

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 10 December 1992

Proposal for a

COUNCIL DIRECTIVE

on the approximation

of the laws of the Member States concerning

satellite earth station equipment,

extending the scope of Council Directive 91/263/EEC

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

In April 1991, the Council, following a proposal from the Commission, issued Directive 91/263/EEC on the approximation of the laws of the Member States concerning telecommunications terminal equipment including the mutual recognition of their conformity. This Directive established the principles and procedures for the full mutual recognition of type approval for telecommunications terminal equipment intended for type approval.

As mentioned in section A above, the Satellite Resolution, identifies four major policy goals in the Community satellite telecommunications policy. In the context of the satellite terminal equipment market, Policy Goal 1 is of particular relevance :

- "1. harmonisation and liberalisation for appropriate satellite earth stations...
...subject in particular to conditions necessary for compliance with essential requirements"

Furthermore, in the Satellite Resolution the Council notes with interest **"...the intention of the Commission to propose measures necessary to achieve the goal mentioned above, including a measure for the approximation of the laws of the Member States concerning appropriate satellite earth stations, including the mutual recognition of their conformity, in line with the principles already established for telecommunications terminal equipment."** This is a reference to the principles already established under Directive 91/263/EEC.

In order to create an open Community-wide market for satellite earth station equipment it is necessary to extend the existing procedures established under Directive 91/263/EEC for mutual recognition of type approval for telecommunications terminal equipment.

II. The aims of the proposed supplemental Directive

The aims of the proposed supplemental Directive are four fold :

- * **to establish** the implementation of the single market for satellite earth station equipment, based where appropriate on the essential requirements already

specified in Directive 91/263/EEC, and in addition, based on the interpretation, for satellite earth station equipment, of the essential requirement of Article 4 (e) of Directive 91/263/EEC concerning effective use of the radio frequency spectrum, as follows

- effective use of orbital resources,
 - avoidance of harmful interference between space and terrestrial communications systems and other technical systems;
- * **to bring into force**, as part of the procedure for satellite earth station equipment to be placed on the market, harmonised procedures for certification, testing, marking, quality assurance and product surveillance, to ensure adherence to the essential requirements already specified in Directive 91/263/EEC, as well as the relevant interpretation of the requirement concerning effective use of the radio spectrum, as specified in the proposed supplemental Directive, in line with those procedures already established under Directive 91/263/EEC;
 - * **to guarantee**, subject to licensing conditions where appropriate, the right to use satellite earth station equipment which has been legally placed on the market;
 - * **to guarantee**, subject to licensing conditions where appropriate, the right to connect satellite earth station equipment to public telecommunications networks without further procedures, if such equipment has been legally placed on the market, and is capable of, and intended for, connection to the public telecommunications network.

III. Scope of the proposed supplemental Directive

Considering the aims of the supplemental Directive, in particular with respect to the implementation of the single market, and in view of the very wide range of satellite earth station equipment types, the scope of the proposed Directive is based on a new definition for "satellite earth station equipment", as expressed in Article 1.2. This definition sets out the basic characteristics which combine to define appropriate satellite earth stations, thus setting the scope of the proposed Directive.

Appropriate "satellite earth station equipment" includes, for example, inter alia, one- and two-way Very Small Aperture Terminals (or, in short, "VSAT" terminal equipment), mobile and transportable satellite earth station equipment, satellite news-

gathering equipment, television receive-only satellite earth station equipment. Hub-stations or satellite earth station network control stations would fall under the scope of this Directive if standards would become available and therefore type-approval would be facilitated. The definition excludes purpose-built satellite earth stations used within the context of the public telecommunications infrastructure. This is intended to exclude, inter alia, gate-way satellite earth stations for major trunking applications within the context of the infrastructure provision (such as large size diameter INTELSAT or EUTELSAT stations) but also, inter alia, tracking and control satellite earth stations.

Receive-only satellite earth station equipment for reception of television and/or data signals falls within the scope of the supplemental Directive, in order to deal with cases where the active receiving elements of the equipment (such as local oscillator circuits) could cause unacceptable frequency noise in the frequency spectrum (spectrum pollution), and where therefore adequate technical solutions need to be implemented via electromagnetic compatibility (EMC) requirements.

In order to allow for technological developments, the definition deliberately refers to transmission and/or reception of radio communications signals by means of space-based systems in general, as well as those systems known specifically as satellites.

IV. The approach adopted

The principles of the proposed Directive are closely based upon those of Directive 91/263/EEC, complemented by the principles set out in the Satellite Resolution, while the general approach adopted in the proposed supplemental Directive is identical to that under Directive 91/263/EEC.

With regard to the introduced principle of preserving orbit and frequency spectrum integrity, by the relevant interpretation of the essential requirement concerning effective use of the radio spectrum, this approach is further fully consistent with the principles of the Radio Regulations of the International Telecommunications Union (ITU) which are already endorsed by the Member States in their capacity as members of the ITU, as recognised in the Satellite Green Paper. Particular reference can be made in this context to Appendices 28 and 29 of the ITU Radio Regulations, which establish criteria for the effective use of orbital resources and detailed co-ordination procedures to enable space and terrestrial systems to co-exist without undue interferences.

In this way the supplemental Directive:

- provides for adequate safeguards to preserve network integrity and interconnectivity in the appropriate cases,
- provides safeguards to preserve orbit and frequency spectrum integrity,
- extends to the appropriate satellite earth stations a simplified procedure of mutual recognition of type approval for the Community as a whole, based closely on the procedures established by Directive 91/263/EEC for telecommunications terminal equipment.

V. Satellite Earth Station Equipment and the Essential Requirements

Directive 91/263/EEC stipulates, for telecommunications terminal equipment, certain essential requirements, based on the need to preserve the integrity of the public telecommunications network and to guarantee interconnectivity in the Community.

The proposed supplemental Directive makes it clear that these essential requirements are equally relevant and necessary for the mutual recognition of type approval of satellite earth station equipment if equipment is capable of and intended for connection to the public telecommunications network. If the equipment is not capable of, or not intended for, connection to the public telecommunications network, then it need not comply with the related essential requirements of Directive 91/263/EEC, i.e. Articles 4 (b), (d), (f) and (g).

The satellite earth station equipment market is affected by the combined use of two limited natural resources :

- orbits (primarily the geo-stationary orbit at present, but also, for example, low earth orbits and elliptical orbits);
- radio frequencies within the relevant frequency spectrum bands used for space communications.

The use of orbital resources in conjunction with the radio frequency spectrum requires a coordinated approach, which is recognised as a general goal in the Satellite Green Paper and supported by the Satellite Resolution. By interpretation of the essential

requirement of Article 4(e) of Directive 91/263/EEC relating to effective use of the radio frequency spectrum, the proposed supplemental Directive therefore stipulates, in relation to satellite earth station equipment, the requirement for preservation of the integrity of orbits and frequencies, that is:

- a. effective use of orbital resources;
- b. avoidance of harmful frequency interference between space and terrestrial communications systems and other technical systems.

An interpretation of Article 4 (c) of Directive 91/263/EEC has been included to ensure that electromagnetic compatibility requirements cover the specific requirements related to satellite earth station equipment. General electromagnetic compatibility requirements will remain to be covered by Council Directive 89/336/EEC.

The determination of justified cases of interworking of satellite earth station equipment with the public telecommunications network is in conformity with such determination under Article 4 (g) of Directive 91/263/EEC.

VI. Procedures

The implementation procedures have been structured in a similar way to those of Directive 91/263/EEC and provide for the specific issues that cover satellite earth station equipment to be dealt with in an orderly manner.

The procedures are split into 5 elements covered by chapters as follows :

1. scope, placing on the markets and free circulation,
2. conformity assessment,
3. CE mark of conformity and inscriptions,
4. committee,
5. final and transitional provisions,

in analogy to Directive 91/263/EEC.

The chapter I procedures

Chapter I procedures define the appropriate measures Member States shall undertake for the placing on the market and free circulation of the relevant satellite earth station equipment.

Satellite earth station equipment which, complies with the relevant requirements, shall be allowed to be placed on the market and to circulate freely. However, satellite earth station equipment capable of transmitting and receiving radio frequency signals (transmit/receive satellite earth stations) as well as receive-only satellite earth station equipment which is capable of and intended for terrestrial connection to the public telecommunications network may remain subject to licensing. Harmonised Community licensing procedures will be the subject of future Commission proposals and are not addressed in this Directive.

If satellite earth station equipment is capable of, and intended for, connection to the public telecommunications network (see chapter II procedures below) and therefore has a transmit/receive interface with the public telecommunications network, the Member States shall ensure that this type of equipment may be connected under the appropriate safeguards and Member States shall take appropriate actions to prevent connection of satellite earth station equipment not used in conformity with its intended purpose. This also applies to receive-only satellite earth station with capabilities for interfacing with the public telecommunications network.

The Commission shall, in accordance with the procedures of Article 6(2) of Directive 91/263/EEC, adopt :

- as a first step, the measure 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 standardisation bodies,

- as a second step, once they have been prepared by the relevant standardisation bodies, the corresponding harmonised standards, or parts thereof, implementing the essential requirements referred to in Article 4(c) to (g) of Directive 91/263/EEC, and the essential requirement mentioned in Article 3(4) of the proposed Directive, which standards 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*.

If a Member State or the Commission considers that the eventual common technical regulations exceed or do not entirely meet the relevant essential requirements, then the same enquiry and notification procedures shall apply as those set out in Article 7 of Directive 91/263/EEC.

The chapter II procedures

The procedures for conformity assessment build on the procedures of Directive 91/263/EEC.

The conformity assessment procedures of Directive 91/263/EEC are summarised in the diagram attached as Annex I, and those under the proposed Directive are summarised in the diagram attached in Annex II.

Satellite earth station equipment within the meaning of the proposed supplemental Directive is:

- either - capable of, and intended for, connection to the public telecommunications network;
- or - capable of, but not intended for, connection to the public telecommunications network;

or - not capable of connection to the public telecommunications network.

In principle, in case of satellite earth stations capable of, and intended for, connection to the public telecommunications network, Directive 91/263/EEC applies as far as this terrestrial interface is concerned. Other elements which are subject to harmonised conditions are subject to this Directive.

Furthermore, satellite earth station equipment within the meaning of the proposed Directive is:

either - capable of transmission and reception of radiocommunications signals;

or - capable of reception only of radiocommunications signals.

These variables (the connection - transmit/receive terrestrial interface - scenario, and the transmit/receive or receive-only -space segment interface - capability) create a matrix, within which, different procedures of conformity assessments are foreseen in the proposed supplemental Directive, in order to establish a meaningful relation between, on the one hand, the need for type-approval, and, on the other hand, the terrestrial connection scenario as well as the space segment interface, or transmission/reception, capability.

Thus the proposed Directive provides three regimes of conformity assessment as well as a forth, overlapping, regime as explained below.

1. A choice of:

either - EC type examination by a competent notified body and EC declaration of conformity to type by the manufacturer or his representative;

- or - EC type examination by a competent notified body and EC production quality assurance.

This choice is proposed for all transmit/receive satellite earth station equipment;

2. A choice of:

- either - EC type examination by a competent notified body and EC declaration of conformity to type by the manufacturer or his representative;
- or - EC type examination by a competent notified body and EC production quality assurance;
- or - full EC quality assurance.

This choice is proposed for receive-only satellite earth station equipment, which is capable of, and intended for, connection and thus transmission and reception via the terrestrial interface to the public telecommunications network.

This choice, however, is already available under Directive 91/263/EEC as concerns the terrestrial interface of the satellite earth station equipment. The interface to the space segment remains subject only to EC Internal Production Control, as for receive-only equipment not connected to the public telecommunications network and already liberalised under Commission Directive 88/301/EEC (see below). It would be unrealistic to demand otherwise as the interface to the space segment remains the same in those cases.

3. EC Internal Production Control.

The EC Internal Production Control procedures, in annex to the proposed Directive, are based on Module A of Council Decision 90/683/EEC on Global Approach and provide a simplified conformity assessment regime.

The procedures are proposed for:

- a. receive-only satellite earth station equipment which is capable of, but not intended for, connection to the public telecommunications network;
- b. receive-only satellite earth station equipment which is not capable of connection to the public telecommunications network.

4. Declaration of Non-intent.

As under Article 2 and Annex VIII of Directive 91/263/EEC, the declaration of non-intent is required for satellite earth station equipment which is capable of, but not intended for, connection to the public telecommunications network. This procedure will therefore overlap with 1., 2. and 3. above for mentioned satellite earth station equipment.

The chapter III procedures

The proposed procedures for marking of satellite earth station equipment with the relevant symbols for:

- compliance with this Directive,
- the identification of the notified body, and

- intention and suitability of connection to the public telecommunications network,

are fully consistent with the procedures of Directive 91/263/EEC⁴.

The chapter IV procedures

In order to ease the process of mutual recognition of type approval, including conformity testing, for satellite earth station equipment, the role of the Approvals Committee for Terminal Equipment (ACTE) is extended to cover the equipment proposed in this Directive.

The chapter V procedures

The final and transitional procedures provide for reporting of the implementation of the Directive by the Commission as well as for the implementation date of the provisions, and reporting of the Member States on their main provisions of domestic law in the field governed by this Directive.

Any further transitional requirements for the implementation of type-approval procedures and the mutual recognition thereof, which might be required in the context of satellite earth station equipment, can be provided within the appropriate Common Technical Regulations.

VII. Notified Bodies

The role of the notified bodies under Directive 91/263/EEC is extended by the proposed Directive to cover satellite earth station equipment.

⁴ The CE mark may be subject to modification in order to comply with the specific Council regulatory text on marking for which a decision is foreseen (Proposal for a Council regulation (EEC) concerning the affixing and use of the CE mark of conformity on industrial products).

The same procedures for notified bodies and test laboratories shall apply as those set out in Article 10, Annex 5 and Article 16 of Directive 91/263/EEC in relation to telecommunications terminal equipment.

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VIII. Standards and Technical Regulations

Under the proposed supplemental Directive, the procedures for adoption of common technical regulations are the same as under Directive 91/263/EEC.

The Commission shall, in accordance with the procedure in Article 14 of Directive 91/263/EEC, adopt common technical regulations for satellite earth station equipment in relation to the relevant essential requirements referred to in Article 4 of Directive 91/263/EEC as well as the relevant interpretation of the essential requirement concerning effective use of the radio spectrum as set out in Article 3(3) of the proposed supplemental Directive.

IX. The Approvals Committee for Telecommunications Equipment (ACTE) - comitology

The standing committee called the Approvals Committee for Telecommunications Equipment (ACTE) established by Directive 91/263/EEC will under the supplemental Directive assist the Commission in accordance with the same remit and working methods as those established under Article 13 of the Directive 91/263/EEC. The role of ACTE is therefore extended to cover satellite earth stations equipment.

The Article 14 procedures of the supplemental Directive, just as Article 13 of Directive 91/263/EEC, are those of an advisory committee, following Procedure I of the Council Decision of 13th July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission⁵ (the Comitology Decision⁵).

⁵ OJ No L 197, 18.7.87, p.33

X. Conclusion

Satellite earth stations represent an important part of the Community market as well as an essential part of an efficient telecommunication system whereby the users within the territory of the Community may enjoy services tailored to their needs and at reasonable costs : the creation of a Community market for satellite earth station equipment is therefore a prerequisite for the full benefit of these telecommunications opportunities.

The proposed supplemental Directive extends existing harmonisation procedures for the creation of this market. This procedures are therefore fully in line with the latest Community policy in the areas of telecommunications, standardisation and certification as well as the procedure for placing on the market.

In consequence, Council is hereby invited to approve the draft Directive described in this document.

This draft Directive takes account of the outcome of consultations with the Member States in the meeting of the Approvals Committee for Telecommunications Equipment (ACTE) of the 23rd of April 1992 and of subsequent written comments from some Member States.

DIRECTIVE 91/263/EEC

MUTUAL RECOGNITION OF TYPE APPROVAL FOR TELECOMMUNICATIONS TERMINAL EQUIPMENT

TELECOMMUNICATIONS TERMINAL EQUIPMENT	RELEVANT ESSENTIAL REQUIREMENTS	CONFORMITY ASSESSMENT
<u>Capable</u> of and <u>intended</u> for connection to public telecommunications network	Arts 4(a) - (g)	<u>either</u> 1. EC Type examination (Annex I) + EC declaration of conformity (Annex II) <u>or</u> 2. EC type examination (Annex I) + EC production quality assurance (Annex III) <u>or</u> 3. EC full quality assurance (Annex IV)
<u>Capable</u> of but <u>not intended</u> for connection to public telecommunications network	NONE	Declaration of non-intent (Annex VIII)

PROPOSED DIRECTIVE

ANNEX II

MUTUAL RECOGNITION OF TYPE APPROVAL FOR SATELLITE EARTH STATION EQUIPMENT

SATELLITE EARTH STATION EQUIPMENT	RELEVANT ESSENTIAL REQUIREMENTS	CONFORMITY ASSESSMENT		DECLARATION OF NON-INTENT (ANNEX VIII, DIR 91/263/EEC)	
		TRANSMIT/RECEIVE (T/R)	RECEIVE-ONLY (R/O)		
			TERRESTRIAL INTERFACE		SPACE SEGMENT INTERFACE
Capable of + intended for connection to public telecommunications network	1. Arts. 4(a) (b) (c) (d) (f) & (g) Dir. 91/263/EEC and 2. Art. 3(3) proposed directive for T/R or Art. 4(e) Dir. 91/263/EEC for R/O	either 1. EC type examination (Annex I Dir. 91/263/EEC) + EC declaration of conformity (Annex II Dir. 91/263/EEC)	1. EC type examination (Annex I Dir.91/263/EEC) + EC declaration of conformity (Annex II Dir.91/263/EEC) or 2. EC type examination (Annex I, Dir.91/263.EEC) + EC production quality assurance (Annex III, Dir. 91/263/EEC) or 3. EC full quality assurance (Annex IV Dir. 91/263/EEC)	EC Internal production control (Annex to proposed Directive	NO
Capable of but not intended for connection to public telecommunications network	1. Arts. 4(a) (c) Dir. 91/263/EEC and	or 2. EC type examination (Annex I, Dir. 91/263/EEC) + EC production quality assurance (Annex III, Dir. 91/263/EEC)	Not applicable	- Module A of Council Decision 90/683/EEC	YES
Not capable of connection to public telecommunications network	2. Art. 3(3) proposed directive for T/R or Art. 4(e) Dir.91/263/EEC for R/O				NO

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COUNCIL DIRECTIVE

of

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on the approximation of the laws of the Member States
concerning satellite earth station equipment ,
extending the scope of Council Directive 91/263/EEC
[/EEC]

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 Commission¹,

In co-operation with the European Parliament²,

Having regard to the Opinion of the Economic and Social Committee³,

Whereas the Commission has issued a Green Paper⁴ on a common approach in the field of satellite communications in the European Community proposing the introduction of mutual recognition of type approval for satellite earth station equipment as one of the major pre-conditions for, *inter alia*, a Community-wide market for satellite earth station equipment;

Whereas the Council resolution of 19th December 1991⁵ on the development of the common market for satellite communications services and equipment, considers as one of the

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⁴ COM(90)490 Final, 20.11.90

⁵ OJ No C 8, 14.1.92, p. 1

major goals in satellite telecommunications policy the harmonisation and liberalisation of appropriate satellite earth station equipment, subject, in particular, to conditions necessary for compliance with essential requirements;

Whereas the Council resolution of 19th December 1991 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/EEC⁶ on the approximation of the laws of the Member States concerning telecommunications terminal equipment including the mutual recognition of their conformity;

Whereas the goal of an advanced open Community-wide market for satellite earth station equipment requires effective and efficient harmonised 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 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;

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 insofar 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 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;

Whereas Council Directive 73/23/EEC on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits⁷ and Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations⁸, as amended by Directive 88/182/EEC⁹, are applicable, *inter alia*, to the fields of telecommunications and information technology;

⁶ OJ No 128, 23.5.91, p. 1

⁷ OJ No L 77, 26.03.1973, p. 29

⁸ OJ No L 109, 26.04.1983, p. 8

Whereas Council Directive 89/336/EEC on the approximation of the laws of the Member States relating to electromagnetic compatibility⁹ sets out harmonised procedures for the protection of apparatus by electromagnetic disturbances and defines the protection requirements and inspection procedures thereto; whereas the general requirements of Directive 89/336/EEC also apply to satellite earth station equipment; whereas electromagnetic compatibility requirements in so far as they are specific to satellite earth station equipment are covered by this Directive;

Whereas Decision 87/95/EEC¹¹ sets out the measures to be implemented for the promotion of standardisation in Europe and the preparation and implementation of standards in the field of information technology and telecommunications;

Whereas in respect of the essential requirements and in order to help manufacturers to prove conformity to these essential requirements, it is desirable to have standards harmonized at European level to safeguard the general interest in the design and manufacture of satellite earth station equipment and in order to allow checks of conformity to 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 Standardisation (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI), are the bodies recognised as competent to adopt harmonized standards;

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 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;

Whereas Directive 91/263/EEC does not explicitly apply to satellite earth station equipment;

Whereas it is therefore necessary to extend to satellite earth station equipment the principles already established in Directive 91/263/EEC in relation to telecommunications terminal equipment;

⁹ OJ No L 81, 26.03.1988, p. 75

¹⁰ OJ No L 139, 23.5.89, p. 19

¹¹ OJ No L 36, 07.02.1987, p. 31

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 telecommunications network infrastructure;

Whereas satellite earth station equipment is configured, as far as its interface to the space based system is concerned, either for both the transmission and reception of radiocommunications signals, or for the reception-only of radiocommunications signals;

Whereas satellite earth station equipment is, as far as the terrestrial interface is concerned, either capable of and intended for, or capable of but not intended for, or not capable of, connection to the public telecommunications network;

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;

Whereas orbital resources are used in conjunction with the radio frequency spectrum which is also a limited nature-given resource;

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 harmonising 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 facilitate 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;

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 unique technical solutions; whereas such solutions shall therefore be mandatory;

Whereas satellite earth station equipment, capable of being used for transmission and reception of radiocommunications signals, may be subject to licensing terms, in addition to the provisions of this Directive;

Whereas satellite earth station equipment, only capable of being used for reception of radiocommunications signals, shall not be subject to licensing terms but only to the provisions

of this Directive unless they are intended for connection to the public telecommunications network, as proposed in the Green Paper on satellite communications in the European Community;

Whereas real, comparable access to the third country markets for European manufacturers should preferably be achieved through multilateral negotiations within GATT, although bilateral talks between the Community and third countries may also contribute to this process;

Whereas representatives of the telecommunication organisations, users, consumers, manufacturers, service providers and the trade unions should have the right to be consulted;

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;

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 and reception ("transmit-receive"), or for reception only ("receive-only"), of radiocommunication signals by means of satellites or other space-based systems; but excluding purpose-built satellite earth station equipment used within the context of the public telecommunications network infrastructure of a Member State.
3. The manufacturer or supplier of satellite earth station equipment shall declare whether or not the equipment is intended for connection to the public telecommunications network.

Article 2

1. Member States shall ensure that satellite earth station equipment not capable of, nor intended for, connection to the public telecommunications network and to be used for the reception-only of radiocommunication signals, which complies with the requirements of this Directive and is properly installed and maintained and used for its intended purposes, may be placed on the market and circulate freely and used on their territory.
2. Member States shall ensure that other satellite earth station equipment, which complies with the requirements of this Directive and is properly installed and maintained and used for its intended purposes, may be placed on the market and circulate freely on their territory.

3. Member States shall also take all appropriate measures to ensure that satellite earth station equipment which is capable of, but not intended for, 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 capable of, but not intended for, connection to the public telecommunications network, is disconnected from the public telecommunications network if such equipment is not used for its intended purpose.

Member States shall moreover take all appropriate measures, according to their national laws, to prevent connection to the public telecommunications network of such equipment if it is not used in conformity with its intended purpose.

Article 3

1. Satellite earth station equipment shall satisfy the same essential requirements as those set out in Article 4 of Directive 91/263/EEC.
2. Notwithstanding paragraph 1, satellite earth station equipment which is not capable of, or which is capable of but not intended for, connection to the public telecommunications network shall not be required to satisfy the essential requirements set out in Articles 4(b), (d), (f) and (g) of Directive 91/263/EEC.
3. In the context of 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 concerning electromagnetic compatibility.
5. 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 with the public telecommunications network, in justified cases.

Cases where satellite earth station equipment is capable, 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 are determined in accordance with the procedure provided for in Article 14.

Article 4

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 harmonised 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 procedures set out in Article 6(2) of Directive 91/263/EEC and Article 14 of this Directive, adopt common technical regulations for satellite earth station equipment in relation to the essential requirements referred to in Article 3 of this Directive.

Article 5

Where a Member State or the Commission considers that the common technical regulations referred to in Article 4 of this Directive exceed or do not entirely meet the relevant essential requirements referred to in Article 3 of this Directive, the same enquiry and notification procedures shall apply as those set out in Article 7 of Directive 91/263/EEC.

Article 6

1. Where a Member State finds that satellite earth station equipment bearing the markings 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 notification and consultation procedures shall apply as those set out in Articles 8(1) and 8(2) and 8(4) of Directive 91/263/EEC.
2. Where satellite earth station equipment which does not comply with the relevant essential requirements bears the CE mark, the competent Member State shall take appropriate action against whomsoever has affixed the mark. The same notification procedures shall apply as those set out in Articles 8.3 and 8.4 of Directive 91/263/EEC.

CHAPTER II**Conformity assessment***Article 7*

All transmit/receive satellite earth station equipment, irrespective of whether it is capable of or intended for connection to the public telecommunications network, shall, according to the choice of the manufacturer or his authorised representative established within the Community, be subject to: -

- either - EC Type Examination as described in Annex I of Directive 91/263/EEC together with EC Declaration of Conformity to type as described in Annex II of Directive 91/263/EEC
- or - EC Type Examination as described in Annex I of Directive 91/263/EEC together with EC Production Quality Assurance as described in Annex III of Directive 91/263/EEC

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

Article 8

Receive-only satellite earth station equipment, which is capable of and intended for terrestrial connection to the public telecommunications network shall, as far as its terrestrial interface is concerned, be subject to all provisions of Directive 91/263/EEC; as far as other elements are concerned, they shall be subject to EC Internal Production Control procedures set out in the Annex.

Article 9

Receive-only satellite earth station equipment which is either not capable of, or is capable of but not intended for, connection to the public telecommunications network, shall be subject to the EC Internal Production Control procedures set out in the Annex.

Article 10

In addition to the provisions of Articles 7, 8, and 9, satellite earth station equipment which is capable of, but 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 of Directive 91/263/EEC, except that the declaration shall make a reference to this Directive instead of Directive 91/263/EEC.

Article 11

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, Article 16(2), and Annex V of Directive 91/263/EEC.

CHAPTER III

CE mark of conformity and inscriptions

Article 12

1. The marking of satellite earth station equipment complying with this Directive shall consist of the CE mark 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 to the public telecommunications network. The CE mark and these two symbols shall be the same as those shown in Annex VI of Directive 91/263/EEC.
2. The affixing of marks which are likely to be confused with the marks of conformity referred to 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. Equipment manufacturers or suppliers who place on the market satellite earth station equipment which is capable of, but not intended for, connection to the public telecommunications network shall affix the same symbol as that specified in Annex VII of Directive 91/263/EEC, in such a way that it follows the CE mark and visually forms an integral part of the total marking.

Article 13

Where it is established that the marking referred to in Article 12(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, where the manufacturer has failed to fulfil his obligations under the relevant EC declaration of conformity, the same procedures shall apply as those set out in Article 12 of Directive 91/263/EEC.

CHAPTER IV

Committee

Article 14

1. The Approvals Committee for Terminal Equipment (hereinafter referred to as "the Committee") established by Article 13(1) of Directive 91/263/EEC shall assist the Commission in executing this Directive as follows : -
2. The representative of the Commission shall submit to the Committee a draft of the measure 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 organisations, the users, the consumers, the manufacturers, the service providers and trade unions and will inform the Committee on the outcome of such consultations, with a view to taking due account of the outcome.

CHAPTER V

Final and transitional provisions

Article 15

The Commission shall report on the implementation of this Directive, in accordance with the same procedures as those set out in Article 15 of Directive 91/263/EEC.

Article 16

1. Member States shall take the measures necessary to comply with this Directive not later than []. 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 17

This Directive is addressed to the Member States.

Done at []

For the Council

The President

[]

ANNEX

EC 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 point 2, ensures and declares that the products concerned satisfy the requirements of the directive that apply to them.

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

2. The manufacturer shall establish the technical documentation described in point 3 and he or his authorized representative established with the Community shall keep it for a period ending at least 10 years after the last product has been manufactured at the disposal of 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 shall be the responsibility of the person who places the product on the Community market.

3. Technical documentation shall enable the conformity of the products with the requirements of the directive that apply to the products. It shall contain so far as relevant for assessment :

- a general description of the product,
- conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.,
- descriptions and explanations necessary for the understanding of said drawings and schemes and the operation of the product,
- a list of the standards applied in full or in part, and descriptions of the solutions adopted to meet the requirements of the directive that apply to the products,
- results of design calculations made, examinations carried out, etc.,
- test reports.

4. **The manufacturer or his authorized representative shall keep a copy of the declaration of conformity with the technical documentation.**
5. **The manufacturer shall take all measures necessary in order that the manufacturing process shall ensure compliance of the manufactured products with the technical documentation referred to in point 2 and with the requirements of the directive that apply to them.**

FINANCIAL OUTLINE

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I. FINANCIAL IMPLICATIONS

1. Title of Action

COUNCIL DIRECTIVE on the approximation of the laws of the Member States concerning satellite earth station equipment, extending the scope of Council Directive 91/263/EEC.

2. Budget Line

B5-4010 (Telecom) : Définition et mise en oeuvre de la politique des télécommunications. In particular, actions concerning conformity of satellite earth station equipment and related preparatory actions.

3. Legal Basis

- Article 100 A
- Green Paper on a common approach in the field of satellite communications and services, COM(90)490 Final, 20.11.90
- Council Resolution of 19th December 1991 on the development of the common market for satellite communications services and equipment OJ No C 8, 14.1.92, p.1.
- Council Directive 91/263/EEC of 29th April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment including the mutual recognition of their conformity, OJ No L 128, 23.05.91, p. 1

4. Description

4.1 Specific Objectives of the Action.

This action aims for the establishment of a common market for satellite earth station equipment, through the definition and application of harmonised standards and of common technical regulations allowing a single procedure for the EC type approval of

satellite earth station equipment valid throughout the Community. The method consists of supporting the work of bodies such as CEN/CENELEC and ETSI for the production of harmonised standards. The action has a very strong industrial impact and its justification lies in the necessity of giving the industry a broad base for its markets and of establishing coherent networks and services in the Community.

4.2 Duration.

The proposed action is an annual action. Its duration is not limited.

4.3 Population aimed at by the Action.

The Directive directly concerns the supply industry in the field of satellite earth station equipment and indirectly all service providers and users of satellite communications services in the Community.

5. Classifications

Non-obligatory spending (Art. 235)

6. Nature of Spending

The Community's financial contribution should not amount to more than 10 % of the resources invested by the national Telecommunications Operators and industry in this work. It will consist in subventions given to the standardisation bodies for the elaboration of the technical basis for common technical regulations.

7. Financial implication for intervention credits

7.1 Cost and methods of calculation

The Community contribution will be covered by appropriations entered on budget item B5-4010 (Telecom). They will be required to cover a contribution to the work done by CEN/CENELEC and ETSI for the production of harmonised standards, as well as committee and working group meetings. These services rendered over the next few years can be estimated at about 5 man-year of expert services annually and 2 meetings per year of the ACTE committee (see Directive 91/263/EEC).

7.2 Indicative Timetable for commitments and payments

YEAR	CA*	PA*
1993	0.5	0.25
1994	0.5	0.5
1995	0.5	0.5
1996	0.5	0.5
1997	0.5	0.5
1998+	-	0.25

* MECU

8. Anti-fraud provisions

With regard to the nature of spending, no anti-fraud provisions are required in the Directive. The standard contractual provisions will be used for the implementation of the proposed Directive.

II. ADMINISTRATIVE EXPENSES.

The administration of this Directive will necessitate the participation of additional personnel, to be employed by the Commission, as well as the redeployment of existing personnel.

III. ELEMENTS OF COST-EFFICIENCY ANALYSIS

I. Objectives and coherence with the financial programming.

- 1.1 The proposed Directive aims at establishment of Community-wide conformity testing of appropriate satellite earth station equipment and the mutual recognition thereof.
- 1.2 The action is provided for in the financial programming of the DG.
- 1.3 The objective of the proposed Directive corresponds to the general objective of the "establishment of an internal market for telecommunications equipment and services", defined in the financial programming of the DG.

2. **Justification of the Action**

The proposed Directive contains a legislative measure necessary for the establishment of an internal market in the satellite communications sector. Currently, the bringing to the market of satellite earth station equipment usually requires the application of twelve different, national type-approval procedures. These procedures are not uniform and based on different technical requirements. The resulting type-approval process is time-consuming and very costly for the supply-industry while the service providers and users bear the burden of these extra costs. The proposed Directive sets out a highly simplified procedure, based on the procedures already developed and adopted for terminal equipment, whereby common standards form the basis for conformity testing via the adoption of common technical regulations. The common technical regulations are used as the basis for type-approval and the mutual recognition thereof throughout the Community.

3. **Follow-up and evaluation of the action.**

The proposed Directive sets out a reporting procedure in its Article 15 which effectively consists of a requirement for the Commission to report on a biannual basis on the progress of implementation including an assessment of progress in achieving an open competitive market for satellite earth station equipment at Community level.

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