

COUNCIL DIRECTIVE

of 24 July 1986

on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment

(86/361/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,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas the mutual recognition of type approval for telecommunications terminal equipment features in the Commission communication to the Council of 18 May 1984 on telecommunications, in the Council recommendations of 12 November 1984 concerning the implementation of harmonization in the field of telecommunications and the first phase of opening up access to public telecommunications contracts, and in the Council conclusions of 17 December 1984 concerning a Community telecommunications policy;

Whereas the market in telecommunications terminal equipment and use of the full potential of the new telecommunications services are of considerable importance for the economic development of the Community;

Whereas it is absolutely essential to establish or consolidate a specifically European industrial potential in the technologies concerned;

Whereas it is highly desirable to make rapid progress towards establishing a common market in this sector, in particular in order to offer the industry an improved base for its operations and to facilitate the adoption of a joint position with respect to third countries;

Whereas the mutual recognition of type approval for telecommunications terminal equipment constitutes a major step towards the creation of an open and unified market for such equipment;

Whereas, since situations differ and technical and administrative constraints exist in the Member States, progress towards this objective should be made in stages;

Whereas in particular the mutual recognition of conformity tests on mass-produced terminal equipment should

constitute an initial stage of the mutual recognition of type approval for such equipment;

Whereas such an approach must be based on the definition of common technical specifications based on international standards and specifications and on the harmonization of general technical requirements for testing, measuring and approval procedures in the areas of telecommunications and information technology;

Whereas a general standardization programme is being implemented in the field of information technology in compliance with the Standards Code of the General Agreement on Tariffs and Trade (GATT);

Whereas there is a need for a more comprehensive framework to be drawn up in preparation for a second stage which would create an open and unified market in telecommunications terminal equipment, bearing in mind that for telecommunications this has to include both the free movement of equipment and unimpeded connection to networks, in accordance with the harmonized 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 ⁽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;

Whereas the Memorandum of Understanding between the European Conference of Postal and Telecommunications Administrations (CEPT) and the Commission concerning standards and type approval for telecommunications equipment and the general guidelines agreed with the Joint European Standards Institution CEN-CENELEC henceforth make it possible to entrust specialized technical harmonization work to those bodies;

Whereas the mechanism introduced by certain CEPT administrations, including those of the Community Member States, under the agreement drawn up at Copenhagen on 15 November 1985, incorporates a formal adoption procedure and an undertaking to implement certain CEPT recommendations, which are then designated as 'NETS' (Normes européennes de télécommunications);

⁽¹⁾ OJ No C 36, 17. 2. 1986, p. 55.

⁽²⁾ OJ No C 303, 25. 11. 1985, p. 2.

⁽³⁾ OJ No L 77, 26. 3. 1973, p. 29.

⁽⁴⁾ OJ No L 109, 26. 4. 1983, p. 8.

Whereas it is necessary to set up a Committee, with the task of assisting the Commission in implementing this Directive and in progressively implementing the mutual recognition of type approval for terminal equipment,

HAS ADOPTED THIS DIRECTIVE :

Article 1

The Member States shall implement the mutual recognition of the results of tests of conformity with common conformity specifications for mass-produced telecommunications terminal equipment in accordance with the detailed rules set out in this Directive.

Article 2

For the purposes of this Directive :

1. 'telecommunications administrations' means the administrations or private operating agencies recognized in the Community and providing public telecommunications services ;
2. 'terminal equipment' means equipment directly or indirectly connected to the termination of a public telecommunications network to send, process or receive information ;
3. '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 ;
4. 'international technical specification in telecommunications' means the technical specification of all or some characteristics of a product, recommended by such organizations as the Comité international télégraphique et téléphonique (CCITT) or the CEPT ;
5. 'common technical specification' means a technical specification drawn up with a view to uniform application in all Member States of the Community ;
6. 'standard' means a technical specification adopted by a recognized standards body for repeated or continuous application, compliance with which is not compulsory ;
7. 'international standard' means a standard adopted by a recognized international standards body ;
8. 'approved testing laboratory' means a laboratory the conformity of which with the accreditation system established by the CEPT in close cooperation with specialized organizations and any relevant national accreditation organizations has been verified, with particular reference to the relevant ISO guides, by the appropriate Member State or a body recognized as competent by that State and which is approved by that Member State or body recognized as competent for conducting conformity tests on terminal equipment ;
9. 'certificate of conformity' means the document certifying that a product or service conforms to given standards or technical specifications ;
10. 'type approval of terminal equipment' means the confirmation delivered by the competent authority of a Member State that a particular terminal equipment type is authorized or recognized as suitable to be connected to a particular public telecommunications network ;
11. 'conformity specification' means a document giving a precise and full description of the technical characteristics of the relevant terminal equipment (such as safety, technical parameters, functions and procedures and service requirements) together with a precise definition of the tests and test methods enabling the conformity of the terminal equipment with the prescribed technical characteristics to be verified ;
12. 'type approval specification' means a specification setting out the full and precise requirements that must be satisfied by terminal equipment to be granted type approval. It includes the conformity specification and also administrative requirements and, where appropriate, requirements concerning quality control operations to be carried out during the manufacture of the equipment ;
13. 'common conformity specification' means a conformity specification used in all the Community Member States by the authority competent for testing the conformity of terminal equipment. It also includes, where appropriate, requirements made necessary in a given State by historical network peculiarities or established national provisions concerning the use of radio frequencies ;
14. 'common type approval specification' means a type approval specification which is used in all the Community Member States by all the authorities empowered to grant type approval for terminal equipment. It includes the common conformity specification and also administrative requirements and, where appropriate, requirements concerning quality control operations to be carried out during the manufacture of the equipment ;
15. 'NET' (Norme européenne de télécommunications) is an approved technical specification recommendation of the CEPT or part or parts thereof which the signatories of the Memorandum of Understanding, established at the meeting of Directors-General of CEPT Administrations, in Copenhagen on 15 November 1985, adopted in accordance with the procedures set down in that Memorandum ;

16. 'mutual recognition of the results of conformity tests on terminal equipment' means a situation where, when an approved laboratory or the competent authority in a Member State issues a certificate, accompanied by test data and identification details, stating that a terminal is in conformity with a common conformity specification or a part thereof, that certificate is recognized in the other Member States, so that if the terminal in question is the subject of an application for type approval in another Member State, it no longer has to be subjected to the tests for verifying conformity with that specification, or with the part of that specification concerning the tests carried out;
17. 'essential requirements' means those aspects of common conformity specifications of such importance as to necessitate compliance as a matter of legal obligation for the implementation of the mutual recognition of the results of conformity tests on terminal equipment as an integral part of the type approval procedure. These essential requirements are at present:
- user safety in so far as this requirement is not covered by Directive 73/23/EEC,
 - safety of employees of public telecommunications network operators in so far as this requirement is not covered by Directive 73/23/EEC,
 - protection of public telecommunications networks from harm,
 - interworking of terminal equipment, in justified cases.

Article 3

The Council, acting in accordance with the rules of the Treaty on a proposal from the Commission, shall supplement as necessary the list of essential requirements and shall make them more specific where necessary for certain products.

Article 4

The Commission shall:

1. draw up each year, after consulting the Committee referred to in Article 5 and with due regard to the general programme of standardization in the information technology sector:
 - a list of international standards and international technical specifications in telecommunications to be harmonized,
 - a list of terminal equipment for which common conformity specifications should be drafted as a matter of priority, on the basis above all of the essential requirements,
 - a timetable for this work;
2. request the CEPT to draw up the common conformity specifications in the form of NETs, within the speci-

fied time limits; in so doing the latter shall, when appropriate, consult other specialized standardization organizations such as the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC).

Article 5

1. In carrying out the tasks referred to in Article 4, the Commission shall be assisted by a Committee, which shall be the Working Party of Senior Officials on Telecommunications. The members of the Committee may be assisted by experts or advisers according to the nature of the question under discussion. The Committee shall be chaired by a Commission representative.
2. Apart from the cases listed in this Directive, the Commission shall consult the Committee on:
 - (a) the broad objectives and the future needs of the telecommunications standardization policy;
 - (b) problems raised by the approval of testing laboratories, and in particular the accreditation system referred to in Article 2 (8) and any amendment to that system which may appear necessary;
 - (c) the effect of technological progress on specification work already under way and the possible need to give a new or revised mandate to the CEPT.

At the request of its Chairman or of a Member State, the Committee may consider any question relating to the implementation of this Directive.

3. The Committee shall adopt its own rules of procedure.
4. The Secretariat of the Committee shall be provided by the Commission.

Article 6

1. For the purposes of this Directive, a 'NET' shall be regarded as the equivalent of the common conformity specification.

Reference to NETs shall be published in the *Official Journal of the European Communities*.

2. Without prejudice to the cases referred to in Article 8, the competent authorities of the Member States shall not have any further tests carried out in respect of a particular type of terminal equipment where results of tests carried out in accordance with Article 7 have given rise to the issue of a certificate of conformity with the relevant common conformity specification, the references to which are published in the *Official Journal of the European Communities*. Such certificate of conformity shall be recognized for the purposes of type approval of the terminal equipment in question.

3. The common conformity specifications shall be used in all Member States by the competent authorities for any verification demanded for type approval purposes of the relevant terminal equipment.

The procedure for exceptions referred to in Article 7 (4) may also be applied by the competent authorities of the Member States in respect to the first subparagraph.

Article 7

1. Member States shall inform the Commission of the authority or authorities competent in their territory to issue type approval for terminal equipment. The Commission shall publish a list of these authorities in the *Official Journal of the European Communities*.

2. Member States shall send the Commission a list of the laboratories which they have approved, or which have been approved by bodies recognized by them as competent, for the purpose of verifying the conformity of terminal equipment with the common conformity specifications. They shall regularly submit a report on the activities of these laboratories in the field covered by this Directive. Such lists and reports shall be transmitted to the Committee referred to in Article 5 for information.

3. For the purposes of Article 6, the certificate of conformity issued by the approved laboratory which has carried out the tests must be accompanied by the data obtained from the measurements performed during the conformity tests, all the information necessary for precise identification of the terminal equipment on which the tests were made and a precise indication of the common conformity specification, or part thereof, used for the tests.

4. Member States shall ensure that telecommunications administrations use common conformity specifications when purchasing terminal equipment covered by such specifications except in the following cases :

(a) where the equipment is to replace equipment connected to the network before the adoption of common conformity specification and is to the same technical specification as the equipment it replaces, or where, during any transition period between two systems, which is accepted as necessary and which is defined within the NET, a Member State needs to add a limited number of pieces of equipment complying with the specification of the first system. In both cases, the Commission shall be informed when such a waiver is invoked and kept informed of the number of pieces of equipment involved ; this information shall be given to the Committee referred to in Article 5 ;

(b) where a careful consultation of the market — i.e. including the publication of a call for declarations of

interest in the *Official Journal of the European Communities* — shows there is no offer at economically acceptable conditions for such terminal equipment complying with those common conformity specifications. In this case, on the basis of an unavoidable need, a Member State may, for a limited period of time, apply only a part of the characteristics set out in the common conformity specifications. The Member State shall inform the Commission immediately and also state what departures from the common conformity specification it intends to permit. The Commission shall consult the Committee referred to in Article 5 as a matter of urgency and may request the CEPT to revise the particular common conformity specification. In addition, the Committee shall review the situation at least every six months during the period when this waiver is applied.

In the event that a request for revision is not made to the CEPT then his waiver shall cease when another Member State presents evidence to the Committee that terminal equipment conforming to that common conformity specification has been connected to its public telecommunication networks on a normal commercial basis.

However, a Member State may have the waiver extended provided that the Commission, on the advice of the Committee referred to in Article 5, agrees that the technical and economic conditions are sufficiently different in the two Member States as to warrant such an extension.

5. The Member States shall consult within the Committee referred to in Article 5, so as to create conditions of fair competition for carrying out the same series of conformity tests in all the approved laboratories.

Article 8

1. A Member State may, after examining the common conformity specification and the test results, suspend recognition of a certificate of conformity issued for the purpose of type approval :

- (a) if it discovers shortcomings regarding the application of the common conformity specification ;
- (b) if it discovers that the common conformity specification itself fails to meet the essential requirements which it is supposed to cover.

If it exercises this option, the Member State concerned shall immediately inform the Commission and the other Member States, stating the reasons for its decision.

2. Where the decision of the Member State concerns the electrical safety of users of terminal equipment, the procedures set out in Article 9 of Directive 73/23/EEC shall apply.

3. If the reasons given for the Member State's decision are as described in paragraph 1 (a), the Commission shall immediately consult the Member States concerned. If no agreement is reached without four weeks, the Commission shall seek the opinion of one of the approved laboratories notified in accordance with Article 7 which is based outside the territory of the Member States concerned. The Commission shall communicate the opinion of this laboratory to all the Member States, which may submit their comments to it within a period of one month.

After taking note of any such comments the Commission shall, if necessary, formulate appropriate recommendations or opinions.

If in preparing its opinion a laboratory consulted unavoidably incurs expenditure, which may if necessary include additional tests, the Commission will defray that expenditure on production of documentary evidence. If, however, further to an opinion a decision to suspend recognition of a certificate of conformity is not maintained, the Member State which took it shall reimburse the Commission, in accordance with the procedures for payment then negotiated with the Member State.

4. If the reasons invoked in support of the Member State's decision are as described in paragraph 1 (b), the Commission shall refer the matter to the Committee referred to in Article 5, which shall express its opinion as a matter of urgency. On the basis of that opinion the Commission shall decide whether or not to withdraw the common specification in question from the list published in the *Official Journal of the European Communities*. If it withdraws the specification, the Commission shall inform the CEPT and may entrust it with a further brief.

5. If a Member State considers that terminal equipment which has already been approved does not meet one or more of the essential requirements, it may revoke the

type approval granted and shall in that case immediately apply the procedures set out in paragraphs 1 and 2.

Article 9

The Commission shall examine the detailed rules for the second stage of the establishment of a market in telecommunications terminal equipment without internal frontiers covering, in particular, the implementation of mutual recognition of type approval for terminal equipment. To this end it shall submit proposals to the Council within a period of two years following the implementation of this Directive.

Article 10

This Directive shall not prejudice the application of Directive 83/189/EEC.

Article 11

1. Member States shall introduce the measures necessary to comply with this Directive within a period of not more than one year following adoption thereof. It shall forthwith inform the Commission thereof.
2. Member States shall ensure that the Commission is informed of the main provisions of national law which they adopt in the field governed by this Directive.

Article 12

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1986.

For the Council

The President

A. CLARK
