



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.03.1998

COM(1998) 176 final

97/0149 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**ON CONNECTED TELECOMMUNICATIONS EQUIPMENT AND THE MUTUAL RECOGNITION OF
THE CONFORMITY OF EQUIPMENT**

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

SUMMARY

On 29 January 1998, the European Parliament approved the Commission proposal for a EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE on connected telecommunications equipment and the mutual recognition of the conformity of equipment (COM(97)257) with amendments (PE A4-0023/98). This modified proposal takes into account the amendments adopted by the European Parliament, which are accepted by the Commission.

The Directive will create the single market for telecommunications terminal and radio equipment and proposes a substantial relaxation of the regulations governing the placing on the market, the free movement and the putting into service of such equipment. The Directive will replace two Council Directives (91/263/EEC¹ - telecommunications terminal equipment and 93/97/EEC² - satellite earth station equipment), simplify the application of two other Council Directives (93/68/EEC³ - conformity marking and 89/336/EEC⁴ - electromagnetic compatibility) and replace a large number of national regulations.

The issues of concern to the European Parliament are:

- **The role of harmonised standards** (7, 8,10);
- **The licensing of use of radio equipment** (6, 15);
- **Access of disabled people to telecommunications** (4, 8);
- **Reciprocity with third countries** (19);
- **Transparency of implementation of the Directive** (9, 10, 15, 16, 17, 18);
- **Exclusion of self-built radio amateur equipment** (5, 8);
- **Essential requirements and network protection** (8, 13);
- **Strengthening the role of industry in the implementation of this Directive** (16).

19 Amendments were formulated on which the Commission has taken the following position:

acceptable	1, 2, 3, 4, 5, 9, 17, 18
acceptable in part or in principle	8, 10, 13, 15, 16, 20, 21, 23
not acceptable	6, 7, 19

¹ OJ No L 128, 23.5.1991, p. 1.

² OJ No L 290, 24.11.1993, p. 1.

³ OJ No L 220, 30.8.1993, p. 1.

⁴ OJ No L. 139, 23.5.1989, p. 19.

EXPLANATORY MEMORANDUM

The Commission hereby presents a modified proposal for a European Parliament and Council Directive on radio and telecommunications terminal equipment and the mutual recognition of their conformity. The modified proposal incorporates those amendments proposed by the European Parliament as First Reading which were accepted by the Commission.

INTRODUCTION

a) Background

The Commission adopted its proposal on 4 June 1997 and it was formally transmitted to the EP and the Council on 6 June 1997⁵.

The Economic and Social Committee gave a favourable Opinion on 10 December 1997. The European Parliament adopted a favourable Resolution at its First Reading on 29 January 1998 and proposed 23 amendments to the Commission proposal⁶.

b) Purpose of the Directive

The Directive will create the single market for telecommunications terminal and radio equipment and proposes a substantial relaxation of the regulations governing the placing on the market, the free movement and the putting into service of such equipment. The Directive will replace two Council Directives (91/263/EEC⁷ - telecommunications terminal equipment and 93/97/EEC⁸ - satellite earth station equipment), simplify the application of two other Council Directives (93/68/EEC⁹ - conformity marking and 89/336/EEC¹⁰ - electromagnetic compatibility) and replace a large number of national regulations.

The major elements of the new Directive are:

- Enlargement of the range of equipment covered with the inclusion of radio equipment;
- A set of new definitions which will make the Directive valid well into the future by taking into account the liberalisation of infrastructures and competition between operators;

⁵ OJ C 248, 14/08/1997 p. 4

⁶ A4-0023/96, PV 29-01-98

⁷ OJ No L 128, 23.5.1991, p. 1.

⁸ OJ No L 290, 24.11.1993, p. 1.

⁹ OJ No L 220, 30.8.1993, p. 1.

¹⁰ OJ No L. 139, 23.5.1989, p. 19.

- The development of the concept of essential requirements specific to telecommunications to take into account technological trends;
- A flexible decision-making process whereby future network infrastructures and systems can be readily covered;
- A less onerous 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 radio and telecommunications terminal equipment market caused by the liberalisation of the telecommunications infrastructures and services.

EP AMENDMENTS ACCEPTED BY THE COMMISSION

Of the 19 amendments adopted by the European Parliament at First Reading, the Commission accepted 8 in full and 8 in part or in principle, making a total of 16:

Amendments accepted in full	1, 2, 3, 4, 5, 9, 17, 18
Amendments accepted in part or in part or in principle	8, 10, 13, 15, 16, 20, 21, 23

The Commission accepted those amendments which:

- reinforce the importance to maximise the classes of equipment covered by the Directive;
- clarify the procedures on dealing with radio equipment;
- introduce a consultation mechanism where equipment considered non-compliant with the Directive is withdrawn from the market;
- introduce possibilities for network operators to disconnect equipment in special circumstances;
- further clarify the text in a manner consistent with the aims of the Directive;
- are consistent with other EU legislation.

EP AMENDMENTS NOT ACCEPTED BY THE COMMISSION

The Commission has not accepted 4 amendments and parts of 10 other amendments. The reasons are given below and the amendments are placed in categories:

Limitation of coverage of putting into service of equipment not operating in harmonised frequency bands (amendment 6)

The Commission recognises the fact that the usage of radio equipment is governed by authorisations and that they are in general given on a national basis. Directive 91/263/EEC provides for community-wide authorisations for a limited class of equipment, operating in

harmonised frequency bands. Since on the one hand there is equipment, which does not operate in harmonised frequency bands but for which it is possible to provide a Community wide authorisation scheme and, whereas, on the other, there is equipment operating in harmonised frequency bands for which the putting into service is nonetheless authorised on a national level, the amendment would unnecessarily restrict the scope of the Directive.

Usage of harmonised standards (amendments 7, 10 (part))

Although it may not have been the intention of the European Parliament to render mandatory harmonised standards where they exist, the amendments 7 and 10 would have this effect. The principle that the usage of harmonised standards should be promoted is fully supported but is already embedded by virtue of the more onerous conformity assessment procedure, which applies when harmonised standards are not used.

Making applicable the essential requirement enabling disabled people to use all equipment covered by this Directive (amendment 8 (part))

The Commission agrees with the European Parliament that the disabled should have access to telecommunication services but is of the opinion that, in principle, market forces should, and will, ensure this. Where the market fails, regulators should however have a possibility to intervene and to enforce usability on certain classes of products. The European Parliament proposes to apply this requirement to all equipment. This is felt unnecessary for classes where the market will ensure usability. For other classes of products (e.g. professional equipment) such a requirement would be inappropriate.

Strengthening of the essential requirements and leaving selection of requirements to ETSI (amendment 8 (part))

Although the Commission fully agrees with the Parliament that it is up to ETSI to interpret the essential requirements into harmonised standards, it is the task of the regulators to define which requirements apply. The selection of which special essential requirements would apply is, therefore, to be made by the Commission after consultation of the TCAM.

Amendment 8 also proposes making the requirement "misuse of network resources causing an unacceptable degradation of service" obligatory for all equipment. The Commission understands the reasoning behind making it obligatory and would expect terminal equipment to comply with it. It is, however, difficult to translate this requirement into harmonised standards as the origin of degradation of service is not necessarily a result of faulty elements in the terminal equipment. For this reason, the Commission feels the requirement should be kept optional.

A requirement to ensure that equipment properly interworks with the network is considered an aspect of product quality and not a necessary feature. Equipment which will not properly interwork with the network does not necessarily cause problems to that network. Market forces would ensure that such products are unsuccessful.

Specific provisions on radio amateur equipment (amendments 8 (part))

Some amendments reflect the concerns of the radio amateur community, that self-built equipment would be subjected to the conformity assessment procedures of the Directive. This equipment is not placed on the market and therefore not covered by this Directive. The risks associated with such equipment are regulated via the licenses which radio amateurs need to be allowed to put such equipment into service. Making special provisions in this Directive to exclude such equipment are not necessary.

Amendment 8 proposes introducing limitations on the technical requirements which can be imposed on commercially built radio amateur equipment placed on the market. Such a provision would be contrary to the principles of the new approach which leave such an assessment to the standardisation organisations.

Extension of markings on equipment (amendment 15 (part))

The European Parliament proposes adding references to the notified bodies and harmonised standards to the marking. Extended marking beyond the CE mark needs to be justified. It only seems justified for certain classes of radio equipment, operating in non-harmonised frequency bands and thus should not be the general rule.

Transparency of procedures of the TCAM (amendment 16 (part))

The Community is bound by Council Decision 87/373/EEC which does not allow for the proceedings of such Committees to be made public.

Reciprocity (amendment 19)

The European Parliament proposes keeping in place the existing Directives, (which are onerous in both requirements and conformity assessment procedures), for products originating from countries not providing reciprocal access for products from the Community. Such a provision is not in line with the Most Favoured Nation principle and the National Treatment Principle of the GATT and the TBT code and is discriminatory. The maintenance of two very different legal regimes is, in addition, very costly and, therefore, quite undesirable.

Introduction of a right to disconnect (amendment 20 (partly accepted))

Refusal of connection can be accepted if equipment seriously affects the operation of a network. Usage of such a measure should, however, be controlled by the regulators in order to avoid abuse by operators. To only allow it when the user can be offered an alternative solution does not provide sufficient guarantees to avoid such abuse.

Extension of liabilities (amendments 23)

The European Parliament proposes that manufacturers should be liable not only for direct economic damage, but also for indirect damage and that they be liable towards any party suffering damage. This seems to exclude that other parties could be liable as well (e.g. network operators who have not specified the characteristics of their networks properly). The proposal might have unforeseen side effects and the view is taken,

therefore, that these issues continue to be handled under the existing national liability legislation.

Where a product manufactured in the Community for other markets is re-re-imported into the Community, both the importer and the manufacturer are liable for that product. If the product was not intended to be used in the Community and the importer is, or should have been aware of it, it is up to the courts to determine to what extent the producer should pay compensation for damages caused by the product.

CONCLUSIONS

The Commission has accepted 16 of the 19 amendments proposed by the European Parliament at First Reading either in whole, in part or in principle.

In accordance with Article 189a paragraph 2 of the EC Treaty, the Commission amends its initial proposal, incorporating these amendments.

**AMENDED PROPOSAL FOR A
EUROPEAN PARLIAMENT AND COUNCIL
DIRECTIVE**

**ON
RADIO AND TELECOMMUNICATIONS TERMINAL
EQUIPMENT AND THE MUTUAL RECOGNITION OF THEIR
CONFORMITY**

<i>Original text</i>	<i>Amended text</i>
Recital 3a (new)	
(new)	Whereas, given the increasing importance of telecommunications terminal equipment and networks using radio transmission besides equipment connected through wired links, any regulation on the manufacturing, marketing and use of R&TTE should cover both classes of such equipment;
Recital 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 ¹¹ , as last amended by Directive 93/68/EEC, are sufficient to cover <u>connected telecommunications equipment</u> ;	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 ¹² , as last amended by Directive 93/68/EEC, are sufficient to cover radio and telecommunications terminal equipment;
Recital 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 ¹³ , as last amended by Directive 93/68/EEC, are sufficient to cover <u>connected telecommunications equipment</u> , whatever the operating voltage limits;	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 ¹⁴ , as last amended by Directive 93/68/EEC, are sufficient to cover radio and telecommunications terminal equipment, whatever the operating voltage limits;

¹¹ OJ No L 139, 23.5.1989, p. 19.

¹² OJ No L 139, 23.5.1989, p. 19.

¹³ OJ No L 77, 26.3.1973, p. 29.

¹⁴ OJ No L 77, 26.3.1973, p. 29.

Recital 8	
Whereas unacceptable degradation of service to other than the user of <u>connected telecommunications equipment</u> should be prevented;	Whereas unacceptable degradation of service to other than the user of radio and telecommunications terminal equipment should be prevented;
Recital 10	
Whereas <u>connected telecommunications equipment</u> can occupy an excessive proportion of limited resources such as radio frequency spectrum;	Whereas the most efficient possible use according to the state of the art of limited resources such as the radio frequency spectrum is to be ensured and promoted;
Recital 12	
Whereas the essential requirements relevant to a class of <u>connected telecommunications equipment</u> 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;	Whereas the essential requirements relevant to a class of radio and telecommunications terminal 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;
Recital 13	
Whereas care should be taken that <u>connected telecommunications equipment</u> should not represent an avoidable hazard to health;	Whereas care should be taken that radio and telecommunications terminal equipment should not represent an avoidable hazard to health;
Recital 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;	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; <u>whereas telecommunications equipment should therefore whenever possible be designed in such a way that disabled people may use it without or with only minimal adaptation;</u>
Recital 15	
Whereas <u>connected telecommunications equipment</u> can provide certain functions required by emergency and security services;	Whereas radio and telecommunications terminal equipment can provide certain functions required by emergency and security services;
Recital 16	
Whereas <u>connected telecommunications equipment</u> should not permit the infringement of	Whereas radio and telecommunications terminal equipment should not permit the

individual privacy;	infringement of individual privacy;
Recital 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 <u>connected telecommunications equipment</u> ; whereas such harmonized standards may be used to demonstrate conformity to the essential requirements;	Whereas it is desirable to have harmonized standards at European level to safeguard the public interest in connection with the design and manufacture of radio and telecommunications terminal equipment; whereas such harmonized standards may be used to demonstrate conformity to the essential requirements;
Recital 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 <u>connected telecommunications equipment</u> ; whereas these requirements must replace the relevant national requirements;	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 radio and telecommunications terminal equipment; whereas these requirements must replace the relevant national requirements;
Recital 20	
Whereas <u>connected telecommunications equipment</u> which complies with the relevant essential requirements should be permitted to circulate freely and be put into service in all Member States; whereas <u>connected telecommunications equipment</u> 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 ¹⁵ ;	Whereas radio and telecommunications terminal equipment which complies with the relevant essential requirements should be permitted to circulate freely and be put into service in all Member States; whereas radio and telecommunications terminal 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 ¹⁶ ;

¹⁵ OJ No L 210, 7.8.1985, p. 29.

¹⁶ OJ No L 210, 7.8.1985, p. 29.

Recital 20a (new)	
	<u>Whereas this Directive does not restrict the non-commercial building, transformation or use of R&TTE in Amateur Radio and Satellite services by licensed radio amateurs:</u>
Article 1 <i>Scope and aim</i>	
This Directive establishes a European Community regulatory framework for the placing on the market, free circulation and putting into service of <u>connected telecommunications equipment (CTE)</u> which complies with the essential requirements.	This Directive establishes a European Community regulatory framework for the placing on the market, free circulation and putting into service of Radio and Telecommunications Terminal Equipment (R&TTE) which complies with the essential requirements.
Article 2 <i>Definitions</i>	
For the purpose of this Directive the following definitions shall apply:	For the purpose of this Directive the following definitions shall apply:
(a) <u>Connected Telecommunications Equipment (CTE)</u> 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;	(a) Radio and Telecommunications Terminal Equipment (R&TTE) 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) <u>Open Telecommunications Network Termination Point (ONTP)</u> A termination point of a telecommunications network at which users of the network may connect any conforming <u>Connected</u>	(b) <u>Open Telecommunications Network Termination Point (ONTP)</u> A termination point of a telecommunications network at which users of the network may connect any conforming <u>Radio and</u>

¹⁷ OJ No L 109, 26.4.1983, p. 8.

<p><u>Telecommunications Equipment</u> 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 <u>CTE</u>. In exceptional cases in the public interest, ONTP types can be termination points of other than public networks;</p> <p>(c) <u>CTE Type</u></p> <p>The <u>CTE</u> 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;</p> <p>(d) <u>Technical specification</u></p> <p>A specification contained in a document which describes those characteristics of a product which implement the applicable essential requirements;</p> <p>(e) <u>Harmonized standard</u></p> <p>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/EEC¹⁷ for the purpose of establishing a European requirement, compliance with which is not compulsory.</p>	<p>Telecommunications Terminal 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 <u>R&TTE</u>. In exceptional cases in the public interest, ONTP types can be termination points of other than public networks;</p> <p>(c) <u>R&TTE Type</u></p> <p>The R&TTE 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;</p> <p>(d) <u>Technical specification</u></p> <p>A specification contained in a document which describes those characteristics of a product which implement the applicable essential requirements;</p> <p>(e) <u>Harmonized standard</u></p> <p>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/EEC¹⁸ for the purpose of establishing a European requirement, compliance with which is not compulsory.</p>
<p><u>Article 3</u> <i>Essential requirements</i></p>	
<p>1. <u>The following general essential requirements are applicable to all CTE:</u></p>	<p>1. The R&TTE referred to in Article 2 shall be so constructed that:</p> <p>(a) the equipment, when properly used, does not endanger the health or the safety of the user or any other person;</p>

¹⁸ OJ No L 109, 26.4.1983, p. 8.

<p>(a) the essential requirements contained in Directive 73/23/EEC with respect to safety whatever the voltage limits of the CTE;</p> <p>(b) the essential requirements contained in Directive 89/336/EEC with respect to electromagnetic compatibility.</p>	<p>(b) the equipment meets the essential requirements contained in Directive 73/23/EEC with respect to safety whatever the voltage limits of the R&TTE;</p> <p>(c) the equipment meets the essential requirements contained in Directive 89/336/EEC with respect to electromagnetic compatibility.</p>
	<p>2. Radio equipment shall be so constructed that the equipment effectively uses the spectrum allocated to terrestrial/space radio communication and orbital resources, in accordance with ITU Radio Regulations.</p>
<p>2. <u>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:</u></p> <p>(a) <u>prevention of misuse of network resources causing an unacceptable degradation of service to other than the user of the CTE;</u></p> <p>(b) <u>interworking via network(s) and Community-wide portability between ONTPs of the same type;</u></p> <p>(c) <u>effective use of spectrum allocated to terrestrial/space radio communication.</u></p>	<p>3. In accordance with the procedure laid down in Article 12, the Commission may decide that Terminal Equipment within certain Equipment Class shall be so constructed that:</p> <p>(a) misuse of network resources causing an unacceptable deterioration of service is prevented;</p> <p>and/or that</p> <p>(b) it interworks via network(s) and can be ported between ONTPs of the same type in the Community;</p> <p>and/or that</p> <p>(c) it contains safeguards to ensure that the individual privacy of the user is protected ;</p> <p>and/or that</p> <p>(d) it supports certain features ensuring access to safety and emergency services ;</p> <p>4. In the interest of people with special needs and in accordance with the procedure laid down in Article 12, the</p>

	<p>Commission may decide that Terminal equipment, which may be used by people with special needs shall support certain features.</p>
<p style="text-align: center;">Article 4 <i>Identification of relevant specific essential requirements</i></p>	<p style="text-align: center;">Article 4 <i>Publication of specifications of interface points</i></p>
<p>1. <u>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:</u></p> <p>(a) <u>protection of health.</u></p> <p>(b) <u>features for users with disabilities.</u></p> <p>(c) <u>features for emergency and security services.</u></p> <p>(d) <u>protection of individual privacy.</u></p> <p>The applicable specific essential requirements shall be published in the <i>Official Journal of the European Communities.</i></p>	
<p>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.</p> <p>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.</p>	<p>1. Member States shall notify the Commission of the radio interfaces they have regulated unless they have been notified pursuant to the provisions of Directive 83/189/EEC. After consulting the Committee provided for in Article 12, the Commission shall establish the equivalence between the interfaces notified and shall determine an equipment category indicator, which shall be published in the <i>Official Journal of the European Communities.</i></p> <p>2. Member States shall notify the Commission of the types of ONTP which are used by networks offering services to the public. Member States shall ensure that the operators of networks offering services to the public publish and regularly update accurate and adequate technical specifications</p>

	concerning these network termination points. These specifications should be in sufficient detail to permit the design of compatible terminal equipment
Article 5 <i>Harmonized standards</i>	
<p>1. When <u>CTE</u> meets the relevant harmonized standards whose reference numbers have been published in the <i>Official Journal of the European Communities</i>, 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 <u>and, in particular, in the absence of a harmonized standard,</u> compliance with the relevant essential requirements can be demonstrated by means of compliance with a technical specification appropriate to the relevant essential requirements.</p> <p>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) <u>and Article 4(1),</u> the Commission or the Member State concerned shall bring the matter before the Committee <u>and initiate the procedures described in Article 12.</u></p>	<p>1. When R&TTE meets the relevant harmonized standards whose reference numbers have been published in the <i>Official Journal of the European Communities</i>, 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 compliance with the relevant essential requirements can be demonstrated by means of compliance with a technical specification appropriate to the relevant essential requirements <u>in accordance with the procedures provided for in Article 9(4).</u></p> <p>2. Where a Member State or the Commission considers that a harmonized standard or a specification referred to in paragraph 1 does not conform to the selected specific essential requirements referred to in Article 3, which it intends to cover, the Commission or the Member State concerned shall bring the matter before the Committee.</p> <p>After consulting the Committee, and in accordance with the procedure provided for in Article 12, the Commission may circulate guidelines concerning the interpretation of the harmonized standard and may publish a list of the corrections made to the harmonized standard, pending formal correction thereof. After consulting the Committee, and in accordance with the procedure provided for in Article 12, the Commission may withdraw the harmonized standards from publication in the <i>Official Journal of the European Communities</i>.</p>

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.

1. Member States shall ensure that R&TTE which complies with the appropriate essential requirements identified in Article 3 is permitted to circulate freely and is not subject to further national regulation. Where the specific essential requirements for a type of R&TTE have not yet been determined, a manufacturer shall not be subject to national regulation and may place the R&TTE on the market provided he complies with the general essential requirements identified in Article 3(1). R&TTE 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 network operators do not refuse connection of R&TTE to appropriate ONTPs on technical grounds when the equipment complies with the requirements of Article 3.
3. Member States shall ensure that, when placed on the market, R&TTE is accompanied by documentation informing the potential purchaser or user of the R&TTE 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 R&TTE may be connected and any limitations on use made necessary by lack of harmonization of radio spectrum.
4. Where a telecommunications operator can demonstrate that Apparatus, declared to be in conformity with this Directive causes damage to his network or is not being used properly, the surveillance authority may authorize

	<p>him to refuse connection of his equipment to his network. Member States shall notify the Commission of such authorizations.</p>
<p>Article 7 <i>Non-compliance</i></p>	
<p>1. Where a Member State <u>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.</u></p>	<p>1. Where a Member State <u>ascertains that equipment within the scope of this Directive does not comply with the requirements referred to in Article 3, it shall take all appropriate and proportionate measures in its territory to avoid the consequences of such non-compliance, such as authorizing the operators to refuse to connect the equipment from their networks, withdrawing the equipment from the market, prohibiting its placing on the market or restricting its free movement.</u></p>
<p>2. The Member State concerned shall immediately notify the Commission of <u>all decisions relating to non-compliance</u> indicating the reasons for its decision and whether non-compliance is due to:</p> <p>(a) incorrect application of the harmonized standards referred to in Article 5,</p> <p>(b) shortcomings in the harmonized standards referred to in Article 5,</p> <p>(c) <u>use of an inappropriate technical specification.</u></p>	<p>2. The Member State concerned shall immediately notify the Commission and other Member States of any such <u>measures</u> indicating the reasons for its decision and whether non-compliance is due to:</p> <p>(a) incorrect application of the harmonized standards referred to in Article 5,</p> <p>(b) shortcomings in the harmonized standards referred to in Article 5,</p> <p>(c) <u>failure to satisfy the requirements referred to in Article 3, where the equipment does not meet the standards referred to in Article 5(1).</u></p>
	<p>3. <u>Where the decision referred to in paragraph 1 is attributed to incorrect application of the harmonized standards referred to in Article 5 or a failure to satisfy those requirements, when the equipment does not meet the standards referred to in Article 5(1), the Commission shall consult the parties concerned as soon as possible. If the Commission finds, after such consultations, that the action is</u></p>

	<u>justified, it shall immediately inform the Member State that took the action and the other Member States accordingly.</u>
<p>3. Where the <u>non-compliance</u> referred to in paragraph 2 is attributed to shortcomings in the harmonized standards <u>applicable</u>, the Commission shall bring the matter before the Committee within two months <u>of the date of notification by the Member State.</u></p> <p>4. The Commission shall keep the Member State informed of the progress and outcome of any procedure initiated pursuant to paragraph 3.</p>	<p>Where the <u>decision</u> referred to in paragraph 1 is attributed to shortcomings in the harmonized standards, the Commission shall bring the matter before the Committee within two months. <u>The Committee shall deliver an opinion in accordance with the procedure laid down in Article 12. If the Commission finds, after such consultations, that the action is justified, it shall immediately inform the Member State that took the action and other Member States and shall initiate the procedures referred to in Article 5(2).</u></p> <p>4. The Commission shall keep the Member State informed of the progress and outcome of any procedure initiated pursuant to paragraph 3.</p> <p>5. <u>The Commission shall maintain a record of the cases notified by Member States.</u></p>
<p>Article 8 <i>Liability for non-compliance</i></p>	
<p>1. Manufacturers <u>or</u> 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.</p> <p>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</p>	<p>1. Manufacturers, their authorized representatives established within the Community or in their absence the responsible person, 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.</p> <p>2. Manufacturers, their authorized representatives established within the Community or in their absence the responsible person, who place products on the Community market shall not be</p>

<p>4 at the time when the equipment was placed on the market.</p>	<p>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.</p>
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Article 9

Conformity assessment procedures

<p>1. The conformity assessment procedures identified in this Article will be used to demonstrate the compliance of the <u>CTE</u> with all the relevant essential requirements identified in Article 3(1) and (2) and <u>Article 4(1)</u>.</p>	<p>1. The conformity assessment procedures identified in this Article will be used to demonstrate the compliance of the R&TTE with all the relevant essential requirements identified in Article 3.</p>
<p>2. <u>CTE</u> 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.</p>	<p>2. R&TTE 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.</p>
<p>3. <u>CTE</u> 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.</p>	<p>3. R&TTE 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.</p>
<p>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.</p>	<p>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.</p>

Article 11

CE marking

<p>1. <u>CTE</u> 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</p>	<p>1. R&TTE complying with all the relevant essential requirements and all the Directives applicable to it 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) and of an equipment class identifier. Any other marking may</p>
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<p>is not thereby reduced.</p> <ol style="list-style-type: none"> 2. No <u>CTE</u>, 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 <u>CTE</u> when non-compliance was discovered. 4. <u>CTE</u> 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 <u>responsible for placing it on the market.</u> 	<p>be affixed to the equipment provided that the visibility and legibility of the CE marking is not thereby reduced.</p> <ol style="list-style-type: none"> 2. No R&TTE, 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 R&TTE when non-compliance was discovered. 4. R&TTE 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 bearing liability in the event of non-compliance with essential requirements.
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Article 12

Constitution and procedures

<ol style="list-style-type: none"> 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, 	<ol style="list-style-type: none"> 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. The Commission shall consult the representatives of the telecommunications network providers, the consumers and the manufacturers on a continuous basis. It shall keep the Committee regularly informed of the outcome of such consultations. 2. The Committee shall be consulted on the matters covered by Articles 3, 4, 5 and 6. 3. The Committee may be consulted, where necessary, on the effectiveness of
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<p>within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.</p> <p>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.</p> <p>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.</p> <p>5. <u>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.</u></p>	<p>the surveillance tasks related to the operation of this Directive.</p> <p>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.</p> <p>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.</p> <p>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.</p>
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Article 13

Review and reporting

<p>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 <i>inter alia</i> 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 <u>CTE</u> at Community level. It shall in particular examine whether essential requirements are still necessary for all categories of terminal equipment covered.</p>	<p>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 <i>inter alia</i> assess whether the scope of the Directive should be maintained or should be reduced taking account of technical development <u>and how the regulatory framework for placing on the market and putting into service of radio and telecommunications terminal equipment should be developed to</u></p> <p>a) ensure that a coherent system is achieved at Community level for all radio and telecommunications terminal equipment;</p> <p>b) allow for convergence of telecommunications, audiovisual and</p>
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	<p>information technology sectors;</p> <p>c) enable harmonisation of regulatory measures at an international level.</p> <p>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 R&TTE at Community level. It shall in particular examine whether essential requirements are still necessary for all categories of terminal equipment covered.</p>
<p>Article 14 <i>Transitional provisions</i></p>	
<p>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 <u>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.</u></p> <p>2. Any measure adopted by Member States in accordance with Directive 91/263/EEC or Directive 93/97/EEC shall continue to be valid.</p>	<p>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. The Commission shall publish a list of references to these standards in the <i>Official Journal of the European Communities</i> immediately after this Directive comes into force.</p> <p>2. Any measure adopted by Member States in accordance with Directive 91/263/EEC or Directive 93/97/EEC shall continue to be valid.</p>
<p>Article 16 <i>Repeal</i></p>	
<p>Directive 91/263/EEC, Directive 97/97/EEC and Article 11 of Directive 93/68/EEC <u>are hereby repealed.</u></p>	<p>From the entry into force of the present Directive 91/263/EEC, Directive 93/97/EEC and Article 11 of Directive 93/68/EEC shall no longer be applicable.</p>

ISSN 0254-1475

COM(98) 176 final

DOCUMENTS

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15 16 01 10

Catalogue number : CB-CO-98-176-EN-C

ISBN 92-78-32333-0

Office for Official Publications of the European Communities
L-2985 Luxembourg