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Proposal for a  
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE  
on connected telecommunications equipment and the mutual recognition of  
the conformity of equipment  
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(presented by the Commission)

## SUMMARY

This proposal for a European Parliament and Council Directive on the approximation of the laws of the Member States concerning connected telecommunications equipment, the CTE Directive, represents a significant step forward in the legislative framework necessary to support a genuinely competitive multi-vendor community market for connected telecommunications equipment in an environment where there is competitive provision of network services.

The Directive will replace two Council Directives (91/263/EEC<sup>1</sup> - telecommunications terminal equipment and 93/97/EEC<sup>2</sup> - satellite earth station equipment) and simplifies the application of two other Council Directives (93/68/EEC<sup>3</sup> - conformity marking and 89/336/EEC<sup>4</sup> - electromagnetic compatibility).

It will enable innovative technologies to rapidly penetrate the market and it will encourage competitive industries and manufacturers to take advantage of large-scale production due to the size of the internal market supplemented with the access to markets where mutual recognition agreements have been obtained.

It supplements existing horizontal community legislation and is fully aligned with the Global Approach to testing and certification. As regards manufacturers liability, provisions equivalent to those contained in Council Directive 85/374/EEC<sup>5</sup> (liability for defective products) are incorporated in the CTE Directive in order to cover telecommunications requirements so that the regulatory regime can be complemented by a balanced harmonised surveillance regime.

The major elements of the new Directive are:

- Enlargement of the scope of equipment covered by the inclusion of radio equipment;
- A set of new definitions making the Directive future-proof by taking into account the liberalisation of infrastructures and competition between operators;
- A development of the concept of telecommunications specific essential requirements to take into account technological trends;
- A flexible decision-making process whereby future network infrastructures and systems can readily be covered;
- A light conformity assessment regime based upon the principle of manufacturer's declarations.

The Directive complements other legislative developments in telecommunications and is a response to the inevitable changes to the connected telecommunications equipment market caused by the liberalisation of the telecommunications infrastructures and services.

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<sup>1</sup> OJ No L 128, 23.5.1991, p. 1.

<sup>2</sup> OJ No L 290, 24.11.1993, p. 1.

<sup>3</sup> OJ No L 220, 30.8.1993, p. 1.

<sup>4</sup> OJ No L 139, 23.5.1989, p. 19.

<sup>5</sup> OJ No L 210, 7.8.1985, p. 29.

## EXPLANATORY MEMORANDUM

### 1. BACKGROUND

The first step towards a harmonization of the European telecommunications terminal market took place back in 1983. At that time, a cooperation agreement was signed between the Commission and the Conférence Européen des Administrations des Postes & Télécommunications (CEPT) with the purpose of setting priorities for the development of single European technical specifications for terminals. The progress made through this cooperation led to the Commission proposal for a Directive covering the mutual recognition of test results produced by the accredited national test laboratories. This proposal was adopted as Council Directive 86/361/EEC<sup>6</sup>. It was however already clear at that time that the harmonization of national regulations was necessary for the implementation of a single internal market

Subsequent changes in the European telecommunications sector made it possible for the Commission to propose a further step forward, i.e. to propose a regime for the mutual recognition of the total type approval process including placing on the market and putting into service of telecommunications terminal equipment. This "one-stop-shopping" regime was introduced with the adoption of Directive 91/263/EEC which replaced the previous 86/361/EEC Directive. The application of Directive 91/263/EEC was extended to cover all satellite earth stations with the adoption of Directive 93/97/EEC.

With the acceleration of the pace of technology, the dramatic shortening of development time for terminal equipment, the mass market opportunities, etc. it soon became clear that the time taken to develop the legal measures called for in Directives 91/263/EEC and 93/97/EEC was a significant impediment to the speedy development of the single market for telecommunications terminal equipment.

The following trends were observed:

- telecommunications terminal and radio equipment product lifetimes were shrinking to as little as three years;
- the production of harmonized standards had reached the stage where final voting and approval procedures even in straightforward cases took 1½ years;
- new telecommunications network types were emerging and being deployed more quickly than formal terminal specifications could be elaborated;
- Liberalization of the infrastructures was encouraging the entry of new operators and a consequent proliferation of networks.

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<sup>6</sup> OJ No L 217, 5.8.1986, p. 21.



The conclusion was that in the light of these trends, legislation covering terminal and radio equipment would need to be fundamentally revised in order to support this very competitive and dynamic environment.

## **2. AIMS AND OBJECTIVES OF THE PROPOSED DIRECTIVE**

The aims and objectives of the Directive are two-fold:

### **2.1 Extended scope**

The current regulatory framework, for the placing on the market, the free circulation and putting into service of Connected Telecommunications Equipment, as embodied in Directive 91/263/EEC, effectively only applies to terminal equipment, where Common Technical regulations or harmonized standards exist. The scope of this Directive has been extended to cover radio equipment and include new innovative equipment types and future products. This single European regulatory framework shall be flexible enough to accommodate the services offered by new network operators and the new termination points that they will make available to their subscribers in addition to today's traditional network termination points. This flexibility is achieved by proposing a means whereby new network termination types can be identified before they are deployed and the essential requirements applicable to the new network type can be determined in a timely manner.

### **2.2 Light conformity assessment regime**

As regards conformity assessment, this Directive establishes a new set of procedures superseding the current type approval system. The proposed set of procedures casts a proportionate balance between *a priori* measures and *a posteriori* surveillance. The new element in establishing this balance is the application of a liability regime similar to that in Directive 85/374/EEC on liability for defective products. Telecommunications products which do not conform to the applicable essential requirements are considered to be defective with the consequence that the penalties for non-conformance are increased so that manufacturers declarations can be relied upon.

Reliance on manufacturers declarations permits the introduction of a very simple set of rules, - rules which are conformant to the simplest procedures called for in the Global Approach to Testing and Certification. The proposed legislation accommodates future market developments where Connected Telecommunications Equipment will become true consumer products.

The proposed Directive takes into account the plans for complementary network legislation and anticipates developments in the availability of telecommunications networks and infrastructures throughout the Community. The traditional definition of public telecommunications from the monopoly telecommunications service provider era must be modified to take into account competition, ONP, independence of ownership, deregulation, etc. This proposed Directive consequently introduces two new definitions, one relating to networks, the other to equipment. These new definitions make the scope of the Directive flexible enough to accommodate present and future categories of termination points, each of them giving access to a specific identified type of present and future networks, termed Open Network Termination Points (ONTP). Equipment



connected to such ONTPs is called Connected Telecommunications Equipment (CTE). Special attention is being given to equipment capable of communicating by means of radio transmission utilizing allocated radio spectrum.

### 3. ESSENTIAL REQUIREMENTS

Experience of the present legislation and technological development have demonstrated that a lighter interpretation of the concept of telecommunications essential requirements is appropriate and that more flexibility is needed in defining which essential requirements should apply to classes of equipment. This flexibility is necessary in order to respond to the specific needs of new network types, accommodate industry reaction to the current regime, be consistent with international trends and react to changing policy, market pressures and the increasing globalization of telecommunications. The overall trend is likely to be a reduction in telecommunications specific essential requirements but for some network types new essential requirements may be necessary.

All CTE equipment should comply with the essential requirements contained in the Low Voltage Directive<sup>7</sup> and Electro Magnetic Compatibility horizontal Directives. It is proposed that there are no telecommunications specific safety and EMC essential requirements.

This draft Directive introduces the concept of ONTP-types. It will be necessary to identify the essential requirements to be applied for each ONTP-type. The relevant specific telecommunications essential requirements will be selected from the essential requirements listed below by the Commission, advised by the Telecommunications Conformity Assessment and Market surveillance committee (TCAM). Any number from zero to the full number may be selected. In all cases, including the case of zero requirements, no additional National Regulations may be applied.

(a) Prevention of misuse of public network resources causing a degradation of service to third parties

Examples would include cross-talk between analogue terminals and radio interference. The requirement is particularly aimed at protecting parties other than the end user of the terminal and the provider of the network service to which the CTE is connected. It can be very difficult to identify the offending equipment in such cases of problems effecting third parties, therefore a regime where equipment must be designed to avoid such problems before being placed on the market is required.

(b) Interworking via the public networks(s) and Community-wide portability between ONTPs

The intention of this requirement is to ensure that there is a single market for terminal equipment which can be connected to ONTPs by avoiding excessive fragmentation of the market and bundling of CTE with network services. Typically this would specify a basic level of interworking, e.g. simple voice telephony but would exclude supplementary services.

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<sup>7</sup> OJ No L 77, 26.3.1973, p. 29.

(c) Effective use of spectrum allocated to terrestrial/space radio communication and used for radio services

The purpose of this requirement is to permit maximum use of the finite radio spectrum. In many cases, trades-off will be necessary between quality, capacity and availability.

#### 4. IDENTIFICATION OF RELEVANT REQUIREMENTS

In selecting the applicable essential requirements, the Commission shall give, where justified, due consideration to the following possible requirements based on the common interest, the needs of the developing European markets and international trends:

(a) Protection of health

The protection of health may place requirements on CTE. An example might be a requirement to minimize the health hazards of radio frequency radiation.

(b) Features for users with disabilities

There is an international trend to extend requirements in this area. In Europe there are about 100 million elderly people and 50 million who have disabilities, both of which groups could benefit from specific terminal facilities<sup>8</sup>. Examples of such requirements might include hearing-aid compatibility of telephones and the support of visually handicapped operator consoles on private telephone exchanges. It would be expected that the requirement would call for a proportionate range of features according to the type of equipment and the needs of different disability groups.

(c) Features for emergency and security services

Examples of this requirement could include the ability to trace emergency calls to individual telephone instruments in private networks in order to assist emergency services or the ability to enable call surveillance when sanctioned by a National Security Service.

(d) Protection of individual privacy

The protection of the content of telecommunications calls or messages and the identification of individuals making these calls may place requirements on CTE connected to certain ONTP types.

#### 5. CONFORMITY ASSESSMENT

The application of the present Conformity Assessment procedures has proved cumbersome and expensive for the manufacturers of terminal equipment. Furthermore, manufacturers are concerned that the differences in the surveillance regimes and infringement penalties between Member States cause market fragmentation.

This proposal takes on board these issues by a substantial simplification of the conformity assessment procedures. Responsibility for conformity assessment is firmly placed on the

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<sup>8</sup> "The forgotten Millions: Access to telecommunications for people with disabilities" (1994, Office for Official Publications of the European Communities, Luxembourg)

manufacturer of the equipment by reliance on manufacturers' declaration and the extension of the application of the manufacturers liability Directive to cover the telecommunications aspects of CTE.

The principle applied is to take the lightest-weight conformity assessment procedures available under the Global Approach to Testing and Certification. In the case of non-radio equipment, conformity assessment is based upon the principles of internal production control (Module A of the Global Approach to Testing and Certification<sup>9</sup>).

Given the risks of interference to other users as soon as radio equipment is switched on, it is proposed that a more demanding conformity assessment procedure is to be applied to radio equipment. The draft Directive requires that for each product type all essential radio tests must be carried out by the manufacturer. Furthermore, the technical documentation must include the full test reports of all essential radio tests. Notified bodies will have the responsibility for identifying the tests which are essential to demonstrate conformity to the essential requirements.

Both the radio and non-radio regimes described above give the option to manufacturers to choose to carry out conformity assessment tests themselves or to use third party test laboratories. The market-place and the capabilities of individual manufacturers, be they multi-nationals or SMEs, will determine which route will be employed. A thorough and comprehensive test program for all products is expected given the clear liability of the manufacturer in the event of non-conformity.

In certain cases the conformity assessment procedures required by horizontal legislation such as the EMC and Low Voltage Directives are not the same as those identified above. In any such case, at the choice of the manufacturer, the above procedures may be applied to assess conformity to the essential requirements specified in these other Directives. This enables "one-stop" conformity assessment for telecommunications products.

## **6. MARKING**

It is proposed that marking is simplified. Conformant CTE will be marked with the "CE" mark only in the case of non-radio CTE and with the "CE" mark with a notified body number in the case of radio CTE. The "crossed hockey sticks" of the current telecommunications terminal Directive will no longer be applicable.

## **7. RECIPROCITY WITH THIRD COUNTRIES**

The introduction of manufactures declaration in place of third-party testing creates a very open regulatory framework which considerably reduces barriers to market entry. Unless an equally open system is made available by our main trading partners, European manufacturers will be disadvantaged relative to manufacturers in those countries. Given this, the Commission should assess the extent of the maturity of MRA negotiations or equivalent deregulation implemented by our main trading partners when the Directive is due for adoption. A type approval system should

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<sup>9</sup> OJ No L 220, 30.8.1993, p. 23.



be maintained if the Commission considers that the extent of these reciprocal arrangements is insufficient. Due account should be taken of the views of European manufacturers, service providers and users when assessing the adequacy of the reciprocal arrangements.

## 8. SUMMARY OF THE CONTENTS OF THE PROPOSED DIRECTIVE

**Chapter I:** contains eight Articles stating the principal provisions.

<b>Article 1</b>	describes the basic scope and aim of the Directive.
<b>Article 2</b>	contains definitions of the main terms used in the Directive. The new term Connected Telecommunications Equipment (CTE) includes all radio equipment.
<b>Articles 3/4</b>	lay down the master list of possible essential requirements. For each type of CTE the essential requirements applicable shall be selected from this master list; and provide for the identification of network termination types and of the essential requirements applicable to CTE for connection to each type of network termination.
<b>Article 5</b>	establishes the link between the essential requirements applicable and the corresponding harmonised European standards and in cases where these do not yet exist, the possibility of reference to other appropriate technical specifications.
<b>Article 6</b>	ensures the linkage between the placing of CTEs on the market and the right to use such equipment.
<b>Article 7</b>	addresses the procedures to be applied in the event of non-compliance of products to the essential requirements. These measures are of an a posteriori nature, as they provide for rectification procedures to be initiated in cases where equipment placed on the market does not or no longer complies with the essential requirements applicable.
<b>Article 8</b>	describes the liability of manufacturers who are non-compliant.

**Chapter II** covers conformity assessment.

<b>Article 9</b>	contains, together with Annexes I and II, the conformity assessment procedures to be applied. In the case of non-radio CTEs, the procedure is the simplest possible i.e. Module A of the global approach. However for radio CTEs, additional evidence must be given regarding the use of the radio frequency spectrum. In this case Module Aa procedures of the global approach are to be applied. The Article also lays down a simplified procedure for radio CTEs regarding EMC and it enhances the scope of the Low Voltage Directive to cover all CTEs.
<b>Article 10</b>	lays down the regime to be followed regarding designation of Notified Bodies, the criteria for assessment thereof being found in Annex III.

**Chapter III** establishes the CE marking regime.

<b>Article 11</b>	establishes the specific CE marking provisions to be applied.
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**Chapter IV** Regulatory Committee

<b>Article 12</b>	establishes a committee composed of representatives from the Member States and chaired by a representative of the Commission. The committee is called the Telecommunications Conformity Assessment and Market Surveillance committee (the TCAM committee). The committee primarily has a consultative role. In addition, the Article describes the Commission's obligation to consult a number of key players.
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**Chapter V** contains the final and transitional provisions.

<b>Article 13</b>	puts an obligation upon the Commission to report back to the Parliament and the Council every third year. The report shall include an assessment of the degree to which the internal market objectives for CTEs have been achieved.
<b>Articles 14/16/17</b>	lay down the provisions necessary to avoid disruption of the market on introduction of the Directive and repeal of Directives 91/263/EEC and 93/97/EEC. A transitional period is proposed.
<b>Article 15</b>	contains standard provisions for the transposition of the Directive into Member States' national law, providing this to be accomplished by [mid 1999].
<b>Article 18</b>	states that the Directive is addressed to the Member States.

**Annexes:**

<b>Annexes I and II</b>	contain the requirement for the drawing up of written declarations of conformity.
<b>Annex III</b>	contains the minimum criteria to be met to permit the designation of Notified Bodies by the Member States.
<b>Annex IV</b>	stipulates the rules to be applied for the CE marking.

## **9. IMPACT ON EXISTING LEGISLATION**

This draft Directive proposes to fully harmonize the market for telecommunications terminals and radio equipment by deregulation of the placing on the market and putting into service of such equipment. The draft Directive makes maximum use of a number of well-established horizontal Directives and of the Global Approach to testing and certification.

It has been possible to rationalize, simplify and streamline the current legislation covering telecommunications terminal equipment and satellite earth stations.

The following Directives and provision shall be repealed following the adoption of this Directive:

Directive 91/263/EEC, Directive 93/97/EEC and Article 11 of Directive 93/68/EEC.

Any harmonized standards referred to in Decisions adopted within the framework of any of the repealed Directives may be used to demonstrate conformity to the essential requirements.

## **10. CONCLUSION**

This proposal on the approximation of the laws of the Member States covering connected telecommunications equipment is an essential development of the existing legislation in this area.

The proposal reflects the need expressed by industry, operators, regulators and users for a regulatory environment which strikes a proper balance between fast market access and the safe-guarding of the needs of the European citizens.

The proposal is designed to handle new types of termination points offered by alternative infrastructures and networks and will complement the introduction of full competition in the provision of telecommunications services and telecommunications infrastructures in the European Union in January 1998.



Proposal for a  
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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a,

Having regard to the proposal from the Commission<sup>10</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>11</sup>,

Acting in accordance with the procedure referred to in Article 189b of the Treaty<sup>12</sup>,

1. Whereas Council Directive 91/263/EEC of 29 April 1991, on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity<sup>13</sup>, amended by Directive 93/68/EEC<sup>14</sup>, further developed the measures for the mutual recognition of the conformity of telecommunications terminal equipment;
2. Whereas Council Directive 93/97/EEC<sup>15</sup> supplemented Directive 91/263/EEC in respect of satellite earth station equipment;
3. Whereas a regulatory regime aimed at the development of a single market for terminal and radio equipment should permit investment, manufacture and sale to take place at the pace of technology and market developments; whereas, as a result of liberalisation of the infrastructure new definitions of network termination points and terminal equipment will be required; whereas, in general, the network termination points to be considered are those of public telecommunications networks; whereas in certain cases in the public interest, terminal equipment for connection to other types of network termination points should be subject to regulation;
4. Whereas Directive [../.../EC] of [.....]<sup>16</sup> on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment calls on national regulatory authorities to ensure the publication of details of technical interface specifications for network access for the purpose of ensuring a competitive market for the supply of terminal equipment;

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<sup>10</sup> OJ No

<sup>11</sup> OJ No

<sup>12</sup> OJ No

<sup>13</sup> OJ No L 128, 23.5.1991, p. 1.

<sup>14</sup> OJ No L 220, 31.8.1993, p. 1.

<sup>15</sup> OJ No L 290 24.11.1993, p. 1.

<sup>16</sup> OJ No L

5. Whereas the electromagnetic compatibility related essential requirements laid down by Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of Member States relating to electromagnetic compatibility<sup>17</sup>, as last amended by Directive 93/68/EEC, are sufficient to cover connected telecommunications equipment;
6. Whereas the provisions of Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits<sup>18</sup>, as last amended by Directive 93/68/EEC, are sufficient to cover connected telecommunications equipment, whatever the operating voltage limits;
7. Whereas certain essential requirements specific to terminal and radio equipment may be necessary in order to protect the public interest;
8. Whereas unacceptable degradation of service to other than the user of connected telecommunications equipment should be prevented;
9. Whereas harmonized interfaces between terminal equipment and telecommunications networks ensure the coexistence of competitive markets for both terminal equipment and network services;
10. Whereas connected telecommunications equipment can occupy an excessive proportion of limited resources such as radio frequency spectrum;
11. Whereas the Commission may need to take into account certain Community-wide requirements where justified in the public interest;
12. Whereas the essential requirements relevant to a class of connected telecommunications equipment should depend on the nature and the needs of that class of equipment; whereas these requirements must be applied with discernment in order not to inhibit technological innovation or the meeting of the needs of a free-market economy;
13. Whereas care should be taken that connected telecommunications equipment should not represent an avoidable hazard to health;
14. Whereas telecommunications are important to the well-being and employment of people with disabilities who represent a substantial and growing proportion of the population of Europe;
15. Whereas connected telecommunications equipment can provide certain functions required by emergency and security services;
16. Whereas connected telecommunications equipment should not permit the infringement of individual privacy;

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<sup>17</sup> OJ No L 139, 23.5.1989, p. 19.

<sup>18</sup> OJ No L 77, 26.3.1973, p. 29.



17. Whereas to enable the Commission to monitor effectively the control of the market, it is necessary that Member States provide the relevant information concerning types of network termination points, inadequate or incorrectly applied harmonized standards, notified bodies and surveillance authorities;
18. Whereas it is desirable to have harmonized standards at European level to safeguard the public interest in connection with the design and manufacture of connected telecommunications equipment; whereas such harmonized standards may be used to demonstrate conformity to the essential requirements;
19. Whereas Community law provides that obstacles to the free movement of goods within the Community, resulting from disparities in national legislation relating to the marketing of products, can only be justified where any national requirements are necessary and proportionate; whereas, therefore, the harmonization of laws must be limited only to those requirements necessary to satisfy the essential requirements relating to connected telecommunications equipment; whereas these requirements must replace the relevant national requirements;
20. Whereas connected telecommunications equipment which complies with the relevant essential requirements should be permitted to circulate freely and be put into service in all Member States; whereas connected telecommunications equipment which does not comply with the applicable essential requirements should be regarded as defective products within the meaning of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products<sup>19</sup>;
21. Whereas manufacturers or their authorized representatives established within the Community who are responsible for placing products on the Community market which do not comply with the relevant essential requirements should be liable according to provisions equivalent to those in Directive 85/374/EEC, modified, as necessary, to meet the needs of telecommunications equipment;
22. Whereas on 22 July 1993 the Council adopted Decision 93/465/EEC concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and the use of CE conformity marking, intended to be used in the technical harmonization directives<sup>20</sup>; whereas the conformity assessment procedures applicable should be chosen from the available modules laid down by that Decision;
23. Whereas it is desirable to establish a committee bringing together parties directly concerned with the implementation of regulation of terminal and radio equipment, in particular the national bodies designated for certifying conformity and national bodies responsible for market surveillance, to assist the Commission in achieving a harmonized and proportionate application of the provisions which meet the needs of the market and the public at large; whereas representatives from the telecommunications organizations, users, consumers, manufacturers, and service providers should be consulted where appropriate;

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<sup>19</sup> OJ No L 210, 7.8.1985, p. 29.

<sup>20</sup> OJ No L 220, 30.8.1993, p. 23.



24. Whereas it is necessary to ensure that with the introduction of changes to the regulatory regime there is a smooth transition from the previous regime in order to avoid disruption to the market and legal uncertainty;
25. Whereas the telecommunications terminal equipment sector is an essential part of the telecommunications market, which is a key element of the economy in the Community; whereas the Directives applicable to the telecommunications terminal equipment sector are no longer capable of accommodating the expected changes in the sector caused by new technology, market developments and network legislation;
26. Whereas the Commission should review on a periodic basis which categories of terminal equipment no longer require Community standards relating to interfaces between public networks and terminal equipment, taking due account of the progress in implementation of competition in the public network provision market;
27. Whereas this Directive replaces Directive 91/263/EEC, Directive 93/97/EEC and Article 11 of Directive 93/68/EEC, which should accordingly be repealed;
28. Whereas in accordance with the principles of subsidiarity and proportionality referred to in Article 3b of the Treaty, the objective of creating an open competitive single market for telecommunications equipment cannot be effectively achieved by the Member States and therefore is better achieved at a Community level; whereas this Directive is limited to the minimum requirements necessary to meet this objective and does not exceed that which is necessary to achieve this aim,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### General aspects

#### Article 1

##### *Scope and aim*

This Directive establishes a European Community regulatory framework for the placing on the market, free circulation and putting into service of Connected Telecommunications Equipment (CTE) which complies with the essential requirements.

#### Article 2

##### *Definitions*

For the purpose of this Directive the following definitions shall apply:

(a) Connected Telecommunications Equipment (CTE)

Equipment capable of communication by means of radio transmission utilizing spectrum allocated to terrestrial/space radio communication excluding equipment which is intended for exclusive public security use,

or

the relevant components of equipment to be connected to an Open Network Termination Point, allowing this equipment to interwork with the relevant network;

(b) Open Telecommunications Network Termination Point (ONTP)

A termination point of a telecommunications network at which users of the network may connect any conforming Connected Telecommunications Equipment of a type supported at that ONTP. Connection may be by wire, radio, optical or other electromagnetic means. An ONTP supports one or more types of CTE. In exceptional cases in the public interest, ONTP types can be termination points of other than public networks;

(c) CTE Type

The CTE type identifies the type of Open Network Termination Point to which the equipment is to be connected by wire, radio, optical or other electromagnetic means;

(d) Technical specification

A specification contained in a document which describes those characteristics of a product which implement the applicable essential requirements;

(e) Harmonized standard

A technical specification adopted by a recognized standards body under a mandate from the Commission in conformity with the procedures laid down in Council Directive 83/189/EEC<sup>21</sup> for the purpose of establishing a European requirement, compliance with which is not compulsory.

Article 3

*Essential requirements*

1. The following general essential requirements are applicable to all CTE:
  - (a) the essential requirements contained in Directive 73/23/EEC with respect to safety whatever the voltage limits of the CTE;
  - (b) the essential requirements contained in Directive 89/336/EEC with respect to electromagnetic compatibility.
2. The specific essential requirements applicable to each type of CTE may be selected in accordance with the provisions of Article 4 from the following list:
  - (a) prevention of misuse of network resources causing an unacceptable degradation of service to other than the user of the CTE;
  - (b) interworking via network(s) and Community-wide portability between ONTPs of the same type;
  - (c) effective use of spectrum allocated to terrestrial/space radio communication.

Article 4

*Identification of relevant specific essential requirements*

1. The Commission shall identify the specific essential requirements applicable to each CTE type in accordance with the procedure laid down in Article 12. In selecting the applicable essential requirements, the Commission shall give, as appropriate, due consideration to:
  - (a) protection of health,
  - (b) features for users with disabilities,

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<sup>21</sup> OJ No L 109, 26.4.1983, p. 8.



- (c) features for emergency and security services,
- (d) protection of individual privacy.

The applicable specific essential requirements shall be published in the *Official Journal of the European Communities*.

2. Member States shall notify the Commission of the types of ONTP which are available or due to become available as soon as they are aware of them. In turn, the Commission shall inform the Committee referred to in Article 12 (hereinafter referred to as "the Committee") of existing and planned ONTP types.
3. Member States shall ensure that the operators of all networks publish and regularly update, accurate and adequate technical specifications of the available ONTPs and the CTE types supported. The specifications should be in sufficient detail to permit the design of compatible CTE.

Article 5  
*Harmonized standards*

1. When CTE meets the relevant harmonized standards whose reference numbers have been published in the *Official Journal of the European Communities*, Member States shall presume compliance with those of the essential requirements referred to in Article 3 and Article 4 as are covered in these standards. At the choice of the manufacturer and, in particular, in the absence of a harmonized standard, compliance with the relevant essential requirements can be demonstrated by means of compliance with a technical specification appropriate to the relevant essential requirements.
2. Where a Member State or the Commission considers that a harmonized standard referred to in paragraph 1 does not conform to the selected specific essential requirements referred to in Article 3(2) and Article 4(1), the Commission or the Member State concerned shall bring the matter before the Committee and initiate the procedures described in Article 12.

Article 6  
*Placing on the market and putting into service*

1. Member States shall ensure that CTE which complies with the appropriate essential requirements identified in Article 3(1) and (2) and Article 4(1) is permitted to circulate freely and is not subject to further national regulation. Where the specific essential requirements for a type of CTE have not yet been determined, a manufacturer shall not be subject to national regulation and may place the CTE on the market provided he complies with the general essential requirements identified in Article 3(1). CTE which complies with the essential requirements applicable at the time of first placing on the market can continue to be placed on the market.
2. Member States shall ensure that connection of CTE to appropriate ONTPs is not refused on the grounds of technical incompatibility when the CTE complies with the requirements of Article 3.

3. Member States shall ensure that, when placed on the market, CTE is accompanied by documentation informing the potential purchaser or user of the CTE that the equipment complies with the relevant essential requirements and of any usage conditions resulting from the selection of essential requirements. These usage conditions should include, *inter alia*, the ONTP type(s) to which the CTE may be connected and any limitations on use made necessary by lack of harmonization of radio spectrum.

Article 7  
*Non-compliance*

1. Where a Member State finds that CTE being placed on the market in its territory does not comply with the essential requirements relevant to the CTE type, it shall take all appropriate measures to withdraw such products from the market and prohibit their being placed on the market.
2. The Member State concerned shall immediately notify the Commission of all decisions relating to non-compliance indicating the reasons for its decision and whether non-compliance is due to:
  - (a) incorrect application of the harmonized standards referred to in Article 5,
  - (b) shortcomings in the harmonized standards referred to in Article 5,
  - (c) use of an inappropriate technical specification.
3. Where the non-compliance referred to in paragraph 2 is attributed to shortcomings in the harmonized standards applicable, the Commission shall bring the matter before the Committee within two months of the date of notification by the Member State.
4. The Commission shall keep the Member State informed of the progress and outcome of any procedure initiated pursuant to paragraph 3.

Article 8  
*Liability for non-compliance*

1. Manufacturers or their authorized representatives established within the Community who place products on the Community market which do not comply with the applicable essential requirements shall be liable for damage as described in Article 9 of Directive 85/374/EEC and for direct economic damage suffered as a consequence of the non-compliance. The economic damage shall not include any anticipated profits.
2. Manufacturers or their authorized representatives established within the Community shall not be liable for the damages referred to in paragraph 1 if they can prove that the essential requirement(s) with which their product does not comply had not been identified pursuant to Article 4 at the time when the equipment was placed on the market.



## CHAPTER II

### Conformity assessment

#### Article 9

##### *Conformity assessment procedures*

1. The conformity assessment procedures identified in this Article will be used to demonstrate the compliance of the CTE with all the relevant essential requirements identified in Article 3(1) and (2) and Article 4(1).
2. CTE which does not make use of the spectrum allocated to terrestrial/space radio communication shall be subject to internal production control, as described in Annex I.
3. CTE which does make use of the spectrum allocated to terrestrial/space radio communication shall be subject to internal production control and specific product tests, as described in Annex II.
4. The records and correspondence relating to the production control procedures referred to in paragraphs 2 and 3 shall be in an official language of the Member State where the said procedure will be carried out, or in a language accepted by the notified body involved.

#### Article 10

##### *Notified bodies and surveillance authorities*

1. Member States shall notify the Commission and the other Member States of the bodies which they have designated to carry out the relevant tasks referred to in Article 9. Member States shall apply the criteria laid down in Annex III in assessing the bodies to be notified.
2. The Commission shall publish a list of the notified bodies, together with their identification numbers and the tasks for which they have been notified, in the *Official Journal of the European Communities*. Member States shall provide the Commission with all information necessary to keep the list up to date.
3. Member States shall notify the Commission and the other Member States of the authorities established within their territory which carry out the surveillance tasks related to the operation of this Directive.



## CHAPTER III

### CE conformity marking and inscriptions

#### Article 11

##### *CE marking*

1. CTE complying with the relevant essential requirements shall bear the CE conformity marking referred to in Annex IV. It shall be affixed by the manufacturer or his authorized representative within the Community. Where appropriate, it shall be accompanied by the identification number of the notified body referred to in Article 10(2). Any other marking may be affixed to the equipment provided that the visibility and legibility of the CE marking is not thereby reduced.
2. No CTE, whether it complies with the relevant essential requirements or not, may bear any other marking which is likely to deceive third parties as to the meaning and form of the CE marking specified in Annex IV.
3. The competent Member State shall take appropriate action against any person who has affixed marking not in conformity with paragraphs 1 and 2. If the person who affixed the marking is not identifiable, the action shall be taken against the holder of the CTE when non-compliance was discovered.
4. CTE 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.

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## CHAPTER IV

### Committee

#### Article 12

##### *Constitution and procedures*

1. The Commission shall be assisted by a Committee, the Telecommunication Conformity Assessment and Market surveillance committee (TCAM), of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The Committee shall be consulted on the matters covered by Articles 4, 5 and 7.
3. The Committee may be consulted, where necessary, on the effectiveness of the surveillance tasks related to the operation of this Directive.
4. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account and decide within one month after having received the opinion of the Committee.

5. The Commission shall periodically consult the representatives of the telecommunications networks providers, the consumers and the manufacturers. It shall keep the Committee regularly informed of the outcome of such consultations.

## CHAPTER V

### Final and transitional provisions

#### Article 13

#### *Review and reporting*

The Commission shall review the operation of this Directive and report thereon to the European Parliament and to the Council, on the first occasion not later than [31 December 1999] and every third year thereafter. This review shall *inter alia* assess whether the scope of the Directive should be maintained or should be reduced taking account of technical development. The report shall cover progress on drawing up the relevant standards, as well as any problems that have arisen in the course of implementation. The report shall also outline the activities of the Committee, and assess progress in achieving an open competitive market for CTE at Community level. It shall in particular examine whether essential requirements are still necessary for all categories of terminal equipment covered.

#### Article 14

#### *Transitional provisions*

1. The harmonized standards or parts thereof identified through Common Technical Regulations adopted under Directive 91/263/EEC or Directive 93/97/EEC may be used as the basis for a presumption of conformity with the specific essential requirements referred to Article 3(2) and Article 4(1) until such time as the Commission indicates, by publication in the *Official Journal of the European Communities*, that they are no longer applicable.
2. Any measure adopted by Member States in accordance with Directive 91/263/EEC or Directive 93/97/EEC shall continue to be valid.

Article 15  
*Transposition*

1. Member States shall take the measures necessary to comply with this Directive not later than [1 July 1999]. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these 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 laid down by Member States.

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

Article 16  
*Repeal*

Directive 91/263/EEC, Directive 97/97/EC and Article 11 of Directive 93/68/EEC are hereby repealed.

Article 17  
*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 18  
*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament  
The President

For the Council  
The President



**Conformity assessment procedure referred to in Article 9(2)<sup>22</sup>**

## Module A (internal production control)

1. This module describes the procedure whereby the manufacturer or his authorized representative established within the Community, who carries out the obligations laid down in paragraph 2, ensures and declares that the products concerned satisfy the requirements of this Directive that apply to them. The manufacturer or his authorized representative established within the Community must affix the CE marking to each product and draw up a written declaration of conformity.
2. The manufacturer must establish the technical documentation described in paragraph 3 and he or his authorized representative established within the Community must keep it for a period ending at least ten years after the last product has been manufactured at the disposal of the relevant national authorities for inspection purposes.
3. Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available is the responsibility of the person who places the product on the Community market.
4. The technical documentation must enable the conformity of the product with the essential requirements to be assessed. It must cover the design, manufacture and operation of the product, in particular:
  - 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 referred to in Article 5, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the Directive where such standards referred to in Article 5 have not been applied or do not exist;
  - results of design calculations made, examinations carried out, etc.;
  - test reports.

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<sup>22</sup> Annex I and Annex 2 are extracted from Decision 93/465/EEC (OJ No L 220, 30.8.1993, p. 23) of 22 July 1993, concerning the modules for the various phases of the conformity assessment procedures...., as supported by the "Guide to the implementation of Community harmonization directives based on the new approach and the global approach - First Version" (Luxembourg Office for Official Publications of the European Communities, 1994, ISBN 92-826-8584-5). Any changes in these documents which may affect the wording of Annex I or II should be taken into account by the Council).

5. The manufacturer or his authorized representative must keep a copy of the declaration of conformity with the technical documentation.
6. The manufacturer must take all measures necessary in order that the manufacturing process ensures compliance of the manufactured products with the technical documentation referred to in paragraph 2 and with the requirements of this Directive that apply to them.

**Conformity assessment procedure referred to in Article 9(3)**

**Module Aa (Internal production control plus specific product tests)**

This Annex consists of Annex I, plus the following supplementary requirement:

For each product, all essential radio test suites must be carried out by the manufacturer or on his behalf. The identification of the tests suites that are considered to be essential is the responsibility of a notified body chosen by the manufacturer.

On the responsibility of the notified body, the manufacturer must affix the former's identification number during the manufacturing process.



**Minimum criteria to be taken into account by Member States when designating notified bodies in accordance with Article 10(1)**

1. The notified body, its director and the staff responsible for carrying out the tasks for which the notified body has been designated shall not be a designer, manufacturer, supplier or installer of terminal or radio equipment, or a network operator or a service provider, nor the authorized representative of any of such parties. They shall be independent and not become directly involved in the design, construction, marketing or maintenance of terminal or radio equipment, nor represent the parties engaged in these activities. This does not preclude the possibility of exchanges of technical information between the manufacturer and the notified body.
2. The notified body and its staff must carry out the tasks for which the notified body has been designated with the highest degree of professional integrity and technical competence and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of any inspection, especially from persons or groups of persons with an interest in such results.
3. The notified body must have at its disposal the necessary staff and facilities to enable it to perform properly the administrative and technical work associated with the tasks for which it has been designated.
4. The staff responsible for inspections must have:
  - sound technical and professional training;
  - satisfactory knowledge of the requirements of the tests or inspections that are carried out and adequate experience of such tests or inspections;
  - the ability to draw up the certificates, records and reports required to authenticate the performance of the inspections.
5. The impartiality of inspection staff must be guaranteed. Their remuneration must not depend on the number of tests or inspections carried out nor on the results of such inspections.
6. The notified body must take out liability insurance unless its liability is assumed by the Member State in accordance with national law, or the Member State itself is directly responsible.
7. The staff of the notified body is bound to observe professional secrecy with regard to all information gained in carrying out its tasks (except vis-à-vis the competent administrative authorities of the Member State in which its activities are carried out) under this Directive or any provision of national law giving effect thereto.

**Marking of equipment referred to in Article 11(1)**

1. The CE conformity marking shall consist of the initials "CE" taking the following form.

If the CE marking is reduced or enlarged, the proportions given in the above graduated drawing must be respected.

2. The CE marking must have a height of at least 5 mm.
3. The CE marking must be affixed to the product or to its data plate. However, where this is not possible or not warranted on account of the nature of the product, it must be affixed to the packaging, if any, and to the accompanying documents.
4. The CE marking must be affixed visibly, legibly and indelibly.

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