Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive on connected telecommunications equipment and the mutual recognition of the conformity of equipment'

(98/C 73/02)

On 27 June 1997 the European Council decided to consult the Economic and Social Committee, under Article 100A of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 5 November 1997. The rapporteur was Mr Green.

At its 350th plenary session (meeting of 10 December 1997) the Economic and Social Committee adopted the following opinion by 95 votes to two.

1. Introduction

1.1. Harmonization of the European telecommunications terminal market has been under way since 1983. In 1985, the Commission proposed a Directive on the mutual recognition of test results for terminal equipment, which was adopted as Council Directive 86/361/EEC [1]. This was superseded by the terminal equipment Directive 91/263/EEC [2], which introduced a harmonized regime for the whole type approval process, including placing on the market and putting into service of terminal equipment. Directive 91/263/EEC was extended by Directive 93/97/EEC [3] to cover all satellite earth stations.

1.2. With the acceleration of the pace of technology, this existing legislation needs fundamental revision. The time taken to produce the legal measures called for in Directives 91/263/EEC and 93/97/EEC is too long in comparison with product lifetimes of as little as three years. Liberalization of the infrastructures, and deregulation of the services market from January 1998, have created a very competitive and dynamic environment. The Commission has therefore proposed significant changes in the European regulation of telecommunications equipment. The proposed directive is intended to operate in an environment where there is competitive supply of networks, services, and terminals.

2. The Commission proposal

2.1. The aim of the Commission's proposal is to provide a regulatory framework for the placing on the market, free circulation and putting into service of 'Connected Telecommunications Equipment' (CTE) [4] which complies with essential requirements.

2.2. The proposed directive will replace Directives 91/263/EEC and 93/97/EEC. It will have an enlarged scope, covering 'non-harmonized' product areas as well as equipment for which harmonized regulations or standards exist. It will replace the current national approvals regimes in the non-harmonized areas. The scope will also be enlarged to cover radio equipment of all kinds, excluding radio equipment which is intended for exclusive public security use.

2.3. To achieve flexibility in applying the proposed directive, and to allow for innovative types of networks and terminals in the future, the essential requirements for CTE are expressed in general terms. A Committee to be known as TCAM [5] will advise the Commission on identifying and defining specific requirements applicable to each CTE type as necessary.

2.4. Experience of the present legislation has led the Commission to propose a lighter interpretation of essential requirements than was used in Directives 91/263/EEC and 93/97/EEC. The previous requirements on prevention of harm to the network and on proper interworking with the network have been dropped. In some circumstances, CTE can be placed on the market on the basis of safety and EMC [6] requirements alone. However, other essential requirements can be applied, such as prevention of degradation of service to other users, Community-wide portability, effective use of the radio spectrum, and aspects related to health, users with disabilities, emergency and security services, and individual privacy.

2.5. Networks to which CTEs may connect will be identified by Member States, and the network operators

[1] ESC Opinion OJ C 303, 25.11.1985.
[2] ESC Opinion OJ C 329, 30.12.1989.
[3] ESC Opinion OJ C 161, 14.6.1993.
[4] CTE = Connected Telecommunications Equipment, is defined in Article 2(a).
[5] TCAM = Telecommunications Conformity Assessment and Market surveillance committee (defined in Article 12.1).
[6] EMC = Electromagnetic compatibility.

will be obliged to publish technical specifications of the network interface, or 'ONTP' [1], in sufficient detail to permit the design of compatible CTE.

2.6. New procedures for conformity assessment are proposed, with suppliers' declarations replacing the third-party testing regime of Directive 91/263/EEC. The manufacturer can choose to use alternative technical specifications in lieu of harmonized standards to show he meets the essential requirements, except for certain radio product tests, which will be specified by Notified Bodies.

2.7. This easier access to the market is balanced by a market surveillance regime, with penalties for products which do not meet the essential requirements. Such products will be removed from the market, but also will be deemed to have caused 'damage' as described in the Product Liability Directive 85/374/EEC. Manufacturers will be liable for this damage, and for direct economic damage suffered as a result of non-compliance with the essential requirements.

3. **General comments**

3.1. The Committee welcomes all actions that simplify Community laws and respond to market circumstances so as to allow a more open, competitive and dynamic Community marketplace in the future, which is clearly the aim of the proposed directive. The Committee considers that the proposed directive will be an important part of the foundation for the future information society, through its lighter interpretation of essential requirements than was used in Directives 91/263/EEC and 93/97/EEC.

3.2. The Committee supports in principle the major elements of the proposed directive. However, there are some areas of concern.

3.3. The exclusion of equipment intended for exclusive public security use should apply for all CTE, not only for radio. This should be stated at the beginning of the directive, rather than in the definitions. Possibly the wording of the proposed Telecommunications Data Protection Directive could provide a model [2].

3.4. The scope of radio equipment covered by the directive should exclude radio equipment used by radio amateurs [3] and receive-only radio equipment capable of radio reception solely of Broadcasting Services.

3.5. National licensing regimes for radio products will continue to be necessary in many Member States. The directive should state that the provisions of the directive are without prejudice to measures, compatible with Community law, taken by Member States to permit or authorise the use of the radio frequency spectrum.

3.6. The essential requirement for effective use of the radio frequency spectrum should be a general essential requirement, applicable to all radio equipment. To avoid confusion, the different requirements for radio and other kinds of CTE should be identified more clearly in the text.

3.7. The role of Notified Bodies [4] is unclear and should be better defined. Their role seems to be limited either to (a) identifying radio test suites for particular CTE types, which could instead be done on a general basis by TCAM, or (b) checking the manufacturer's statement of which CTE type a particular product conforms to, but without verifying that conformity. Unless the Notified Body has a role in product inspection or production control, its identification number should not be included in the CE Marking.

3.8. The content of the other specific essential requirements taken up in Articles 3 and 4 of the Commission proposal is still undefined. It is important that any such requirements be well defined in advance. The Member States should be involved in the interpretation of these requirements in the proposed committee.

3.9. The proposed directive should clarify that consumers are protected through horizontal legislation for aspects of products that fall outside the essential requirements. This is important because the proposed directive has a lighter interpretation of essential requirements than was used in Directives 91/263/EEC and 93/97/EEC.

3.10. In the opinion of the Committee, the possibility of removal of all products from the market under the safeguard provisions of the directive is an adequate force compelling suppliers to ensure that CTE meets all applicable essential requirements, and that the simplified access to the market is not abused. No further provisions on liability for non-compliance are needed.

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(1) ONTP = Open Telecommunications Network Termination Point [defined in Article 2(b)].

(2) 'This Directive shall not apply to the activities which fall outside the scope of Community law such as those provided for by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (Including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law', Article 1.3 of Common Position No 57/96, 12.9.1996, OJ C 315, 24.10.1996, p. 96.

(3) Within the meaning of Article 1, definition 53, of the radio regulations in the International Telecommunications Convention.

(4) See Articles 10 and 11.

3.11. The directive should include safeguards and an appeals procedure for manufacturers who believe that their products have been withdrawn from the market without proper justification.

3.12. The directive should also include an appeals procedure to resolve disputes as to whether the technical specifications of ONTPs published by network operators are in sufficient detail to permit the design of compatible CTE.

3.13. The recent WTO agreement on mutual recognition (MRA) does not contain provisions for manufacturers' self-declarations. This raises the question of reciprocity which should be recognized by the proposed directive.

4. **Specific comments**

4.1. *Article 2(d)*

The text should read:

> ' ... a document which describes inter alia those characteristics..'

4.2. *Article 3.1(a)*

The general essential requirements with respect to safety, referred to in Article 3.1(a), and contained in Directive 73/23/EEC, should be stated as 'the principal elements of safety of Directive 73/23/EEC', because the term 'essential requirements' is not used in that directive. The requirements should not apply to equipment listed in Annex II of Directive 73/23/EEC.

4.3. *Article 3.1(b)*

The general essential requirements with respect to electromagnetic compatibility, referred to in Article 3.1(b), and contained in Directive 89/336/EEC, should be stated as 'the requirements of Article 4 of Directive 89/336/EEC', because the term 'essential requirements' is not used in that directive. The requirements should not apply to equipment to which Directive 89/336/EEC does not apply by virtue of Article 2(2) of that directive.

4.4. *Article 4.1(a)*

The requirement for 'protection of health' is expressed too broadly for a Telecoms Directive. Requirements that the equipment shall not endanger the health or safety of people are already contained in the Low Voltage Directive, 73/23/EEC, which covers non-electrical aspects of safety as well as electrical aspect. Hazards from radio frequency radiation are covered by the EMC Directive, 89/336/EEC. This sub-article should be deleted.

4.5. *Article 4.1(d)*

The requirement for 'protection of individual privacy' may already be covered by the proposed Telecommunications Data Protection Directive [1]. This sub-article should be reconsidered.

4.6. *Article 6.1*

Add the words 'in respect of placing on the market' after 'is not subject to further national regulation'.

4.7. *Article 7.1*

Insert the words 'when properly used in accordance with the purpose intended by the manufacturer' after 'does not comply with the essential requirements relevant to the CTE type'. (This point follows from General Comment 3.11)

4.8. *Article 7.3*

Begin Article 7.3 with the words:

> 'The Commission shall enter into consultation with the parties concerned as soon as possible. Where, after such consultation, the Commission finds that any measure as referred to in paragraph 1 is justified it shall immediately so inform the Member State that took the action and the other Member States.'

(This text is taken from Directive 91/263/EEC, Article 8.2.). (This point follows from General Comment 3.11.)

4.9. *Article 8*

Article 8 should be deleted. Redress against non-compliance with essential requirements should be found through Article 7 and through other provisions of Community law. (This point follows from General Comment 3.10.)

4.10. *Preamble 20*

The second part of preamble 20 should be deleted. (This point follows from General Comment 3.10.)

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[1] Common Position No 57/96, 12.9.1996, OJ C 315, 24.10.1996, p. 96.

4.11. *Preamble 2l*

The original text of preamble 21 should be replaced as follows:

'Whereas manufacturers or their authorized representatives established within the Community who are responsible for placing products on the Community market are liable for all aspects of those products under Community law, including the provisions on product liability in Directive 85/374/EEC, whereas Community law also recognizes manufacturers' liability for products used by businesses and other users of telecommunications that are not natural persons;'.

Brussels, 10 December 1997.

(This point follows from General Comments 3.9 and 3.10.)

4.12. *Proposed new Article 6.4*

'The provisions of this Article shall not prevent the application in any Member State of the measures referred to in Article 8 of Directive 89/336/EEC, nor shall they prevent any redress otherwise available under Community law against damage or harm to persons or property caused by equipment which meets the essential requirements applicable at the time of first placing on the market.'

The President

of the Economic and Social Committee

Tom JENKINS

Opinion of the Economic and Social Committee on the 'Proposal for a European Parliament and Council Directive relating to motor vehicles and their trailers transporting certain animals and amending Directive 70/156/EEC in respect of the type-approval of motor vehicles and their trailers'

(98/C 73/03)

On 3 July 1997 the European Council decided to consult the Economic and Social Committee, under Article 100 A of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 3 December 1997. The rapporteur was Mr Gardner.

At its 350th plenary session (meeting of 10 December 1997), the Economic and Social Committee adopted the following opinion by 84 votes to two, with three abstentions.

1. **Introduction**

1.1. This is a 'separate directive' under the framework type approval Directive 70/l56/EEC. It deals separately with type approval for complete vehicles, the chassis (often standard units produced in large runs) and the specialized bodywork (often small production runs). Because the proposal covers a wide range of vehicles, from large multi-deck trucks to small trailers hitched on to four wheel drive cars, common solutions present a particular difficulty.

1.2. Like most other type approvals it applies optional harmonization — Member States must accept vehicles and trailers made according to this directive but may approve units made to national specifications as well.

1.3. This proposal is under Article 100A and deals only with type approval of vehicles and trailers. It does not deal with the use of these and with actual transport conditions. These come under Article 43. The Commission was supposed to propose legislation on these several years ago but now states that it will do so as soon as the present 100a Directive has been adopted.