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(Acts whose publication is obligatory)

DIRECTIVE 98/13/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 February 1998

relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof;

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee [1],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [2],

(1) Whereas Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity [3], and Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment [4] should, for the sake of clarity and rationality, be codified in a single text;

(2) Whereas the sector covering telecommunications terminal equipment and satellite earth station equipment is a vital part of the telecommunications industry, which is one of the industrial mainstays of the economy in the Community;

(3) Whereas the Commission, in its Green Paper on the development of the common market for telecommunications services and equipment, has proposed to accelerate the introduction of the full mutual recognition of type approval as the measure vital for the development of a competitive Community-wide terminal market;

(4) Whereas the Commission, in its Green Paper on a common approach in the field of satellite communications in the Community, has proposed the introduction of mutual recognition of type approval for satellite earth station equipment as one of the major preconditions for, *inter alia*, a Community-wide market for satellite earth station equipment;

(5) Whereas the Council, in its resolution of 30 June 1988 [5] on the development of the common market for telecommunications services and equipment, has confirmed as a major goal in the telecommunications policy the full mutual recognition of type approval for terminal equipment on the basis of the rapid development of common European conformity specifications;

(6) Whereas the Council, in its resolution of 19 December 1991 on the development of the common market for satellite communications services and equipment [6], has recognised as one of the major goals in satellite telecommunications policy the harmonisation and liberalisation of appropriate satellite earth station equipment, subject, in particular, to conditions necessary for compliance with essential requirements;

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[1] OJ C 204, 15.7.1996, p. 3.

[2] Opinion of the European Parliament of 22 May 1996 (OJ C 166, 10.6.1996, p. 60), Council Common Position of 16 October 1997 (OJ C 375, 10.12.1997, p. 48) and Decision of the European Parliament of 19 November 1997. Council Decision of 18 December 1997.

[3] OJ L 128, 23.5.1991, p. 1. Directive as amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

[4] OJ L 290, 24.11.1993, p. 1.

[5] OJ C 257, 4.10.1988, p. 1.

[6] OJ C 8, 14.1.1992, p. 1.

(7) Whereas the Council, in its Decision 87/95/EEC [1], has set out the measures to be implemented for the promotion of standardisation in Europe and the preparation and implementation of standards in the field of information technology and telecommunications;

(8) Whereas the Council, in its resolution of 7 May 1985 [2] has provided for a new approach to technical harmonisation and standards;

(9) Whereas the scope of this Directive must be based on a general definition of the terms 'telecommunications terminal equipment' and 'satellite earth station equipment' so as to allow the technical development of products; whereas the scope excludes purpose-built satellite earth station equipment intended for use as part of the public terrestrial telecommunications network; whereas this is intended to exclude, *inter alia*, gateway satellite earth stations for major trunking applications within the context of the infrastructure provision (such as large-diameter stations) and earth stations for satellite tracking and control;

(10) Whereas this Directive does not affect current special or exclusive rights concerning satellite communications which may, in accordance with Community law, be retained by the Member States;

(11) Whereas harmonising conditions for the placing on the market of telecommunications terminal equipment will create the conditions for an open and unified market; whereas the same applies to the goal of an advanced, open trans-European market for satellite earth stations equipment, which requires effective and efficient harmonised procedures for certification, testing, marking, quality assurance and product surveillance; whereas the alternative to Community legislation is an analogous system of provisions negotiated between Member States, which would involve obvious difficulties because of the number of organisms which would be involved in multiple bilateral negotiations; whereas this is hardly practicable, and would be neither rapid nor efficient; whereas therefore the objectives of the proposed action cannot be sufficiently achieved by the Member States; whereas on the contrary the form of a Community Directive has repeatedly shown itself, in the sector of telecommunications among others, to be a practicable, rapid and efficient means; whereas the objectives of the action under consideration can therefore be better achieved at Community level;

(12) Whereas Community law in its present form provides — notwithstanding one of the fundamental rules of the Community, namely the free movement of goods — that obstacles to movement within the Community, resulting from disparities in national legislation on the marketing of products, must be accepted in so far as such requirements can be recognised as being necessary to satisfy imperative requirements; whereas, therefore, the harmonisation of laws in this case must be limited only to those requirements necessary to satisfy the essential requirements relating to telecommunications terminal equipment and satellite earth station equipment; whereas these requirements must replace the relevant national requirements because they are essential;

(13) Whereas the essential requirements must be satisfied in order to safeguard the general interest; whereas those requirements must be applied with discernment to take account of the state of the art at the time of manufacture, and economic requirements;

(14) Whereas Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits [3] and Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [4], are applicable *inter alia* to the fields of telecommunications and information technology;

(15) Whereas Directive 73/23/EEC in general also covers safety of persons;

(16) Whereas Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility [5] sets out harmonised procedures for the protection of apparatus from electromagnetic disturbances and defines the protection requirements and inspection procedures relating thereto; whereas the general requirements of Directive 89/336/EEC apply *inter alia* to the fields of telecommunications and information technology and also to satellite earth station equipment; whereas electromagnetic compatibility requirements are covered by this Directive in so far as they are specific to telecommunications terminal equipment and satellite earth station equipment;

[1] OJ L 36, 7.2.1987, p. 31.
[2] OJ C 136, 4.6.1985, p. 1.
[3] OJ L 77, 26.3.1973, p. 29. Directive as amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).
[4] OJ L 109, 26.4.1983, p. 8. Directive as last amended by Directive 94/10/EC (OJ L 100, 19.4.1994, p. 30).
[5] OJ L 139, 23.5.1989, p. 19. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

(17) Whereas in respect of the essential requirements and in order to help manufacturers to prove conformity to those requirements, it is desirable to have standards harmonised at European level to safeguard the general interest in the design and manufacture of terminal equipment and in order to allow checks as to conformity to those requirements; whereas these standards, harmonised at European level, are drawn up by private-law bodies and must retain their non-binding status; whereas for this purpose the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (Cenelec) and the European Telecommunications Standards Institute (ETSI), are the bodies recognised as competent to adopt harmonised standards; whereas, for the purposes of this Directive, a harmonised standard is a technical specification (European standard or harmonisation document) adopted by one of those bodies, on the basis of a remit from the Commission in accordance with the provisions of Directive 83/189/EEC, and in accordance with the general guidelines referred to above;

(18) Whereas in respect of the essential requirements relating to interworking with public telecommunications networks and, in cases where it is justified, through such networks, it is in general not possible to comply with such requirements other than by the application of unique technical solutions; whereas such solutions should therefore be mandatory;

(19) Whereas the proposals for common technical regulations are, as a general rule, drawn up on the basis of harmonised standards, and in order to ensure appropriate technical coordination on a broad European basis, through additional consultations, in particular with the Telecommunications Regulations Application Committee (TRAC);

(20) Whereas satellite earth station equipment is configured, as far as its interface to the space-based system is concerned, either for the emission of radio-communications signals or for both the emission and reception of radio-communications signals, or for the reception only of radio-communications signals;

(21) Whereas satellite earth station equipment is, as far as the terrestrial interface is concerned, either intended or not intended for terrestrial connection to the public telecommunications network;

(22) Whereas orbits (such as the geo-stationary orbit, low earth orbits and elliptical orbits) are paths in space described by satellites or other space-based systems, and are limited resources determined by nature;

(23) Whereas orbital resources are used in conjunction with the radio frequency spectrum which is also a limited resource determined by nature; whereas transmitting satellite earth station equipment makes use of both those resources;

(24) Whereas the effective use of orbital resources in conjunction with the radio frequency spectrum and avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems is of importance for the development of European satellite communications; whereas the International Telecommunications Union (ITU) establishes criteria for effective use of orbital resources as well as for radio-coordination to enable space and terrestrial systems to co-exist without undue interference;

(25) Whereas harmonising conditions for the placing on the market of satellite earth station equipment will create conditions permitting an effective use of orbital resources and the radio frequency spectrum and will facilitate avoidance of harmful interference between space-based and terrestrial communication systems and other technical systems;

(26) Whereas in respect of the essential requirements related to effective use of orbital resources and the radio frequency spectrum, and avoiding harmful interference with space-based and terrestrial communications systems and other technical systems, it is in general not possible to comply with such requirements other than by the application of specific technical solutions; whereas common technical regulations are therefore necessary;

(27) Whereas satellite earth station equipment capable of being used for transmission or for transmission and reception of radio-communication signals may be subject to licensing, in addition to the provisions of this Directive;

(28) Whereas satellite earth station equipment, capable only of being used for the reception of radio-communications signals, may not be subject to licensing but only to the provisions of this Directive unless they are intended for terrestrial connection to the public telecommunications network, as proposed in the Green Paper on satellite communications in the Community; whereas the use of such satellite earth station equipment must be in conformity with national regulations compatible with Community law;

(29) Whereas it is essential to ensure that notified bodies are of a high standard throughout the Community

and meet minimum criteria of competence, impartiality and financial and other independence from clients;

(30) Whereas the Approvals Committee for Terminal Equipment (ACTE) composed of representatives of the Member States and chaired by the representative of the Commission, should assist the Commission in executing the tasks entrusted to it;

(31) Whereas representatives of the telecommunication organisations, users, consumers, manufacturers, service providers and the trade unions should have the right to be consulted;

(32) Whereas ACTE should work in close cooperation with relevant committees dealing with licence procedures for satellite networks and services;

(33) Whereas the Member States' responsibility for safety, health and the other aspects covered by the essential requirements on their territory must be recognised in a safeguard clause providing for proper Community protection procedures;

(34) Whereas the addressees of any decision taken under this Directive must be informed of the reasons for such a decision and the remedies available to them;

(35) Whereas transitional arrangements are required in order that the manufacturers have the necessary time to adapt the design and production of satellite earth station equipment to meet the common technical regulations; whereas in order to have the necessary flexibility the transition arrangements must be worked out on a case-by-case basis; whereas the common technical regulations shall lay down the necessary transition arrangements;

(36) Whereas real, comparable access to third country markets, in particular the United States of America and Japan, for European manufacturers should preferably be achieved through multilateral negotiations within the World Trade Organisation (WTO), although bilateral talks between the Community and third countries may also contribute to this process;

(37) Whereas this Directive should not affect the obligations on the part of the Member States concerning the deadlines for the transposition of the Directives set out in Annex X, Part B,

HAVE ADOPTED THIS DIRECTIVE:

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Article 1

Scope and definitions

1. This Directive shall apply to terminal equipment and to satellite earth station equipment.

2. For the purpose of this Directive:

— 'public telecommunications network' shall mean the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means,

— 'terminal equipment' shall mean equipment intended to be connected to the public telecommunication network, namely:

  (a) to be connected directly to the termination of a public telecommunications network; or

  (b) to interwork with a public telecommunications network being connected directly or indirectly to the termination of a public telecommunications network

  in order to transmit, process or receive information.

  The system of connection may be wire, radio, optical or other electromagnetic system,

— 'technical specification' shall mean a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marking and labelling,

— 'standard' shall mean a technical specification adopted by a recognised standards body for repeated or continuous application, compliance with which is not compulsory,

— 'satellite earth station equipment' shall mean equipment which is capable of being used either for transmission only, or for transmission and reception (transmission-receive), or for reception only (receive-only), of radio-communication signals by means of satellites or other space-based systems, but excluding satellite earth station equipment intended for use as part of the public telecommunications network of a Member State,

— 'terrestrial connection to the public telecommunications network' shall mean any connection to the public telecommunications network which does not include a space segment.

TITLE I

TELECOMMUNICATIONS TERMINAL EQUIPMENT

Chapter I

Placing on the market and free circulation

Article 2

The intended purpose of the equipment shall be declared by the manufacturer or supplier of the equipment. However, terminal equipment within the meaning of Article 1(2), second indent, which makes use of a system of communication employing the radio frequency spectrum is presumed to be intended for connection to the public telecommunications network.

Article 3

1. Notwithstanding Articles 1 and 2, equipment which is capable of being connected to the public telecommunications network, but is not intended for such a purpose, shall be accompanied by a manufacturer's or supplier's declaration, the model of which is to be found in Annex VIII and by the operating manual. At the time of placing the equipment on the market for the first time, a copy of such documentation shall be transmitted to the notified body referred to in Article 11(1) in the Member State where this first placing on the market takes place. In addition, such equipment shall be subject to the provisions of Article 12(4).

2. The manufacturer or supplier shall be prepared to justify once, at the request of any notified body referred to in Article 11(1), the intended purpose of such equipment on the basis of its relevant technical characteristics, its functions and indications of the market segment it is intended for.

Article 4

1. Member States shall take all appropriate measures to ensure that terminal equipment may be placed on the market and put into service only if it bears the CE marking provided for in Article 12 attesting to its conformity to the requirements of this Directive, including the conformity assessment procedures laid down in Chapter II and where it is properly installed and maintained and used for its intended purpose.

2. Member States shall also take all appropriate measures to ensure that equipment referred to in Article 3 may be placed and allowed to remain on the market only if it complies with the requirements laid down by this Directive for this equipment and may not