II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

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

(91/263/EEC)

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 Comittee (3),

Whereas Directive 86/361/EEC (4) introduced the initial stage of the mutual recognition of type approval for telecommunications terminal equipment and in particular in its Article 9 envisaged a further stage for full mutual recognition of type approval for terminal equipment;

Whereas Decision 87/95/EEC (5) 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;

Whereas the Commission has issued a Green Paper on the development of the common market for telecommunications services and equipment proposing to acclerate the introduction of the full mutual recognition of type approval as the measure vital for the development of a competitive Community-wide terminal market;

Whereas the Council, in its resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 (6), considers 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;

Whereas the terminal equipment sector is a vital part of the telecommunications industry, which is one of the industrial mainstays of the economy in the Community;

Whereas harmonizing conditions for the placing on the market of telecommunications terminal equipment will create the conditions for an open and unified market;

(1) OJ No C 211, 17. 8. 1989, p. 12.
(2) OJ No C 113, 7. 5. 1990; and OJ No C 19, 28. 1. 1991, p. 88.
(3) OJ No C 329, 30. 12. 1989, p. 1
(4) OJ No L 217, 5. 8. 1986, p. 21.
(5) OJ No L 36, 7. 2. 1987, p. 31.
(6) OJ No C 257, 4. 10. 1988, p. 1.

Whereas real, comparable access to third country markets for European manufacturers should preferably the achieved through multilateral negotiations within GATT, although bilateral talks between the Community and third countries may also contribute to this process;

Whereas the Council resulution of 7 May 1985 provides for a new approach to technical harmonization and standards (1);

Whereas the scope of the Directive must be based on a general definition of the term 'terminal equipment' so as to allow the technical development of products;

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 relating to the marketing of products, must be accepted in so far as such requirements can be recognized as being necessary to satisfy imperative requirements; whereas, therefore, the harmonization of laws in this case must be limited only to those requirements necessary to satisfy the essential requirements relating to terminal equipment; whereas these requirements must replace the relevant national requirements because they are essential;

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

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 (2) 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 (3), as amended by Directive 88/182/EEC (4), are applicable, *inter alia,* to the fields of telecommunications and information technology;

Whereas Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of Member States relating to electromagnetic compatibility (5) is applicable, *inter alia,* to the fields of telecommunications and information technology; whereas it is, however, appropriate to delete the provisions of Directive 89/336/EEC in so far as they refer to the definition of telecommunications terminal equipment and to the conformity assessment procedures to be applied for such equipment;

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 harmonized at European level to safeguard the general interest in the design and manufacture of terminal equipment and in order to allow checks of conformity to those 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 Europen Committee for Standardization (CEN), the European Commttee for Electrotechnical Standardization (Cenelec) and the European Telecommunications Standards Institute (ETSI), are the bodies recognized as competent to adopt harmonized standards; whereas, within the meaning of this Directive, a harmonized standard is a technical specification (European standard or harmonization document) adopted by one of these bodies, on the basis of a remit from the Commission in accordance with the provision of Directive 83/189/EEC, and in accordance with the general guidelines referred to above;

Whereas in respect of the essential requirements related 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 shall therefore be mandatory;

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 an appropriate technical coordination on a broad European basis, of additional consultations, in particular with the Telecommunications Regulations Application Committee (TRAC) set up by members of the European Conference of Postal and Telecommunications Administrations (CEPT) in a memorandum of understanding signed in 1991;

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;

Whereas it is appropriate to set up a committee bringing together parties directly concerned with the implementation

(1) OJ No C 136, 4. 6. 1985, p. 1.
(2) OJ No L 77, 26. 3. 1973, p. 29.
(3) OJ No L 109, 26. 4. 1983, p. 8.
(4) OJ No L 81, 26. 3. 1988, p. 75.
(5) OJ No L 139, 23. 5. 1989, p. 19.

of this Directive, in particular the national bodies designated for certifying conformity, to assist the Commission in executing the tasks entrusted to it by this Directive; whereas representatives from the telecommunication organizations, users, consumers, manufacturers, service providers and the trade unions should have the right to be consulted;

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

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;

Whereas measures must be adopted with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

Scope, placing on the market and free circulation

Article 1

1. This Directive shall apply to terminal equipment.

2. For the purpose of this Directive:

— 'public telecommunications network' means 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' means equipment intended to be connected to the public telecommunications network, i.e.:

(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 send, process or receive information.

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

— 'technical specification' means 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' means a technical specification adopted by a recognized standards body for repeated or continuous application, compliance with which is not compulsory.

3. The intended purpose of the equipment, shall be declared by the manufacturer or supplier of the equipment. However, terminal equipment within the meaning of paragraph 2 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 2

1. Notwithstanding Article 1, 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 10 (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 11 (4).

2. The manufacturer or supplier shall be prepared to justify once, at the request of any notified body referred to in Article 10 (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 3

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 complies with the requirements laid down in this Directive when 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 2 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 be connected to the public telecommunications network within the meaning of Article 1 (2).

3. Member States shall also take all appropriate measures to ensure that terminal equipment or equipment referred to in Article 2 is disconnected from the public telecommunications network if it is not used for its intended purpose. Member States may moreover take all appropriate measures, according to their national laws, to prevent connection to the public telecommunications network of terminal equipment that is not used in conformity with its intended purpose.

Article 4

Terminal equipment shall satisfy the following essential requirements:

(a) user safety, in so far as this requirement is not covered by Directive 73/23/EEC;

(b) safety of employees of public telecommunications networks operators, in so far as this requirement is not covered by Directive 73/23/EEC;

(c) electromagnetic compatibility requirements in so far as they are specific to terminal equipment;

(d) protection of the public telecommunications network from harm;

(e) effective use of the radio frequency spectrum, where appropriate;

(f) interworking of terminal equipment with public telecommunications network equipment for the purpose of establishing, modifying, charging for, holding and clearing real or virtual connection;

(g) interworking of terminal equipment via the public telecommunications network, in justified cases.

The cases where terminal equipment supports:

(i) reserved service according to Community law;

or

(ii) a service which the Council has decided that there should be Community-wide availability,

are considered as justified cases and the requirements concerning this interworking are determined in accordance with the procedure provided for in Article 14.

In addition, after consultation of representatives of the bodies referred to in Article 13 (3) and taking due account of the result of these consultations, the Commission may propose that this essential requirement is recognized as being justified for other terminal equipment in accordance with the procedure provided for in Article 14.

Article 5

Member States shall not impede the placing on the market and the free circulation and use on their territory of terminal equipment which complies with the provisions of this Directive.

Article 6

1. Member States shall presume compliance with the essential requirements referred to in Article 4 (a) and (b) in respect of terminal equipment which is in conformity with the national standards implementing the relevant harmonized standards, the references of which have been published in the *Official Journal of the European Communities*. Member States shall publish the references of such national standards.

2. The Commission shall, in accordance with the procedure laid down in Article 14, adopt:

— as a first step, the measure identifying the type of terminal equipment for which a common technical regulation is required, as well as the associated scope statement for that regulation, with a view to its transmission to the relevant standardization bodies,

— ás a second step, once they have been prepared by the relevant standardization bodies, the corresponding harmonized standards, or parts thereof, implementing the essential requirements referred to in Article 4 (c) to (g) which shall be transformed into common technical regulations, compliance with which shall be mandatory and the reference of which shall be published in the *Official Journal of the European Communities*.

Article 7

Where a Member State or the Commission considers that the harmonized standards referred to in Article 6 exceed or

do not entirely meet the essential requirements referred to in Article 4, the Commission or the Member State concerned shall bring the matter before the Committee referred to in Article 13, hereinafter referred to as 'the Committee', giving the reasons therefor. The Committee shall deliver an opinion as soon as possible.

In the light of the Committee's opinion and after consultation of the standing Committee set up by Directive 83/189/EEC, the Commission shall inform the Member States whether or not it is necessary to withdraw reference to those standards and any related technical regulations from the *Official Journal of the European Communities* and shall take the necessary steps to correct the shortcomings noted in the standards.

Article 8

1. Where a Member State finds that terminal equipment bearing the markings under the provision laid down in Chapter III does not comply with the relevant essential requirements when properly used in accordance with the purpose intended by the manufacturer, it shall take all appropriate measures to withdraw such products from the market or to prohibit or restrict their being placed on the market.

The Member State concerned shall immediately inform the Commission of any such measure indicating the reasons for its decision, and in particular whether non-compliance is due to:

(a) incorrect application of the harmonized standards or common technical regulations referred to in Article 6;

(b) shortcomings in the harmonized standards or common technical regulations referred to in Article 6 themselves.

2. The Commission shall enter into consultation with the parties concerned as soon as possible. Where, after such consultation, the Commission finds that any measure as referred to in paragraph 1 is justified it shall immediately so inform the Member State that took the action and the other Member States. Where the decision referred to in paragraph 1 is attributed to shortcomings in the harmonized standards or common technical regulations, the Commission, after consulting the parties concerned, shall bring the matter before the Committee within two months if the Member State which has taken the measure intends to maintain them, and shall initiate the procedure referred to in Article 7.

3. Where terminal equipment which does not comply with the relevant essential requirements bears the CE mark the competent Member State shall take appropriate action against whomsoever has affixed the mark and shall inform the Commission and the other Member States thereof.

4. The Commission shall keep the Member State informed of the progress and outcome of this procedure

CHAPTER II

Conformity assessment

Article 9

1. According to the choice of the manufacturer or his authorized representative established within the Community, terminal equipment shall be subject to either the EC type-examination, as described in Annex I, or to the EC delcaration of conformity, as described in Annex IV.

2. An EC type-examination as described in Annex I shall be accompanied by a declaration issued according to the EC declaration of conformity to type procedure as described in Annex II or Annex III.

3. The records and correspondence relating to the procedure referred to in this Article shall be in an official language of the Member State where the said procedure will be carried out, or in a language acceptable to the notified body involved

4. Article 10 (4) of Directive 89/336/EEC is hereby deleted.

Article 10

1. Member States shall notify to the Commission the bodies established in the Community and their identifying symbols, which they have designated for carrying out the certification, product checks, and associated surveillance tasks pertaining to the procedures referred to in Article 9. Member States shall apply the minimum criteria, set out in Annex V, for the designation of such bodies. Bodies that satisfy the criteria fixed by the relevant harmonized standards shall be presumed to satisfy the criteria set out in Annex V.

2. Member States shall inform the Commission of test laboratories established in the Community which they have designated for carrying out tests pertaining to the procedures referred to in Article 9. Notified bodies shall apply the criteria fixed by the appropriate parts of the