Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

11 July 2018 *

(Reference for a preliminary ruling — Directive 1999/5/EC — Mutual recognition of the conformity of radio equipment and telecommunications terminal equipment — Existence of harmonised standards — Need for the manufacturer to consult a notified body — Affixing of the identification number of a notified body)

In Case C-192/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 23 February 2017, received at the Court on 13 April 2017, in the proceedings

COBRA SpA

v

Ministero dello Sviluppo economico,

THE COURT (Ninth Chamber),

composed of C. Vajda (Rapporteur), President of the Chamber, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Italian Government, by G. Palmieri, acting as Agent, and by P. Garofoli, avvocato dello Stato,

– the European Commission, by G. Gattinara and D. Kukovec, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Italian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10), as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 (OJ 2009 L 188, p. 14) ('Directive 1999/5').

2 The request has been made in proceedings between COBRA SpA and the Ministero dello Sviluppo economico (Ministry of Economic Development) ('the MISE') concerning the fact that there is no indication, either on the apparatus manufactured by COBRA or on its packaging, of the identification number of a notified body.

Legal context

European Union law

3 Directive 1999/5 was repealed and replaced, with effect from 13 June 2016, by Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ 2014 L 153, p. 62). However, in view of the date of the events in the main proceedings, this request for a preliminary ruling will be examined in the light of Directive 1999/5.

4 Recitals 14, 27 and 32 of Directive 1999/5 stated:

'(14) Whereas care should be taken that radio equipment and telecommunications terminal equipment should not represent an avoidable hazard to health;

…

(27) Whereas it is in the public interest to have harmonised standards at European level in connection with the design and manufacture of radio equipment and telecommunications terminal equipment; whereas compliance with such harmonised standards gives rise to a presumption of conformity to the essential requirements; whereas other means of demonstrating conformity to the essential requirements are permitted;

…

(32) Whereas radio equipment and telecommunications terminal equipment which complies with the relevant essential requirements should be permitted to circulate freely; whereas such equipment should be permitted to be put into service for its intended purpose; whereas the putting into service may be subject to authorisations on the use of the radio spectrum and the provision of the service concerned.'

5 Article 1 of that directive, entitled 'Scope and aim', provided, in paragraph 1 thereof:

'This Directive establishes a regulatory framework for the placing on the market, free movement and putting into service in the Community of radio equipment and telecommunications terminal equipment.'

6 Article 2 of that directive, entitled ‘Definitions’, provided:

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

…

(c) “radio equipment” means a product, or relevant component thereof, capable of communication by means of the emission and/or reception of radio waves utilising the spectrum allocated to terrestrial/space radiocommunication;

…

(h) “harmonised standard” means a technical specification adopted by a recognised standards body under a mandate from the Commission in conformity with the procedures laid down in Directive 98/34/EC [of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37)] for the purpose of establishing a European requirement, compliance with which is not compulsory.’

7 Article 3 of that directive, entitled ‘Essential requirements’, stated, in paragraph 1 thereof:

‘The following essential requirements are applicable to all apparatus:

(a) the protection of the health and the safety of the user and any other person, including the objectives with respect to safety requirements contained in [Council] Directive 73/23/EEC [of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (OJ 1973 L 77, p. 29)], but with no voltage limit applying;

(b) the protection requirements with respect to electromagnetic compatibility contained in [Council] Directive 89/336/EEC [of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (OJ 1989 L 139, p. 19)].’

8 Article 5 of Directive 1999/5, entitled ‘Harmonised standards’, provided, in paragraph 1 thereof:

‘Where apparatus meets the relevant harmonised standards or parts thereof 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 as are covered by the said harmonised standards or parts thereof.’

9 Article 7 of that directive, entitled ‘Putting into service and right to connect’, provided, in paragraph 1 thereof:

‘Member States shall allow the putting into service of apparatus for its intended purpose where it complies with the appropriate essential requirements identified in Article 3 and the other relevant provisions of this Directive.’

10 Article 10 of that directive, entitled ‘Conformity assessment procedures’, stated:

‘1. The conformity assessment procedures identified in this Article shall be used to demonstrate the compliance of the apparatus with all the relevant essential requirements identified in Article 3.

…

3. Telecommunications terminal equipment which does not make use of the spectrum allocated to terrestrial/space radio communication and receiving parts of radio equipment shall be subject to the procedures described in any one of Annexes II, IV or V at the choice of the manufacturer.

4. Where a manufacturer has applied the harmonised standards referred to in Article 5(1), radio equipment not within the scope of paragraph 3 shall be subject to the procedures described in any one of Annexes III, IV or V at the choice of the manufacturer.

5. Where a manufacturer has not applied or has only applied in part the harmonised standards referred to in Article 5(1), radio equipment not within the scope of paragraph 3 of this Article shall be subject to the procedures described in either of Annexes IV or V at the choice of the manufacturer.

…'

11 Under Article 11 of that directive, entitled 'Notified bodies and surveillance authorities':

'1. Member States shall notify the Commission of the bodies which they have designated to carry out the relevant tasks referred to in Article 10. Member States shall apply the criteria laid down in Annex VI in determining the bodies to be designated.

2. Member States shall notify the Commission of the authorities established within their territory which are to carry out the surveillance tasks related to the operation of this Directive.

…'

12 Article 12 of Directive 1999/5, entitled 'CE marking', provided, in paragraph 1 thereof:

'Apparatus complying with all relevant essential requirements shall bear the EC conformity marking referred to in Annex VII. It shall be affixed under the responsibility of the manufacturer, his authorized representative within the Community or the person responsible for placing the apparatus on the market.

Where the procedures identified in Annex III, IV or V are used, the marking shall be accompanied by the identification number of the notified body referred to in Article 11(1). Radio equipment shall in addition be accompanied by the equipment class identifier where such identifier has been assigned. Any other marking may be affixed to the equipment provided that the visibility and legibility of the EC marking is not thereby reduced.'

13 Annex III to that directive, relating to the conformity assessment procedure referred to in Article 10(4) (Internal production control plus specific apparatus tests), provided:

'This Annex consists of Annex II, plus the following supplementary requirements:

For each type of apparatus, all essential radio test suites must be carried out by the manufacturer or on his behalf. The identification of the test suites that are considered to be essential is the responsibility of a notified body chosen by the manufacturer except where the test suites are defined in the harmonised standards. The notified body must take due account of previous decisions made by notified bodies acting together.

The manufacturer or his authorised representative established within the Community or the person responsible for placing the apparatus on the market must declare that these tests have been carried out and that the apparatus complies with the essential requirements and must affix the notified body's identification number during the manufacturing process.'

14 Under point 3 of Annex VII to that directive, relating to the marking of equipment referred to in Article 12(1) thereof, the CE marking was to be affixed to the product or to its data plate. Additionally it was to be affixed to the packaging, if any, and to the accompanying documents.

Italian law

15 Decreto legislativo n. 269 — Attuazione della direttiva 1999/5/CE riguardante le apparecchiature radio, le apparecchiature terminali di telecomunicazione ed il reciproco riconoscimento della loro conformità (Legislative Decree No 269 transposing Directive 1999/5/EC on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity) of 9 May 2001 (Ordinary supplement to GURI No 156 of 7 July 2001) ('Legislative Decree No 269/2001'), in the version then applicable to the events in the main proceedings, provided, in Article 11(3) thereof, that 'telecommunications terminal equipment which does not make use of the spectrum allocated to terrestrial and space radio communications, and receiving parts of radio equipment, shall be subject to the conformity assessment procedures described in any one of Annexes II, IV or V to this Decree at the choice of the manufacturer'.

16 Under Article 11(4) of that legislative decree, 'where a manufacturer has applied the harmonised standards referred to in Article 5(1), radio equipment not provided for in paragraph 3 shall be subject to the procedures described in any one of Annexes III, IV or V to this Decree at the choice of the manufacturer'.

17 Article 13 of that legislative decree provided that 'apparatus complying with all the relevant essential requirements set out in Article 3 shall bear the EC conformity marking referred to in Annex VII. It shall be affixed under the responsibility of the manufacturer, his authorised representative within the European Union or the person responsible for placing the apparatus on the market. Where the procedures identified in Annex III, IV or V to this Decree are used, the marking shall be accompanied by the identification number of the notified body referred to in Article 12(1)'.

18 Annex III to that legislative decree provided that, 'for each type of apparatus, the essential radio tests must be carried out by the manufacturer or on his behalf. The identification of the tests that are considered to be essential shall be carried out under the responsibility of a notified body chosen by the manufacturer except where the tests are defined in the harmonised standards'.

The dispute in the main proceedings and the questions referred for a preliminary ruling

19 COBRA is an undertaking active in the consumer electronics sector which markets, under the trade mark Pascal, a booster for household use which is installed near an audio or video signal source, receives the signal from that source, and retransmits it to a television up to 100 metres away for listening or viewing purposes. That retransmission makes use of the radio spectrum and thus constitutes a radio frequency transmission.

20 The MISE is competent to inspect that type of apparatus in Italy. During an inspection carried out on 18 May 2011, it noted that there was no indication of the identification number of a notified body as referred to in Directive 1999/5 either on the specimens of the apparatus bearing that mark being offered for sale to the public or on their packaging, but only in the user manual supplied with the apparatus.

21 The MISE, considering that that indication needed to be displayed on the apparatus itself in order to comply with the requirements laid down by Directive 1999/5 and by Legislative Decree No 269/2001 transposing that directive into Italian law, carried out an administrative seizure of the apparatus which

it considered irregular and imposed a fine on COBRA. In addition, by decision of 22 June 2011, it ordered that company to bring both the seized specimens and the specimens which had already been placed on the Italian market back into compliance.

22 COBRA brought an action against that decision before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), arguing that that decision was based on an incorrect reading of Directive 1999/5, in particular the second paragraph of Annex III thereto. That court dismissed the action, holding that Directive 1999/5 and Legislative Decree No 269/2001 require that an indication of the notified body responsible for ensuring that checks for compliance have been carried out in the proper way be provided on the apparatus bearing the trade mark Pascal in question. COBRA then brought an appeal on a point of law before the Consiglio di Stato (Council of State, Italy) in which it once again argued that the decision at issue was contrary to Directive 1999/5.

23 The Consiglio di Stato (Council of State) finds that the apparatus concerned falls within the scope of Directive 1999/5 on the ground that it is radio equipment as referred to in Article 10(4) of that directive. It states that, according to Article 5 of that directive, the essential requirements referred to in Article 3 thereof are presumed to be fulfilled for goods meeting the harmonised standards. It also notes that there is a seeming inconsistency in Directive 1999/5 concerning the compliance of radio equipment with the essential requirements set out in Article 3 of that directive. According to the second subparagraph of Article 12(1) of that directive, apparatus complying with all the essential requirements is to bear the EC conformity marking referred to in Annex VII thereto, but that provision also states that, where the procedure identified in Annex III to that directive is used, that marking must be accompanied by the identification number of the notified body. On the other hand, according to the Consiglio di Stato (Council of State), it is apparent from Annex III to that directive that, where the essential radio test suites to be carried out have been defined in the harmonised standards, it is not necessary for the CE marking to be accompanied by the identification number of the notified body.

24 The Consiglio di Stato (Council of State) considers that it is illogical, and contrary to the principles of proportionality and adequacy, to require the involvement of a notified body where harmonised standards exist at EU level. It maintains that such an approach is supported by the Commission's guidelines regarding the interpretation of Directive 1999/5, which state that, when harmonised standards indicate all the essential technical tests for radio equipment, a manufacturer who complies with those standards does not need to provide an indication of the identification number of a notified body on the product concerned.

25 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Should [Directive 1999/5] be interpreted as meaning that a manufacturer who makes use of the procedure provided for in the second paragraph of Annex III, and when there are harmonised standards defining the essential radio test suites to be carried out, must consult a notified body and thus ensure that the CE marking (certifying compliance with the essential requirements set out in that directive) is accompanied by the identification number of that notified body?

(2) If the answer to Question 1 is in the affirmative, in the event that a manufacturer, having made use of the procedure referred to in the second paragraph of Annex III [to Directive 1999/5], and when there are harmonised standards defining the essential radio test suites to be carried out, has nonetheless voluntarily consulted a notified body, asking it to confirm the list of tests mentioned above, must that manufacturer ensure that the CE marking certifying compliance with the essential requirements set out in [that directive] is accompanied by the identification number of that notified body?

(3) If the answer to Question 2 is in the affirmative, in the event that a manufacturer, having made use of the procedure referred to in the second paragraph of Annex III [to Directive 1999/5], and when there are harmonised standards defining the essential radio test suites to be carried out, has nonetheless subsequently voluntarily consulted a notified body, asking it to confirm the list of tests mentioned above, and has voluntarily ensured that the product is accompanied by the identification number of the body consulted, must that manufacturer also quote that body's identification number on both the product and its packaging?'

Consideration of the questions referred

Preliminary observations

26 It should be pointed out, in the first place, that it is not clear from the order for reference what procedure was used by the appellant in the main proceedings to assess the compliance of the apparatus at issue with the essential requirements set out in Article 3 of Directive 1999/5. However, the second question raised by the referring court is based on the premiss that a manufacturer has made use of a notified body, albeit solely for the purpose of confirming the list of essential radio test suites to be carried out within the framework of harmonised standards. It is therefore necessary to answer the referring court on the basis of that premiss, while leaving it to that court to verify whether that premiss is accurate.

27 In the second place, it should be noted that, under Article 1(1) of Directive 1999/5, that directive applies to radio equipment as defined in Article 2(c) thereof. It is apparent from the order for reference that the apparatus at issue constitutes radio equipment as defined in that provision.

The first question

28 By its first question, the referring court asks, in essence, whether the second subparagraph of Article 12(1) of Directive 1999/5 is to be interpreted as meaning that, where a manufacturer of radio equipment makes use of the procedure laid down in the second paragraph of Annex III to that directive and uses the harmonised standards in order to define the test suites referred to in that paragraph, he is required to consult a notified body as referred to in Article 11(1) of that directive and, consequently, must ensure that the CE marking is accompanied by the identification number of that notified body.

29 As regards interpreting provisions of EU law, it is necessary to consider not only their wording but also the context in which they occur and the objectives pursued by the rules of which they form part (judgments of 19 September 2000, *Germany* v *Commission*, C-156/98, EU:C:2000:467, paragraph 50; of 25 October 2011, *eDate Advertising and Others*, C-509/09 and C-161/10, EU:C:2011:685, paragraph 54; and of 26 July 2017, *Jafari*, C-646/16, EU:C:2017:586, paragraph 73).

30 In that regard, the wording of the second subparagraph of Article 12(1) of Directive 1999/5, taken in isolation, might suggest that the affixing of a CE marking on radio equipment calls for that marking to be accompanied by the identification number of a notified body as referred to in Article 11(1) of that directive where the conformity assessment procedure identified in Annex III to that directive is used.

31 However, in view of the reference made in the second subparagraph of Article 12(1) of that directive to the conformity assessment procedure identified in Annex III thereto, it is necessary, in order to provide a literal interpretation of that provision, to refer to the wording of that annex.

32 In that regard, it is apparent from the wording of the annex in question, to which the second subparagraph of Article 12(1) refers, that the involvement of a notified body in the conformity assessment procedure laid down therein is not required in all circumstances.

33 In the first place, in that assessment procedure, the essential radio test suites are to be carried out either 'by the manufacturer' himself or 'on his behalf'. In the second place, that annex provides that 'the identification of the test suites that are considered to be essential is the responsibility of a notified body chosen by the manufacturer except where the test suites are defined in the harmonised standards'.

34 Thus, it follows from the wording of Annex III to Directive 1999/5 that the conformity of apparatus with the essential requirements, which, according to Article 10(1) of that directive, are those identified in Article 3 thereof, may be established by the manufacturer himself if he has carried out all the essential radio test suites defined in the harmonised standards. Consequently, based solely on the wording of that annex, that assessment procedure does not call, in all circumstances, for the involvement of a notified body, whether in the identification of the essential radio test suites, or in order to carry out those test suites.

35 Accordingly, where the manufacturer has made use of the harmonised standards when using the conformity assessment procedure identified in Annex III to Directive 1999/5, the wording of the second subparagraph of Article 12(1) of that directive, read in the light of the wording of that annex, must be interpreted as not calling for the involvement of a notified body and, consequently, for the affixing of the CE marking on radio equipment to be accompanied by the identification number of that body.

36 Such an interpretation is supported by the context in which the second subparagraph of Article 12(1) of Directive 1999/5 occurs.

37 The result of a different interpretation would be that the involvement of a notified body would be required in a situation where the radio equipment at issue is already deemed to be in conformity with the essential requirements set out in Article 3 of that directive.

38 In that regard, Article 10 of Directive 1999/5 lays down assessment procedures for establishing the conformity of apparatus with those essential requirements, as set out in Article 3 thereof. Article 10 of that directive provides, in paragraph 4 thereof, that, where a manufacturer has applied the harmonised standards, radio equipment is to be subject to the assessment procedures described in any one of Annexes III, IV or V thereto at the choice of the manufacturer. However, as has been noted in paragraph 34 above, the assessment procedure described in Annex III to that directive does not call for the involvement of a notified body in all circumstances.

39 In addition, Article 5(1) of Directive 1999/5 provides that, where apparatus meets the 'harmonised standards', defined in Article 2(h) of that directive as 'technical specification[s] adopted by a recognised standards body … for the purpose of establishing a European requirement, compliance with which is not compulsory', there is also a consequent presumption of compliance with the essential requirements.

40 That presumption is borne out both by recital 27 of Directive 1999/5, which provides that 'compliance with … harmonised standards gives rise to a presumption of conformity to the essential requirements' and that 'other means of demonstrating conformity to the essential requirements are permitted', and by Annex III to that directive, which exempts the manufacturer from using a notified body for the procedure laid down therein where the conformity of the apparatus has been assessed using the harmonised standards.

41 Given that the compliance of apparatus with the essential requirements is to be presumed from the use of the harmonised standards and having regard to the interpretation set out in paragraph 34 above, according to which the involvement of a notified body is not necessary where a manufacturer of radio equipment has made use of those standards, a manufacturer who uses the harmonised standards in the context of making use of the assessment procedure described in Annex III to Directive 1999/5 cannot be required to make use of a notified body and, consequently, to ensure that the CE marking affixed on radio equipment is accompanied by that body's identification number.

42 Furthermore, that interpretation of the second subparagraph of Article 12(1) of Directive 1999/5 and Annex III thereto is consistent with the objective pursued by that directive. It follows from recitals 14 and 32 of Directive 1999/5 that that directive is intended to guarantee the free movement of goods by limiting impediments to such free movement to national requirements that are necessary and proportionate, while ensuring that the radio equipment does not represent an avoidable hazard to health.

43 In that regard, under Article 1 thereof, Directive 1999/5 thus establishes a regulatory framework for the placing on the market, free movement and putting into service in the European Union of such equipment. For its part, Article 7 of that directive provides that the Member States are to allow the putting into service of that equipment for its intended purpose where it 'complies with the … essential requirements'. Those requirements are defined in Article 3 of Directive 1999/5 and include, in particular, the protection of the health and the safety of the user.

44 As has been stated in paragraphs 39 and 40 above, Article 5 of Directive 1999/5 establishes a presumption that the essential requirements set out in Article 3 thereof are met where apparatus complies with the harmonised standards. Accordingly, in such a situation, the involvement of a notified body is not necessary in order to ensure that that equipment does not represent an avoidable hazard to health and is thus also not necessary in order to protect the health and the safety of the user.

45 That interpretation is borne out by the fact that the role of the notified body, as defined in Article 11(1) of Directive 1999/5, is merely to carry out 'the relevant tasks' included in the assessment procedures laid down in Article 10 of that directive, and not to certify the compliance of all apparatus with the essential requirements set out in Article 3 thereof.

46 Moreover, in addition to the analysis of the wording and context of the second subparagraph of Article 12(1) of Directive 1999/5 and the intended purpose of that directive, the interpretation set out in paragraph 35 above is supported by the Commission's guidelines regarding the interpretation of Directive 1999/5. In the section entitled '*Ambiguity in Annex III to the Directive*', it is apparent from those guidelines that, when harmonised standards indicate all the essential technical radio test suites for radio equipment, a manufacturer who complies with those standards is not obliged to provide an indication of the identification number of a notified body on that equipment. Those guidelines emphasise that a notified body is not to be involved in the conformity assessment procedure described in Annex III to Directive 1999/5 where a manufacturer uses the harmonised standards and that, accordingly, the obligation set out in the second subparagraph of Article 12(1) of that directive does not apply where that manufacturer has used the harmonised standards.

47 In the light of the foregoing, the answer to the first question is that the second subparagraph of Article 12(1) of Directive 1999/5 must be interpreted as meaning that, where a manufacturer of radio equipment makes use of the procedure laid down in the second paragraph of Annex III to that directive and uses the harmonised standards in order to define the test suites referred to in that paragraph, he is not required to consult a notified body as referred to in Article 11(1) of that directive and, consequently, is not required to ensure that the CE marking is accompanied by the identification number of that notified body.

The second question

48 By its second question, the referring court asks, in essence, whether the second subparagraph of Article 12(1) of Directive 1999/5 is to be interpreted as meaning that a manufacturer of radio equipment who has made use of the procedure identified in Annex III to that directive, using the harmonised standards defining the essential radio test suites to be carried out, must ensure that the CE marking is accompanied by the identification number of the notified body that he has voluntarily consulted — despite not being required to do so — in order to confirm the list of essential radio test suites set out in those harmonised standards.

49 In view of the answer to the first question, such a manufacturer cannot be required to ensure that the CE marking is accompanied by the identification number of a notified body when that body was consulted voluntarily in order to confirm the list of essential radio test suites set out in those harmonised standards.

50 Indeed, in so far as, when a manufacturer makes use of the conformity assessment procedure described in the second paragraph of Annex III to Directive 1999/5 and uses the harmonised standards in order to define the test suites referred to in that paragraph, he is not required to consult a notified body and, consequently, is not required to ensure that the CE marking is accompanied by that body's identification number, it follows that a manufacturer cannot be required to ensure that the CE marking is accompanied by the identification number of such a body where he has made use of that body voluntarily.

51 That interpretation is supported by the fact that, as the Commission remarked in its written observations, in a situation where the notified body is not responsible for identifying those test suites, the obligation to provide an indication of that body's identification number would be meaningless in view of the considerations set out in paragraph 40 above.

52 In the light of the foregoing, the answer to the second question is that the second subparagraph of Article 12(1) of Directive 1999/5 must be interpreted as meaning that a manufacturer of radio equipment who has made use of the procedure identified in Annex III to that directive, using the harmonised standards defining the essential radio test suites to be carried out, is not required to ensure that the CE marking is accompanied by the identification number of the notified body that he has voluntarily consulted — despite not being required to do so — in order to confirm the list of essential radio test suites set out in those harmonised standards.

The third question

53 In view of the answers to the first and second questions, there is no need to answer the third question.

Costs

54 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

1. **The second subparagraph of Article 12(1) of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009, must be**

interpreted as meaning that, where a manufacturer of radio equipment makes use of the procedure laid down in the second paragraph of Annex III to that directive and uses the harmonised standards in order to define the test suites referred to in that paragraph, he is not required to consult a notified body as referred to in Article 11(1) of that directive and, consequently, is not required to ensure that the CE marking is accompanied by the identification number of that notified body.

2. **The second subparagraph of Article 12(1) of Directive 1999/5, as amended by Regulation No 596/2009, must be interpreted as meaning that a manufacturer of radio equipment who has made use of the procedure identified in Annex III to that directive, using the harmonised standards defining the essential radio test suites to be carried out, is not required to ensure that the CE marking is accompanied by the identification number of the notified body that he has voluntarily consulted — despite not being required to do so — in order to confirm the list of essential radio test suites set out in those harmonised standards.**

[Signatures]