ISSN 0378-6986

Official Journal

of the European Communities

C 243

Volume 42

27 August 1999

English edition

Information and Notices

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I

(Information)

COUNCIL

COMMON POSITION (EC) No 27/1999

adopted by the Council on 28 June 1999

with a view to adopting Directive 1999/…/EC of the European Parliament and of the Council of … relating to cableway installations designed to carry persons

(1999/C 243/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Articles 55 and 95 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

(1) Whereas cableway installations designed to carry persons are designed, manufactured, put into service and operated with the object of providing a service to users; whereas, principally, cableway installations are mountain lift systems used in high-altitude tourist resorts and consisting of funicular railways, cable cars, gondolas, chairlifts and drag lifts, but may also consist of cableway installations used in urban transport facilities; whereas some types of cableway installation may use other, completely different basic principles which cannot be excluded *a priori;* whereas, therefore, provision should be made for introducing specific requirements designed to achieve the same safety objectives as those laid down in this Directive;

(2) Whereas cableway installations are principally operated in connection with tourism, particularly in mountain areas, which plays an important role in the economy of the regions concerned and is becoming an increasingly important factor in the trade balances of the Member States; whereas, from a technical point of view, the cableway installations sector also ranks among the industrial activities linked to the production of capital equipment and to activities in the building and civil engineering sector;

(3) Whereas the Member States are responsible for ensuring the safety of cableway installations at the time of manufacture, putting into service and during operation; whereas, moreover, they are responsible together with the competent authorities for such matters as land-use, regional planning and environmental protection; whereas national regulations differ widely as a result of techniques peculiar to the national industry as well as local customs and knowhow; whereas they stipulate specific dimensions and devices and particular characteristics; whereas, in the light of these circumstances, manufacturers are obliged to redefine their equipment for each market; whereas this makes it difficult to provide standard solutions and adversely affects competitiveness;

(4) Whereas the essential health and safety requirements must be observed in order to ensure that cableway installations are safe; whereas those requirements must be applied with discernment to take account of the state of the art at the time of construction and of technical and economic requirements;

(5) Whereas, further, cableway installations may straddle frontiers and the construction thereof may run up against conflicting national rules;

(6) Whereas steps should be taken to define, on a Community-wide basis, essential safety, health, environmental protection and consumer protection

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[1] OJ C 70, 8.3.1994, p. 8, and OJ C 22, 26.1.1996, p. 12.

[2] OJ C 388, 31.12.1994, p. 26.

[3] Opinion of the European Parliament of 6 April 1995 (OJ C 109, 1.5.1995, p. 122), Council Common Position of 28 June 1999 (not yet published in the Official Journal).

requirements applicable to cableway installations, subsystems and their safety components; whereas, without this, mutual recognition of national regulatory provisions would create insoluble political and technical difficulties as regards interpretation and liability; whereas, by the same token, standardisation without prior definition of harmonised regulatory requirements is not sufficient to solve the problems;

(7) Whereas responsibility for approving cableway installations is generally vested in a service of the competent national authorities, whereas, in certain cases, approval of the components cannot be obtained beforehand but only when the customer applies for such approval; whereas, by the same token, the requisite inspection of the cableway installation prior to its entry into service may result in the rejection of certain components or in diverse technological solutions; whereas such a state of affairs leads to increased costs and longer delivery periods and is particularly penalising for foreign manufacturers; whereas, moreover, cableway installations are carefully monitored by the public services, also when they are operational; whereas the causes of serious accidents may be linked to the choice of site, to the system of transport itself, to the structures, or to the way in which the system is operated and maintained;

(8) Whereas, in these circumstances, the safety of cableway installations depends equally on the surrounding conditions, on the quality of the industrial goods supplied and on the way in which they are assembled, installed on site and monitored during operation; whereas this underlines the importance of having a general overview of cableway installations in order to assess the level of safety and of adopting a common approach at Community level to quality assurance; whereas, in these circumstances, in order to enable manufacturers to overcome their present difficulties and in order to enable users to derive the full benefit from cableway installations and to enjoy an equal level of development in all Member States, a set of requirements should be defined, together with control and inspection procedures to be applied uniformly in all Member States;

(9) Whereas users from all Member States and even beyond must be ensured a satisfactory level of safety; whereas, in order to meet this requirement, it is necessary to define procedures and examination, control and inspection methods; whereas this necessitates the use of standardised technical devices which must be incorporated in cableway installations;

(10) Whereas, where Council Directive 85/337/EEC [1] so requires, the effects of cableway installations on the environment must be assessed; whereas, above and beyond the effects mentioned in that Directive, both environmental protection and requirements in connection with the sustainable development of tourism should be taken into account;

(11) Whereas cableway installation may come within the scope of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors [2];

(12) Whereas technical specifications should be included in the general documentation or in the technical specifications peculiar to each contract; whereas those technical specifications must be defined by reference to European specifications where such specifications exist;

(13) Whereas, in order to make it easier to prove that the essential requirements have been complied with, it is useful to have harmonised European standards, compliance with which enables it to be presumed that the product is in conformity with the said essential requirements; whereas harmonised European standards are drawn up by private bodies and must retain their non-mandatory status; whereas, for this purpose, the European Committee for Standardisation (CEN) and the European Committee for Electrotechnical Standardisation (Cenelec) are recognised as the bodies competent to adopt harmonised standards that follow the general guidelines for cooperation between the Commission and those two bodies signed on 13 November 1984;

(14) Whereas, for the purposes of this Directive, a harmonised standard is a technical specification (European standard or harmonisation document) adopted by one or other of those bodies or by both, at the request of the Commission pursuant to 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 and of rules on information society services [3] and in accordance with the general guidelines referred to above; whereas, in relation to standardisation, the Commission should be assisted by the committee referred to in that Directive, which will, if necessary, consult technical experts;

(15) Whereas only safety components or subsystems of an installation which conform to a national standard transposing a harmonised standard the reference of which has been published in the *Official Journal of the European Communities* are deemed to conform to the relevant essential requirements of this Directive, regardless of the need for any special justification;

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(1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985, p. 40). Directive as last amended by Directive 97/11/EC (OJ L 73, 14.3.1997, p. 5).

(2) OJ L 199, 9.8.1993, p. 84. Directive as last amended by Directive 98/4/EC (OJ L 101, 1.4.1998, p. 1).

(3) OJ L 204, 21.7.1998, p. 37. Directive as last amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

(16) Whereas, in the absence of European specifications, the technical specifications should as far as possible be defined by reference to other standards in use in the Community; whereas main contractors may define the additional specifications needed to supplement the European specifications or other standards; whereas these provisions must ensure that the harmonised Community-level requirements with which cableway installations must comply are satisfied;

(17) Whereas it is, moreover, in the interest of the Member States to have an international standardisation system capable of producing standards which are actually used by international trading partners and satisfy the requirements of Community policy;

(18) Whereas, in certain Member States at the moment in the general documentation or specifications peculiar to each contract, main contractors may indicate the control and inspection procedures; whereas those procedures must in future, notably in the case of safety components, fall within the framework of the Council resolution of 21 December 1989 concerning a global approach to conformity assessment [1]; whereas the concept of safety component applies not only to physical objects but also to intangible objects such as software; whereas the procedures for assessing the conformity of safety components must be based on use of the modules provided for in Council Decision 93/465/EEC [2]; whereas, in the case of critical safety components, the principles and conditions for the application of design quality assurance should be defined; whereas such an approach is necessary in order to promote the general adoption of the quality assurance system in undertakings;

(19) Whereas, when conducting methodical safety analysis of cableway installations, it is necessary to identify the components on which the safety of the cableway installation depends;

(20) Whereas, in their contractual documents, main contractors lay down, by reference to European specifications, the characteristics which manufacturers are under a contractual obligation to observe, particularly for safety components, whereas, in these circumstances, the conformity of the components is linked principally to their field of use and not solely to free movement on the Community market;

(21) Whereas safety components should bear the CE marking to be affixed either by the manufacturer or by his authorised representative established within the Community; whereas the CE marking means that the safety component complies with the provisions of this Directive and those of other applicable Community Directives on CE marking;

(22) Whereas it is not necessary to affix the CE marking to subsystems subject to the provisions of this Directive but whereas, on the basis of the assessment of conformity following the procedures laid down for this purpose in this Directive, the declaration of conformity will suffice; whereas this is without prejudice to the obligation incumbent on manufacturers to affix the CE marking to certain subsystems in order to certify that they conform with other Community provisions applicable to them;

(23) Whereas Member States' responsibility for safety, health and other aspects covered by the essential requirements on their territory must be recognised in a safeguard clause providing for the appropriate Community procedures;

(24) Whereas a procedure is necessary for the inspection of subsystems of cableway installations before they are put into service; whereas such inspection must enable the authorities to satisfy themselves that at each stage of the design, manufacturing and entry into service, the result obtained conforms with the applicable provisions of this Directive; whereas this must enable manufacturers to count on equal treatment irrespective of the Member State in question; whereas the principles and conditions governing EC verification of subsystems of installations should therefore be defined;

(25) Whereas the constraints linked to the operation of cableway installations must be taken into account in the safety analysis, albeit not in such a way as to jeopardise the principle of free movement of goods or the safety of cableway installations; whereas, consequently, although this Directive does not cover the actual operation of cableway installations, the Commission should propose to the Member States a series of recommendations designed to ensure that such installations situated on their territory are operated in such a way as to offer users, operating personnel and third parties a high degree of protection;

(26) Whereas, in the case of cableway installations, full-scale tests can be carried out on technological innovations only on the construction of a new installation; whereas, in these circumstances, a procedure should be provided for which, while ensuring that the essential requirements are complied with, also enables special conditions to be established;

(27) Whereas cableway installations for which authorisation has been given but in connection with which building work has not yet started or which are already under construction must comply with the provisions of this Directive, unless Member States decide otherwise, giving their reasons, and an equally high level of protection is achieved; whereas the provisions of this Directive must

[1] OJ C 10, 16.1.1990, p. 1.

[2] Council Decision 93/465/EEC of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonisation Directives (OJ L 220, 30.8.1993, p. 23).

be complied with where existing cableway installations are modified if national legislation requires such modifications to be authorised;

(28) Whereas it is not necessary to require all existing cableway installations to be brought into conformity with the provisions applicable to new installations; whereas, however, this may prove necessary if the essential safety objectives are not complied with; whereas, in that event, the Commission should propose to the Member States a series of recommendations designed to ensure that existing cableway installations on their territory afford users a high degree of protection in the light of the provisions applicable in this field to new installations;

(29) Whereas, particularly in the absence of a European specification, the notified bodies responsible for procedures for assessing the conformity both of safety components and of subsystems of cable installations must coordinate their decisions as closely as possible; whereas the Commission must ensure that they do so;

(30) Whereas implementation of the essential requirements, particularly with regard to the safety of the installation, and coordination of all procedures call for the establishment of a special committee;

(31) Whereas a *modus vivendi* between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty [1] was reached on 20 December 1994,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

1. This Directive shall apply to cableway installations designed to carry persons.

2. For the purposes of this Directive 'cableway installations designed to carry persons' shall mean installations made up of several components, designed, manufactured, assembled and put into service with the object of providing a passenger transport service.

These on-site installations are used for the carriage of persons in vehicles or by towing devices, whereby the suspension and/or traction is provided by cables positioned along the line of travel.

3. The installations concerned are:

(a) funicular railways and other installations with vehicles mounted on wheels or on other suspension devices where traction is provided by one or more cables;

(b) cable cars where the cabins are lifted and/or displaced by one or more carrier cables; this category also includes gondolas and chair lifts;

(c) drag lifts, where users with appropriate equipment are dragged by means of a cable.

4. This Directive shall apply to:

— installations built and put into service, as from its entry into force,

— subsystems and safety components placed on the market, as from its entry into force.

It concerns such harmonisation provisions as are necessary and sufficient in order to ensure and guarantee compliance with the essential requirements referred to in Article 3(1).

In the event that important characteristics, subsystems or safety components of existing installations undergo modifications for which a new authorisation for entry into service is required by the Member State in question, such modifications and their repercussions on the installation as a whole must satisfy the essential requirements referred to in Article 3(1).

5. For the purposes of this Directive:

— 'installation' shall mean the whole on-site system, consisting of infrastructure and the subsystems listed in Annex I where infrastructure specially designed for each installation and constructed on site shall mean the layout, system data, station structures and structures along the line, which are needed for the construction and the operation of the installation, including the foundations,

— 'safety component' shall mean any basic component, set of components, sub-assembly or complete assembly of equipment and any device incorporated in the installation for the purpose of ensuring a safety function and identified by the safety analysis, the failure of which endangers the safety or health of persons, be they users, operating personnel or third parties,

— 'main contractor' shall mean any natural or legal person who commissions the construction of an installation,

— 'operability' shall mean all the technical provisions and measures which have an impact on design and realisation and are necessary in order for the installation to operate safely,

[1] OJ C 102, 4.4.1996, p. 1.

— 'maintainability' shall mean all the technical provisions and measures which have an impact on design and realisation and are necessary for maintenance designed to ensure that the installation operates safely.

6. This Directive shall not apply to:

— lifts within the meaning of Directive 95/16/EC [1],

— cable-operated tramways of traditional construction,

— installations used for agricultural purposes,

— on-site or mobile equipment for use in fairgrounds and/or amusement parks which are designed for leisure purposes and not as a means for transporting persons,

— on-site installations used for industrial purposes,

— cable-operated ferries,

— rack railways,

— chain-driven installations.

Article 2

1. This Directive shall apply without prejudice to other Community Directives, although compliance with the essential requirements laid down in this Directive may call for the application of special European specifications established for that purpose.

2. 'European specification' shall mean a common technical specification, a European technical approval or a national standard transposing a European standard.

3. The references of European specifications, which may be common technical specifications, European technical approvals within the meaning of Directive 93/38/EEC or national standards used to transpose harmonised European standards, shall be published in the *Official Journal of the European Communities*.

4. Member States shall publish the references of national standards used to transpose harmonised European standards.

5. In the absence of harmonised European standards, Member States shall take the necessary measures to inform parties concerned of those existing national standards and technical specifications which are regarded as important or useful for ensuring proper transposition of the essential requirements referred to in Article 3(1).

6. Those technical specifications which are also required to supplement European specifications or other standards must not jeopardise compliance with the essential requirements referred to in Article 3(1).

7. Where a Member State or the Commission considers that a European specification as referred to in paragraph 2 does not entirely satisfy the essential requirements referred to in Article 3(1), the Commission or the Member State concerned shall bring the matter before the committee referred to in Article 18 giving the reasons therefor. The committee shall deliver an opinion without delay.

In the light of the committee's opinion and following consultations with the committee set up pursuant to Directive 98/34/EC in the case of harmonised European standards, the Commission shall inform the Member States whether or not it is necessary to withdraw the European specifications in question from the published information referred to in paragraph 3.

Article 3

1. The installations and their infrastructure, subsystems and safety components of an installation must comply with the essential requirements which are laid down in Annex II and are applicable to them.

2. Where a national standard transposing a harmonised European standard the reference for which has been published in the *Official Journal of the European Communities* covers the essential safety requirements laid down in Annex II, the installations and their infrastructure, subsystems and safety components of any installation constructed in accordance with the standard shall be presumed to comply with the relevant essential requirements.

Article 4

1. At the request of the main contractor or his authorised representative, all planned installations shall be subject to a safety analysis as defined in Annex III which covers all safety aspects of the system and its surroundings in the context of the design, realisation and putting into service and makes it possible to identify from past experience risks liable to occur during operation.

2. The safety analysis shall be the subject of a safety report recommending the measures envisaged to deal with any such risks and including a list of the safety components and subsystems which must be covered by the provisions of Chapter II or III, as the case may be.

CHAPTER II

SAFETY COMPONENTS

Article 5

1. Member States shall take all necessary measures to ensure that safety components:

[1] Directive 95/16/EC of the European Parliament and of the Council of 29 June 1995 on the approximation of the laws of the Member States relating to lifts (OJ L 213, 7.9.1995, p. 1).

— are placed on the market only if they permit the construction of installations complying with the essential requirements referred to in Article 3(1),

— are put into service only if they permit the construction of installations which are not liable to endanger the health or safety of persons or, where applicable, the safety of property when properly installed and maintained and used for their intended purpose.

2. This Directive shall not affect Member States' entitlement to lay down, in compliance with the Treaty, such requirements as they may deem necessary to ensure that persons and in particular workers are protected when using the installations in question, provided that this does not mean that the installations are modified in a way not specified in the Directive.

Article 6

Member States may not, on the basis of this Directive, prohibit, restrict or impede the placing on their national markets of safety components intended to be used in an installation where such components comply with the provisions of this Directive.

Article 7

1. Member States shall regard safety components referred to in Article 4(2) bearing the CE conformity marking shown in Annex IX and accompanied by the EC declaration of conformity provided for in Annex IV as conforming with all the relevant provisions of this Directive.

2. Before a safety component is placed on the market, the manufacturer or his authorised representative established in the Community must:

(a) submit the safety component to a conformity assessment procedure in accordance with Annex V, and

(b) affix the CE conformity marking on the safety component and, on the basis of the modules laid down in Decision 93/465/EEC, draw up an EC declaration of conformity in accordance with Annex IV.

3. The procedure for assessing safety component conformity shall be carried out at the request of the manufacturer or his authorised representative established in the Community by the notified body referred to in Article 17 and appointed by him for this purpose.

4. Where the safety components are subject to other Directives concerning other aspects and which also provide for the affixing of the CE conformity marking, the marking shall indicate that the safety component is also presumed to conform to the provisions of those other Directives.

5. Where neither the manufacturer nor his authorised representative established in the Community has complied with the obligations of paragraphs 1 to 4, those obligations shall devolve on whomsoever places the safety component on the market in the Community. The same obligations shall apply to whomsoever manufactures safety components for his own use.

Article 8

1. Where a Member State ascertains that a safety component bearing the CE conformity marking placed on the market and used in accordance with its intended purpose is liable to endanger the safety and the health of persons and, where applicable, the safety of property, it shall take all appropriate measures to restrict its conditions of use or prohibit its use.

The Member State shall immediately inform the Commission of any such measure, indicating the reasons for its decision and whether non-conformity is due, in particular, to:

(a) failure to satisfy the essential requirements referred to in Article 3(1);

(b) incorrect application of the European specifications referred to in Article 2(2) in so far as application of those specifications is invoked;

(c) a shortcoming in the European specifications referred to in Article 2(2).

2. The Commission shall enter into consultation with the parties concerned at the earliest opportunity. Where, after such consultation, the Commission finds that:

— the measures are justified, it shall immediately so inform the Member State which took the initiative and the other Member States; where the decision referred to in paragraph 1 is based on shortcomings in European specifications, the Commission shall, after consulting the parties concerned, initiate the procedure referred to in Article 2(7) if the Member State which has taken the decision intends to maintain it,

— the measures are unjustified, it shall immediately so inform the manufacturer or his authorised representative established in the Community and the Member State which took the measures.

3. Where a safety component bearing the CE conformity marking is found not to comply, the competent Member State shall take appropriate action against whomsoever affixed that marking and drew up the EC declaration of conformity and shall so inform the Commission and the other Member States.

4. The Commission shall ensure that the Member States are kept informed of the outcome of the procedure.

CHAPTER III

SUBSYSTEMS

Article 9

Member States shall take all necessary measures to ensure that subsystems within the meaning of Annex I are placed on the market only if they permit the construction of installations complying with the essential requirements referred to in Article 3(1).

Article 10

Member States may not, on the basis of this Directive, prohibit, restrict or impede the placing on their national markets for use in an installation, of subsystems which comply with the provisions of this Directive.

Article 11

1. Member States shall regard subsystems within the meaning of Annex I which are accompanied by the EC declaration of conformity based on the model provided for in Annex VI and by the technical documentation provided for in paragraph 3 of this Article, as conforming with the relevant essential requirements referred to in Article 3(1).

2. The EC procedure for examining subsystems shall be carried out at the request of the manufacturer or his authorised representative established in the Community or, in their absence, any natural or legal person who places the subsystem in question on the market, by the notified body referred to in Article 17 which the manufacturer or his authorised representative or the abovementioned person appointed for that purpose. The EC declaration of conformity shall be drawn up by the manufacturer or his authorised representative or the abovementioned person on the basis of the EC examination in accordance with Annex VII.

3. The notified body shall draw up the EC examination certificate in accordance with Annex VII and the technical documentation which accompanies it. The technical documentation must include all the necessary documents concerning the characteristics of the subsystem and, where appropriate, all the documents certifying the conformity of the safety components. It must also contain all the relevant details of the conditions of, and restrictions on, use and of the instructions for servicing.

Article 12

1. Where a Member State ascertains that a subsystem with an EC declaration of conformity as referred to in Article 11(1), used in accordance with its intended purpose, is liable to endanger the safety and health of persons, and, where applicable, the safety of property, it shall take all appropriate measures to restrict its conditions of use or prohibit its use.

The Member State concerned shall immediately inform the Commission of the measures taken, indicating the reasons for its decision and whether non-conformity is due, in particular to:

(a) failure to satisfy the essential requirements referred to in Article 3(1);

(b) incorrect application of the European specifications referred to in Article 2(2) in so far as application of those specifications is invoked;

(c) shortcomings in the European specifications referred to in Article 2(2).

2. The Commission shall enter into consultation with the parties concerned at the earliest opportunity. Where, after such consultation, the Commission finds that:

— the measures are justified, it shall immediately so inform the Member State which took the initiative and the other Member States; where the decision referred to in paragraph 1 is based on shortcomings in the European specifications, the Commission shall, after consulting the parties concerned, initiate the procedure referred to in Article 2(7) if the Member State which has taken the decision intends to maintain it,

— the measures are unjustified, it shall immediately so inform the manufacturer or his authorised representative established in the Community or, in their absence, any natural or legal person having placed the subsystem in question on the market, and the Member State which took the measures.

3. Where a subsystem with an EC declaration of conformity is found not to comply, the competent Member State shall take appropriate action against whomsoever drew up the EC declaration of conformity and shall so inform the Commission and the other Member States.

4. The Commission shall ensure that the Member States are kept informed of the outcome of the procedure.

CHAPTER IV

INSTALLATIONS

Article 13

1. Each Member State shall lay down procedures for authorising the construction and the putting into service of installations which are located within its territory.

2. Member States shall take all appropriate measures and determine the procedures to ensure that safety components and subsystems referred to in Annex I, incorporated in installations constructed in their territory are installed and put into service only if they permit the construction of installations which are not liable to endanger the safety and health of persons or, where applicable, the safety of property, when properly installed and maintained and used in accordance with their intended purpose.

3. Where a Member State considers a safety component or subsystem referred to in Annex I to have been designed or constructed using an innovative approach, it shall take all appropriate measures and may make the construction and/or putting into service of an installation in which such innovative components or subsystems are to be used subject to special conditions. It shall immediately inform the Commission thereof, stating its reasons. The Commission shall immediately refer the matter to the committee provided for in Article 18.

4. Member States shall take all appropriate measures to ensure that the installations are constructed and put into service only if they have been designed and constructed in such a way as to guarantee compliance with the essential requirements referred to in Article 3(1).

5. On the basis of the provisions referred to in paragraph 1, Member States may not prohibit, restrict or hinder the free movement of safety components and subsystems referred to in Annex I which are accompanied by an EC declaration of conformity within the meaning of Article 7 or Article 11.

6. The safety analysis, the EC declarations of conformity and the accompanying technical documentation relating to the safety components and subsystems referred to in Annex I must be submitted by the main contractor or his authorised representative to the authority responsible for approving the installation, and a copy of them shall be kept at the installation.

7. Member States must ensure that the safety analysis, the safety report and the technical documentation are provided and include all the documentation concerning the characteristics of the installation and, where appropriate, all the documents certifying the conformity of the safety components and subsystems referred to in Annex I. In addition, documents must exist setting out the necessary conditions, including the restrictions on operation, and full details of servicing supervision, adjustment and maintenance.

Article 14

Without prejudice to other legislative provisions, Member States may not prohibit, restrict or impede the construction and putting into service within their territories of installations which comply with this Directive.

Article 15

If a Member State finds that an approved installation which is used in accordance with its intended purpose is liable to endanger the safety and the health of persons and, where appropriate, the safety of property, it shall take all appropriate measures to restrict the conditions of operation of the installation or to prohibit the operation thereof.

Article 16

Member States shall ensure that an installation remains in operation only if it conforms to the conditions set out in the safety report.

CHAPTER V

NOTIFIED BODIES

Article 17

1. Member States shall notify the Commission and the other Member States of the bodies responsible for carrying out the conformity assessment procedure referred to in Articles 7 and 11, specifying the field of competence of each body. The Commission shall assign identification numbers to them. The Commission shall publish in the *Official Journal of the European Communities* the list of notified bodies, together with their identification number and their fields of competence, and shall ensure that the list is kept up to date.

2. Member States must apply the criteria laid down in Annex VIII in assessing the bodies to be notified. Bodies meeting the assessment criteria laid down in the relevant harmonised European standards shall be presumed to fulfil those criteria.

3. A Member State which has notified a body must withdraw its notification if it finds that the body no longer meets the criteria laid down in Annex VIII. It shall immediately inform the Commission and the other Member States thereof.

4. Should the need arise, coordination of the notified bodies shall be implemented in accordance with Article 18(1).

CHAPTER VI

COMMITTEE

Article 18

1. The Commission may adopt any appropriate measure with a view to ensuring the uniform application of this Directive,in accordance with the procedure laid down in paragraph 2.

2. The Commission shall be assisted by a standing committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The committee shall draw up its rules of procedure.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

CHAPTER VII

CE CONFORMITY MARKING

Article 19

1. The CE conformity marking shall consist of the letters 'CE'. Annex IX sets out the model to be used.

2. The CE conformity marking shall be affixed to each safety component distinctly and visibly or, where that is not possible, on a label inseparably attached to the component.

3. The affixing on safety components of markings which are likely to mislead third parties as to the meaning and form of the CE conformity marking shall be prohibited. Any other marking may be affixed to the safety component, provided that the visibility and legibility of the CE conformity marking are not thereby reduced.

4. Without prejudice to Article 8:

(a) where a Member State establishes that the CE conformity marking has been wrongly affixed, the manufacturer of the safety component or the authorised representative of the latter established in the Community shall be obliged to make the product conform as regards the provisions concerning the CE conformity marking and to end the infringement under the conditions imposed by the Member State;

(b) should non-conformity persist, the Member State must take all appropriate measures to restrict or prohibit the placing on the market of the safety component in question, or to ensure that it is withdrawn from the market in accordance with the procedures provided for in Article 8.

CHAPTER VIII

FINAL PROVISIONS

Article 20

Any decision taken pursuant to this Directive which restricts the use of safety components or of a subsystem in an installation or the placing on the market thereof shall state the grounds on which it is based. Such decision shall be notified at the earliest opportunity to the party concerned, who shall at the same time be informed of the legal remedies available to him under the law in force in the Member States concerned and of the time limits to which such remedies are subject.

Article 21

Installations for which authorisation has been given before the entry into force of this Directive and for which construction has not yet started must comply with the provisions of this Directive, unless Member States decide otherwise, stating their reasons, and an equally high level of protection is achieved.

Article 22

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive not later than … (*). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

3. Member States shall, for a period of four years following entry into force of this Directive, allow:

— the construction and putting into service of installations,

— the placing on the market of subsystems and safety components

which conform with the provisions in force in their territories on the date of entry into force of this Directive.

4. The Commission shall report to the European Parliament and the Council on the implementation of this Directive, and in particular Article 18 thereof, not later than …(**)and, if necessary, submit any proposal for appropriate amendments.

Article 23

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

Article 24

This Directive is addressed to the Member States.

Done at …

For the European Parliament	*For the Council*
The President	*The President*

(*) 24 months following the date of entry into force of this Directive.
(**) Four years following the date of entry into force of this Directive.

ANNEX I

SUBSYSTEMS OF AN INSTALLATION

For the purposes of this Directive, an installation is divided up into infrastructure and the subsystems listed below, with exploitability and maintainability having to be taken into account in each case:

1. Cables and cable connections
2. Drives and brakes
3. Mechanical equipment
   - 3.1. Cable winding gear
   - 3.2. Station machinery
   - 3.3. Line engineering
4. Vehicles
   - 4.1. Cabins, seats or drag devices
   - 4.2. Suspension gear
   - 4.3. Driving gear
   - 4.4. Connections to the cable
5. Electrotechnical devices
   - 5.1. Monitoring, control and safety devices
   - 5.2. Communication and information equipment
   - 5.3. Lightning protection equipment
6. Rescue equipment
   - 6.1. Fixed rescue equipment
   - 6.2. Mobile rescue equipment

ANNEX II

ESSENTIAL REQUIREMENTS

1. Purpose

This Annex sets out the essential requirements, including maintainability and operability, applicable to the design, construction and entry into service of installations referred to in Article 1(5) of this Directive.

2. General requirements

2.1. *Safety of persons*

The safety of users, workers and third parties is a fundamental requirement for the design, construction and operation of installations.

2.2. *Principles of safety*

All installations must be designed, operated and serviced in accordance with the following principles, which are to be applied in the order given:

— eliminate or, if that is not possible, reduce risks by means of design and construction features,

— define and implement all necessary measures to protect against risks which cannot be eliminated by the design and construction features,

— define and state the precautions which should be taken to avoid the risks which it has not been possible to eliminate completely by means of the provisions and measures referred to in the first and second indents.

2.3. *Consideration of external factors*

Installations must be so designed and constructed as to make it possible to operate them safely, taking into account the type of installation, the nature and physical features of the terrain on which it is installed, its surroundings and atmospheric and meteorological factors, as well as possible structures and obstacles located in the vicinity either on the ground or in the air.

2.4. *Dimensions*

The installation, the subsystems and all its safety components must be dimensioned, designed and constructed to withstand with a sufficient degree of safety all stresses encountered under all foreseeable conditions, including those which occur when not in operation, and taking account in particular of outside influences, dynamic effects and fatigue phenomena, while complying with the acknowledged rules of the art, in particular with regard to the choice of materials.

2.5. *Assembly*

2.5.1. The installation, the subsystems and all the safety components must be designed and constructed in such a way as to ensure that they can be safely assembled and put into place.

2.5.2. The safety components must be so designed as to make assembly mistakes impossible, either as a result of construction or by means of appropriate markings on the components themselves.

2.6. *Integrity of the installation*

2.6.1. The safety components must be designed and constructed and be usable in such a way as to ensure that, in every case, their own operational integrity and/or the safety of the installation is ensured, as defined in the safety analysis in Annex III, so that their failure is highly improbable and with an adequate safety margin.

2.6.2. The installation must be designed and constructed in such a way as to ensure that, during its operation, any failure of a component which might affect safety, even indirectly, is met by an appropriate measure being taken in good time.

2.6.3. The safeguards referred to in points 2.6.1 and 2.6.2 must apply throughout the period between two scheduled inspections of the component concerned. The time period for the scheduled inspection of the safety components must be clearly indicated in the instruction manual.

2.6.4. Safety components which are incorporated into installations as spare parts must satisfy the essential requirements of this Directive and the conditions relating to the smooth interaction with the other parts of the installations.

2.6.5. Measures must be taken to to ensure that the effects of a fire in the installation do not endanger the safety of persons being transported and workers.

2.6.6. Special measures must be taken to protect installations and persons from the effects of lightning.

2.7. *Safety devices*

2.7.1. Any defect in the installation which could result in a failure endangering safety must, where practicable, be detected, reported and processed by a safety device. The same applies to any normally foreseeable external event which may endanger safety.

2.7.2. It must be possible at all times to shut down the installation manually.

2.7.3. After the installation has been shut down by a safety device, it must not be possible to restart it unless appropriate action has been taken.

2.8. *Maintainability*

The installation must be designed and constructed so as to enable routine or special maintenance and repair operations and procedures to be carried out safely.

2.9. *Nuisance*

The installation must be designed and constructed in such a way as to ensure that any internal or external nuisance resulting from noxious gases, noise emissions or vibrations falls within the prescribed limits.

3. **Infrastructure requirements**

3.1. *Layout, speed, distance between vehicles*

3.1.1. The installation must be designed to operate safely taking into account the characteristics of the terrain and its surroundings, atmospheric and meteorological conditions, any possible structures and obstacles located in the vicinity either on the ground or in the air in such a way as to cause no nuisance or pose no danger under any operational or servicing conditions or in the event of an operation to rescue persons.

3.1.2. Sufficient distance must be maintained laterally and vertically between vehicles, towing devices, tracks, cables, etc., and possible structures and obstacles located in the vicinity either on the ground or in the air, taking account of the vertical, longitudinal and lateral movement of the cables and vehicles or of the towing devices under the most adverse foreseeable operating conditions.

3.1.3. The maximum distance between vehicles and ground must take account of the nature of the installation, the type of vehicles and the rescue procedures. In the case of open cars it must also take account of the risk of fall as well as the psychological aspects associated with the distance between vehicles and ground.

3.1.4. The maximum speed of the vehicles or towing devices, the minimum distance between them and their acceleration and braking performance must be chosen to ensure the safety of persons and the safe operation of the installation.

3.2. *Stations and structures along the line*

3.2.1. Stations and structures along the line must be designed, installed and equipped so as to ensure stability. They shall permit safe guidance of the cables, vehicles and the towing devices, and enable maintenance to be safely carried out, under all operating conditions.

3.2.2. The entry and exit areas of the installation must be designed so as to guarantee the safety of the traffic of vehicles, towing devices and persons. The movement of vehicles and towing devices in the stations must be capable of taking place without risk to persons, taking into account their possible active collaboration to their movement.

4. **Requirements relating to cables, drives and brakes and to mechanical and electrical installations**

4.1. *Cables and their supports*

4.1.1. All measures must be taken in line with the latest technological developments to:

— avoid cables or their attachments breaking,

— cover their minimum and maximum stress values,

— ensure that they are safely mounted on their supports and prevent derailment,

— enable them to be monitored.

4.1.2. It is not possible to prevent all risk of cable derailment, measures must be taken to ensure that cables can be retrieved and the installations shut down without risk to persons in the event of derailment.

4.2. *Mechanical installations*

4.2.1. Drives

The drive system of an installation must be of a suitable performance and capability, adapted to the various operating systems and modes.

4.2.2. Standby drive

The installation must have a standby drive with an energy supply which is independent of that of the main drive system. A standby drive is not, however, necessary if the safety analysis shows that persons can leave the vehicles and, in particular, towing devices easily, quickly and safely even if a standby drive is not available.

4.2.3. Braking

4.2.3.1. In an emergency, it must be possible to shut down the installation and/or the vehicles at any moment, under the most unfavourable conditions in terms of authorised load and pulley adhesion during operation. The stopping distance must be as short as the security of the installation dictates.

4.2.3.2. Deceleration values must be within adequate limits fixed in such a way to ensure both the safety of the persons and the satisfactory behaviour of the vehicles, cables and other parts of the installation.

4.2.3.3. In all installations there must be two or more braking systems, each capable of bringing the installation to a halt, and coordinated in such a way that they automatically replace the active system when its efficiency becomes inadequate. The traction cable's last braking system must act directly on the driving pulley. These provisions do not apply to drag lifts.

4.2.3.4. The installation must be fitted with an effective clamp and locking mechanism to guard against premature restarts.

4.3. *Control devices*

The control devices must be designed and constructed so as to be safe and reliable, to withstand normal operating stresses and external factors such as humidity, extreme temperatures or electromagnetic interference and so as not to cause dangerous situations, even in the event of operational error.

4.4. *Communication devices*

Suitable facilities must be provided to enable operational staff to communicate with one another at all times and to inform users in case of emergency.

5. **Vehicles and towing devices**

5.1. Vehicles and/or towing devices must be designed and fitted out in such a way that under foreseeable operating conditions no person can fall out or encounter any other risks.

5.2. The fittings of vehicles and towing devices must be dimensioned and constructed so as not to:

— damage the cable or

— slip, except where slippage does not significantly affect the safety of the vehicle, the towing device or the installation

under the most unfavourable conditions.

5.3. Vehicle doors (on cars, cabins) must be designed and constructed in such a way as to make it possible to close and lock them. The vehicle floor and walls must be designed and constructed so as to withstand pressure and loads exerted by users under any circumstances.

5.4. If for reasons of operational safety an operator is required on board the vehicle, the vehicle must be fitted with the equipment required for him to carry out his tasks.

5.5. Vehicles and/or towing devices and, in particular, their suspension mechanisms must be designed and fitted so as to ensure the safety of workers servicing them in accordance with appropriate rules and instructions.

5.6. In the case of vehicles equipped with disconnectable fittings, all measures must be taken to bring to a halt, without risk to users, at the moment of departure, any vehicle whose fitting has been incorrectly connected to the cable and, at the moment of arrival, any vehicle whose fitting has not been disconnected, and to prevent the vehicle from falling.

5.7. Funicular vehicles and, in so far as the configuration of the installation so permits, bi-cable cable cars must be equipped with an automatic braking device on the track, when the possibility of carrier cable breaking cannot reasonably be excluded.

5.8. Where all risk of derailment of the vehicle cannot be eliminated by other measures, the vehicle must be fitted with an anti-derailment device which enables the vehicle to be brought to a halt without risk to persons.

6. **Equipment for users**

The access to embarkation areas and exit from disembarkation areas and the embarkation and disembarkation of users must be organised with regard to the movement and stopping of vehicles in such a way as to ensure the safety of persons, in particular in areas where there is a risk of falling.

It must be possible for children and persons with reduced mobility to use the installation safely if the installation is designed for the transport of such persons.

7. **Operability**

7.1. *Safety*

7.1.1. All technical provisions and measures must be taken to ensure that the installation is used for its intended purpose according to its technical specification and to the specified operating conditions and that the instructions on safe operation and maintenance can be complied with. The instruction manual and the corresponding notes shall be drawn up in an official language or languages of the Community which may be determined in accordance with the Treaty by the Member State in the territory of which the installation is constructed.

7.1.2. The persons responsible for operating the installation must be provided with the appropriate material resources and must be qualified to carry out the task in hand.

7.2. *Safety in the event of immobilisation of the installation*

All technical provisions and measures must be adopted to ensure that users can be brought to safety within a set time appropriate to the type of installation and its surroundings when the installation is immobilised and cannot be restarted quickly.

7.3. *Other special provisions concerning safety*

7.3.1. Operators' stands and workplaces

Movable parts which are normally accessible in the stations must be designed, constructed and installed in such a way as to preclude any risks or, where such risks exist, be fitted with protective devices so as to prevent any contact with parts of the installation which may cause accidents. These devices must be of a type that cannot easily be removed or rendered inoperative.

7.3.2. Risk of falling

Workplaces and working areas, including those used only occasionally, and the access to them, must be designed and constructed in such a way as to prevent persons required to work or move in them from falling. Should the construction not be adequate, they must also be provided with anchorage points for personal protective equipment to prevent falls.

ANNEX III

SAFETY ANALYSIS

The safety analysis required for every cableway installation referred to in Article 1(5) of this Directive must take into account every mode of operation envisaged. The analysis must follow a recognised or established method and take into account the current state of the art and the complexity of the installation in question. The aim is also to ensure that the design and configuration of the installation should take account of the local surroundings and the most adverse situations in order to ensure satisfactory safety conditions.

The analysis must also cover the safety devices and their effect on the installation and related subsystems that they bring into action so that either:

— they are capable of reacting to an initial breakdown or failure detected so as to remain either in a state that guarantees safety, in a lower operating mode or in a fail safe state,

— they are redundant and are monitored, or

— they are such that the probability of their failure can be evaluated and they are of a standard equivalent to that achieved by safety devices that meet the criteria in the first and second indents.

Safety analysis must be used to draw up the inventory of risks and dangerous situations in accordance with Article 4(1) of this Directive and to determine the list of safety components referred to in Article 4(2) thereof. The result of the safety analysis must be summarised in a safety report.

ANNEX IV

SAFETY COMPONENTS: EC DECLARATION OF CONFORMITY

This Annex applies to the safety components referred to in Article 1(5) of this Directive with a view to establishing their compliance with the essential requirements which concern them referred to in Article 3(1) of the Directive and defined in Annex II.

The EC declaration of conformity and the accompanying documentation must be dated and signed. It must be drawn up in the same language or languages as the instruction manual referred to in point 7.1.1 of Annex II.

The declaration must state the following particulars:

— the references of this Directive,

— name, business name and full address of the manufacturer or his authorised representative established in the Community. An authorised representative must also give the name, business name and full address of the manufacturer,

— description of the component (make, type, etc.),

— details of the conformity declaration procedure used (Article 7 of this Directive),

— all relevant provisions with which the component must comply and, in particular, the conditions of use,

— the name and address of any body notified, involved in the conformity procedure and the date of the EC examination certificate with details, where appropriate, of the duration and conditions of validity of the certificate,

— where appropriate, the reference of the harmonised standards applicable,

— identification of the person empowered to sign on behalf of the manufacturer or his authorised representative established in the Community.

ANNEX V

SAFETY COMPONENTS: ASSESSMENT OF CONFORMITY

1. **Scope**

This Annex applies to safety components with a view to checking compliance with the essential requirements referred to in Article 3(1) of this Directive and defined in Annex II. It concerns the assessment by one or more notified bodies of the intrinsic conformity of a component, considered in isolation, with the prescribed technical specifications.

2. **Procedures**

The assessment procedures implemented by the notified bodies both at the design and production stage are based on the modules defined in Council Decision 93/465/EEC along the lines indicated in the following table. The solutions in this table are considered to be equivalent and can be used at the manufacturer's discretion.

ASSESSMENT OF THE CONFORMITY OF SAFETY COMPONENTS

Design	Production
(1) EC type-examination MODULE B	(1a) Production quality assurance MODULE D
	(1b) Product verification MODULE F
(2) Full quality assurance MODULE H	(2) Full quality assurance MODULE H
(3) Unit verification MODULE G	(3) Unit verification MODULE G

Modules must be applied taking into account the specific supplementary conditions in each module.

MODULE B: EC TYPE-EXAMINATION

1. This module describes that part of the procedure by which a notified body ascertains and attests that a specimen, representative of the production envisaged, meets the provisions of this Directive.

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

The application must include:

— the name and address of the manufacturer and, if the application is lodged by the authorised representative, his name and address as well,

— a written declaration that the same application has not been lodged with any other notified body,

— the technical documentation, as described in point 3.

The applicant must place at the disposal of the nofitied body a specimen, representative of the production envisaged and hereinafter called 'type'. The notified body may request further specimens if needed for carrying out the test programme.

3. The technical documentation must enable the conformity of the component with the requirements of this Directive to be assessed. It must, as far as is relevant for such assessment, cover the design, manufacture and operation of the component.

The documentation must contain as far as is relevant to assessment:

— a general type-description,

— conceptual design and manufacturing drawings and schemes of components, subassemblies, circuits, etc.,

— descriptions and explanations necessary for the understanding of the said drawings and schemes and the operation of the product,

— the list of the European specifications referred to in Article 2(2) of this Directive, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements where the European specifications referred to in Article 2(2) of this Directive do not exist,

— the results of design calculations made, examinations carried out, etc.,

— test reports.

It must also indicate the field of use of the component.

4. The notified body:

4.1. must examine the technical documentation, verify that the type has been manufactured in conformity with the technical documentation and identify the components which have been designed in accordance with the relevant provisions of the European specifications referred to in Article 2(2) of this Directive as well as those which have been designed without applying the relevant provisions of those European specifications;

4.2. must perform or have performed the appropriate examinations and necessary tests to check whether, where the European specifications referred to in Article 2(2) of this Directive have not been applied, the solutions adopted by the manufacturer meet the essential requirements of this Directive;

4.3. must perform or have performed the appropriate examinations and necessary tests to check whether, where the manufacturer has chosen to apply the relevant European specifications, these have actually been applied;

4.4. must agree with the applicant the location where the examinations and necessary tests are to be carried out.

5. Where the type meets the provisions of this Directive, the notified body must issue an EC type-examination certificate to the applicant. The certificate must state the name and address of the manufacturer, the conclusions of the examination, the conditions for its validity, the duration thereof and give the necessary data for identification of the approved type.

A list of the relevant parts of the technical documentation must be annexed to the certificate and a copy kept by the notified body. If the notified body refuses to issue an EC-type certificate to the manufacturer, the former must provide detailed reasons for such refusal. Provision must be made for an appeals procedure.

6. The applicant must inform the notified body that holds the technical documentation concerning the EC type-examination certificate of all modifications of the approved component which must receive additional approval where such changes may affect the conformity of the component with the essential requirements for the prescribed conditions for its use. This additional approval is given in the form of an addition to the original EC type-examination certificate.

7. Each notified body must communicate to the other notified bodies the relevant information concerning the EC type-examination certificates and additions issued and withdrawn.

8. The other notified bodies may receive copies of the EC type-examination certificates and/or their additions. The Annexes to the certificates must be kept at the disposal of the other notified bodies.

9. The manufacturer or his authorised representative must keep with the technical documentation copies of EC type-examination certificates and their additions for at least 30 years after the last component has been manufactured.

Where neither the manufacturer nor his authorised representative is established within the Community, the obligation to keep the technical documentation available is the responsibility of the person who places the component on the Community market.

MODULE D: PRODUCTION QUALITY ASSURANCE

1. This module describes the procedure whereby the manufacturer who satisfies the obligations of point 2 ensures and declares that the components concerned are in conformity with the type as described in the EC type-examination certificate and satisfy the requirements of this Directive. The manufacturer or his authorised representative established within the Community must affix the CE marking to each component and must draw up a written declaration of conformity. The CE marking must be accompanied by the identification symbol of the notified body responsible for monitoring as specified in point 4.

2. The manufacturer must operate an approved quality system for production, final component inspection and testing as specified in point 3, and is subject to monitoring as specified in section 4.

3. Quality system

3.1. The manufacturer must lodge an application for assessment of his quality system with a notified body or his choice, for the components concerned.

The application must include:

— all relevant information for the component category envisaged,

— the documentation concerning the quality system,

— if applicable, the technical documentation of the approved type and a copy of the EC type-examination certificate.

3.2. The quality system must ensure compliance with the type as described in the EC type-examination certificate and with the requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records.

It must in particular contain an adequate description of:

— the quality objectives and the organisational structure, responsibilities and powers of the management with regard to competent quality,

— the manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,

— the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out,

— the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.,

— the means to monitor the achievement of the required component quality and the effective operation of the quality system.

3.3. The notified body must assess the quality system to determine whether it satisfies the requirements referred to in point 3.2. It presumes conformity with these requirements in respect of quality systems that implement the relevant harmonised standards.

The auditing team must have a least one member with experience of evaluating in the component technology concerned. The evaluation procedure must include an inspection visit to the manufacturer's premises.

The decision must be notified to the manufacturer. The notification must contain the conclusions of the examination and the reasoned assessment decision.

3.4. The manufacturer must undertake to discharge the obligations arising from the quality system as approved and to maintain it in an appropriate and efficient manner at a proper and efficient level.

The manufacturer or his authorised representative must keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body must evaluate the modifications proposed and decide whether the modified quality system will still satisfy the requirements referred to in paragraph 3.2 or whether a reassessment is required.

It must notify its decision to the manufacturer. The notification must contain the conclusions of the examination and the reasoned assessment decision.

4. Surveillance under the responsibility of the notified body

4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer must allow the notified body entrance for inspection purposes to the places of manufacture, inspection and testing, and storage, and must provide it with all necessary information, in particular:

— the quality system documentation,

— the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

4.3. The notified body must periodically carry out audits to make sure that the manufacturer maintains and applies the quality system and must provide an audit report to the manufacturer.

4.4. Additionally the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may carry out or cause to be carried out, tests to verify that the quality system is functioning correctly, if necessary. The notified body must provide the manufacturer with a visit report and, if a test has taken place, a test report.

5. The manufacturer must, for period ending at least 30 years after the last component has been manufactured, keep at the disposal of the national authorities:

— the documentation referred to in the second indent of the second subparagraph of point 3.1,

— the updating referred to in the second paragraph of point 3.4,

— the decisions and reports from the notified body which are referred to in points 3.4, 4.3 and 4.4.

6. Each notified body must give the other notified bodies the relevant information concerning all quality system approvals issued and withdrawn.

MODULE F: PRODUCT VERIFICATION

1. This module describes the procedure whereby a manufacturer or his authorised representative established within the Community checks and attests that the components subject to the provisions of point 3 are in conformity with the type described in the EC type-examination certificate and satisfy the requirements of this Directive.

2. The manufacturer must take all measures necessary in order that the manufacturing process ensures conformity of the components with the type as described in the EC type-examination certificate and with the requirements of this Directive. He shall affix the CE marking to each component and shall draw up a declaration of conformity.

3. The notified body must carry out the appropriate examinations and tests in order to check the conformity of the components to the requirements of this Directive either by examination and testing of every component as specified in point 4 or by examination and testing of components on a statistical basis, as specified in point 5, at the choice of the manufacturer.

The manufacturer or his authorised representative resident within the Community must keep a copy of the declaration of conformity for a period ending at least 30 years after the last component has been manufactured.

4. Verification by examination and testing of every component

4.1. All components must be individually examined and appropriate tests as set out in the relevant European specification(s) referred to in Article 2 or equivalent tests shall be carried out in order to verify their conformity with the type described in the EC type-examination certificate and to the requirements of this Directive.

4.2. The notified body must affix or cause to be affixed, its identification symbol to each approved component and draw up a written certificate of conformity relating to the tests carried out.

4.3. The manufacturer or his authorised representative must ensure that he is able to supply the notified body's certificates of conformity on request.

5. Statistical verification

5.1. The manufacturer must present his components in the form of homogeneous lots and shall take all measures necessary in order that the manufacturing process ensures the homogeneity of each lot produced.

5.2. All components must be available for verification in the form of homogeneous lots. A random sample must be drawn from each lot. Components in a sample must be individually examined and appropriate tests as set out in the European specification(s) referred to in Article 2(2) of this Directive, or equivalent tests, shall be carried out to ensure their conformity with the requirements of this Directive and to determine whether the lot is accepted or rejected.

5.3. The statistical procedure must use the following elements:

— a statistical method,

— a sampling plan with its operational characteristics.

5.4. In the case of accepted lots, the notified body must affix, or cause to be affixed, its identification number to each component, and shall draw up a written certificate of conformity relating to the tests carried out. All components in the lot may be put on the market, except those components from the sample which were found not to be in conformity.

If a lot is rejected, the notified body or the competent authority must take appropriate measures to prevent the putting on the market of that lot. In the event of the frequent rejection of lots the notified body may suspend statistical verification.

The manufacturer may, under the responsibility of the notified body, affix the latter's identification number during the manufacturing process.

5.5. The manufacturer or his authorised representative must ensure that he is able to supply the notified body's certificates of conformity on request.

MODULE G: UNIT VERIFICATION

1. This module describes the procedure whereby the manufacturer ensures and declares that the component concerned, which has been issued with the certificate referred to in point 2, conforms to the requirements of this Directive that apply to it. The manufacturer or his authorised representative established within the Community must affix the CE marking to the component and must draw up a declaration of conformity.

2. The notified body must examine the component and must carry out the appropriate tests as set out in the relevant European specifications referred to in Article 2(2) of this Directive, or equivalent tests, to ensure its conformity with the relevant requirements of this Directive.

The notified body must affix, or cause to be affixed, its identification number on the approved component and shall draw up a certificate of conformity concerning the tests carried out.

3. The aim of the technical documentation is to enable conformity with the requirements of this Directive to be assessed and the design, manufacture and operation of the component to be understood.

For the purposes of assessment, the documentation must include the following:

— a general description of the type,

— conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.,

— descriptions and explanations necessary for the understanding of said drawings and schemes and the operation of the component,

— a list of the relevant European specifications applied in total or partially referred to in Article 2(2) of this Directive, as well as description of the solutions adopted by the manufacturer to meet the essential requirements of the Directive, where the European specifications referred to in Article 2(2) have not been applied,

— the results of the design calculations made, examinations carried out, etc.,

— test reports,

— fields of use of components.

MODULE H: FULL QUALITY ASSURANCE

1. This module describes the procedure whereby a manufacturer who satisfies the obligations of paragraph 2 must ensure and declare that the components concerned satisfy the relevant requirements of this Directive. The manufacturer or his authorised representative established within the Community must affix the CE marking to the component and must draw up a written declaration of conformity. The CE marking must be accompanied by the identification symbol of the notified body responsible for the surveillance as specified in point 4.

2. The manufacturer must operate an approved quality system for design, manufacture and final component inspection and testing as specified in point 3 and shall be subject to surveillance as specified in point 4.

3. Quality system

3.1. The manufacturer must lodge an application for assessment of his quality system with a notified body.

The application must include:

— all relevant information for the category of component envisaged,

— the documentation relating to the quality system.

3.2. The quality system must ensure compliance of the components with the relevant requirements of this Directive.

All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation shall ensure a common understanding of the quality policies and procedures such as quality programmes, plans, manuals and records.

It must in particular include an adequate description of:

— the quality objectives and the organisational structure, responsibilities and powers of the management with regard to design and component quality,

— the technical design specifications, including the European specifications referred to in Article 2(2) of this Directive, that will be applied and, where the European specifications will not be applied in full, the means that will be used to ensure that the essential requirements of this Directive that apply to the products will be met,

— the design control and design verification techniques, processes and systematic actions that will be used when designing the components pertaining to the category of components covered,

— the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,

— the examinations and tests that will be carried out before, during and after manufacture, and the frequency with which they will be carried out,

— the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.,

— the means to monitor the achievement of the required design and component quality and the effective operation of the quality assurance system.

3.3. The notified body must assess the quality system to determine whether it satisfies the requirements referred to in point 3.2. It shall presume compliance with these requirements in respect of quality systems that implement the relevant harmonised standard conform to those requirements.

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

The decision must be notified to the manufacturer. The notification must contain the conclusions of the examination and the reasoned assessment decision.

3.4. The manufacturer must undertake to fulfil the obligations arising from the quality system as approved and to uphold it so that it remains adequate and efficient.

The manufacturer or his authorised representative must keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body must evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in paragraph 3.2 or whether a reassessment is required.

It must notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

4. Surveillance under the responsibility of the notified body

4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

4.2. The manufacturer must allow the notified body entrance for inspection purposes to the places of design, manufacture, inspection and testing, and storage, and shall provide it with all necessary information, in particular:

— the quality system documentation,

— the quality records as provided for by the design part of the quality system, such as results of analyses, calculations, tests, etc.,

— the quality records as provided for by the manufacturing part of the quality system, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

4.3. The notified body must periodically carry out audits to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.

4.4. Additionally, the notified body may pay unexpected visits to the manufacturer. At the time of such visits, the notified body may carry out tests or have them carried out in order to check the proper functioning of the quality system where necessary; it must provide the manufacturer with a visit report and, if a test has been carried out, with a test report.

5. The manufacturer must, for a period ending at least 30 years after the last component has been manufactured, keep at the disposal of the national authorities:

— the documentation referred to in the second indent of the second subparagraph of point 3.1,

— the updating referred to in the second subparagraph of point 3.4,

— the decisions and reports form the notified body which are referred to in points 3.4, 4.3 and 4.4.

6. Each notified body must forward to the other notified bodies the relevant information concerning the quality system approvals issued and withdrawn.

7. Supplementary requirements; design examination

7.1. The manufacturer must lodge an application for examination of the design with a single notified body.

7.2. The application must enable the design, manufacture and operation of the component to be understood, and shall enable conformity with the requirements of this Directive to be assessed.

It must include:

— the technical design specifications, including the European specifications referred to in Article 2(2) of this Directive that have been applied,

— the necessary supporting evidence for their adequacy, in particular where the European specifications referred to in Article 2(2) of this Directive have not been applied in full. This supporting evidence must include the results of tests carried out by the appropriate laboratory of the manufacturer or on his behalf.

7.3. The notified body must examine the application and where the design meets the provisions of this Directive, must issue an EC design examination certificate to the applicant. The certificate shall contain the conclusions of the examination, conditions for its validity, the necessary data for identification of the approved design and, if relevant, a description of the component's functioning.

7.4. The applicant must keep the notified body that issued the EC design examination certificate informed of any modification to the approved design. Modifications to the approved design must receive additional approval from the notified body that issued the EC design examination certificate where such changes may affect conformity to the essential requirements referred to in Article 3(1) of this Directive or the prescribed conditions for use of the component. This additional approval is given in the form of an addition to the original EC design examination certificate.

7.5. The notified bodies must forward to the other notified bodies the relevant information concerning:

— the EC design examination certificates and additions issued,

— the EC design approvals and additional approvals withdrawn,

— the EC design examination certificates and additions refused.

ANNEX VI

SUBSYSTEMS: EC DECLARATION OF CONFORMITY

This Annex applies to the subsystems referred to in Article 9 of this Directive in order to ensure that they fulfil the essential requirements concerning them referred to in Article 3(1) of this Directive.

The EC declaration of conformity must be drawn up by the manufacturer, or his authorised representative established in the Community, or, where such a person is not available, any natural or legal person, who places the subsystem on the market; the declaration and the accompanying technical documentation must be dated and signed.

This EC declaration of conformity and the technical documentation must be drawn up in the same language or languages as the instruction manual, referred to in point 7.1.1 of Annex II and must contain the following information:

— the reference of this Directive,

— the name and address of the person who ordered EC examination,

— a description of the subsystem,

— the name and address of the notified body which carried out the EC examination, referred to in Article 11 of this Directive,

— all relevant provisions with which the subsystem must comply, in particular any operating restrictions or operating conditions,

— the outcome of EC examination referred to in Annex VII (EC conformity certificate),

— particulars of the person who is authorised to sign a legally binding declaration for the manufacturer, or his authorised representative or, where such a person is not available, the natural or legal person, who places the subsystem on the market.

ANNEX VII

SUBSYSTEMS: ASSESSMENT OF CONFORMITY

1. EC examination is the procedure whereby, at the request of the manufacturer or his authorised representative established in the Community or, where such a person is not available, any natural or legal person who assumes responsibility for placing the subsystem on the market, a notified body checks and attests that a subsystem is:

   — in conformity with the provisions of the Directive and other relevant provisions in compliance with the Treaty,

   — in conformity with the technical documentation, and

   — completed

2. The examination of the subsystem is carried out at each of the following stages:

   — design,

   — construction and acceptance trials once the subsystem has been completed.

3. The technical documentation accompanying the examination certificate must comprise the following:

   — construction plans and calculations, electrical and hydraulic diagrams, control circuit diagrams, description of computer and automatic systems, operating and servicing instructions, etc.,

   — a list of the safety components referred to in Article 4(2) of this Directive which are used in the subsystem,

   — copies of the EC declaration of conformity as provided for in Annex IV for these safety components together with the corresponding construction plans and a copy of the reports on any other tests and trials carried out.

4. Documentation and correspondence in connection with EC examination procedures must be drawn up in the same language or languages as the instruction manual referred to in point 7.1.1 of Annex II.

5. Surveillance

   5.1. It shall be ensured by means of surveillance that during construction of the subsystem the obligations arising from the technical documentation are fulfilled.

   5.2. The notified body responsible for EC examination must have permanent access to the production shops, storage areas and, where necessary, to prefabrication areas, testing plants and more generally to any locations it feels it needs to visit in order to perform its task. The manufacturer or his authorised representative or, where such a person is not available, the natural or legal person who places the subsystem on the market must provide it with, or arrange for it to be provided with, any documents required to that end, notably the plans and technical documentation relating to the subsystem.

   5.3. The notified body responsible for EC examination must periodically carry out audits to ensure compliance with the provisions of this Directive. On each visit it must provide the site supervisor responsible with an audit report. It may ask to be brought in to inspect various stages of the work.

   5.4. In addition, the notified body may pay unexpected visits to the production shops. During such visits it may carry out full or partial audits. The notified body must draw up a report on the visit and, where necessary, submit an audit report to the site supervisor responsible.

6. Each notified body must publish periodically the relevant information concerning:

   — all applications for EC examination received,

   — all EC examination certificates issued,

   — all EC examination certificates refused.

ANNEX VIII

MINIMUM CRITERIA TO BE TAKEN INTO ACCOUNT BY MEMBER STATES FOR THE NOTIFICATION OF BODIES

1. The notified body, its director and the staff responsible for carrying out the verification operations may not be either the designer, manufacturer, supplier or installer of the safety components or subsystems which they inspect or the authorised representative of any of those parties or the natural or legal person, who places these safety components or subsystems on the market. They may not become involved, either directly or as authorised representatives, in the design, manufacture, construction, marketing, servicing or operation of these safety components or subsystems. This does not preclude the possibility of exchanges of technical information between the manufacturer and the notified body.

2. The notified body and its inspection staff must carry out the verification operations with the highest degree of professional integrity and technical competence and must be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of the inspection, especially from persons or groups of persons with an interest in the result of the verifications.

3. The notified body must have at its disposal the necessary staff and possess the necessary facilities to enable it to perform properly the administrative and technical tasks connected with the verification operations; it must also have access to the equipment required for special verification.

4. The staff responsible for inspection must have:

   — sound technical and professional training,

   — satisfactory knowledge of the requirements of the tests they carry out and adequate experience of such tests,

   — the ability required to draw up the certificates, records and reports required to authenticate the performance of the tests.

5. The impartiality of inspection staff must be guaranteed. Their remuneration must not depend on the number of tests carried out or on the results of such tests.

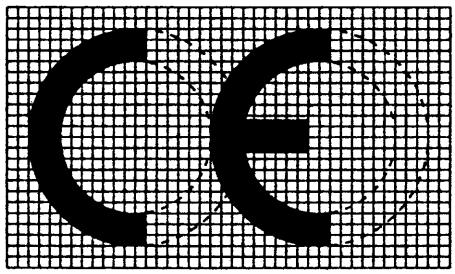
6. The notified body must take out civil liability insurance unless its liability is assumed by the State in accordance with national law or the Member State itself is directly responsible for the inspections.

7. The staff of the body must be bound by professional secrecy (except vis-à-vis the competent administrative authorities of the State in which its activities are carried out) with regard to all information it acquires in carrying out its tasks under this Directive or any provision of national law giving effect to it.

ANNEX IX

CE CONFORMITY MARKING

The CE conformity marking shall consist of the letters 'CE' taking the following form:



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

The various components of the CE marking must have substantially the same vertical dimension, which may not be less than 5 mm. This minimum dimension may be waived for small-scale safety components.

The CE marking shall be followed by the last two figures of the year in which it was affixed and by the identification number of the notified body that deals with the procedures referred to in Article 7(3) of this Directive.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 31 January 1994, the Commission submitted a proposal for a Directive [1] based on Articles 47(2), 55 and 95 of the EC Treaty, relating to cableway installations designed to carry passengers.

2. Following the opinion of the European Parliament, delivered on 6 April 1995 [2], the Commission submitted an amended proposal [3].

3. The Economic and Social Committee delivered its opinion on 6 July 1994 [4].

4. On 28 June 1999, the Council adopted its Common Position in accordance with the procedure laid down in Article 251 of the Treaty.

II. OBJECTIVE

5. The aim of the proposal is to complete the single market in the area of cableway installations designed to carry persons. It is based in particular on the following principles:

   — the free movement of cableway installations, and

   — the safety of cableway installation users.

III. ANALYSIS OF THE COMMON POSITION

6. The Council examined the proposal and, in the course of its discussions, agreed on a number of significant amendments.

   All the amendments to the proposal were accepted by the Commission.

7. There are two separate principles underlying the Common Position:

   — safety components and subsystems may be placed on the market and circulate freely if they fulfil certain essential requirements; in addition, CE marking is introduced and only safety components accompanied by CE marking can be considered as complying with the essential requirements without any need for specific justification,

   — each Member State must lay down procedures for authorising the construction and the putting into service of installations and their infrastructure (civil engineering).

Amendments adopted by the Council

The Council also took over a large majority of the European Parliament's amendments, which in most cases have been inserted in a slightly reworded form.

8. The Council adopted amendment 1 (accepted by the Commission), which amends the title by replacing 'designed to carry passengers' by 'designed to carry persons'.

9. The Council also adopted amendment 2 (accepted by the Commission), which amends the first recital by including installations used in urban transport facilities for which special requirements must be stipulated (first recital).

10. In line with amendment 4, the Council adopted the reference to the transfrontier nature of certain installations (fifth recital). This amendment was also approved by the Commission.

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[1] OJ C 70, 8.3.1994, p. 8.
[2] OJ C 109, 1.5.1995, p. 122.
[3] OJ C 22, 26.1.1996, p. 12.
[4] OJ C 338, 31.12.1994, p. 26.

11. The Council adopted amendment 10 (27th recital), which describes the conditions to apply to existing installations if the essential safety requirements are not complied with.

12. The Council adopted amendment 12 (Article 1) which defines the concept of 'owner' (this amendment was accepted in part by the Commission).

13. The amendment concerning the authorisation of construction (amendment 15) was also adopted by the Council, but with the text adapted to reflect both the new principles associated with subsystems and the safeguard clause.

14. The Council adopted amendment 16, making the derogation procedure non-compulsory wherever an innovative approach was used (this was accepted by the Commission). The amendment was incorporated into Article 13(3).

Amendments adopted in simplified form

15. The Council adopted amendment 3 (second recital) in a simplified form; this amendment recognises the fact that the installations covered by the Directive are not connected with tourism in all cases (accepted by the Commission).

16. The Council in addition adopted in simplified form amendment 5 (seventh recital), which stresses the importance of the choice of site from the safety point of view (accepted by the Commission).

The Council also adopted amendment 6 (eighth recital) in a simplified form. This stresses the importance of environmental studies from the safety point of view (approved by the Commission).

17. The Council adopted in simplified form amendment 7 (10th recital), which stipulates that the impact of cableway installations on environmental protection must be assessed and requirements in connection with the sustainable development of tourism taken into account. The Commission accepted this amendment.

The Council furthermore adopted in simplified form amendment 8 (24th recital), which stresses that constraints linked to the operation of the installations must be taken into account in the safety analysis. The Commission accepted this amendment.

18. As regards the definition of safety components (Article 1(5)), the Council adopted amendment 11. However, it made slight amendments to the text proposed by the European Parliament (the Commission approved this amendment).

Amendments adopted in part

19. As regards amendment 9 (26th recital), the Council adopted in part the changes specifying the conditions for application of the Directive when it enters into force (its scope was modified). This amendment was accepted by the Commission.

20. In the case of amendment 17 (accepted in part by the Commission), concerning the conditions for applying the Directive to installations planned or under construction at the time the Directive enters into force, the Council added a 26th recital which incorporates the amendment in partial form.

21. The Council adopted in part amendment 18 (Article 22), which extends the provisions of that Article to construction (accepted by the Commission). Its scope was modified.

The Council also adopted in part amendment 20 (Annex II, section 2.3 and 10th recital), which extends the consideration of external factors to include the specific environmental features of the site (its scope was modified). The Commission accepted this amendment.

Amendments not adopted by the Council

22. The Council was unable to adopt amendment 13, which would have allowed the Committee to amend the essential requirements (the amendment was not approved by the Commission). The Council considered that only the Council and the European Parliament were empowered to amend the essential requirements.

23. The Council was unable to adopt amendment 14, concerning transfrontier installations. The Commission did not approve it either.

    The Council considered that the procedure adopted in its Common Position was simpler and more effective.

24. Amendment 19 (accepted by the Commission) which states that third parties include skiers, was not adopted by the Council because skiers fell into the category of third parties as a matter of course and there was no need to make special mention of them.

25. Finally, the Council did not adopt amendment 21, which refers to the qualifications of operators (accepted by the Commission). Although the Council agreed to this amendment in principle, it did not consider it appropriate to embody it in the Directive.

IV. **CONCLUSION**

26. Overall, having adopted most of the European Parliament's amendments and taken account of the concern expressed by the European Parliament on other points, the Council considered it had found the right balance between the initially divergent positions.

COMMON POSITION (EC) NO 28/1999

adopted by the Council on 28 June 1999

with a view to adopting Directive 1999/000/EC of the European Parliament and of the Council of … on a Community framework for electronic signatures

(1999/C 243/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

(1) Whereas on 16 April 1997 the Commission presented to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a Communication on a European initiative in electronic commerce;

(2) Whereas on 8 October 1997 the Commission presented to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions a Communication on ensuring security and trust in electronic communication – Towards a European framework for digital signatures and encryption;

(3) Whereas on 1 December 1997 the Council invited the Commission to submit as soon as possible a proposal for a Directive of the European Parliament and of the Council on digital signatures;

(4) Whereas electronic communication and commerce necessitate 'electronic signatures' and related services allowing data authentication; whereas divergent rules with respect to legal recognition of electronic signatures and the accreditation of certification-service providers in the Member States may create a significant barrier to the use of electronic communications and electronic commerce; whereas, on the other hand, a clear Community framework regarding the conditions applying to electronic signatures will strengthen confidence in, and general acceptance of, the new technologies; whereas legislation in the Member States should not hinder the free movement of goods and services in the internal market;

(5) Whereas the interoperability of electronic-signature products should be promoted; whereas, in accordance with Article 14 of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods is ensured; whereas essential requirements specific to electronic-signature products must be met in order to ensure free movement within the internal market and to build trust in electronic signatures, without prejudice to Council Regulation (EC) No 3381/94 of 19 December 1994 setting up a Community regime for the control of exports of dual-use goods [5] and Council Decision 94/942/CFSP of 19 December 1994 on the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning the control of exports of dual-use goods [6];

(6) Whereas this Directive does not harmonise the provision of services with respect to the confidentiality of information where they are covered by national provisions concerned with public policy or public security;

(7) Whereas the internal market ensures the free movement of persons, as a result of which citizens and residents of the European Union increasingly need to deal with authorities in Member States other than the one in which they reside; whereas the availability of electronic communication could be of great service in this respect;

(8) Whereas rapid technological development and the global character of the Internet necessitate an approach which is open to various technologies and services capable of authenticating data electronically;

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[1] OJ C 325, 23.10.1998, p. 5.
[2] OJ C 40, 15.2.1999, p. 29.
[3] OJ C 93, 6.4.1999, p. 33.
[4] Opinion of the European Parliament of 13 January 1999 (OJ C 104, 14.4.1999, p. 49). Council Common Position of 28 June 1999 and Decision of the European Parliament of … (not yet published in the Official Journal).
[5] OJ L 367, 31.12.1994, p. 1. Regulation as amended by Regulation (EC) No 837/95) (OJ L 90, 21.4.1995, p. 1).
[6] OJ L 367, 31.12.1994, p. 8. Decision as last amended by Decision 1999/193/CFSP (OJ L 73, 19.3.1999, p. 1).

(9) Whereas electronic signatures will be used in a large variety of circumstances and applications, resulting in a wide range of new services and products related to or using electronic signatures; whereas the definition of such products and services should not be limited to the issuance and management of certificates, but should also encompass any other service and product using, or ancillary to, electronic signatures, such as registration services, time-stamping services, directory services, computing services or consultancy services related to electronic signatures;

(10) Whereas the internal market enables certification-service-providers to develop their cross-border activities with a view to increasing their competitiveness, and thus to offer consumers and businesses new opportunities to exchange information and trade electronically in a secure way, regardless of frontiers; whereas in order to stimulate the Community–wide provision of certification services over open networks, certification–service–providers should be free to provide their services without prior authorisation; whereas prior authorisation means not only any permission whereby the certification–service–provider concerned has to obtain a decision by national authorities before being allowed to provide its certification services, but also any other measures having the same effect;

(11) Whereas voluntary accreditation schemes aiming at an enhanced level of service-provision may offer certification-service-providers the appropriate framework for developing further their services towards the levels of trust, security and quality demanded by the evolving market; whereas such schemes should encourage the development of best practice among certification-service-providers; whereas certification-service-providers should be left free to adhere to and benefit from such accreditation schemes;

(12) Whereas certification services can be offered either by a public entity or a legal or natural person, when it is established in accordance with the national law; whereas Member States should not prohibit certification-service-providers from operating outside voluntary accreditation schemes; whereas it should be ensured that such accreditation schemes do not reduce competition for certification services;

(13) Whereas Member States may decide how they ensure the supervision of compliance with the provisions laid down in this Directive; whereas this Directive does not preclude the establishment of private-sector-based supervision systems; whereas this Directive does not oblige certification-service-providers to apply to be supervised under any applicable accreditation scheme;

(14) Whereas it is important to strike a balance between consumer and business needs;

(15) Whereas Annex III covers requirements for secure signature-creation devices to ensure the functionality of advanced electronic signatures; whereas it does not cover the entire system environment in which such devices operate; whereas the functioning of the internal market requires the Commission and the Member States to act swiftly to enable the bodies charged with the conformity assessment of secure signature devices with Annex III to be designated; whereas in order to meet market needs conformity assessment must be timely and efficient;

(16) Whereas this Directive contributes to the use and legal recognition of electronic signatures within the Community; whereas a regulatory framework is not needed for electronic signatures exclusively used within closed systems; nevertheless electronic signatures which fulfil the requirements laid down in this Directive and which are used within closed user-groups should be legally recognised; whereas the freedom of parties to agree among themselves the terms and conditions under which they accept electronically signed data should be respected to the extent allowed by national law;

(17) Whereas this Directive does not seek to harmonise national rules concerning contract law, particularly the formation and performance of contracts, or other formalities of a non-contractual nature concerning signatures; whereas for this reason the provisions concerning the legal effect of electronic signatures should be without prejudice to requirements regarding form laid down in national law with regard to the conclusion of contracts or the rules determining where a contract is concluded;

(18) Whereas the storage and copying of signature–creation data could cause a threat to the legal validity of electronic signatures;

(19) Whereas electronic signatures will be used in the public sector within national and Community administrations and in communications between such administrations and with citizens and economic operators, for example in the public procurement, taxation, social security, health and justice systems;

(20) Whereas harmonised criteria relating to the legal effects of electronic signatures will preserve a coherent legal framework across the Community; whereas national law lays down different requirements for the legal validity of handwritten signatures; whereas certificates can be used to confirm the identity of a person signing electronically; whereas advanced electronic signatures based on qualified certificates aim at a higher level of security; whereas advanced electronic signatures which are based on a qualified certificate and which are

created by a secure-signature-creation device can be regarded as legally equivalent to handwritten signatures only if the requirements for handwritten signatures are fulfilled;

(21) Whereas in order to contribute to the general acceptance of electronic authentication methods it has to be ensured that electronic signatures can be used as evidence in legal proceedings in all Member States; whereas the legal recognition of electronic signatures should be based on objective criteria and not be linked to authorisation of the certification-service-provider involved; whereas national law governs the use of electronic documents and electronic signatures; whereas this Directive is without prejudice to the power of a national court to make a ruling regarding conformity with the requirements of this Directive and does not affect national rules regarding the unfettered judicial consideration of evidence;

(22) Whereas certification-service-providers providing certification-services to the public are subject to national rules regarding liability;

(23) Whereas the development of international electronic commerce requires cross-border arrangements involving third countries;

(24) Whereas in order to increase user confidence in electronic communication and electronic commerce, certification-service-providers must observe data protection legislation and individual privacy;

(25) Whereas provisions on the use of pseudonyms in certificates should not prevent Member States from requiring identification of persons pursuant to Community or national law;

(26) Whereas, for the purposes of the application of this Directive, the Commission should be assisted by a management committee;

(27) Whereas two years after its implementation the Commission will carry out a review of this Directive so as, *inter alia*, to ensure that the advance of technology or changes in the legal environment have not created barriers to achieving the aims stated in this Directive; whereas it should examine the implications of associated technical areas and submit a report to the European Parliament and the Council on this subject;

(28) Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objective of creating a harmonised legal framework for the provision of electronic signatures and related services cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive does not go beyond what is necessary to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

The purpose of this Directive is to facilitate the use of electronic signatures and to contribute to their legal recognition. It establishes a legal framework for electronic signatures and certain certification-services in order to ensure the proper functioning of the internal market.

It does not cover aspects related to the conclusion and validity of contracts or other legal obligations where there are requirements as regards form prescribed by national or Community law nor does it affect rules and limits, contained in national or Community law, governing the use of documents.

Article 2

Definitions

For the purpose of this Directive:

1. 'electronic signature' means data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of authentication;

2. 'advanced electronic signature' means an electronic signature which meets the following requirements:

   (a) it is uniquely linked to the signatory;

   (b) it is capable of identifying the signatory;

   (c) it is created using means that the signatory can maintain under his sole control; and

   (d) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable;

3. 'signatory' means a person who holds a signature-creation device and acts either on his own behalf or on behalf of the natural or legal person or entity he represents;

4. 'signature-creation data' means unique data, such as codes or private cryptographic keys, which are used by the signatory to create an electronic signature;

5. 'signature-creation device' means configured software or hardware used to implement the signature-creation data;

6. 'secure-signature-creation device' means a signature-creation device which meets the requirements laid down in Annex III;

7. 'signature-verification-data' means data, such as codes or public cryptographic keys, which are used for the purpose of verifying an electronic signature;

8. 'signature-verification device' means configured software or hardware used to implement the signature-verification-data;

9. 'certificate' means an electronic attestation which links signature-verification data to a person and confirms the identity of that person;

10. 'qualified certificate' means a certificate which meets the requirements laid down in Annex I and is provided by a certification-service-provider who fulfils the requirements laid down in Annex II;

11. 'certification-signature-product' means an entity or a legal or natural person who issues certificates or provides other services related to electronic signatures;

12. 'electronic-signature-product' means hardware or software, or relevant components thereof, which are intended to be used by a certification-service-provider for the provision of electronic-signature services or are intended to be used for the creation or verification of electronic signatures;

13. 'voluntary accreditation' means any permission, setting out rights and obligations specific to the provision of certification services, to be granted on request by the certification-service-provider concerned, by the public or private body charged with the elaboration of, and supervision of compliance with, such rights and obligations, where the certification-service-provider is not entitled to exercise the rights stemming from the permission until it has received the decision by the body.

Article 3

Market access

1. Member States shall not make the provision of certification services subject to prior authorisation.

2. Without prejudice to the provisions of paragraph 1, Member States may introduce or maintain voluntary accreditation schemes aiming at enhanced levels of certification-service provision. All conditions related to such schemes must be objective, transparent, proportionate and non-discriminatory. Member States may not limit the number of accredited certification-service-providers for reasons which fall within the scope of this Directive.

3. Each Member State shall ensure the establishment of an appropriate system that allows for supervision of certification-service-providers which are established on its territory and issue qualified certificates to the public.

4. The conformity of secure signature-creation-devices with the requirements laid down in Annex III shall be determined by appropriate public or private bodies designated by Member States. The Commission shall, pursuant to the procedure laid down in Article 9, establish criteria for Member States to determine whether a body should be designated.

A determination of conformity with the requirements laid down in Annex III made by the bodies referred to in the first subparagraph shall be recognised by all Member States.

5. The Commission may, in accordance with the procedure laid down in Article 9, establish and publish reference numbers of generally recognised standards for electronic-signature products in the *Official Journal of the European Communities*. Member States shall presume that there is compliance with the requirements laid down in Annex II, point (f), and Annex III when an electronic signature product meets those standards.

6. Member States and the Commission shall work together to promote the development and use of signature-verification devices in the light of the recommendations for secure signature-verification laid down in Annex IV and in the interests of the consumer.

7. Member States may make the use of electronic signatures in the public sector subject to possible additional requirements. Such requirements shall be objective, transparent, proportionate and non-discriminatory and shall relate only to the specific characteristics of the application concerned. Such requirements may not constitute an obstacle to cross-border services for citizens.

Article 4

Internal market principles

1. Each Member State shall apply the national provisions which it adopts pursuant to this Directive to certification-service-providers established on its territory and to the services which they provide. Member States may not restrict the provision of certification-services originating in another Member State in the fields covered by this Directive.

2. Member States shall ensure that electronic-signature products which comply with this Directive are permitted to circulate freely in the internal market.

Article 5

Legal effects of electronic signatures

1. Member States shall ensure that advanced electronic signatures which are based on a qualified certificate and which are created by a secure-signature-creation device;

(a) satisfay the legal requirements of a signature in relation to data in electronic form in the same manner as a handwritten signature satisfies those requirements in relation to paper-based data; and

(b) are admissible as evidence in legal proceedings.

2. Member States shall ensure that an electronic signature is not denied legal effectiveness and admissibility as evidence in legal proceedings solely on the grounds that it is:

— in electronic form, or

— not based on a qualified certificate, or

— not based on a qualified certificate issued by an accredited certification-service-provider, or

— not created by a secure signature-creation device.

Article 6

Liability

1. As a minimum, Member States shall ensure that by issuing a certificate as a qualified certificate to the public or by guaranteeing such a certificate to the public a certification-service-provider is liable for damage caused to any entity or legal or natural person who reasonably relies on that certificate:

(a) as regards the accuracy at the time of issue of all information contained in the qualified certificate;

(b) for assurance that at the time of the issue of the certificate, the signatory identified in the qualified certificate held the signature-creation data corresponding to the signature-verification data given or identified in the certificate;

(c) for assurance that the signature-creation data and the signature-verification data can be used in a complementary manner in cases where the certification-service-provider generates them both;

unless the certification-service-provider proves that he has not acted negligently.

2. As a minimum, Member States shall ensure that a certification-service-provider who has issued a certificate as a qualified certificate to the public is liable for damage caused to any entity or legal or natural person who reasonably relies on the certificate for failure to register revocation of the certificate unless the certification-service-provider proves that he has not acted negligently.

3. Member States shall ensure that a certification-service-provider may indicate in a qualified certificate limitations on the use of that certificate, provided that the limitations are recognisable to third parties. The certification-service-provider shall not be liable for damage arising from use of a qualified certificate which exceeds the limitations placed on it.

4. Member States shall ensure that a certification-service-provider may indicate in the qualified certificate a limit on the value of transactions for which the certificate can be used, provided that the limit is recognisable to third parties.

5. The provisions of paragraphs 1 to 4 shall be without prejudice to Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ([1]).

Article 7

International aspects

1. Member States shall ensure that certificates which are issued as qualified certificates to the public by a certification-service-provider established in a third country are recognised as legally equivalent to certificates issued by a certification-service-provider established within the Community if:

(a) the certification-service-provider fulfils the requirements laid down in this Directive and has been accredited under a voluntary accreditation scheme established in a Member State; or

(b) a certification-service-provider established within the Community which fulfils the requirements laid down in this Directive guarantees the certificate; or

(c) the certificate or the certification-service-provider is recognised under a bilateral or multilateral agreement between the Community and third countries or international organisations.

2. In order to facilitate cross-border certification services with third countries and legal recognition of advanced electronic signatures originating in third countries, the Commission shall make proposals, where appropriate, to achieve the effective implementation of standards and

([1]) OJ L 95, 21.4.1993, p. 29.

international agreements applicable to certification services. In particular, and where necessary, it shall submit proposals to the Council for appropriate mandates for the negotiation of bilateral and multilateral agreements with third countries and international organisations. The Council shall decide by qualified majority.

3. Whenever the Commission is informed of any difficulties encountered by Community undertakings with respect to market access in third countries, it may, if necessary, submit proposals to the Council for an appropriate mandate for the negotiation of comparable rights for Community undertakings in these third countries. The Council shall decide by qualified majority.

Measures taken pursuant to this paragraph shall be without prejudice to the obligations of the Community and of the Member States under relevant international agreements.

Article 8

Data protection

1. Member States shall ensure that certification-service-providers and national bodies responsible for accreditation or supervision comply with the requirements laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1].

2. Member States shall ensure that a certification-service-provider which issues certificates to the public may collect personal data only directly from the data subject, or after the explicit consent of the data subject, and only in so far as it is necessary for the purposes of issuing and maintaining the certificate. The data may not be collected or processed for any other purposes without the explicit consent of the data subject.

3. Without prejudice to the legal effect given to pseudonyms under national law, Member States shall not prevent certification service providers from indicating in the certificate a pseudonym instead of the signatory's name.

Article 9

Committee

1. The Electronic-Signature Committee, hereinafter referred to as 'the committee', is hereby established. It shall be composed of representatives of the Member States and be chaired by the representative of the Commission.

2. The Commission shall be assisted by the committee.

3. 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. The opinion shall be delivered by the majority laid down in Article 205(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:

— the Commission shall defer the application of the measures which it has decided for three months from the date of communication,

— the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the first indent.

Article 10

Tasks of the committee

The committee shall clarify the requirements laid down in the Annexes to this Directive, the criteria referred to in Article 3(4) and the generally recognised standards for electronic signature products established and published pursuant to Article 3(5), in accordance with the procedure laid down in Article 9.

Article 11

Notification

1. Member States shall notify to the Commission and the other Member States the following:

(a) information on national voluntary accreditation schemes, including any additional requirements pursuant to Article 3(7);

(b) the names and addresses of the national bodies responsible for accreditation and supervision as well as of the bodies referred to in Article 3(4):

(c) the names and addresses of all accredited national certification service providers.

2. Any information supplied under paragraph 1 and changes in respect of that information shall be notified by the Member States as soon as possible.

[1] OJ L 281, 23.11.1995, p. 31.

Article 12

Review

1. The Commission shall review the operation of this Directive and report thereon to the European Parliament and to the Council by (*) at the latest.

2. The review shall, *inter alia*, assess whether the scope of this Directive should be modified, taking account of technological, market and legal developments. The report shall in particular include an assessment, on the basis of experience gained, of aspects of harmonisation. The report shall be accompanied, where appropriate, by legislative proposals.

Article 13

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before … (**). They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 14

Entry into force

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

Article 15

Addressees

This Directive is addressed to the Member States.

Done at …

For the European Parliament	*For the Council*
The President	*The President*
…	…

(*) Three years and six months after the date of entry into force of this Directive.

(**) One year and six months after the date of entry into force of this Directive.

ANNEX I

Requirements for qualified certificates

Qualified certificates must contain:

(a) an indication that the certificate is issued as a qualified certificate;

(b) the identification of the certification-service-provider and the State in which it is established;

(c) the name of the signatory or a pseudonym, which shall be identified as such;

(d) provision for a specific attribute of the signatory to be included if relevant, depending on the purpose for which the certificate is intended;

(e) signature-verification data which correspond to signature-creation data under the control of the signatory;

(f) an indication of the beginning and end of the period of validity of the certificate;

(g) the identity code of the certificate;

(h) the advanced electronic signature of the certification-service-provider issuing it;

(i) limitations on the scope of use of the certificate, if applicable;

(j) limits on the value of transactions for which the certificate can be used, if applicable.

ANNEX II

Requirements for certification-service-providers issuing qualified certificates

Certification-service-providers must:

(a) demonstrate the reliability necessary for providing certification services;

(b) ensure the operation of a prompt and secure directory and a secure and immediate revocation service;

(c) ensure that the date and time when a certificate is issued or revoked can be determined precisely;

(d) verify, by appropriate means in accordance with national law, the identity and, if applicable, any specific attributes of the person to which a qualified certificate is issued;

(e) employ personnel who possess the expert knowledge, experience, and qualifications necessary for the services provided, in particular competence at managerial level, expertise in electronic signature technology and familiarity with proper security procedures; they must also apply administrative and management procedures which are adequate and correspond to recognised standards;

(f) use trustworthy systems and products which are protected against modification and ensure the technical and cryptographic security of the processes supported by them;

(g) take measures against forgery of certificates, and, in cases where the certification-service-provider generates signature-creation data, guarantee confidentiality during the process of generating such data;

(h) maintain sufficient financial resources to operate in conformity with the requirements laid down in the Directive, in particular to bear the risk of liability for damages, for example, by obtaining appropriate insurance;

(i) record all relevant information concerning a qualified certificate for an appropriate period of time, in particular for the purpose of providing evidence of certification for the purposes of legal proceedings. Such recording may be done electronically;

(j) not store or copy signature-creation data of the person to whom the certification-service-provider provided key management services;

(k) before entering into a contractual relationship with a person seeking a certificate to support his electronic signature, inform that person by a durable means of communication of the precise terms and conditions regarding the use of the certificate, including any limitations on its use, the existence of a voluntary accreditation scheme and procedures for complaints and dispute settlement. Such information, which may be transmitted electronically, must be in writing and in readily understandable language. Relevant parts of this information must also be made available on request to third-parties relying on the certificate;

(l) use trustworthy systems to store certificates in a verifiable form so that:

— only authorised persons can make entries and changes,

— information can be checked for authenticity,

— certificates are publicly available for retrieval in only those cases for which the certificate-holder's consent has been obtained, and

— any technical changes compromising these security requirements are apparent to the operator.

ANNEX III

Requirements for secure signature-creation devices

1. Secure-signature-creation devices must, by appropriate technical and procedural means, ensure at least that:

   (a) the signature-creation-data used for signature generation can practically occur only once, and that their secrecy is reasonably assured;

   (b) the signature-creation-data used for signature generation cannot, with reasonable assurance, be derived and the signature is protected against forgery using currently available technology;

   (c) the signature-creation-data used for signature generation can be reliably protected by the legitimate signatory against the use of others.

2. Secure signature creation devices must not alter the data to be signed or prevent such data from being presented to the signatory prior to the signature process.

ANNEX IV

Recommendations for secure signature verification

During the signature-verification process it should be ensured with reasonable certainty that:

(a) the data used for verifying the signature correspond to the data displayed to the verifier;

(b) the signature is reliably verified and the result of that verification is correctly displayed;

(c) the verifier can, as necessary, reliably establish the contents of the signed data;

(d) the authenticity and validity of the certificate required at the time of signature verification are reliably verified;

(e) the result of verification and the signatory's identity are correctly displayed;

(f) the use of a pseudonym is clearly indicated;

(g) any security-relevant changes can be detected.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 16 June 1998 the Commission submitted a proposal for a European Parliament and Council Directive on a common framework for electronic signatures.

2. The European Parliament delivered its opinion at first reading on 13 January 1999 and the Economic and Social Committee and the Committee of the Regions delivered their opinions on 3 December 1998 and 14 January 1999 respectively.

3. On 28 June 1999 the Council adopted its Common Position in accordance with Article 251 of the Treaty.

II. OBJECTIVE

The purpose of the proposal is to ensure the proper functioning of the internal market in the field of electronic signatures by creating a harmonised legal framework.

This framework, consisting of a set of criteria to be used as a basis for the legal recognition of electric signatures, will facilitate the use of such signatures and enable consumers and businesses in Europe to benefit fully from the opportunities offered by electronic communications.

III. ANALYSIS OF THE COMMON POSITION

A. GENERAL COMMENTS

Although the Council adopted the approach and aims proposed by the Commission and supported by the Parliament, it considered it necessary, when drawing up its Common Position, to make a number of changes to both the substance and the wording of the proposed Directive.

When making these changes the Council's main concerns were to:

— clarify the provisions of the new Directive and make it easier to read,

— provide greater security in electronic communications,

— take greater account of the various technologies and services for authenticating information transmitted electronically,

— take greater account of the diversity of national situations.

B. SPECIFIC COMMENTS

1. **Principal changes made to the Commission proposal**

(a) *Distinction made between advanced electronic signatures and other electronic signatures*

According to the approach chosen by the Council, an advanced electronic signature is a signature providing a high security level which is therefore recognised as having equivalent validity to a handwritten signature (see Article 2(2) and Article 5(1)).

Such a signature must be based on a qualified certificate drawn up and delivered in compliance with a number of requirements (see Annex I for the requirements for qualified certificates and Annex II for the requirements for certification-service-providers). It must also be created using a secure electronic signature-creation device (see requirements in Annex III).

Other electronic signatures must at least benefit from the principle of non-discrimination and cannot therefore be considered to have no legal effect for the sole reason that they are presented in electronic form or that they do not comply with the requirements for advanced electronic signatures (see Article 2(1) and Article 5(2)).

(b) *Additional measures to improve the level of service provided by the certification-service-providers*

Although the Common Position enshrines the principle of prohibiting any prior authorisation for the provision of certification services, it supports the introduction at national level of voluntary accreditation schemes to improve the level of such services and requires the Member States to establish an appropriate system for supervising service-providers which issue qualified certificates to the public (see Article 3(2) and (3)).

The Common Position also extends the responsibility of service-providers as regards the validity of the content of the approved certificates which they issue, in order to increase user confidence in those certificates (see Article 6). This responsibility covers in particular the revocation of certificates (see Article 6(2)).

(c) *Committee assisting the Commission*

The Council considered it desirable to adopt for this committee a type IIB regulatory procedure on account of the importance of the tasks entrusted to it (see Articles 9 and 10).

The committee will have the following tasks:

— clarifying the requirements laid down in the Annexes to the Directive,

— establishing the criteria for designating the national bodies responsible for verifying the Directive's conformity with secure signature-creation-devices used for advanced signatures (see Article 3(4)),

— determining the standards generally recognised for electronic signature products, compliance with which will confer a presumption that those products comply with the requirements of the Directive (see Article 3(5)).

(d) *Recommendations concerning signature-verification devices*

The Common Position sets out a number of recommendations to make the advanced electronic signature verification process as secure as possible and asks Member States and the Commission to work together to promote the development and use of signature-verification devices on the basis of those recommendations (see Article 3(6) and Annex IV).

2. **The Council's position on the European Parliament amendments**

(a) *Amendments incorporated fully or in part into the Common Position*

The Council incorporated the full wording of amendments 3, 11, 12, 14, 18, 20, 31, 32, 33 and 34, and the principle of amendments 2, 13, 21, 22 and 25.

The Council incorporated amendments 4, 9 and 17 in part, aligning its decision on the Commission's position.

(b) *Amendments not incorporated into the Common Position*

In not incorporating amendments 1, 6, 7, 10, 15, 23, 24, 26, 28 and 29, the Council followed the Commission's negative opinion.

In not incorporating amendments 5, 16, 27 and 30, the Council based its decisions on the following considerations:

— amendment 5 concerning easier access for European Union citizens to the administrative services of a Member State other than that in which they reside (new recital).

The Council considered that Article 3(7), stipulating that by regulating the use of electronic signatures in the public sector Member States could not create obstacles to cross-border services for citizens, took account of the European Parliament's concerns in this matter,

— amendment 16 concerning the recognition of accredition schemes administered by non-governmental bodies (Article 3(2)).

The Council considered that the European Parliament's concerns were taken into account in the definition of voluntary accreditation inserted into Article 2(13),

— amendment 27 concerning the transmission to public authorities of information concerning the identity of persons using pseudonyms (Article 8(4)).

The Council considered that the proposal to authorise such transmission only in the case of a criminal investigation or court proceedings was too restrictive and might involve the risk of encouraging the illegal use of electronic communications,

— amendment 30 concerning reference to 'recognised' national bodies as regards notification of the bodies responsible for accreditation and supervision (Article 11).

The Council considered that the expression 'recognised bodies', which was not defined or mentioned in the rest of the Directive, could give rise to problems of interpretation.

COMMON POSITION (EC) NO 29/1999

adopted by the Council on 28 June 1999

with a view to adopting Decision No …/1999/EC of the European Parliament and of the Council adopting a multiannual programme for the promotion of renewable energy sources in the Community (Altener) (1998 to 2002)

(1999/C 243/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

(1) Whereas Article 174 of the Treaty provides that one of the objectives of Community action is to ensure prudent and rational utilisation of natural resources;

(2) Whereas Article 152 of the Treaty provides that health protection requirements are to form a constituent part of the Community's other policies; the Altener programme set out in this Decision contributes to health protection;

(3) Whereas at its meeting on 29 October 1990 the Council set an objective of stabilising total CO_2 emissions by the year 2000 at the 1990 level in the Community as a whole;

(4) Whereas the Kyoto Protocol to the United Nations Framework Convention on Climate Change contains further commitments for the Community and its Member States to reduce greenhouse gas emissions, including the undertaking given by the Community to the effect that an 8% reduction in greenhouse gas emissions for the years 2008 to 2012 compared with 1990 levels would be achieved;

(5) Whereas a mechanism for monitoring CO_2 and other greenhouse gas emissions in the Community was established by Council Decision 93/389/EEC [4];

(6) Whereas CO_2 emissions from energy consumption in the Community are likely to increase by about 3% between 1995 and 2000, assuming normal economic growth; in the light of the abovementioned Kyoto undertaking, it is essential to adopt additional measures; measures which would genuinely help to achieve the above objective include a much more intensive use of renewable energy sources as well as energy efficiency;

(7) Whereas at its meeting on 25 and 26 June 1996 the Council noted that in the framework of the negotiations on a protocol concerning the Berlin Mandate, the Second Assessment Report of the Intergovernmental Panel on Climate Change (SAR IPCC) had concluded that the balance of evidence suggested that there was a discernible human influence on global climate change and had stressed the need for urgent action at the widest possible level, noted that significant 'no-regrets' opportunities were available and requested the Commission to identify the measures that had to be taken at Community level;

(8) Whereas by the Green Paper of 11 January 1995 and the White Paper of 13 December 1995 the Commission communicated to the European Parliament and the Council its views on the future of energy policy in the Community and on the role that renewable energy sources should play;

(9) Whereas in its resolution of 4 July 1996 on a Community action plan for renewable energy sources [5] the European Parliament called on the Commission to implement a Community action plan to promote renewable energy sources;

(10) Whereas by the Green Paper of 20 November 1996 and the White Paper of 26 November 1997 entitled 'Energy for the future: Renewable sources of energy', the Commission started a process for the development and

[1] OJ C 214, 10.7.1998, p. 44.
[2] OJ C 315, 13.10.1998, p. 2.
[3] Opinion of the European Parliament of 11 March 1999 (OJ C 175, 21.6.1999, p. 262), Council Common Position of 28 June 1999 and Decision of the European Parliament of … (not yet published in the Official Journal).
[4] OJ L 167, 9.7.1993, p. 31.
[5] OJ C 211, 22.7.1996, p. 27.

further implementation of a Community strategy and an action plan on renewable energy sources; these are set out, together with a 'Campaign for take-off', in its White Paper;

(11) Whereas in its resolution of 15 May 1997 [1] on the Green Paper entitled 'Energy for the future: Renewable sources of energy', the European Parliament urged the Commission to adopt as soon as possible a strengthened Altener II programme; in its resolution of 18 June 1998 on the Commission communication 'Energy for the future: Renewable sources of energy – White Paper for a Community strategy and action plan' [2], it called for a clear increase in funding for the Altener programme in the energy framework programme;

(12) Whereas Article 8 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity [3] offers Member States the possibility of furthering the penetration of the market in electricity produced from renewable sources of energy by giving them priority;

(13) Whereas Article 158 of the Treaty provides that the Community is to develop and pursue its actions leading to the strengthening of its economic and social cohesion and that, in particular, it is to aim at reducing disparities between the levels of development of the various regions and the backwardness of the least-favoured regions; those actions cover, *inter alia*, the energy sector;

(14) Whereas in Decision 93/500/EEC [4] and Decision 98/352/EC [5], the Council adopted a Community programme entitled Altener for the promotion of renewable energy sources aimed at reducing CO_2 emissions by increasing the market share of renewable energy sources and its contribution to overall primary energy production in the Community;

(15) Whereas the Community has recognised that the Altener programme represents an important element of the Community strategy for reducing CO_2 emissions;

(16) Whereas provision should therefore be made within the multiannual framework programme for actions in the energy sector (1998 to 2002) adopted by Council Decision 1999/21/EC, Euratom [6] for a specific programme for the promotion of renewable energy sources; this specific programme would replace the corresponding instrument currently in force;

(17) Whereas in implementing Decision No 182/1999/EC of the European Parliament and of the Council of 22 December 1998 concerning the fifth framework programme of the European Community for research, technological development and demonstration activities (1998 to 2002) [7], the Council Decision of 25 January 1999 adopting a specific programme for research, technological development and demonstration on energy, environment and sustainable development (1998 to 2002) [8] devotes particular attention to efficient and renewable energy technologies; the Altener programme is an instrument which complements that programme;

(18) Whereas the Altener programme does not alter national projects or systems for the promotion of renewable resources; its objective is to add a Community aspect that represents added value;

(19) Whereas renewable energy sources are an important energy source for the European Union with considerable commercial potential; their development should therefore be supported through a specific strategy and targeted actions to make them both viable and competitive and thus create a favourable environment for investment;

(20) Whereas the increased use of renewable sources of energy will have a positive effect both on the environment and on the security of energy supplies; the free and large-scale development of renewable energy sources will make it possible fully to exploit their economic and employment potential; a high degree of international cooperation is desirable to achieve the best results;

(21) Whereas a strengthened Altener programme represents an essential instrument for developing the potential of renewable energy sources; renewable energy sources should account for a reasonable share of the European internal energy market;

(22) Whereas in order to ensure proper implementation of the Community strategy and action plan up to 2010 for renewable energy sources, the Commission needs appropriate mechanisms for monitoring and assessing the various initiatives;

(23) Whereas the aim of the targeted actions referred to in Article 2(d) of this Decision is to facilitate and accelerate investment in new operational capacity for the production of energy from renewable sources by providing financial support, in particular for small and

[1] OJ L 167, 2.6.1997, p. 160.
[2] OJ C 210, 6.7.1998, p. 215.
[3] OJ L 27, 30.1.1997, p. 20.
[4] OJ L 235, 18.9.1993, p. 41.
[5] OJ L 159, 3.6.1998, p. 53.
[6] OJ L 7, 13.1.1999, p. 16.
[7] OJ L 26, 1.2.1999, p. 1.
[8] OJ L 64, 12.3.1999, p. 58.

medium-sized enterprises (SMEs), in order to reduce the peripheral and service costs of renewable energy projects, and thus overcome the non-technical obstacles present; those actions promote, *inter alia*, access to specialised advice, the analysis of market prospects, the choice of location of projects, application for construction and operation permits, initiatives taken by SMEs on investment in renewable sources of energy, the establishment of financing plans, the preparation of calls for tenders, the training of operators and plant commissioning;

(24) Whereas those targeted actions concern the implementation of projects carried out in the area of biomass, including energy crops, firewood, residues from forestry and agriculture, municipal waste which cannot be recycled, liquid biofuels and biogas, and in the areas of thermal and photovoltaic solar systems, passive and active solar systems in buildings, small scale (less than 10 MW) hydroelectric projects, wave energy, wind power and geothermal energy;

(25) Whereas the development of renewable energy sources can help create a competitive energy system for the whole of Europe and develop a European renewable energy sources industry, with vast opportunities for the export of know-how and for investment in third countries involving Community participation;

(26) Whereas it is politically and economically desirable to open the Altener programme to the associated central and east European countries, in accordance with the conclusions of the Copenhagen European Council of 21 and 22 June 1993 as confirmed by subsequent European Councils and as outlined in the Commission communication on that subject in May 1994, and also to Cyprus;

(27) Whereas in order to ensure that Community aid is used efficiently and duplication of work is avoided the Commission will ensure that projects are subject to thorough prior appraisal; it will systematically monitor and evaluate the progress and results of supported projects;

(28) Whereas this Decision establishes a financial framework which should be the principal point of reference, within the meaning of point 1 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995 [1] for the budgetary authority for the purposes of the annual budgetary procedure; account should be taken of the fact that a new financial perspective will be negotiated during the course of the Altener programme;

(29) Whereas this Decision replaces Decision 98/352/EC which should accordingly be repealed.

[1] OJ C 102, 4.4.1996, p. 4.

HAVE ADOPTED THIS DECISION:

Article 1

1. Within the multiannual framework programme for actions in the energy sector, a specific programme for promotion of renewable energy sources and support for the implementation of a Community strategy and action plan for renewable energy sources to the year 2010 (hereinafter referred to as 'the Altener programme') shall be implemented by the Community for the period 1998 to 2002.

In addition to the priority objectives listed in Article 1(2) of Council Decision 1999/21/EC, Euratom the objectives of the Altener programme shall be:

(a) to help create the necessary conditions for the implementation of a Community action plan for renewable energy sources, and in particular the legal, socioeconomic and administrative conditions;

(b) to encourage private and public investment in the production and use of energy from renewable sources.

These two specific objectives shall contribute to achieving the following overall Community objectives – complementing those of the Member States – and priorities: limitation of CO_2 emissions, increasing the share of renewable energy sources in order to reach the indicative objective of 12% in the gross internal energy consumption in the Community in 2010, reduction in energy import dependence, security of energy supply, promotion of employment, economic development, economic and social cohesion and local and regional development, including the strengthening of the economic potential of remote and peripheral regions.

2. Community financial support shall be granted under the Altener programme for actions and measures meeting the objectives set out in paragraph 1(a) and (b).

3. The financial framework for the implementation of the Altener programme shall be EUR 74 million. Of this amount, EUR 29,6 million shall be for the period 1998 to 1999.

The financial framework for the period 2000 to 2002 shall be EUR 44,4 million. This amount shall be reviewed if it is not consistent with the financial perspective for that period.

The annual appropriations shall be authorised by the budget authority within the limits of the financial perspective.

Article 2

The following actions and measures relating to renewable energy sources shall be financed under the Altener programme:

(a) studies and other actions, intended to implement and complement other measures by the Community and Member States taken to develop the potential of renewable energy sources. These involve in particular the development of sectoral and market strategies, the development of norms and certification, facilitating grouped procurement, analyses, based on projects, comparing the environmental impact and the long-term cost/benefit trends resulting from the use of traditional forms of energy and the use of renewable energy sources, the analysis of the legal, socioeconomic and administrative conditions, including analysis of the possible use of economic measures and/or tax incentives which are more favourable to the market penetration of renewable energies, the preparation of appropriate legislation to promote an environment favourable to investment and better methods which make it possible to evaluate the costs and benefits that are not reflected in the market price;

(b) pilot actions of interest to the Community aimed at creating or extending structures and instruments for the development of renewable energy sources in:

— local and regional planning,

— the tools for planning, design and evaluation,

— new financial products and market instruments;

(c) measures intended to develop information, education and training structures; measures to encourage the exchange of experience and know-how aimed at improving coordination between international, Community, national, regional and local activities; establishment of a centralised system for collecting, prioritising and circulating information and know-how on renewable energy sources;

(d) targeted actions facilitating the market penetration of renewable energy sources and relevant know-how, in order to facilitate the transition from demonstration to marketing, and encouraging investment, by advising on the preparation and presentation of projects and their implementation;

(e) monitoring and evaluation actions intended to:

— monitor the implementation of the Community strategy and action plan for the development of renewable energy sources,

— support initiatives taken in implementing the action plan, particularly with a view to promoting better coordination and greater synergy between actions, including all Community funded activities and those funded by other bodies such as the European Investment Bank,

— monitor the progress achieved by the Community and comment on that achieved by the Member States with regard to the development of renewable energy sources,

— evaluate the impact and cost effectiveness of actions and measures undertaken under the Altener programme. This evaluation shall also take into account the environmental and social aspects, including the effects on employment.

Article 3

1. All costs relating to the actions and measures referred to in Article 2(a), (c) and (e) shall be borne by the Community. Where a body other than the Commission proposes a measure covered by Article 2(c), the Community's financial contribution shall not exceed 50% of the total cost of the measure; the balance may be made up from public or private sources or a combination of the two.

2. The level of funding under the Altener programme for the actions and measures referred to in Article 2(b) shall not exceed 50% of their total cost; the balance may be made up from public or private sources or a combination of the two.

3. The level of funding under the Altener programme for the actions and measures referred to in Article 2(d) shall be established annually for each of the targeted actions in accordance with Article 4(2).

Article 4

1. The Commission shall be responsible for the financial execution and implementation of the Altener programme.

The Commission shall also ensure that actions under the Altener programme are subject to prior appraisal, monitoring and subsequent evaluation which, on completion of the project, shall include assessment of impact, implementation and whether the original objectives have been achieved.

The Commission shall ensure that the selected beneficiaries submit reports to the Commission on at least a six-monthly basis or, in the case of projects lasting less than one year, at the halfway point and in all cases on completion.

The Commission shall keep the committee, referred to in Article 5, informed of the development of projects.

2. The conditions and guidelines to be applied for the support of the actions and measures referred to in Article 2 shall be defined each year taking into account:

(a) the priorities set out by the Community and the Member States in their programmes for the promotion of renewable energy sources;

(b) criteria relating to the cost effectiveness and development potential of renewable energy sources and their impact on employment and the environment, in particular the reduction of CO_2 emissions;

(c) for the actions referred to in Article 2(d), the relative cost of the assistance, the long-term commercial viability, the new production capacity expected to arise and the extent of transregional and/or transnational benefits;

(d) the principles established in Article 87 of the Treaty and the relevant Community guidelines on State aid for environmental protection.

The committee provided for in Article 5 shall assist the Commission in defining these conditions and guidelines.

Article 5

The Commission shall be assisted, for the purposes of implementing the Altener programme, by the committee referred to in Article 4 of Decision 1999/21/EC, Euratom.

Article 6

Examination and internal and external assessment of the implementation of the Altener programme shall be carried out in accordance with the provisions of Article 5 of Decision 1999/21/EC, Euratom.

Article 7

The Altener programme shall be open to participation by associated central and east European countries in accordance with the conditions, including financial provisions, laid down in the additional protocols to the Association Agreements, or in the Association Agreements themselves, relating to participation in Community programmes.

The Altener programme shall also be open to participation by Cyprus on the basis of additional appropriations, under the same rules as those applied to the EFTA/EEA countries, in accordance with procedures to be agreed with that country.

Article 8

This Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Article 9

Decision 98/352/EC shall be repealed.

Article 10

This Decision is addressed to the Member States.

Done at …

For the European Parliament	*For the Council*
The President	*The President*
…	…

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 4 December 1997, the Commission forwarded to the Council a proposal for a Council Decision adopting a multiannual programme for the promotion of renewable energy sources in the Community (1998 to 2002) the Altener programme [1].

2. The European Parliament delivered its opinion on 11 March 1999 [2]. The Economic and Social Committee and the Committee of the Regions have delivered their opinions [3].

3. On 25 May 1999, the Commission forwarded an amended proposal to the Council [4].

4. On 28 June 1999, the Council adopted its Common Position pursuant to Article 251 of the Treaty.

II. AIM OF PROPOSAL AND BACKGROUND

5. This proposal is a part of the energy framework programme, which was adopted by the Council on 14 December 1998 [5]. The objective of the energy framework programme is to create a framework for a more focused and integrated energy policy in the Community. The framework programme consists of a basic decision setting out general principles and six specific programmes of which this proposal, the Altener programme, is one.

This proposal aims to include the already existing programme for promotion of renewables in the energy framework programme.

III. ANALYSIS OF THE COMMON POSITION

A. General remarks

6. On 18 May 1998, the Council decided to prolong and update the already existing Altener programme, which expired at the end of 1997. The new, updated Altener programme [6] was therefore used as a basis during the negotiations on the energy framework programme.

7. The Council considered that the basic decision of the energy framework programme should contain rules and principles which are general in character and thus valid for all the specific programmes. Provisions on general objectives, reports to the European Parliament and the Council, committee procedures for implementation measures have been included in the basic decision; the specific programmes refer to the basic decision on these issues.

8. The Council has decided to include a financial reference amount in all specific programmes of the energy framework programme. In this context, the Council has agreed to give priority to this proposal on renewable energy sources, together with the proposal concerning energy efficiency (see Article 1(3)).

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(1) Not published in the Official Journal.
(2) OJ C 175, 21.6.1999, p. 262.
(3) The Economic and Social Committee: OJ C 214, 10.7.1998, p. 44.
The Committee of the Regions: OJ C 315, 13.10.1998, p. 1.
(4) Not yet published in the Official Journal; see doc. 8853/99 ENER 68 ENV 191 CODEC 308.
(5) OJ L 7, 13.1.1999, p. 16.
(6) OJ L 159, 3.6.1998, p. 53.

B. **Amendments proposed by the European Parliament**

9. The Council has adopted, in full or in part, or in some cases in principle, the following proposed amendments: 1, 2, 4, 5, 7, 8, 9, 11, 14, 17, 18, 19, 20, 21, 23 and 24.

The Council has not included the following proposed amendments in its Common Position: 3, 6, 10, 12, 13, 15, 16, 22, 26 and 30, of which the Commission had rejected proposed amendments 3, 12, 15, 26 and 30. In some cases, the proposed amendments have been covered by provisions included in other decisions of the energy framework programme, which the Council saw no need to repeat in this context.