

## II

*(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 <sup>(1)</sup>,

In cooperation with the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

(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 <sup>(4)</sup> 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 <sup>(5)</sup>;

(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

<sup>(1)</sup> OJ No C 4, 8. 1. 1993, p. 3.

<sup>(2)</sup> OJ No C 176, 28. 6. 1993, p. 74 and Decision of 27 October 1993 (not yet published in the Official Journal).

<sup>(3)</sup> OJ No C 161, 14. 6. 1993, p. 11.

<sup>(4)</sup> OJ No C 8, 14. 1. 1992, p. 1.

<sup>(5)</sup> 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;

Committee for Electrotechnical Standardization (Cenelec) and the European Telecommunications Standards Institute (ETSI) are the bodies recognized as competent to adopt harmonized standards;

- (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 <sup>(1)</sup> 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 <sup>(2)</sup>, 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 <sup>(3)</sup> 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 <sup>(4)</sup> 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 satellite 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;

<sup>(1)</sup> OJ No L 77, 26. 3. 1973, p. 29.

<sup>(2)</sup> 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).

<sup>(3)</sup> 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).

<sup>(4)</sup> 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 specified in conjunction with the technical features of the specific equipment;
- (25) Whereas satellite earth station equipment, capable of being used for transmission or for 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 or 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.

*Article 5*

1. Member States shall presume compliance with the essential requirements referred to in Article 4 (a) and (b) of Directive 91/263/EEC in respect of satellite earth station 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 16 of this Directive, adopt:

— as a first step, the measures identifying the type of satellite earth station 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,

— as 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 (2) to (5), 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 6*

Where a Member State or the Commission considers that the harmonized standards referred to in Article 5 of this Directive exceed or do not entirely meet the relevant essential requirements referred to in Article 4 of this Directive, the same enquiry and notification procedures shall apply as those set out in Article 7 of Directive 91/263/EEC.

*Article 7*

1. Where a Member State finds that satellite earth station equipment bearing the marking under the provisions 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, the same measures, information and consultation procedures shall apply as those set out in Article 8 (1) (2) and (4) of Directive 91/263/EEC.

2. Where satellite earth station equipment which does not comply with the relevant essential requirements bears the CE marking, the competent Member State shall take appropriate action against whomsoever has affixed the marking. The same notification procedures shall apply as those set out in Article 8 (3) and (4) of Directive 91/263/EEC.

## CHAPTER II

**Conformity assessment***Article 8*

1. All transmit or transmit receive satellite earth station equipment shall, according to the choice of the manufacturer or his authorized representative established within the Community, be subject to all the provisions of Article 9 (1) and (2) of Directive 91/263/EEC concerning conformity assessment.

2. The same procedures regarding language requirements shall apply as those set out in Article 9 (3) of Directive 91/263/EEC.

3. Article 10 (5) of Directive 89/336/EEC shall not apply to equipment falling within the scope of this Directive or of Directive 91/263/EEC.

*Article 9*

Receive-only satellite earth station equipment, which is intended for terrestrial connection to the public telecommunications network, shall, as far as its terrestrial interface is concerned, be subject to the provisions of Article 8 (1) concerning conformity assessment while, as far as other elements are concerned, they shall be subject either to the provisions of Article 8 (1) or to the Community internal production control procedures set out in the Annex, as far as the requirements of this Directive are concerned.

*Article 10*

Receive-only satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network shall be subject either to the provisions of Article 8 (1) or to the Community internal production control procedures set out in the Annex as far as the requirements of this Directive are concerned.

*Article 11*

In addition to the provisions of Articles 8, 9 and 10 of this Directive satellite earth station equipment which is not intended for connection to the public telecommunications network shall be accompanied by a manufacturer's or supplier's declaration made and transmitted in accordance with the same procedures as those set out in Article 2 and Annex VIII to Directive 91/263/EEC, except that the declaration shall make a reference to this Directive instead of Directive 91/263/EEC.

*Article 12*

In relation to satellite earth station equipment, the same procedures for notified bodies and test laboratories shall apply as those set out in Article 10 and Annex V to Directive 91/263/EEC.

## CHAPTER III

## CE marking of conformity and inscriptions

## Article 13

1. The marking of satellite earth station equipment complying with this Directive shall consist of the CE marking consisting of the symbol 'CE', followed by the identifying symbol of the notified body responsible and, where relevant, a symbol indicating that the equipment is intended and is suitable to be connected through a terrestrial connection to the public telecommunications network. The 'CE' symbol and these two other symbols shall be the same as those shown in Annex VI to Directive 91/263/EEC.

2. The affixing of marks which are likely to be confused with the CE marking referred to in paragraph 1 above shall be prohibited.

3. Satellite earth station equipment shall be identified by the manufacturer by means of type, batch and/or serial numbers and by the name of the manufacturer and/or supplier responsible for placing it on the market.

4. Notwithstanding paragraph 1, the marking of receive-only satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network and which has been subject to the Community internal production control procedure set out in the Annex as far as the requirements of this Directive are concerned, shall consist of the CE marking, consisting of the symbol 'CE'.

## Article 14

Where it is established that the marking referred to in Article 13 (1) of this Directive has been affixed to satellite earth station equipment which:

- does not conform to an approved type, or
- conforms to an approved type which does not meet the essential requirements applicable to it, or

or where the manufacturer has failed to fulfil his obligations under the relevant Community declaration of conformity, the same procedures shall apply as those set out in Article 12 of Directive 91/263/EEC.

## CHAPTER IV

## Committee Procedures

## Article 15

1. The Approvals Committee for Terminal Equipment (hereinafter referred to as 'the Committee') set up under Article 13 (1) of Directive 91/263/EEC shall assist the Commission in implementing this Directive.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. The Commission shall inform the Committee of the manner in which its opinion has been taken into account.

3. The Commission will periodically consult the representatives of the telecommunications organizations, users, consumers, manufacturers, service providers and trade unions and will inform the Committee of the outcome of such consultations, with a view to taking due account of the outcome.

## Article 16

1. Notwithstanding Article 15 (1) and (2), the procedure laid down in the following paragraphs shall apply for matters covered by Articles 4 (6) and 5 (2).

2. The representative of the Commission shall submit to the Committee set up under Article 14 a draft of the measures to be taken as referred to in Articles 4 (6) and 5 (2). The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

4. If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority. If, within three months from the date referred to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

## CHAPTER V

**Final and transitional provisions***Article 17*

1. The Commission shall report on the implementation of this Directive at the same time and in the same manner as provided for in Article 15 of Directive 91/263/EEC.

2. The Commission shall, when submitting those draft measures referred to in Article 5 (2) of this Directive dealing with common technical regulations, ensure that transition arrangements, where appropriate, form part of the draft measures.

*Article 18*

1. Member States shall take the measures necessary to comply with this Directive no later than 1 May 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall inform the Commission of the main provisions of domestic law which they adopt in the field governed by this Directive.

*Article 19*

This Directive is addressed to the Member States.

Done at Brussels, 29 October 1993.

*For the Council*

*The President*

R. URBAIN

*ANNEX***Community internal production control procedure**

1. This Annex describes the procedure whereby the manufacturer or his authorized representative established within the Community, who carries out the obligations laid down in 2, ensures and declares that the products concerned satisfy the requirements of this Directive that apply to them.

The manufacturer must affix the CE marking to each product and draw up a written declaration of conformity.

2. The manufacturer must establish the technical documentation described in 3 and he or his authorized representative established within the Community must keep it, for a period ending at least 10 years after the last product has been manufactured, at the disposal of the relevant national authorities for inspection purposes.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available is the responsibility of the person who places the product on the Community market.

3. Technical documentation must enable the conformity of the products to be assessed against the requirements of this Directive that apply to them. It must contain, so far as relevant for assessment:

- a general description of the product,
- conceptual design and manufacturing drawings and lists of components, sub-assemblies, circuits, etc.,
- descriptions and explanations necessary for the understanding of the said drawings and lists and the operation of the product,
- a list of the standards mentioned in Article 5 of this Directive applied in full or as far as is relevant or, in the absence of such standards, the technical construction file, and descriptions of the solutions adopted to meet those requirements of this Directive that apply to the products,
- results of design calculations made, examinations carried out, etc.,
- test reports.

4. The manufacturer or his authorized representative must keep a copy of the declaration of conformity with the technical documentation.

5. The manufacturer must take all measures necessary to ensure that the manufacturing process ensures compliance by the manufactured products with the technical documentation referred to in 2 and with those requirements of this Directive that apply to them.