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(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 93/97/EEC

of 29 October 1993

supplementing Directive 91/263/EEC in respect of satellite earth station equipment

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

(1) Whereas the Commission has issued a Green Paper on a common approach in the field of satellite communications in the Community proposing 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;

(2) Whereas the Council resolution of 19 December 1991 on the development of a common market for satellite communications services and equipment (4) considers as one of the major goals in satellite telecommunications policy the harmonization and liberalization of appropriate satellite earth station equipment, subject, in particular, to conditions necessary for compliance with essential requirements;

(3) Whereas that resolution notes with interest the intention of the Commission to propose measures for the approximation of the laws of the Member States concerning the appropriate satellite earth station equipment, including the mutual recognition of their conformity, in line with the principles already established in Directive 91/263/EEC (5);

(4) Whereas the goal of an advanced, open Community-wide market for satellite earth station equipment requires effective and efficient harmonized 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 not practicable, rapid or 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, as a practicable, rapid and efficient means; whereas the objective of the action under consideration can therefore be better achieved at Community level;

(5) 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 legislations relating to the marketing of products, must be accepted in so far as such requirements can be recognized as being necessary to satisfy essential requirements; whereas, therefore, the harmonization of laws in this case must be limited only to

(1) OJ No C 4, 8. 1. 1993, p. 3.
(2) OJ No C 176, 28. 6. 1993, p. 74 and Decision of 27 October 1993 (not yet published in the Official Journal).
(3) OJ No C 161, 14. 6. 1993, p. 11.
(4) OJ No C 8, 14. 1. 1992, p. 1.
(5) OJ No L 128, 23. 5. 1991, p. 1.

those requirements necessary to satisfy the essential requirements relating to satellite earth station equipment; whereas these requirements must replace the relevant national requirements because they are essential;

(6) Whereas Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits [1] 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 [2], are applicable, *inter alia*, to the fields of telecommunications and information technology;

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

(8) Whereas Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility [3] sets out harmonized procedures for the protection of apparatus by electromagnetic disturbances and defines the protection requirements and inspection procedures relating thereto; whereas the general requirements of that Directive also apply to satellite earth station equipment; whereas electromagnetic compatibility requirements are covered by this Directive in so far as they are specific to satellite earth station equipment;

(9) Whereas Decision 87/95/EEC [4] sets out the measures to be implemented for the promotion of standardization in Europe and the preparation and implementation of standards in the field of information technology and telecommunications;

(10) Whereas bearing in mind the essential requirements, it is desirable in order to help manufacturers to prove conformity with these essential requirements, to have standards harmonized at European level to safeguard the general interest in the design and manufacture of satellite earth station equipment and allow checks on conformity with these essential requirements; whereas these standards harmonized 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 Standardization (CEN), the European Committee for Electrotechnical Standardization (Cenelec) and the European Telecommunications Standards Institute (ETSI) are the bodies recognized as competent to adopt harmonized standards;

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

(12) Whereas Directive 91/263/EEC introduced the full mutual recognition of type approval for telecommunications terminal equipment and established the Approvals Committee for Terminal Equipment (ACTE) composed of representatives of the Member States and chaired by the representative of the Commission to assist the Commission in executing the tasks entrusted to it by that Directive;

(13) Whereas Directive 91/263/EEC does not explicitly apply to satellite earth station equipment;

(14) Whereas it is therefore necessary to extend to satelitte earth station equipment the principles already established in that Directive in relation to telecommunications terminal equipment;

(15) Whereas the scope of this Directive must be based on a general definition of the term '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 size diameter stations) and satellite tracking and control earth stations;

(16) 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;

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

[1] OJ No L 77, 26. 3. 1973, p. 29.
[2] OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Commission Decision 92/400/EEC (OJ No L 221, 6. 8. 1992, p. 55).
[3] OJ No L 139, 23. 5. 1989, p. 19. Directive as last amended by Directive 92/31/EEC (OJ No L 126, 12. 5. 1992, p. 11).
[4] OJ No L 36, 7. 2. 1987, p. 31.

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

(19) 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, nature-given resources;

(20) Whereas orbital resources are used in conjunction with the radio frequency spectrum which is also a limited, nature-given resource; whereas transmitting satellite earth station equipment makes use of both these resources;

(21) 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;

(22) Whereas harmonizing conditions for the placing on the market of satellite earth station equipment will create the conditions for an open and unified market and further will achieve an effective use of orbital resources and the radio frequency spectrum and facilitate avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems;

(23) 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 special technical solutions; whereas common technical regulations are therefore necessary;

(24) Whereas the parameters for the use of the frequency spectrum by transmitters are covered by the essential requirements in Article 4 (c) and (e) of Directive 91/263/EEC, with the test methods and the limit values being specifed in conjunction with the technical features of the specific equipment;

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

(26) Whereas satellite earth station equipment, only capable of being used for reception of radio-communications signals, shall not be subject to licensing terms 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 European Community; whereas the use of such satellite earth station equipment must be in conformity with national regulations, compatible with Community law;

(27) 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 GATT, although bilateral talks between the Community and third countries may also contribute to this process;

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

(29) Whereas the addressees of any decision taken under this Directive must be informed of the reasons for such a decision and the means of appeal open to them;

(30) 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 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;

(31) Whereas ACTE has to play an important role in the application of this Directive; whereas it should work in close cooperation with relevant committees dealing with licence procedures for satellite network and services,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope, placing on the market and free circulation

Article 1

1. This Directive shall apply to satellite earth station equipment as defined in paragraph 2.

2. For the purpose of this Directive:

— the definitions given in Directive 91/263/EEC shall apply, where relevant,

— *satellite earth station equipment* means equipment which is capable of being used either for transmission only, or for transmission and reception (transmit-receive), or for reception only (receive-only), of radio-communication signals by means of satellites or other space-based systems, but excluding purpose-built 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* means any connection to the public telecommunications network which does not include a space segment.

3. The manufacturer of supplier of satellite earth station equipment shall declare if the equipment is either intended for, or not intended for terrestrial connection to the public telecommunications network.

Article 2

1. Member States shall take all appropriate measures to ensure that receive-only satellite earth station equipment not intended for terrestrial connection to the public telecommunications network may be placed on the market and put into service and used on their territory, in conformity with national law compatible with Community law, only if it complies with the requirements of this Directive when it is properly installed and maintained and used for its intended purposes.

Such use must be in conformity with any national law, compatible with Community law, which restricts the use to the reception of services intended for that user.

2. Member States shall take all appropriate measures to ensure that other satellite earth station equipment may be placed on the market only if it complies with the requirements of this Directive when it is properly installed and maintained and used for its intended purposes. The use of such equipment may be subject to licensing terms in conformity with Community law.

3. Member States shall also take all appropriate measures to ensure that satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network is not permitted to be connected to the public telecommunications network.

4. Member States shall also take all appropriate measures to ensure that satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network is disconnected from the public telecommunications network.

Member States shall moreover take all appropriate measures, according to their national laws, to prevent terrestrial connection to the public telecommunications network of such equipment.

Article 3

Member States shall not impede the free circulation and the placing on the market of satellite earth station equipment conforming to the provisions of this Directive.

Article 4

1. Satellite earth station equipment shall satisfy the same essential requirements as those set out in Article 4 of Directive 91/263/EEC.

2. For the purpose of this Directive, as well as Directive 91/263/EEC, the essential requirements of Article 4 (a) of Directive 91/263/EEC shall imply the safety of persons in the same way as in Directive 73/23/EEC.

3. In the context of transmit or transmit-receive satellite earth station equipment, the essential requirement set out in Article 4 (e) of Directive 91/263/EEC concerning effective use of the radio frequency spectrum shall include the effective use of orbital resources and the avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems.

4. In the context of satellite earth station equipment, electromagnetic compatibility requirements in so far as they are specific to satellite earth station equipment shall be subject to the essential requirement set out in Article 4 (c) of Directive 91/263/EEC.

5. Satellite earth station equipment shall satisfy the essential requirement set out in Article 4 (f) of Directive 91/263/EEC, regarding the interworking of satellite earth station equipment with the public telecommunications network.

6. Satellite earth station equipment shall satisfy the essential requirement set out in Article 4 (g) of Directive 91/263/EEC regarding the interworking of satellite earth station equipment via the public telecommunications network in justified cases.

Cases where satellite earth station equipment is capable of supporting and intended to support a service for which the Council has decided that there should be Community-wide availability are considered as justified cases and the requirements concerning this interworking shall be determined in accordance with the procedure laid down in Article 16 of this Directive.

7. Notwithstanding paragraphs 1, 5 and 6 of this Article, satellite earth station equipment which is not intended for connection to the public telecommunications network shall not be required to satisfy the essential requirements set out in Article 4 (b), (d), (f) and (g) of Directive 91/263/EEC.