

Directive 2004/108/EC of the European Parliament and of the Council of 15 December 2004 on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC (Text with EEA relevance) (repealed)

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and scope

1 This Directive regulates the electromagnetic compatibility of equipment. It aims to ensure the functioning of the internal market by requiring equipment to comply with an adequate level of electromagnetic compatibility. This Directive applies to equipment as defined in Article 2.

2 This Directive shall not apply to:

- a equipment covered by Directive 1999/5/EC;
- b aeronautical products, parts and appliances as referred to in Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency⁽¹⁾;
- c radio equipment used by radio amateurs within the meaning of the Radio Regulations adopted in the framework of the Constitution and Convention of the ITU⁽²⁾, unless the equipment is available commercially. Kits of components to be assembled by radio amateurs and commercial equipment modified by and for the use of radio amateurs are not regarded as commercially available equipment.

3 This Directive shall not apply to equipment the inherent nature of the physical characteristics of which is such that:

- a it is incapable of generating or contributing to electromagnetic emissions which exceed a level allowing radio and telecommunication equipment and other equipment to operate as intended; and
- b it will operate without unacceptable degradation in the presence of the electromagnetic disturbance normally consequent upon its intended use.

4 Where, for the equipment referred to in paragraph 1, the essential requirements referred to in Annex I are wholly or partly laid down more specifically by other Community directives, this Directive shall not apply, or shall cease to apply, to that equipment in respect of such requirements from the date of implementation of those directives.

5 This Directive shall not affect the application of Community or national legislation regulating the safety of equipment.

Article 2

Definitions

1 For the purposes of this Directive, the following definitions shall apply:

- a 'equipment' means any apparatus or fixed installation;
 - b 'apparatus' means any finished appliance or combination thereof made commercially available as a single functional unit, intended for the end user and liable to generate electromagnetic disturbance, or the performance of which is liable to be affected by such disturbance;
 - c 'fixed installation' means a particular combination of several types of apparatus and, where applicable, other devices, which are assembled, installed and intended to be used permanently at a predefined location;
 - d 'electromagnetic compatibility' means the ability of equipment to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbances to other equipment in that environment;
 - e 'electromagnetic disturbance' means any electromagnetic phenomenon which may degrade the performance of equipment. An electromagnetic disturbance may be electromagnetic noise, an unwanted signal or a change in the propagation medium itself;
 - f 'immunity' means the ability of equipment to perform as intended without degradation in the presence of an electromagnetic disturbance;
 - g 'safety purposes' means the purposes of safeguarding human life or property;
 - h 'electromagnetic environment' means all electromagnetic phenomena observable in a given location.
- 2 For the purposes of this Directive the following shall be deemed to be an apparatus within the meaning of paragraph 1(b):
- a 'components' or 'sub-assemblies' intended for incorporation into an apparatus by the end user, which are liable to generate electromagnetic disturbance, or the performance of which is liable to be affected by such disturbance;
 - b 'mobile installations' defined as a combination of apparatus and, where applicable, other devices, intended to be moved and operated in a range of locations.

Article 3

Placing on the market and/or putting into service

Member States shall take all appropriate measures to ensure that equipment is placed on the market and/or put into service only if it complies with the requirements of this Directive when properly installed, maintained and used for its intended purpose.

Article 4

Free movement of equipment

1 Member States shall not impede, for reasons relating to electromagnetic compatibility, the placing on the market and/or the putting into service in their territory of equipment which complies with this Directive.

2 The requirements of this Directive shall not prevent the application in any Member State of the following special measures concerning the putting into service or use of equipment:

- a measures to overcome an existing or predicted electromagnetic compatibility problem at a specific site;
- b measures taken for safety reasons to protect public telecommunications networks or receiving or transmitting stations when used for safety purposes in well-defined spectrum situations.

Without prejudice to Directive 98/34/EC, Member States shall notify those special measures to the Commission and to the other Member States.

The special measures which have been accepted shall be published by the Commission in the *Official Journal of the European Union*.

3 Member States shall not create any obstacles to the display and/or demonstration at trade fairs, exhibitions or similar events of equipment which does not comply with this Directive, provided that a visible sign clearly indicates that such equipment may not be placed on the market and/or put into service until it has been brought into conformity with this Directive. Demonstration may only take place provided that adequate measures are taken to avoid electromagnetic disturbances.

Article 5

Essential requirements

The equipment referred to in Article 1 shall meet the essential requirements set out in Annex I.

Article 6

Harmonised standards

1 'Harmonised standard' means a technical specification adopted by a recognised European standardisation body under a mandate from the Commission in conformity with the procedures laid down in Directive 98/34/EC for the purpose of establishing a European requirement. Compliance with a 'harmonised standard' is not compulsory.

2 The compliance of equipment with the relevant harmonised standards whose references have been published in the *Official Journal of the European Union* shall raise a presumption, on the part of the Member States, of conformity with the essential requirements referred to in Annex I to which such standards relate. This presumption of conformity is limited to the scope of the harmonised standard(s) applied and the relevant essential requirements covered by such harmonised standard(s).

3 Where a Member State or the Commission considers that a harmonised standard does not entirely satisfy the essential requirements referred to in Annex I, it shall bring the matter before the Standing Committee set up by Directive 98/34/EC (hereinafter 'the Committee'), stating its reasons. The Committee shall deliver an opinion without delay.

4 Upon receipt of the Committee's opinion, the Commission shall take one of the following decisions with regard to the references to the harmonised standard concerned:

- a not to publish;
- b to publish with restrictions;
- c to maintain the reference in the *Official Journal of the European Union*;
- d to withdraw the reference from the *Official Journal of the European Union*.

The Commission shall inform the Member States of its decision without delay.

CHAPTER II

APPARATUS

Article 7

Conformity assessment procedure for apparatus

Compliance of apparatus with the essential requirements referred to in Annex I shall be demonstrated by means of the procedure described in Annex II (internal production control). However, at the discretion of the manufacturer or of his authorised representative in the Community, the procedure described in Annex III may also be followed.

Article 8

‘CE’ marking

1 Apparatus whose compliance with this Directive has been established by means of the procedure laid down in Article 7 shall bear the ‘CE’ marking which attests to that fact. The affixing of the ‘CE’ marking shall be the responsibility of the manufacturer or his authorised representative in the Community. The ‘CE’ marking shall be affixed in accordance with Annex V.

2 Member States shall take the necessary measures to prohibit the affixing to the apparatus, or to its packaging, or to the instructions for its use, of marks which are likely to mislead third parties in relation to the meaning and/or graphic form of the ‘CE’ marking.

3 Any other mark may be affixed to the apparatus, its packaging, or the instructions for its use, provided that neither the visibility nor the legibility of the ‘CE’ marking is thereby impaired.

4 Without prejudice to Article 10, if a competent authority establishes that the ‘CE’ marking has been unduly affixed, the manufacturer or his authorised representative in the Community shall bring the apparatus into conformity with the provisions concerning the ‘CE’ marking under conditions imposed by the Member State concerned.

Article 9

Other marks and information

1 Each apparatus shall be identified in terms of type, batch, serial number or any other information allowing for the identification of the apparatus.

2 Each apparatus shall be accompanied by the name and address of the manufacturer and, if he is not established within the Community, the name and address of his authorised representative or of the person in the Community responsible for placing the apparatus on the Community market.

3 The manufacturer shall provide information on any specific precautions that must be taken when the apparatus is assembled, installed, maintained or used, in order to ensure that, when put into service, the apparatus is in conformity with the protection requirements set out in Annex I, point 1.

4 Apparatus for which compliance with the protection requirements is not ensured in residential areas shall be accompanied by a clear indication of this restriction of use, where appropriate also on the packaging.

5 The information required to enable apparatus to be used in accordance with the intended purpose of the apparatus shall be contained in the instructions accompanying the apparatus.

Article 10

Safeguards

1 Where a Member State ascertains that apparatus bearing the 'CE' marking does not comply with the requirements of this Directive, it shall take all appropriate measures to withdraw the apparatus from the market, to prohibit its placing on the market or its putting into service, or to restrict the free movement thereof.

2 The Member State concerned shall immediately inform the Commission and the other Member States of any such measure, indicating the reasons and specifying, in particular, whether non-compliance is due to:

- a failure to satisfy the essential requirements referred to in Annex I, where the apparatus does not comply with the harmonised standards referred to in Article 6;
- b incorrect application of the harmonised standards referred to in Article 6;
- c shortcomings in the harmonised standards referred to in Article 6.

3 The Commission shall consult the parties concerned as soon as possible, following which it shall inform the Member States whether or not it finds the measure to be justified.

4 Where the measure referred to in paragraph 1 is attributed to a shortcoming in harmonised standards, the Commission, after consulting the parties, shall, if the Member State concerned intends to uphold the measure, bring the matter before the Committee and initiate the procedure laid down in Article 6(3) and (4).

5 Where the non-compliant apparatus has been subject to the conformity assessment procedure referred to in Annex III, the Member State concerned shall take appropriate action in respect of the author of the statement referred to in Annex III, point 3, and shall inform the Commission and the other Member States accordingly.

Article 11

Decisions to withdraw, prohibit or restrict the free movement of apparatus

1 Any decision taken pursuant to this Directive to withdraw apparatus from the market, prohibit or restrict its placing on the market or its putting into service, or restrict the free movement thereof, shall state the exact grounds on which it is based. Such decisions shall be notified without delay to the party concerned, who shall at the same time be informed of the remedies available to him under the national law in force in the Member State in question and of the time limits to which such remedies are subject.

2 In the event of a decision as referred to in paragraph 1, the manufacturer, his authorised representative, or any other interested party shall have the opportunity to put forward his point of view in advance, unless such consultation is not possible because of the urgency of the measure to be taken as justified in particular with respect to public interest requirements.

Article 12

Notified bodies

1 Member States shall notify the Commission of the bodies which they have designated to carry out the tasks referred to in Annex III. When determining the bodies to be designated, Member States shall apply the criteria laid down in Annex VI.

Such notification shall state whether the bodies are designated to carry out the tasks referred to in Annex III for all apparatus covered by this Directive, and/or the essential requirements referred to in Annex I or whether the scope of designation is limited to certain specific aspects and/or categories of apparatus.

2 Bodies which comply with the assessment criteria established by the relevant harmonised standards shall be presumed to comply with the criteria set out in Annex VI covered by such harmonised standards. The Commission shall publish in the *Official Journal of the European Union* the references of those standards.

3 The Commission shall publish in the *Official Journal of the European Union* a list of notified bodies. The Commission shall ensure that the list is kept up to date.

4 If a Member State finds that a notified body no longer meets the criteria listed in Annex VI, it shall inform the Commission and the other Member States accordingly. The Commission shall withdraw the reference to that body from the list referred to in paragraph 3.

CHAPTER III

FIXED INSTALLATIONS

Article 13

Fixed installations

1 Apparatus which has been placed on the market and which may be incorporated into a fixed installation is subject to all relevant provisions for apparatus set out in this Directive.

However, the provisions of Articles 5, 7, 8 and 9 shall not be compulsory in the case of apparatus which is intended for incorporation into a given fixed installation and is otherwise not commercially available. In such cases, the accompanying documentation shall identify the fixed installation and its electromagnetic compatibility characteristics and shall indicate the precautions to be taken for the incorporation of the apparatus into the fixed installation in order not to compromise the conformity of that installation. It shall furthermore include the information referred to in Article 9(1) and (2).

2 Where there are indications of non-compliance of the fixed installation, in particular, where there are complaints about disturbances being generated by the installation, the competent authorities of the Member State concerned may request evidence of compliance of the fixed installation, and, when appropriate, initiate an assessment.

Where non-compliance is established, the competent authorities may impose appropriate measures to bring the fixed installation into compliance with the protection requirements set out in Annex I, point 1.

3 Member States shall set out the necessary provisions for identifying the person or persons responsible for the establishment of compliance of a fixed installation with the relevant essential requirements.

CHAPTER IV

FINAL PROVISIONS

Article 14

Repeal

Directive 89/336/EEC is hereby repealed as from 20 July 2007.

References to Directive 89/336/EEC shall be construed as references to this Directive and should be read in accordance with the correlation table set out in Annex VII.

Article 15

Transitional provisions

Member States shall not impede the placing on the market and/or the putting into service of equipment which is in compliance with the provisions of Directive 89/336/EEC and which was placed on the market before 20 July 2009.

Article 16

Transposition

1 Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 20 January 2007. They shall forthwith inform the Commission thereof. They shall apply those provisions as from 20 July 2007. When Member States adopt those provisions, 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 reference shall be laid down by Member States.

2 Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 17

Entry into force

This Directive shall enter into force on the twentieth day after its publication in the *Official Journal of the European Union*.

Status: This is the original version (as it was originally adopted).

Article 18

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 15 December 2004.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

A. NICOLAI

Status: This is the original version (as it was originally adopted).

- (1) [OJ L 240, 7.9.2002, p. 1](#). Regulation as amended by Commission Regulation (EC) No 1701/2003 ([OJ L 243, 27.9.2003, p. 5](#)).
- (2) Constitution and Convention of the International Telecommunication Union adopted by the Additional Plenipotentiary Conference (Geneva, 1992) as amended by the Plenipotentiary Conference (Kyoto, 1994).