up to date list of certified eFTI platforms and of those that received a negative assessment. The updated list shall be transmitted to the competent authorities concerned each time a certificate or a negative assessment is issued.	
3. Information made available to competent authorities by means of a certified eFTI platform shall be accompanied by a certification mark.	
4. The eFTI platform developer shall apply for a reassessment of its certification if the technical specifications adopted in the implementing acts referred to in Article 7(2) are revised.	
5. The Commission is empowered to adopt delegated acts in accordance with Article 13 to supplement this Regulation with rules on certification, use of the certification mark and renewal of the certification of eFTI platforms.	
Article 12 <i>Certification of eFTI service providers</i>	
1. Upon request of an eFTI service provider, a conformity assessment body shall assess the compliance of the eFTI service provider with the requirements laid down in Article 9(1). If the assessment is positive, a compliance certificate shall be issued. If the assessment is negative, the compliance assessment body shall inform the applicant why the provider does not comply with those requirements.	
2. Conformity assessment bodies shall maintain an up to date list of the certified eFTI service providers and of those that received a negative assessment. The updated list shall be made available to the competent authorities concerned each time a certificate or a negative assessment is issued.	
3. The Commission is empowered to adopt delegated acts in accordance with Article 13 to supplement this Regulation with rules on certification of eFTI service providers.	
CHAPTER IV DELEGATIONS OF POWER AND IMPLEMENTING PROVISIONS	
Article 13 <i>Exercise of the delegation</i>	
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	

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2. The power to adopt delegated acts referred to in Article 2, Article 11(5) and Article 12(3) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Regulation].	
3. The delegation of power referred to in Article 2, Article 11(5), Article 12(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.	
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	
6. A delegated act adopted pursuant to Article 2, Article 10(5) and Article 11(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	
<i>Article 14</i> <i>Committee procedure</i>	
1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	
CHAPTER V FINAL PROVISIONS	
<i>Article 15</i> <i>Review</i>	

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<p>1. By [five years from the date of application of this Regulation] at the latest the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.</p>	<p><u>Proposal:</u> With reference to the general comment on the implementation period, The Netherlands proposes to change Article 15 (1) as follows: 1. By [eight years from the date of application of this Regulation] at the latest the Commission shall carry out an evaluation of this Regulation and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee.</p>
<p>2. Member States shall provide the Commission with the information necessary for the preparation of that Report.</p>	<p><u>Proposal:</u> The Netherlands proposes to change Article 15 (2) as follows: 2. Member States shall provide the Commission with the information on the national implementation necessary for the preparation of that Report.</p>
<p><i>Article 16 Monitoring</i></p>	
<p>The Member States shall provide the following information to the Commission every two years and for the first time by [two years from the date of application of this Regulation] at the latest:</p>	
<p>1. the number of competent authorities which have implemented measures to access and process information made available by economic operators concerned in accordance with Article 4(2);</p>	
<p>2. the number of economic operators concerned which have made regulatory information available to the Member State's competent authorities in accordance with Article 4(1), broken down by transport mode.</p> <p>The information shall be provided for each year covered by the reporting period.</p>	
<p><i>Article 17 Entry into force and application</i></p>	
<p>This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p> <p>It shall apply from [OP insert four years from the entry into force].</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p>	<p><u>Proposal:</u> With reference to the general comment on the implementation period, The Netherlands proposes to change the second paragraph of Article 17 as follows: It shall apply from [OP insert seven years from the entry into force].</p>

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ANNEX I REGULATORY INFORMATION FALLING UNDER THE SCOPE OF THIS REGULATION	
ANNEX II REQUIREMENTS RELATING TO NOTIFIED BODIES	