COUNCIL DIRECTIVE

of 17 September 1984

on the approximation of the laws of the Member States relating to common provisions for appliances using gaseous fuels, safety and control devices for these appliances and methods of surveillance of them

(84/530/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to the opinion of the European Parliament (2),

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

Whereas in certain Member States mandatory provisions determine the technical characteristics of construction, verification and/or operation of appliances using gaseous fuels; whereas these requirements differ from one Member State to another; whereas such differences hinder trade and may create unequal conditions of competition within the Community;

Whereas these obstacles to the establishment and functioning of the common market can be reduced or indeed eliminated if the same requirements apply in each of the Member States, either in addition to or in place of their existing laws;

Whereas a check on compliance with these technical requirements is necessary to provide effective protection for users and third parties; whereas the existing inspection procedures differ from one Member State to another; whereas in order to achieve free movement of appliances within the common market and to obviate multiple inspections which are in effect a barrier to the free movement of these appliances, arrangements should be made for the mutual recognition of inspection procedures by the Member States;

Whereas, in order to facilitate this mutual recognition of inspection procedures, adequate EEC type-examination procedures and EEC surveillance procedures for appliances should be established and the criteria for appointing the bodies responsible for verification should be harmonized;

Whereas the presence on an appliance using gaseous fuels of the EEC mark showing that it has undergone the appropriate inspections indicates that it satisfies the relevant technical requirements and therefore makes it unnecessary, on the importation and placing into service of the appliance, to repeat inspections which have already been carried out;

Whereas national rules on appliances using gaseous fuels cover numerous types of appliances using gaseous fuels of widely varying uses and capacities; whereas this Directive should lay down the general provisions dealing, in particular, with EEC type-examination procedures and EEC surveillance; whereas separate Directives for each category of appliance will lay down the technical requirements as to the design and methods of surveillance of such apppliances and, where appropriate, the conditions under which Community technical requirements are to replace national provisions in force; whereas the results obtained by international standardization bodies should be used as far as possible in the separate Directives;

Whereas the technical requirements of the Directives on appliances using gaseous fuels must be adapted without delay to take account of technical progress; whereas, in order to facilitate the implementation of the measures necessary for this purpose, provision should be made for a procedure establishing close cooperation between the Member States and the Commission, within the Committee for Adaptation to Technical Progress of the Directives for Removing Technical Barriers to Trade in Appliances using Gaseous Fuels;

Whereas appliances using gaseous fuels placed on the market, although conforming to the requirements of the relevant separate Directives might nevertheless constitute a safety hazard; whereas provision should therefore be made for a procedure to reduce this hazard;

Whereas different conditions as regards types of gas and fuel feed pressures are in force in the Member States;

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(1) OJ No C 134, 16. 6. 1975, p. 37.
(2) OJ No C 76, 7. 4. 1975, p. 37.
(3) OJ No C 270, 27. 11. 1975, p. 28.

whereas these mandatory conditions cannot be harmonized in view of the fact that each Member State's energy supply and distribution situation is peculiar to it;

Whereas certain appliances using gaseous fuels may also be regarded as falling partly within the scope of Council Directive 76/767/EEC of 27 July 1976 relating to pressure vessels and methods of inspecting them (1), as amended by the Act of Accession of 1979; whereas the Council will have to decide in each individual case whether, as regards construction specifications and surveillance methods, the parts of such appliances under pressure should come under Directive 76/767/EEC,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Definitions and basic principles

Article 1

1. This Directive shall apply to any appliance for cooking, heating, hot water production, refrigeration, lighting or washing which uses gaseous fuels and to any safety or control device which is intended to form an integral part of such an appliance.

2. The appliances and devices referred to in paragraph 1 are hereinafter called 'appliances'.

3. The following shall be excluded from the scope of this Directive:

— appliances specifically intended for installation in ships and aircraft,

— appliances not covered by a separate Directive within the meaning of Article 2.

4. For the purposes of this Directive, 'gaseous fuel' means any fuel which is entirely in a gaseous state at a temperature of 15 °C under a pressure of 1,01325 bar.

5. For the purpose of this Directive:

'EEC type-examination' means the procedure whereby the body approved for that purpose by a Member State establishes, following tests, and certifies that a type of appliance conforms to the requirements harmonized under this Directive and the relevant separate Directives;

'EEC surveillance' means the procedure whereby the body approved for that purpose by a Member State ensures, after an EEC type-examination certificate has been issued in accordance with this Directive and the relevant separate Directive, that appliances have been manufactured in conformity with the approved type.

Article 2

1. Separate Directives shall lay down the design and construction requirements, methods of surveillance and testing and, where necessary, the manner of operation for the categories of appliances to which they relate.

2. The aims which must in principle be pursued in devising the requirements and tests referred to in paragraph 1, taking into account the state of technical progress, must ensure in particular that appliances:

— when properly installed and maintained and used for the purpose intended, do not endanger the safety of persons, domestic animals or property,

— meet the requirements of rational use of energy,

— fulfil the purpose for which they are intended.

3. The separate Directives may specify the date from which the Member States may no longer allow the placing on their markets of the appliances covered by these Directives, unless they conform thereto.

Article 3

1. For the purposes of this Directive, 'EEC-type appliance' means any appliance which satisfies the requirements of this Directive and of the relevant separate Directive, and which accordingly bears the EEC mark of conformity referred to in Article 7 (6) and (7) and/or has been granted a certificate of conformity which may be provided for in the relevant separate Directive.

2. No Member State may, on grounds relating to the construction of an EEC appliance or surveillance thereof within the meaning of this Directive and the relevant separate Directive, refuse, prohibit or restrict the placing on the market, connection to the distribution network and putting into service for a purpose for which it was intended of an EEC-type appliance.

3. Member States shall in particular ensure that authorities or bodies responsible for the supply of gas, connection to the network and putting into service of

(1) OJ No L 262, 27. 9. 1976, p. 153.

such appliances do not impose upon such connection and putting into service any technical conditions other than the following:

— connection and putting into service for a use which is in conformity with the appliance's intended use,

— compliance with the installation requirements in force in the territory of a Member State.

Article 4

Member States shall attach the same value to EEC type-examination and EEC surveillance as to the corresponding national procedures.

CHAPTER II

EEC type-examination and EEC type-examination certificate

Article 5

1. Where it is provided for in a separate Directive, EEC type-examination shall be a prerequisite for the placing on the market, connection to the distribution network, and putting into service of an appliance.

2. EEC type-examination shall be carried out by bodies approved for this purpose by the Member State.

Article 6

1. Approved bodies appointed by Member States to carry out EEC type-examination in accordance with Article 7 shall comply with the minimum criteria laid down in Annex II, without prejudice to Member States' competence to take such measures and lay down such conditions as they consider necessary at national level to ensure that these bodies operate in an efficient, coordinated and exemplary fashion.

Compliance with the minimum criteria by a body shall not oblige a Member State to approve it.

2. Where a Member State has approved a body or bodies to carry out EEC type-examination, it shall notify the other Member States and the Commission of the body or list of bodies concerned. It shall also notify the other Member States and the Commission of any subsequent amendments to these particulars.

Article 7

1. The EEC type-examination certificate shall be the document by which an approved body certifies that a type of appliance conforms to the requirements of this Directive and the relevant separate Directives.

2. At the request of the manufacturer, or his authorized representative established in the Community, the approved bodies referred to in Article 6 shall carry out the EEC type-examination of a type of appliance. If the type meets the requirements of this Directive and of the relevant separate Directives and if the manufacturer undertakes to comply with the conditions referred to in Article 13 and in the separate Directives, the approved body shall issue an EEC type-examination certificate. This certificate shall conform to the model given in the separate Directives.

The appliance subjected to the EEC type-examination must be representative of the proposed production series. Appliances manufactured with a view to obtaining an EEC type-examination certificate must conform to the appliance for which this certificate was issued.

3. The approved bodies shall issue, refuse to issue, suspend or withdraw EEC type-examination certificates in accordance with the provisions of this chapter and of Annex I.

4. Applications for EEC type-examination relating to the same type of appliance may be submitted to only one of the approved bodies.

5. The EEC type-examination certificate shall be subject to the conditions contained in Article 13 and may also be issued for a limited period or be subject to other conditions stipulated in the separate Directives.

6. Any manufacturer who has obtained an EEC type-examination certificate shall be entitled to affix an EEC mark of conformity to the products to be marketed which correspond to the type for which the certificate was issued. This mark must be visibly, legibly and indelibly affixed to each appliance.

7. The requirements relating to the EEC type-examination certificate and the EEC mark of conformity are given in Annex I.

Article 8

1. If an approved body finds that several samples of an appliance of the type for which it has issued an EEC type-examination certificate fail to conform to that

type, it shall request the holder of the certificate to rectify production within a specified period, if necessary suspending the certificate. Where necessary, the separate Directive relating to the type of appliance concerned shall fix the number of samples deemed sufficient to justify intervention by the approved body. Failing rectification within the specified period, the approved body shall suspend or withdraw the certificate.

2. The approved body which has granted the EEC type-examination certificate must withdraw it if it finds that the certificate should not have been granted.

3. It shall suspend or withdraw the certificate if the holder fails to fulfil the undertakings to the approved body which are referred to in Articles 7 and 13.

Article 9

1. Member States shall ensure that the approved bodies carry out the aforementioned tasks correctly.

To this end they shall, by appropriate measures, oblige the approved bodies to allow the competent authorities of the Member States which appointed them to make checks at any time.

2. A Member State may authorize a body approved by it, without thereby restricting that body's own responsibility, to entrust to one or more laboratories the task of carrying out the tests to be conducted in the context of the EEC type-examination and the EEC surveillance provided for in Chapter III, provided that these laboratories satisfy the criteria laid down in sections 3, 4 and 5 of Annex II.

3. Member States shall take the necessary steps to ensure that the applicant or the person to whom the EEC type-examination certificate was issued is able to appeal against decisions by the approved body to refuse, suspend or withdraw the EEC type-examination certificate.

4. If a Member State finds that a body which it has approved is not correctly fulfilling the tasks referred to in Articles 7 and 8, such Member State shall take all appropriate steps with regard to that body.

5. The Member State shall in any event withdraw approval if it finds that an approved body has ceased to satisfy the minimum criteria laid down in Annex II or that it does not comply with the conditions set by the Member State.

6. If a Member State does not withdraw approval from a body which no longer satisfies the minimum criteria, any other Member State may bring this fact to the attention of the Commission. The Commission shall take appropriate steps to find a solution.

Article 10

1. A Member State which withdraws approval from a body shall take all necessary steps to ensure continuity with regard to fulfilment of the obligations and duties resulting from the issue of EEC type-examination certificates by that body before the withdrawal of approval. Applications refused by that body may, moreover, be re-submitted.

2. The Member State must withdraw all certificates issued by that body before withdrawal of approval if they were issued improperly.

Article 11

1. If one of the cases referred to in Article 8 is noted in a Member State, the competent authorities of that Member State shall bring this fact to the attention of the Member State in which the certificate was issued.

2. The competent authorities of the Member State in which the EEC type-examination certificate was issued shall oblige the approved body concerned to take the steps provided for in Article 8.

3. In the event of a dispute between the Member State in which an EEC type-examination certificate was issued and another Member State, the Commission shall be informed and shall take appropriate steps.

CHAPTER III

EEC surveillance

Article 12

Member States shall ensure that EEC surveillance, the aim of which is to ensure correct use of the EEC mark of conformity, is carried out. Surveillance may be carried out by the approved bodies referred to in Article 6 which issued the EEC type-certificate. Surveillance

shall be carried out by taking samples and by spot checks, *inter alia*. The bodies which carry out the surveillance must, in any case, satisfy the criteria laid down in Annex II and be notified in accordance with Article 6.

Article 13

1. A manufacturer, or his authorized representative established in the Community, who makes use of the EEC mark must:

(a) inform the approved body which granted the EEC type-examination certificate of:
   — the places where the appliances are manufactured and/or warehoused, as requested by the approved body,
   — the date on which manufacture commences,
   — any other information required by the body to enable it to carry out its task and provided for by the separate Directive;

(b) allow representatives of the approved body which granted the certificate to have access for the purpose of surveillance to the said places of manufacture and/or warehousing and to inspection records and provide all necessary information relevant to such surveillance;

(c) permit the approved body which granted the certificate to take one or more appliances as samples for surveillance purposes from the places of manufacture or warehousing.

2. The approved body which granted the EEC type-examination certificate must supply copies of the test report and, where appropriate, of the technical file to the other approved bodies, the Member States and the Commission, if they so request.

3. The holder of the EEC mark of conformity must carry out production checks or ensure that they are carried out and have at his disposal the equipment necessary for him to monitor adequately the conformity of appliances manufactured with the appliance for which the EEC type-examination certificate was issued.

Article 14

1. The approved body which granted the EEC type-examination certificate shall organize EEC surveillance of the manufactured appliances for which the EEC type-examination certificate was granted.

This surveillance must enable the approved body to verify, firstly, whether the manufacturer has the facilities for carrying out the checks referred to in Article 13 (3) and, secondly, whether the manufacturer actually carries out checks to verify whether appliances manufactured conform to the appliance for which the EEC type-examination certificate was granted; for example, whether he keeps inspection records if he has been requested to do so.

The approved body may also arrange for sampling to be carried out unannounced at the designated places of manufacture and warehousing. The approved bodies shall not be prevented from carrying out sampling, upon payment, at any stage of marketing as well.

2. If the place of manufacture, warehousing or marketing is situated in a Member State other than that of the approved body which granted the EEC type-examination certificate, that body shall, if necessary, contact an approved body in the Member State where the samples are to be taken for the checks referred to above.

The approved body which carried out the surveillance shall send a report to the approved body which granted the EEC type-examination certificate.

3. The costs which the manufacturer is required to bear as a result of EEC surveillance at any stage in the marketing process once the appliance has left the place of manufacture or warehousing may be determined in accordance with the detailed rules laid down in the separate Directives.

Article 15

1. Should the checks referred to in Article 14 prove that the appliances do not conform to the appliance which received the EEC type-examination certificate and/or that the requirements of this Directive and the relevant separate Directive have not all been fulfilled, the approved body must take one of the following measures against the holder of the EEC mark of conformity:

(a) a simple warning formally requiring that the infringements noted cease within a given period of time;

(b) a warning as referred to in (a) but accompanied by more frequent surveillance checks;

(c) suspension of the EEC type-examination certificate;

(d) withdrawal of the EEC type-certificate.