

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 21 February 1991

Reexamined proposal for a

COUNCIL DIRECTIVE

on the approximation of the laws of the Member States
concerning telecommunications terminal equipment,
including the mutual recognition of their conformity

(presented by the Commission pursuant to Article 149.2(d)
of the EEC treaty)

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Reexamined proposal for a Council Directive on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity.

EXPLANATORY NOTE

1. STATUS OF THE PROCEDURE.

- a). The Commission has submitted its proposal to the Council on 27 July 1989.
- b). The Economic and Social Committee adopted its favourable opinion on 4 October 1989.
- c). The European Parliament adopted during its first reading 24 amendments to the proposed Directive on 3 April 1990.
- d). In accordance with Article 149.3 of the Treaty, the Commission adopted a revised proposal on 19 June 1990, incorporating in full or in part 19 of these amendments.
- e). The Council adopted its common position on 24 July 1990.
- f). The Commission accepted this common position and informed the European Parliament of its opinion on 6 September 1990.
- g). The European Parliament adopted during its second reading 22 amendments on 11 December 1990.

2. POSITION OF THE COMMISSION.

a). Out of the 22 amendments proposed during the second reading, 5 amendments having been adopted by the Parliament at its first hearing but not having been accepted by the Commission at that time, were reintroduced and again not accepted. Of the remaining 17 new amendments the Commission has accepted in full or in part 5 thereof to the common position .

The five amendments accepted in full or in part are reported below, together with the motivation of the Commission position:

TEXT OF THE COMMON POSITION

AMENDMENT NO.3

Article 1, paragraph 2 (addendum)

"Public telecommunications network" means the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means.

<p>The addition of this definition, drawn from the ONP Directive, adds clarity in this Directive.</p>

TEXT OF THE COMMON POSITION
Article 17

Member States shall take the measures necessary to comply with this Directive not later than 18 months from its notification. They shall forthwith inform the Commission thereof.

AMENDMENT NO.12
Article 17

Member States shall take the measures necessary to comply with this Directive not later than 18 months from its notification. They shall forthwith inform the Commission thereof.

The provisions adopted under the first subparagraph shall refer explicitly to this directive.

Text now agreed between Council and Commission and which has to be introduced into this directive:

"When Member States adopt these provisions, they shall contain a reference to this directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States."

TEXT OF THE COMMON POSITION
Article 1, paragraph 3

The intended purpose of the equipment, shall be declared by the manufacturer or supplier of the equipment. However, terminal equipment within the meaning of paragraph 2 which makes use of the radio frequency spectrum is presumed to be intended for connection to the public network.

AMENDMENT NO.2
Article 1, paragraph 3

The intended purpose of the equipment, shall be declared by the manufacturer or supplier of the equipment. However, with respect to connection and/or interworking, terminal equipment within the meaning of paragraph 2 which makes use of the radio frequency spectrum, including terminals that are designed to send information by means of radio propagation capable of being received outside user premises and capable of being retransmitted to a public telecommunications network termination point, is presumed to be intended for connection to the public telecommunications network.

Text not accepted, but principle taken into account with simplified wording. The text "of the radio frequency spectrum" is replaced by "of a system of connection by radio". In addition, "telecommunications" is added as proposed at the end of the paragraph.

TEXT OF THE COMMON POSITION
Article 2, paragraph 2

The manufacturer or supplier shall be prepared to justify once, at the request of any notified body referred to in Article 10(1), the intended purpose of such equipment on the basis of its design, its functions and indications of the market segment it is intended for.

AMENDMENT NO.4
Article 2, paragraph 2

The manufacturer or supplier shall be prepared to justify once, at the request of any notified body referred to in Article 10(1), the intended purpose of such equipment its functions and indications of the market segment it is intended for.

Text not accepted, but the idea not to involve proprietary information is taken by changing the word "design" into "technical characteristics".

TEXT OF THE COMMON POSITION
Article 10, paragraph 4

A Member State that has designated a notified body or a test laboratory under paragraph 1 or paragraph 2 shall annul the designation if the notified body or the test laboratory no longer meets the relevant criteria for designation. It shall immediately inform the other Member States and the Commission accordingly and withdraw the notification. Where a Member State or the Commission considers that a notified body or a test laboratory designated by a Member State does not meet the relevant criteria the matter shall be brought before the Committee, which shall give its opinion within three months; in the light of the Committee's opinion, the Commission shall inform the Member State concerned of any changes needed if that notified body or test laboratory is to retain its recognized status.

AMENDMENT NO.8
Article 10, paragraph 4

A Member State that has designated a notified body or a test laboratory under paragraph 1 or paragraph 2 shall annul the designation if the notified body or the test laboratory no longer meets the relevant minimum criteria for designation, as set out in Annex 5. It shall immediately inform the other Member States and the Commission accordingly and withdraw the notification. Where a Member State or the Commission considers that a notified body or a test laboratory designated by a Member State does not meet the relevant criteria the matter shall be brought before the Committee, established in Article 13, which shall give its opinion within three months; in the light of the Committee's opinion, the Commission shall inform the Member State concerned of any changes needed if that notified body or test laboratory is to retain its recognized status.

Part 1: Not accepted, Part 2: Accepted. First part would be redundant for notified bodies and incorrect for test laboratories. Second part adds clarity.

b). The list of the amendments which were not accepted is given in Annex 1, with the reasons motivating the position of the Commission.

c). In addition to the above mentioned changes, the Commission proposes a declaration in the proceedings of the Council, to take into account a concern strongly expressed by the Parliament and the Industry, which relates to the procedures foreseen in the Directive for certifying the equipment, and mainly those in Annex I. The representatives of European Industry, supported by the Parliament, stated at several occasions that the wording in particular of Annex I, which relates to the procedure which will be commonly used by the SMEs, leaves too much freedom to the notified bodies to request an excessive amount of information. As a matter of fact, this annex mentions that information has to be requested as far as relevant for the assessment of conformity to the essential requirements, and contains under its point 3 a list of elements of documentation, which is given only "for example". But even taking this into account, Industry fears to be requested more information than what is strictly necessary for the assessment of its equipment, to be obliged to transmit to the notified bodies for instance "design" information which could be proprietary, and finally to have to bear a bureaucratic burden which is not really necessary.

The Commission is of the opinion that the text of Annex I agreed upon in the Common Position must not be modified, because it allows the necessary flexibility to adapt the request of information by the Notified Bodies to the variety of types of terminal equipment. But it considers useful that the Council draw the attention of the notified bodies to this concern of Industry and prompt them to limit their requests to what is strictly necessary for the assessment of conformity to the essential requirements. Consequently, the adoption of the following Declaration is proposed:

" The Council and the Commission agree that, with a view to reducing the bureaucratic burden imposed on Industry in the course of the certification procedures, to limiting to what is absolutely necessary the provision of proprietary information on equipment design and finally to accelerating the procedures, the information requested to Industry in view of these certification procedures must be strictly limited to what is necessary to assess the conformity to the relevant essential requirements of the equipment submitted . Consequently, the Notified Bodies have to take due account of this necessity."

d). Finally, the Commission thinks appropriate to take the opportunity of the adoption of its Reexamined Proposal to finalise the legal presentation aspects which arise as a consequence of the modifications the adoption of this Directive will introduce in other already adopted Community legislation.

These modifications stem from the fact that this Directive, when adopted, will repeal Directive 86/361/EEC, the reference to which is made in a number of other Community Directives or Decisions.

The following provisions are introduced in order to cope with this aspect :

- Article 16.1 is amended with an additional text being :
"References made to the repealed directive are understood as being made to this directive".
 - Article 1, paragraph 2 is amended by the addition of the following two definitions which appears in Directive 86/361, articles 2.3 and 2.6 and are used in later directives:
 - 'technical specification' means a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marking and labelling.
- and
- 'standard' means a technical specification adopted by a recognized standards body for repeated or continuous application, compliance with which is not compulsory.

3. CONCLUSION.

In conclusion, the Commission is of the opinion that the proposed amendments to the Common Position do not modify the balance of its elements of substance, but adds clarity to some of its points.

ANNEX 1

LIST OF THE AMENDMENTS TO THE COMMON POSITION ADOPTED BY THE EUROPEAN PARLIAMENT AND NOT ACCEPTED BY THE COMMISSION.

TEXT OF THE COMMON POSITION
Recital 15 (a) new

AMENDMENT NO.1
Recital 15 (a) new

Whereas conformity assessment procedures should not be too onerous or bureaucratic.

Not accepted as not useful. The necessity of reducing the bureaucratic burden has been taken into account during the negotiations in the Council, and procedures have consequently been simplified as far as possible.

TEXT OF THE COMMON POSITION
Article 3, paragraph 2

AMENDMENT NO.5
Article 3, paragraph 2

Member States shall also take all appropriate measures to ensure that equipment referred to in Article 2 may be placed and allowed to remain on the market only if it complies with the requirements laid down by this Directive for this equipment and may not be connected to the public telecommunications network within the meaning of Article 1(2).

Subject to transitional measures in accordance with Article 14 (b) Member States shall also take all appropriate measures to ensure that equipment referred to in Article 2 may be placed and allowed to remain on the market only if it complies with the requirements laid down by this Directive for this equipment and may not be connected to the public telecommunications network within the meaning of Article 1(2).

Not accepted : Presented and rejected at the First Hearing. The added text is redundant.

TEXT OF THE COMMON POSITION
Article 4 (d)

AMENDMENT NO.6
Article 4 (d)

Protection of the public telecommunications network from harm;

Protection of the public telecommunications network from harm;
of a technical or non-commercial nature;

Not accepted : This amendment was presented at the First Hearing and rejected. The limitations of the type of harm to be considered are specified in the directives on liberalisation of services and ONP.

TEXT OF THE COMMON POSITION
Article 8, paragraph 3 (a) (new)

AMENDMENT NO.7
Article 8, paragraph 3 (a) (new)

For testing and development of equipment, experimental use, trade shows and exhibitions, and other exceptional circumstances, full conformity assessment of all essential requirements may not be appropriate as a condition to connect to the public network. A public network operator may in such cases allow equipment to be attached to his network subject to his own judgement.

Not accepted : This amendment was presented at the First Hearing and rejected. It does not address equipment actually placed on the market.

TEXT OF THE COMMON POSITION
Article 13, paragraph 3

AMENDMENT NO. 9
Article 13, paragraph 3

The Commission will periodically consult the representatives of the telecommunications organisations, 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 take due account of the outcome.

The Commission will periodically and at least on a 6 monthly basis consult the representatives of the telecommunications organisations, the users, the consumers, the manufacturers, the service providers and trade unions. It will inform the Committee of the outcome of these consultations, and will take the fullest possible account of them. The Committee shall draw up and publish its own rules of procedure.

Not accepted : Puts too heavy a bureaucratic burden on the Commission, for a process which is already open as linked to standardisation. We accept the addition of "users" to the list.

TEXT OF THE COMMON POSITION

Article 14, paragraph 3

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

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 qualified majority.

If, within three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

AMENDMENT NO.10

Article 14, paragraph 3

The Commission shall adopt measures which shall enter into effect immediately. However, if these measures are not in accordance with the opinion of the committee, the Commission shall notify the Council of them without delay. In this case:

the Commission may postpone the application of the measures it has adopted for a period not exceeding one month from the date of notification;

the Council, acting by qualified majority, may take a different decision with the period of time provided for in the preceding paragraph.

Not accepted : A regulatory committee is deemed necessary for the Directive.

TEXT OF THE COMMON POSITION

Article 14 (b) (new)

AMENDMENT NO.11

Article 14 (b) (new)

Transitional arrangements shall apply to equipment in stock at the date when this Directive comes into force and having type approval to standards applicable at the time of the introduction of this directive. Such equipment which does not carry the EC mark may be placed on the market and put into service in the territory in respect of which type approval has been granted for a period to be determined by the notified body.

Not accepted : This amendment was presented at the First Hearing and rejected. This directive deals only with terminals covered by a common specification. In this case, transitional measures are covered by Article 16.3

TEXT OF THE COMMON POSITION
Annex 1, point 3

The technical documentation shall enable the conformity of the product with the essential requirements of the Directive to be assessed. It shall, as far as relevant for such assessment, cover the design, manufacture and operation of the product.

For example, the documentation shall contain as far as is relevant for assessment :

- a general type-description sufficient to identify the product preferably by provision of photographs;
- design and manufacturing drawings and lists of components, sub-assemblies, circuits, etc.;
- descriptions and explanations necessary for the understanding of said drawings and lists and the operation of the product;
- a list of the standards referred to in Article 6, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the Directive where the standards referred to in Article 6 have not been applied;
- results of examinations carried out, etc.;
- test reports;
- proposed user information or handbook.

AMENDMENT NO.13
Annex 1, point 3

The technical documentation shall enable the conformity of the product with the essential requirements of the Directive to be assessed. It shall, as far as relevant for such assessment, cover the design, manufacture and operation of the product.

For example, the documentation shall contain as far as is relevant for assessment :

- a general type-description sufficient to identify the product preferably by provision of photographs;
- design and manufacturing information and lists of components, sub-assemblies, circuits, etc.;
- descriptions and explanations necessary for the understanding of said information and lists and the operation of the product;
- a list of the standards referred to in Article 6, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the Directive where the standards referred to in Article 6 have not been applied;
- results of examinations carried out, etc.;
- test reports;
- proposed user information or handbook.

Not accepted : This amendment was presented at the First Hearing, and rejected. The wording is too vague, with no justification as it is an example.

TEXT OF THE COMMON POSITION

Article 1, paragraph 2

2. For the purpose of this Directive, terminal equipment means equipment intended to be connected to the public telecommunications network, i.e. :

a) to be connected directly to the termination of a public telecommunications network

or

b) to interwork with a public telecommunications network being connected directly or indirectly to the termination of a public telecommunication network

in order to send, process or receive information.

The system of connection may be wire, radio, optical or other electromagnetic system.

AMENDMENT NO.14

Article 1, paragraph 2

2. For the purpose of this Directive terminal equipment means equipment (or a subassembly thereof) that :

a) is intended by the supplier or manufacturer to be connected or be capable of connection to the termination of a publicly accessible telecommunications network.

b) is the closest equipment to such termination capable of addressing the network and of controlling any attempt by equipment more remote from the network to address and

c) may reasonably affect the conformity with the essential requirements of this Directive.

Not accepted, as the definition in the Commissions text is more precise. Moreover, the Commissions text allows for dealing in a special way with cases of terminals not being intended for connection to the public networks, but technically capable of being connected.

TEXT OF THE COMMON POSITION

Article 8, paragraph 1

1. Where a Member State finds that terminal 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, it shall take all appropriate measures to withdraw such products from the market or to prohibit or restrict their being placed on the market.

AMENDMENT NO.15

Article 8, paragraph 1

1. Where a Member State finds that terminal 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, it shall take all appropriate measures to withdraw such products from the market or to prohibit or restrict their being placed on the market, after notification of the affected parties.

Not accepted, as Article 8.2 stipulates, that it is the Commission responsibility to do so.

TEXT OF THE COMMON POSITION

Article 7, second paragraph

In the light of the Committee's opinion and after consultation of the standing Committee set up by Directive 83/189/EEC, the Commission shall inform the Member States whether or not it is necessary to withdraw references to those standards and any related technical regulations from the Official Journal of the European Communities and shall take the necessary steps to correct the shortcomings noted in the standards.

AMENDMENT NO.16

Article 7, second paragraph

In the light of the Committee's opinion and after consultation of the standing Committee set up by Directive 83/189/EEC, the Commission shall inform the Member States whether or not it is necessary to withdraw references to those standards and any related technical regulations from the Official Journal of the European Communities and shall take the necessary steps to correct the shortcomings noted in the standards and any related technical regulations.

Not accepted. When the standard has been revised, it constitutes the basis for a new technical regulation to be adopted in the framework of the Directive.

TEXT OF THE COMMON POSITION

Article 4, paragraph c

Electromagnetic compatibility requirements in so far as they are specific to terminal equipment;

AMENDMENT NO.17

Article 4, paragraph c

Electromagnetic compatibility requirements of terminal equipment arising solely out of its physical connection to the public telecommunications network in so far as they are not covered by Directive 89/336/EEC;

Not accepted. The consideration of "physical" connection only is too restrictive, and Article 9.4 transfers the specific telecommunications aspects to this Directive .

TEXT OF THE COMMON POSITION

Annex I, paragraph 2, first subparagraph

2. The application for the EC Type examination shall be lodged by the manufacturer or his authorised representative established within the Community with a notified body of his choice.

AMENDMENT NO.18

Annex I, paragraph 2, first subparagraph

2. The application for the EC Type examination shall be lodged by the manufacturer or his authorised representative established within the Community with a notified body (or bodies) of his choice.

Not accepted. The practice of requesting several notified bodies to certify an equipment could, in certain cases, cause a saturation of the testing installations in the Community, and harm other manufacturers which would like to have the same type of equipment certified.

TEXT OF THE COMMON POSITION
Annex IV, paragraph 3.3, third subparagraph

The auditing team shall have at least one member experienced as an assessor in the product technology concerned. The evaluation procedure shall include an assessment visit to the manufacturer's premises.

AMENDMENT NO.20
Annex IV, paragraph 3.3, third subparagraph

The auditing team shall have at least one member experienced as an assessor in the product technology concerned. The evaluation procedure shall include an assessment visit to the manufacturer's production premises.

Not accepted, as inspection at other locations than the production facilities might be needed. E.g., test-laboratories, maintenance facilities.

TEXT OF THE COMMON POSITION
Article 9, paragraph 4a (new)

AMENDMENT NO.24
Article 9, paragraph 4a (new)

4a. In order to protect the manufacturers, the technical documentation to notified bodies has to be limited to that which is required solely for the purpose of assessment of conformity with the essential requirements. Legal protection of confidential information shall be required.

Not accepted. The fact that the documentation has to be relevant only to the assessment of the product with regard to the applicable essential requirements is already clear in the annexes. In addition, the confidentiality duty of the notified bodies is spelt out in Annex V, point 7.

TEXT OF THE COMMON POSITION
Article 10, paragraph 6a (new)

AMENDMENT NO.25
Article 10, paragraph 6a (new)

6a. Subcontracting to an establishment located in a third country shall be subject to certain conditions guaranteeing :

(i) the competence of the establishment operating as sub-contractor, on the basis of conformity with series EN 45000 standards and the capability of the Member State that has notified the subcontracting body to ensure effective monitoring of such compliance;

(ii) the ability of the body notified to exercise effective responsibility for the work carried out.

Not accepted, as the Notified Bodies and the test laboratories must be established within the Community.

TEXT OF COMMON POSITION
Article 9, paragraph 4a (new)

AMENDMENT NO.26
Article 9, paragraph 4a (new)

4a. Provision shall be made for an appeals procedure.

Not accepted : a special appeals procedure is not necessary, the interested parties in the issue considered here have always the possibility to bring their possible objections to the attention of the Commission. On another hand, Art. 9 is not the appropriate place to deal with this idea.

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