

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Member States relating to electromagnetic compatibility and repealing Directive 89/336/EEC (Text with EEA relevance) (repealed)

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(Text with EEA relevance) (repealed)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁽²⁾,

Whereas:

- (1) Council Directive 89/336/EEC of 3 May 1989 on the approximation of laws of the Member States relating to electromagnetic compatibility⁽³⁾ has been the subject of a review under the initiative known as Simpler Legislation for the Internal Market (SLIM). Both the SLIM process and a subsequent in-depth consultation have revealed the need to complete, reinforce and clarify the framework established by Directive 89/336/EEC.
- (2) Member States are responsible for ensuring that radiocommunications, including radio broadcast reception and the amateur radio service operating in accordance with International Telecommunication Union (ITU) radio regulations, electrical supply networks and telecommunications networks, as well as equipment connected thereto, are protected against electromagnetic disturbance.
- (3) Provisions of national law ensuring protection against electromagnetic disturbance should be harmonised in order to guarantee the free movement of electrical and electronic apparatus without lowering justified levels of protection in the Member States.
- (4) Protection against electromagnetic disturbance requires obligations to be imposed on the various economic operators. Those obligations should be applied in a fair and effective way in order to achieve such protection.

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- (5) The electromagnetic compatibility of equipment should be regulated with a view to ensuring the functioning of the internal market, that is to say, of an area without internal frontiers in which the free movement of goods, persons, services and capital is assured.
- (6) The equipment covered by this Directive should include both apparatus and fixed installations. However, separate provision should be made for each. This is so because, whereas apparatus as such may move freely within the Community, fixed installations on the other hand are installed for permanent use at a predefined location, as assemblies of various types of apparatus and, where appropriate, other devices. The composition and function of such installations correspond in most cases to the particular needs of their operators.
- (7) Radio equipment and telecommunications terminal equipment should not be covered by this Directive since they are already regulated by Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity⁽⁴⁾. The electromagnetic compatibility requirements in both Directives achieve the same level of protection.
- (8) Aircraft or equipment intended to be fitted into aircraft should not be covered by this Directive, since they are already subject to special Community or international rules governing electromagnetic compatibility.
- (9) This Directive need not regulate equipment which is inherently benign in terms of electromagnetic compatibility.
- (10) This Directive should not deal with the safety of equipment, since that is dealt with by separate Community or national legislation.
- (11) Where this Directive regulates apparatus, it should refer to finished apparatus commercially available for the first time on the Community market. Certain components or sub-assemblies should, under certain conditions, be considered to be apparatus if they are made available to the end-user.
- (12) The principles on which this Directive is based are those set out in the Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards⁽⁵⁾. In accordance with that approach, the design and manufacture of equipment is subject to essential requirements in relation to electromagnetic compatibility. Those requirements are given technical expression by harmonised European standards, to be adopted by the various European standardisation bodies, European Committee for Standardisation (CEN), European Committee for Electro-technical Standardisation (CENELEC) and European Telecommunications Standards Institute (ETSI). CEN, CENELEC and ETSI are recognised as the competent institutions in the field of this Directive for the adoption of harmonised standards, which they draw up in accordance with the general guidelines for cooperation between themselves and the Commission, and with the procedure laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services⁽⁶⁾.

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- (13) Harmonised standards reflect the generally acknowledged state of the art as regards electromagnetic compatibility matters in the European Union. It is thus in the interest of the functioning of the internal market to have standards for the electromagnetic compatibility of equipment which have been harmonised at Community level. Once the reference to such a standard has been published in the *Official Journal of the European Union*, compliance with it should raise a presumption of conformity with the relevant essential requirements, although other means of demonstrating such conformity should be permitted. Compliance with a harmonised standard means conformity with its provisions and demonstration thereof by the methods the harmonised standard describes or refers to.
- (14) Manufacturers of equipment intended to be connected to networks should construct such equipment in a way that prevents networks from suffering unacceptable degradation of service when used under normal operating conditions. Network operators should construct their networks in such a way that manufacturers of equipment liable to be connected to networks do not suffer a disproportionate burden in order to prevent networks from suffering an unacceptable degradation of service. The European standardisation organisations should take due account of that objective (including the cumulative effects of the relevant types of electromagnetic phenomena) when developing harmonised standards.
- (15) It should be possible to place apparatus on the market or put it into service only if the manufacturers concerned have established that such apparatus has been designed and manufactured in conformity with the requirements of this Directive. Apparatus placed on the market should bear the 'CE' marking attesting to compliance with this Directive. Although conformity assessment should be the responsibility of the manufacturer, without any need to involve an independent conformity assessment body, manufacturers should be free to use the services of such a body.
- (16) The conformity assessment obligation should require the manufacturer to perform an electromagnetic compatibility assessment of apparatus, based on relevant phenomena, in order to determine whether or not it meets the protection requirements under this Directive.
- (17) Where apparatus is capable of taking different configurations, the electromagnetic compatibility assessment should confirm whether the apparatus meets the protection requirements in the configurations foreseeable by the manufacturer as representative of normal use in the intended applications; in such cases it should be sufficient to perform an assessment on the basis of the configuration most likely to cause maximum disturbance and the configuration most susceptible to disturbance.
- (18) Fixed installations, including large machines and networks, may generate electromagnetic disturbance, or be affected by it. There may be an interface between fixed installations and apparatus, and the electromagnetic disturbances produced by fixed installations may affect apparatus, and vice versa. In terms of electromagnetic compatibility, it is irrelevant whether the electromagnetic disturbance is produced by apparatus or by a fixed installation. Accordingly, fixed installations and apparatus should be subject to a coherent and comprehensive regime of essential requirements.

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It should be possible to use harmonised standards for fixed installations in order to demonstrate conformity with the essential requirements covered by such standards.

- (19) Due to their specific characteristics, fixed installations need not be subject to the affixation of the 'CE' marking or to the declaration of conformity.
- (20) It is not pertinent to carry out the conformity assessment of apparatus placed on the market for incorporation into a given fixed installation, and otherwise not commercially available, in isolation from the fixed installation into which it is to be incorporated. Such apparatus should therefore be exempted from the conformity assessment procedures normally applicable to apparatus. However, such apparatus should not be permitted to compromise the conformity of the fixed installation into which it is incorporated. Should apparatus be incorporated into more than one identical fixed installation, identifying the electromagnetic compatibility characteristics of these installations should be sufficient to ensure exemption from the conformity assessment procedure.
- (21) A transitional period is necessary in order to ensure that manufacturers and other concerned parties are able to adapt to the new regulatory regime.
- (22) Since the objective of this Directive, namely to ensure the functioning of the internal market by requiring equipment to comply with an adequate level of electromagnetic compatibility, cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (23) Directive 89/336/EEC should therefore be repealed,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 220, 16.9.2003, p. 13.](#)
- (2) Opinion of the European Parliament of 9 March 2004 (not yet published in the Official Journal) and Council Decision of 29 November 2004.
- (3) [OJ L 139, 23.5.1989, p. 19.](#) Directive as last amended by Directive 93/68/EEC ([OJ L 220, 30.8.1993, p. 1.](#))
- (4) [OJ L 91, 7.4.1999, p. 10.](#) Directive as amended by Regulation (EC) No 1882/2003 ([OJ L 284, 31.10.2003, p. 1.](#))
- (5) [OJ C 136, 4.6.1985, p. 1.](#)
- (6) [OJ L 204, 21.7.1998, p. 37.](#) Directive as last amended by the 2003 Act of Accession.