

Practical guide on how to fill in field 9 and subfield 9.a-b-c of the TRIS notification message: the proportionality assessment in the framework of the Single Market Transparency Directive (Directive (EU) 2015/1535)

Preface

The European Commission's Single Market Strategy¹ aims to remove unjustified barriers, improve regulatory cooperation and foster a predictable and competitive environment for businesses, investors and consumers alike. A thorough assessment of planned national rules that could create barriers in the single market is essential to limit such barriers to what is strictly necessary to protect legitimate public interests. Proportionality plays a decisive role in that regard. The Single Market Strategy foresees that Member States shall conduct a thorough assessment of proportionality before the adoption of national rules. Member States are invited to work with the Commission to ensure that a robust proportionality assessment of draft national measures is performed to allow the Commission, other Member States and stakeholders to engage in an effective exchange in order to avoid that a disproportionate new barrier materialises.

In the framework of the procedure laid down by Directive (EU) 2015/1535² (hereinafter the Single Market Transparency Directive - 'SMTD'), Member States provide information to the Commission on notified draft technical regulations via a notification message, which is transmitted electronically via the Technical Regulations Information System ('TRIS') database. The current form for the notification message does not contain a specific field to provide information on the proportionality assessment carried out by the Member States in the context of a notified draft. To facilitate the provision of input by the Member States on their proportionality assessments, a new subfield 9.a-b-c has been created. Subfield 9.a-b-c complements field 9 of the notification message in which Member States are requested to provide information on the reasons and the necessity for preparing the draft ('statement of grounds') including, when appropriate, information on the EU act covering the area regulated in their notified draft. Proper information in field 9 sets the necessary background for the information to be provided on the proportionality assessment in subfield 9.a-b-c. Such a technical development in the notification procedure under the SMTD aims to ensure that the Member States comply with the principle of proportionality when implementing their obligations under the SMTD.

It is in that context that the Commission services have drafted this practical guide, which is intended to support the Member States in completing both field 9 and the new subfield 9.a-b-c of the notification message.

The document contains non-exhaustive references to the case-law of the Court of Justice of the European Union (hereinafter 'CJEU') to illustrate the different aspects Member States are to consider when conducting their proportionality assessments. As notified drafts may concern harmonised areas (when Member States' draft measures concern sectors governed by Union acts), partially harmonised or non-harmonised areas, the notifying Member States will have to adapt the proportionality assessments accordingly. The guidance provided here is intended solely to offer clarification on how to comply with the proportionality principle in the specific context of the SMTD notification procedure, without prejudice to other existing guiding documents at EU level on the proportionality assessment.

This text is not legally binding. Only the CJEU has the final authority to interpret EU law. The original language of this document is English.

¹ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - The Single Market: our European home market in an uncertain world*, COM(2025)500, 21.5.2025.

² Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1.

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1. Introduction

Article 5(1) of the SMTD requires Member States, when notifying draft technical regulations, to provide ‘a statement of the grounds which make the enactment of such a technical regulation necessary’³. Such measures may concern harmonised areas (when Member States’ draft measures concern sectors governed by Union acts) or non-harmonised areas⁴. Any restrictions to the free movement of goods or the freedom to provide services cannot be accepted, unless it is proved that they pursue a legitimate public interest and are proportionate, as explained in Sections 2 and 3 of this document.

Proportionality is a general principle of EU law and applies to European Union and, in the fields covered by Union law, to national measures, covering both legislative and administrative action. Rooted in the case-law of the CJEU, the proportionality principle imposes a clear obligation on Member States whenever they introduce measures that may hinder or make less attractive the exercise of the fundamental freedoms guaranteed by the Treaty on the Functioning of the European Union (‘TFEU’).

To be **proportionate**, measures must be i) suitable to achieve the public interest pursued, ii) necessary and iii) not excessive in relation to the pursued objective.

The proportionality test is to be carried out only after the existence of a relevant **legitimate public interest** underlying the notified national measure at issue has been verified and proved.

The justification assessment must be integrated in the law-making and regulatory preparatory work on a draft technical regulation and is to be done *ex ante* in view of the need to protect the good functioning of the internal market, including the rights of market operators and consumers. Therefore, completing a justification and proportionality analysis after the adoption of the measure is not appropriate.

In the SMTD procedure, the Member States need to submit a sufficiently detailed explanation in their notification message that makes it possible to appraise whether the measures in the notified draft are duly justified. To that end, they must provide insight into the justification and proportionality assessment, including the facts and evidence underlying the assessment and the elements that were considered. It is expected that the reasons for considering that a measure is justified and, in particular, proportionate are substantiated by qualitative and quantitative elements, e.g. market monitoring

³ In the same vein, according to recital (3) of the SMTD, in order to promote the smooth functioning of the internal market, as much transparency as possible should be ensured as regards national initiatives for the establishment of technical regulations. Moreover, ‘barriers to trade resulting from technical regulations relating to products may be allowed only where they are necessary in order to meet essential requirements and have an objective in the public interest of which they constitute the main guarantee’ (recital 4 of the SMTD). ‘It is essential for the Commission to have the necessary information at its disposal before the adoption of technical provisions. Consequently, the Member States, which are required to facilitate the achievement of its task pursuant to Article 4(3) of the Treaty on European Union (TEU), must notify it of their projects in the field of technical regulations’ (recital 5 of the SMTD). All the Member States must also be informed of the technical regulations envisaged by any one Member State, as well as stakeholders (see recitals 6 and 7 of the SMTD).

⁴ Article 7 SMTD excludes from the scope of application of the SMTD ‘those laws, regulations and administrative provisions of the Member States or voluntary agreements by means of which Member States: (a) comply with binding Union acts which result in the adoption of technical specifications or rules on services; (b) fulfil the obligations arising out of international agreements which result in the adoption of common technical specifications or rules on services in the Union; (c) make use of safeguard clauses provided for in binding Union acts; (d) apply Article 12(1) of Directive 2001/95/EC of the European Parliament and of the Council (10); (e) restrict themselves to implementing a judgment of the Court of Justice of the European Union; (f) restrict themselves to amending a technical regulation within the meaning of point (f) of Article 1(1), in accordance with a Commission request, with a view to removing a barrier to trade or, in the case of rules on services, to the free movement of services or the freedom of establishment of service operators’. In this respect see *Single Market Transparency Directive (Directive (EU) 2015/1535): an instrument of co-operation between EU institutions, Member States and enterprises to ensure the smooth functioning of the Single Market - A guide to the procedure for the provision of information in the field of technical regulations and of rules on Information Society services*, p. 11 (on the scope of application of the SMTD) and p. 38 (on the exemptions from the notification obligation), available at <https://technical-regulation-information-system.ec.europa.eu/en/the-20151535-and-you-being-informed/guidances/vademecum>.

reports, academic research articles, surveys, statistical data etc. Member States may also consider involving the stakeholders and give them the opportunity to make their views known.

To enable the Commission and other Member States to examine the due justification of a restriction by the notified measure, the notifying Member State is required to indicate the public interest pursued by the notified measure in field 9 and substantiate the proportionality of that measure in subfield 9.a-b-c.

To that end, Member States are required to submit in the SMTD notification message:

- In field 9: the objective of public interest pursued by the notified measure;
- In the new subfield 9.a-b-c: a substantiated proportionality assessment, supported by qualitative/quantitative evidence (e.g., market reports, research, surveys, or stakeholder consultations).

The assessment grid in the new subfield 9.a-b-c (see Annex to this guide) is structured in three parts that mirror the steps of the proportionality assessment. Targeted questions for each part provide Member States with a clear framework to conduct the assessment efficiently, effectively, systematically and transparently. The aim of the questions is to guide the input in each part. If any of the questions is not relevant for a specific notification, an answer is not needed.

If necessary, Member States can use cross references to information already provided in the notification message, to avoid repetitions.

2. Statement of grounds in field 9 of the notification message in TRIS

In field 9 of the notification message in TRIS, Member States are required to state the grounds for the notified measure, i.e. which legitimate public interest is pursued.

The justification of a restriction requires that the measure pursues a public interest that is legitimate under EU law: i) the public interests enumerated in Article 36 TFEU (regarding free movement of goods) and in Article 62 TFEU read in conjunction with Article 52 TFEU (as regards services), and ii) the overriding reasons of public interest (mandatory requirements) as developed in the case-law of the CJEU⁵.

The grounds listed in Article 36 TFEU (for goods) and 52 TFEU (for services) refer to respectively i) ‘public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property’ and ii) ‘public policy, public security or public health’.

Overriding reasons of public interest include, for instance, consumer protection⁶, protection of the environment⁷, protection of minors⁸, freedom of expression⁹, protection of press diversity¹⁰, road

⁵ See for instance Case C-120/78, *Rewe v Bundesmonopolverwaltung für Branntwein*, ECLI:EU:C:1979:42, paragraph 8; Case C-110/05, *Commission of the European Communities v Italian Republic*, ECLI:EU:C:2009:66, paragraph 59.

⁶ Case C-275/92, *Schindler*, ECLI:EU:C:1994:119, paragraph 58; Case C-448/98, *Guimont*, ECLI:EU:C:2000:663, paragraph 30.

⁷ Case C-302/86, *Commission v Denmark*, ECLI:EU:C:1988:421, paragraphs 8 and 9.

⁸ Case C-662/21, *Booky.fi Oy*, ECLI:EU:C:2023:239, paragraph 41.

⁹ Case C-112/00, *Eugen Schmidberger Internationale Transporte und Planzüge v Austria*, ECLI:EU:C:2003:333, paragraph 74.

¹⁰ Case C-368/95, *Vereinigte Familiapress Zeitungsverlags- und vertriebs GmbH v Heinrich Bauer Verlag*, ECLI:EU:C:1997:325, paragraph 18.

safety¹¹, fight against crime¹² and others¹³. The list of overriding reasons relating to the public interest may evolve over time with the development of the case-law of the CJEU.

National measures that discriminate on the ground of nationality, be it directly or indirectly, are usually examined by the CJUE with particular rigour. A national measure can discriminate on the ground of nationality not only in a direct way (for example: only foreign operators are subject to a given requirement), but also in an indirect way (for example: operators whose CEO is foreign are subject to a given requirement). The concept of discrimination includes state measures which are discriminatory in nature in that they establish, directly or indirectly, a difference in treatment between domestic and cross-border activities which does not correspond to an objective difference in circumstances¹⁴.

In any case, purely economic interests¹⁵ or considerations of an administrative nature¹⁶ do not constitute legitimate public interests under EU law.

In cases of full harmonisation through an EU act, Member States may rely solely on the justifications provided for in that act and not on the grounds provided in the TFEU or an overriding reason of public interest.

In cases of minimum harmonisation, the Treaty justifications and the overriding reasons of public interest recognised by the CJEU can be invoked where a Member State wishes to go beyond the minimum harmonisation; moreover, the national measure must in any event comply with the provisions laid down in the EU harmonising act. In any case, the national measure must comply with the principle of proportionality¹⁷.

3. Proportionality assessment in subfield 9.a-b-c of the notification message in TRIS

Within the framework of the SMTD, the proportionality test functions as a key ‘filter’. When a Member State notifies a draft technical regulation, the Commission and the other Member States assess whether the measure complies with the principle of proportionality.

It is for the Member States to prove, in a concrete manner and by reference to the circumstances of the case, that the notified provisions are justified¹⁸. The ‘reasons which may be invoked by a Member State by way of justification must be accompanied by appropriate evidence or by an analysis of the appropriateness and proportionality of the restrictive measure adopted by that State, and by precise evidence enabling its arguments to be substantiated’¹⁹. Providing information on the proportionality assessment carried out prior to a notification is an obligation and an important element in this context.

¹¹ Case C-110/05, *Commission of the European Communities v Italian Republic*, ECLI:EU:C:2009:66, paragraph 60; Case C-265/06, *Commission of the European Communities v Portuguese Republic*, ECLI:EU:C:2008:210, paragraph 38.

¹² Case C-265/06, *Commission of the European Communities v Portuguese Republic*, paragraph 38.

¹³ See also recital 40 and Article 4(8) of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27.12.2006, p. 36.

¹⁴ Case C-78/18, *Commission v Hungary*, ECLI:EU:C:2020:476, paragraph 53.

¹⁵ Case C-201/15, *AGET Iraklis*, ECLI:EU:C:2016:972, paragraph 72; Case C-254/98, *Schutzverband gegen unlauteren Wettbewerb v TK-Heimdienst Sass GmbH*, ECLI:EU:C:2000:12, paragraph 33.

¹⁶ Case 205/84, *Commission v Germany*, ECLI:EU:C:1986:463, paragraph 54; Joined Case C-369/96 and C-376/96, *Arblade et Leloup*, ECLI:EU:C:1999:575, paragraph 37.

¹⁷ Case C-313/99, *Mulligan and others v Minister for Agriculture and Food, Northern Ireland*, ECLI:EU:C:2002:386, paragraphs 35 and 36. Article 36 TFEU, overriding reasons of public interest and the principle of proportionality cannot be used to justify departing from fully harmonised rules, see European Commission, *Commission Notice, Guide on Articles 34-36 of the Treaty on the Functioning of the European Union (TFEU)*, C(2021)1457, OJ C 100, 23.3.2021, p. 66, and the case-law cited therein.

¹⁸ Case C-78/18, *Commission v Hungary*, ECLI:EU:C:2020:476, paragraph 77.

¹⁹ Case C-254/05, *Commission v Belgium*, ECLI:EU:C:2007:319, paragraph 36 and the case-law cited.

While the proportionality assessment displays particular nuances depending on whether it is applied in harmonised or non-harmonised areas and depending on the area concerned, its core logic is largely consistent across contexts, making it possible to identify a set of general features. The present guide does not aim to provide an exhaustive analysis of the proportionality assessment applicable in all cases but rather to set out common characteristics based on the existing case-law.

The proportionality assessment must be carried out in an objective and independent manner. It encompasses the following elements:

A. *Suitability*

First, once a legitimate objective has been identified, it must be verified whether the measure is suitable to achieve that legitimate objective (**suitability verification**).

In the context of the suitability limb of the proportionality test, the notifying Member State must specifically identify a risk for the public interest and substantiate it, including, where relevant, through a detailed assessment²⁰.

Depending on the complexity of the matter, such an assessment must be based on convincing and sufficient evidence, which may include empirical evidence²¹, quantitative measurements²², behavioural analyses²³, expert opinions²⁴, or market and scientific studies²⁵.

If appropriate in relation to a specific restriction, Member States need to rely on the most recent and reliable scientific data available concerning an alleged real risk to a legitimate public interest²⁶ and to sufficiently establish the existence of a risk and the degree of probability of harmful effects, as well as the seriousness of those potential effects²⁷. Where relevant, this may be done in the light of scientific studies²⁸. A national measure is only suitable if it is capable of addressing the identified risk. Depending on the subject matter and its complexity, this aspect can be assessed through various methods, such as behavioural analyses²⁹ or market studies³⁰. If the measure has no or only a minimal demonstrable impact on a relevant risk, it may not be deemed suitable³¹.

A national measure can be considered to be an appropriate means for securing the achievement of the objective pursued only if it genuinely reflects a concern to secure the attainment of that objective in a consistent and systematic manner³². Accordingly, national measures are inconsistent for example if they apply only in certain scenarios but not others, whereas both scenarios present an analogue level of risk or threat to the public objective pursued by the restrictions³³ or if they permit significant exceptions that are neither narrow in scope nor adequately justified³⁴.

²⁰ Case C-95/01, Criminal proceedings against John Greenham and Léonard Abel, ECLI:EU:C:2004:71, paragraphs 41 and 47.

²¹ Case C-639/11, European Commission v Republic of Poland, ECLI:EU:C:2014:173, paragraph 57.

²² Case C-320/03, Commission of the European Communities v Republic of Austria, ECLI:EU:C:2005:684, paragraph 79.

²³ Case C-178/84, Commission v Germany (Reinheitsgebot case), ECLI:EU:C:1987:126, paragraph 44.

²⁴ C-366/04, Georg Schwarz v Bürgermeister der Landeshauptstadt Salzburg, ECLI:EU:C:2005:719, paragraph 34.

²⁵ Case C-95/01, Criminal proceedings against John Greenham and Léonard Abel, ECLI:EU:C:2004:71, paragraphs 40 and 42.

²⁶ Case C-95/01, Criminal proceedings against John Greenham and Léonard Abel, paragraphs 42 and 47.

²⁷ Case C-41/02, Commission of the European Communities v Kingdom of the Netherlands, ECLI:EU:C:2004:762, paragraph 49.

²⁸ Case C-41/02, Commission of the European Communities v Kingdom of the Netherlands, ECLI:EU:C:2004:762, paragraph 49; Case C-639/11, European Commission v Republic of Poland, ECLI:EU:C:2014:173, paragraph 63.

²⁹ Case 120/78, Rewe-Zentral v Bundesmonopolverwaltung für Branntwein, ECLI:EU:C:1979:42, paragraph 11.

³⁰ Case C-368/95, Vereinigte Familienpress Zeitungsverlags- und vertriebs GmbH v Heinrich Bauer Verlag, ECLI:EU:C:1997:325, paragraph 29.

³¹ See Case C-170/04, Klas Rosengren and Others v Riksåklagaren, ECLI:EU:C:2007:313, paragraph 47.

³² Case C-333/14, Scotch Whisky Association and Others v The Lord Advocate and The Advocate General for Scotland, ECLI:EU:C:2015:845, paragraph 37.

³³ Case C-178/84, Commission of the European Communities v Federal Republic of Germany, ECLI:EU:C:1987:126, paragraph 49.

³⁴ Case C-662/21, Booky.fi Oy, ECLI:EU:C:2023:239, paragraphs 47, 49 and 55.

Member States are, therefore, requested to evaluate the following and provide related explanations in their notification messages:

- What is the risk for the legitimate public interest objective that the notified measure aims to address?
- How does the measure contribute to achieving the stated objective?
- Is the public interest objective pursued in a consistent and systematic manner and if so, how?

In line with the applicable CJEU case-law referred to above, it is recommended that, when filling in subfield 9.a-b-c of the notification message:

- Member States properly substantiate the replies to the above-mentioned questions so that stakeholders, other Member States and the Commission services are able to understand the reasoning provided, and
- that the notifying Member State's position is supported by appropriate and convincing evidence (impact assessments accompanying the draft technical regulation, empirical evidence, quantitative measurements, behavioural analyses, expert opinions, market and scientific studies etc.).

B. *Necessity*

The second limb of the proportionality assessment consists in analysing whether the measure is necessary to achieve the aim pursued. This entails the assessment of **whether the measure goes beyond what is necessary**.

One main element of this assessment is the scope of the measure. For example, a measure goes beyond what is necessary where it is over-comprehensive, i.e. where its scope of application goes beyond what is necessary for the pursuit of the public policy objective at issue. In turn, a restriction is usually considered less significant where the scope of the measure is limited for example by only targeting the specific problematic products or services (or specific aspects³⁵ or certain consumer groups³⁶). The scope of a restriction may also be limited through the introduction of exceptions for certain products or undertakings³⁷.

To assess the scope of a restriction, Member States need to carefully examine their existing relevant legal framework as a whole, in particular by taking into account the effect of the new measure when combined with other existing restrictive rules affecting the given product or service. Restrictive measures may be considered necessary only where existing measures of a specific or more general nature, such as product-safety law, or consumer-protection law, or other relevant rules (on competition, public health, etc.) cannot be regarded as suitable or genuinely effective to achieve the aim pursued.

Similarly, Member States must examine whether the introduction of additional requirements does not duplicate requirements that have already been introduced by that Member State in the context of other rules or procedures.

³⁵ Case C-36/02 Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn, ECLI:EU:C:2004:614, paragraph 39; Case C-265/06, Commission of the European Communities v Portuguese Republic, ECLI:EU:C:2008:210, paragraphs 45-47; Case 298/87, Smanor SA, ECLI:EU:C:1988:415, paragraphs 17-19.

³⁶ Case C-170/04, Klas Rosengren and Others v Riksåklagaren, ECLI:EU:C:2007:313, paragraph 51.

³⁷ See Case C-473/98, Kemikalieinspektionen v Toolex Alpha AB, ECLI:EU:C:2000:379, paragraphs 46-49.

To determine whether there are alternative less restrictive measures available, it is also important to assess the extent of the restriction caused by the proposed draft measure.

Member States must take into consideration the existence or availability of measures that may pursue the same public interest objective as the envisaged draft but that are less restrictive to free movement in the internal market. Thus, Member States need to examine, *inter alia*, alternative approaches³⁸. Whereas Member States do not need to analyse all possibly conceivable alternatives, they must carry out an in depth and comprehensive examination of the plausible alternatives. Therefore, it is required that Member States evaluate the following and provide related explanation in their notification messages:

- What less possible restrictive alternatives were considered?
- Is there any measure that pursues and achieves the same objective of public interest but is less restrictive to free movement in the internal market?
- Why were these alternatives rejected?

The notifying Member State is requested, when filling in subfield 9.a-b-c of the notification message, to properly justify the replies to these questions, so that stakeholders, other Member States and the Commission are able to assess the potential restriction to the internal market and the necessity of the measure. It is also necessary that the notifying Member State's position is supported by appropriate evidence (empirical evidence, quantitative measurements, behavioural analyses, expert opinions, or market and scientific studies etc.).

C. *Excessive burden in relation to the objective pursued*

The CJEU applies, in certain cases, a final step in the proportionality assessment. Even if there are no less restrictive means, the CJEU verifies whether the measure is disproportionate to the pursued objective, which implies, in particular, a balancing between, on the one hand, the importance of the objective and the seriousness of the interference and, on the other hand, the rights and freedoms concerned³⁹. In this context the CJEU assesses in particular whether the measure strikes an appropriate balance between the objectives pursued by the Member State and the restriction at stake. This involves weighing the benefits of the public measure against its restrictive aspects, in order to determine whether the measure imposes on companies and individuals excessive burdens relative to the aim pursued and whether the benefits of a measure for the pursued objective are outweighed by the burden it causes. This aspect of the assessment of proportionality can be expressed as the following rule: the greater the degree of detriment to a fundamental freedom, the greater must be the importance of the public interest on which the Member State relies⁴⁰.

³⁸ Case C-333/14, *Scotch Whisky Association and Others v The Lord Advocate and The Advocate General for Scotland*, ECLI:EU:C:2015:845, paragraphs 41-50; Case C-473/98, *Kemikalieinspektionen v Toolex Alpha AB*, ECLI:EU:C:2000:379, paragraph 47.

³⁹ For instance, in Case C-128/22, *Nordic Info v Belgische Staat*, ECLI:EU:C:2023:951, paragraph 77 (and the case-law cited therein), the CJEU applied the three-step test including the balancing of whether the interference is not disproportionate to the objective of general interest pursued to balance free movement of persons and the protection of public health in the context of border controls during the COVID-19-pandemic. Furthermore, in Case C-112/00 *Schmidberger*, ECLI:EU:C:2003:333, paragraphs 81-94, the Court balanced the restriction to the free movement of goods against the fundamental rights of the demonstrators on the Brenner motorway and thus mainly applied what is referred to here as the third step of the proportionality test. See also Case C-220/98 *Estée Lauder*, ECLI:EU:C:2000:8, paragraph 27 on free movement of goods and consumer protection and opinion of Mr Advocate General Van Gerven delivered on 11/06/1991 in Case C-159/90, *Society for the Protection of Unborn Children Ireland v Grogan and Others*, ECLI:EU:C:1991:249, paragraph 24.

⁴⁰ Opinion of Mr Advocate General Poirares Maduro delivered on 13 July 2006 in Case C-434/04, *Jan-Erik Anders Ahokainen Mati Leppik v Virallinen syyttäjä*, ECLI:EU:C:2006:462, paragraph 26: 'the greater the degree of detriment to the principle of free movement of goods, the greater must be the importance of satisfying the public interest on which the Member State relies'.

Member States may therefore, where appropriate, consider evaluating the following and provide related explanations in their notification messages:

- Are the restrictions imposed by the measure proportionate to the importance of the public interest objective, or, where appropriate, to the seriousness of the risk and the probability of its materialisation?
- Was the protection of the public interest to be achieved by the measure assessed against the degree of interference caused to the functioning of the internal market? Why have the authorities concluded that the protection of the public interest outweighed the creation of an internal market barrier? How detrimental is the lack of attainment of the public interest compared to the potential harm caused by the restriction?

When filling in subfield 9.a-b-c of the notification message, the notifying Member State is invited to justify all statements so that stakeholders, other Member States and the Commission are able to understand the balancing assessment that was conducted.

Annex - New subfield 9.a-b-c of the TRIS notification message: questions on the proportionality assessment

1. Suitability of the measure to attain the pursued objective

- What is the risk for the objective of public interest that the notified measure aims to address (as indicated in field 9)? Please provide appropriate evidence, such as empirical evidence, quantitative measurements, behavioural analyses, expert opinions, market or scientific studies etc.
- How does the measure in the notified draft contribute to achieving the stated objectives? Are there any evidence or studies supporting this link?
- Is the public interest objective pursued in a consistent and systematic manner? How?

2. Necessity

- What is the extent of the restriction on the internal market created by the notified draft measure? How will the measure affect cross-border trade and services?
- Why are the existing rules of a specific or general nature (e.g. product and safety legislation, consumer protection law) insufficient to protect the public interest objective(s) pursued? Is the measure in the notified draft the least restrictive measure or are there any measures that would be less restrictive in terms of impact on the internal market?
- What less restrictive alternatives were considered?
- Why were these alternatives rejected?
- Why is the chosen measure the least restrictive way to achieve the objective?

3. Excessive burden in relation to the pursued objective

- Are the restrictions imposed by the measure proportionate to the importance of the public interest objective pursued, or, where appropriate, to the seriousness of the risk and the probability of its materialisation?
- Was the protection of the public interest to be achieved by the measure assessed against the degree of interference caused to the functioning of the internal market? Why have the authorities concluded that the protection of the public interest outweighed the creation of an internal market barrier?
- How detrimental is the lack of attainment of the public interest compared to the potential harm caused by the restriction?