

**COMMISSION OF THE EUROPEAN COMMUNITIES**

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Brussels, 10 August 1989

**REVISED PROPOSAL**

**FOR A COUNCIL DIRECTIVE**

**ON THE ESTABLISHMENT OF THE INTERNAL MARKET  
FOR TELECOMMUNICATIONS SERVICES  
THROUGH THE IMPLEMENTATION OF  
OPEN NETWORK PROVISION (O N P)**

(presented by the Commission)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission<sup>1</sup>;

In co-operation with the European Parliament<sup>2</sup>;

Having regard to the opinion of the Economic and Social Committee<sup>3</sup>;

1. Whereas Article 8a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of services is ensured, in accordance with the other provisions of the Treaty;
2. Whereas the Commission has submitted a Green Paper on the Development of the Common Market for Telecommunications Services and Equipment (COM(87) 290), dated 30 June 1987, and a Communication on the Implementation of the Green Paper up to 1992 (COM(88) 48), dated 9 February 1988;
3. Whereas the Council has adopted on 30 June 1988 a Resolution on the development of the common market for telecommunications services and equipment up to 1992<sup>4</sup>;

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<sup>1</sup> O.J. C 39 of 16.02.1989, p. 8.

<sup>2</sup> Opinion of 26.05.1989 (not yet published in the Official Journal).

<sup>3</sup> O.J. C 159 of 26.06.1989, p. 37.

<sup>4</sup> O.J. C 257 of 04.10.1988, p. 1.

4. Whereas, given the obstacles resulting from diverging laws, regulations, or administrative actions in the Member States, the full establishment of a Community-wide market in telecommunications services can only be achieved by the rapid introduction of harmonized principles and conditions for Open Network Provision, in order to avoid a series of contentious cases and lengthy conflict, in particular for transfrontier provision of services;
5. Whereas, since situations differ and technical and administrative constraints exist in the Member States, progress towards this objective should be made in stages;
6. Whereas the conditions of Open Network Provision must be consistent with certain principles and should not restrict access to networks and services except for reasons of general public interest, hereinafter referred to as 'essential requirements';
7. Whereas the definition and interpretation of such principles and essential requirements must take full account of the fact that any restrictions of the right to provide services within and between Member States must be objectively justified, must follow the principle of proportionality and must not be excessive in relation to the aim pursued;
8. *Whereas the conditions of Open Network Provision must not allow for any additional restrictions on the use of the public telecommunications network and/or public telecommunications services except those which may be derived from the exercise of exclusive or special rights granted by Member States, and are compatible with Community law;*
9. *Whereas the creation of an open common market in telecommunications services and equipment is compatible with continued exclusive or special rights of telecommunications organizations as regards the supply and the operation of the network infrastructure and the provision of a limited number of basic services where such exclusive provision is deemed essential, at this stage, for safeguarding the public service role;*

10. *Whereas this applies in particular to the provision of voice telephony;*
11. *Whereas special consideration will also need to be given to the provision of the telex service, the packet- and circuit-switched data services and in particular the simple resale of capacity for the transmission of data;*
12. *Whereas the simple resale of capacity consists of the commercial provision on leased lines for the general public of data transmission as a separate service, including only such switching, processing, storing of data, or protocol conversion, as is necessary for transmission in real-time, to and from the public switched network;*
13. *Whereas the arguments in favour of continued exclusive or special rights, where they exist, must be weighed carefully against the obligations of the telecommunications organizations which will be retained but also against the restrictions which this may impose on those connected to the network concerning present and future application for their own use, shared use or provision to third parties;*
14. **Whereas the working out in detail of harmonized conditions of Open Network Provision must be a progressive process and should be prepared in consultation with the Member States, the Telecommunications organizations and the other parties concerned, and in particular with the assistance of an advisory committee, which consults the representatives of the telecommunications organizations, the users, the consumers, the manufacturers and the service providers;**
15. **Whereas the definition of harmonized conditions for Open Network Provision must be a process open to all parties concerned and therefore sufficient time should be given for public comment;**

16. Whereas the Community-wide definition of harmonized technical interfaces and access conditions must be based on the definition of common technical specifications based on international standards and specifications;
17. Whereas work in this area must take full account, inter alia, of the framework provided by Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>5</sup>, as amended by Directive 88/182/EEC<sup>6</sup>, Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment<sup>7</sup> and other relevant Community legislation and Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications<sup>8</sup>;
18. Whereas the formal adoption of the statutes of the European Telecommunications Standards Institute (ETSI) on 12 February 1988, and of the associated internal rules, has created a new mechanism for producing European telecommunications standards;
19. *Whereas the Council in its Resolution of 27 April 1989<sup>9</sup> has supported the work of ETSI and invited the Commission to contribute to the coherent development of ETSI and lend it its support, in particular in the programme of work related to the Community's telecommunications policy;*
20. Whereas the general guide-lines agreed with the Joint European Standards Institution CEN/CENELEC henceforth make it possible to entrust specialized technical harmonization work to this body;

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<sup>5</sup> O.J. L 109 of 26.04.1983, p. 8.

<sup>6</sup> O.J. L 81 of 26.03.1988, p. 75.

<sup>7</sup> O.J. L 217 of 05.08.1986, p. 21.

<sup>8</sup> O.J. L 36 of 07.02.1987, p. 31.

<sup>9</sup> O.J. C 117 of 11.05.1989, p. 1.

21. Whereas the Community-wide definition and implementation of clear harmonized network termination points establishing the physical interface between the network infrastructure and users' and other service providers' equipment will be an essential element of the overall concept of Open Network Provision;
22. Whereas Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets of telecommunications terminal equipment<sup>10</sup> requires Member States to ensure that users who so request shall be given access to network termination points within a reasonable time period;
23. Whereas the principal aim of the establishment of an internal market in telecommunications services must be the freedom to provide services in the whole of the Community once authorized or legally provided in a Member State;
24. Whereas this will require the mutual recognition of licensing procedures for services provision where such authorization may be required;
25. Whereas such mutual recognition of licensing procedures required must depend on progress on the harmonization of the conditions for service provision, by the progressive implementation of Open Network Provision;
26. Whereas in its Resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 the Council considered the taking fully into account of the external aspects of Community measures on telecommunications to be a major policy goal;
27. Whereas in accordance with the Council Decision of 28 November 1988, the Member States have accompanied their signature of the Final Acts of the World Administrative Telegraph and Telephone Conference (WATTC-88) by a joint declaration stating that they will apply the International Telecommunications Regulations in accordance with their obligations under the EEC Treaty;

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<sup>10</sup> O.J. L 131 of 27.05.1988, p. 73.

28. Whereas the Community attaches major importance to the continued growth of cross-border telecommunications services, to the contribution of telecommunications services provided by companies, firms or natural persons established in a Member State of the Community to the growth of the Community market, and to the increased participation of Community service providers in third country markets; whereas it will therefore be necessary, as detailed Directives are elaborated, to ensure that these objectives are taken into account with a view to reaching a situation where the realization of the more open Community market for telecommunications services will, where appropriate, be accompanied by reciprocal market opening elsewhere;

Whereas this can be achieved *preferably through* multilateral negotiations in the *framework of GATT*, or through bilateral negotiations *between the Community and third countries*;

29. Whereas this Directive should not address the problems of mass media, meaning broadcasting and distribution of television programmes via telecommunications means, in particular cable television networks, which need special consideration;

30. Whereas this Directive should not address communication via satellite for which, according to the Council Resolution of 30 June 1988, a common position should be worked out;

31. Whereas *the Council, on the basis of a report which the Commission shall submit to the Council and the European Parliament, and in accordance with Article 100b of the Treaty, shall review, during 1992, any remaining conditions for access to telecommunications services which have not been harmonized, the effects of these conditions on the workings of the internal market for telecommunications services, and the extent to which this market needs to be further opened up*;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive provides for the harmonization of conditions for open *and efficient* access to and use of public telecommunications networks and, *where applicable*, public telecommunications services, *as defined in Article 2*.
2. These conditions *are designed to facilitate* the provision of services *using public telecommunications networks and/or public telecommunications services*, within and between Member States. *This includes* in particular the provision of services by companies, firms or natural persons established in a Member State of the Community other than that of the company, firm or natural person for whom the services are intended.



## Article 2

For the purposes of this Directive:

1. *'Telecommunications Organizations' means public or private bodies, to which a Member State grants special or exclusive rights for the provision of a public telecommunications network and, when applicable, public telecommunications services.*

The bodies listed in Annex 1 fulfil these criteria. *The Commission, after having consulted the Committee referred to in Article 9, shall amend Annex 1 in order*

- *to delete entities to which Annex 1 refers and which do no longer fulfill the criteria mentioned above, or*
  - *to include entities which will have been granted special or exclusive rights and meet those criteria.*
2. *'Special or exclusive rights' means the rights granted by a Member State or a public authority to one or more public or private bodies through any legal or regulatory instrument reserving them the right to provide a service or undertake an activity.*
  3. *'Public telecommunications network' means the public telecommunications infrastructure which enables signals to be transmitted between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means.*
  4. *'Public telecommunications services' means services offered by telecommunications organizations and whose provision consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio-broadcasting and television.*

5. 'Network termination point' means *all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to and efficient communication through that public network.*
6. 'Essential requirements' means *the non-economic reasons in the general interest which may cause a Member State to regulate the supply of telecommunications services. These reasons are security of network operations, maintenance of network integrity, and, in justified cases, interoperability of services and data protection.*
7. 'Voice telephony' means *the commercial provision for the general public of the direct transport and switching of real-time speech to and from public switched network termination points, whereby any user can use equipment connected to such a network termination point to communicate with another termination point.*
8. 'Packet- and circuit-switched data services' means *the commercial provision for the general public of direct transport of data to and from public switched network termination points, whereby any user can use equipment connected to such a network termination point to communicate with another termination point.*
9. 'Telex service' means *the commercial provision for the general public of direct transport of telex messages in accordance with the relevant CCITT recommendation to and from public switched network termination points, whereby any user can use equipment connected to such a network termination point to communicate with another termination point.*

10. 'Open Network Provision conditions' means the conditions harmonized according to the provisions set forth in this Directive which *concern the efficient* access to and use of public *telecommunications* networks and, *where applicable*, public telecommunications services (hereinafter referred to as 'ONP conditions').

ONP conditions can include in particular harmonized conditions with regard to:

- technical interfaces, including the definition and implementation of network termination points, where required;
- usage conditions, including access to frequencies where required;
- tariff principles.

ONP conditions will apply to *efficient* access to or use of those public telecommunications networks and public telecommunications services for which the telecommunications organizations defined under 1. are in law or in fact the sole or main providers either singly or jointly.

*The areas to which ONP conditions shall apply, will be defined according to Article 4.*

11. 'Technical specifications', 'standards' and 'terminal equipment' are given the same meaning as in Article 2 of Directive 86/361/EEC.

### Article 3

1. ONP conditions must comply with a number of basic principles. These principles are that:

- conditions must be based on objective criteria;
- conditions must be transparent, and published in an appropriate manner;
- conditions must guarantee equality of access, and must be non-discriminatory, in accordance with Community law.

2. ONP conditions must *not restrict access to public telecommunications networks or public telecommunications services except for reasons based on essential requirements, within the framework of Community law.* These requirements are:

- security of network operations;
- maintenance of network integrity;
- interoperability of services, in justified cases;
- protection of data, in justified cases.

*In addition, the conditions in general applicable to the connection of terminal equipment to the network shall apply.*

3. ONP conditions must not allow for any additional restrictions on the use of the public *telecommunications* network and/or public *telecommunications* services except those which may be derived from the exercise of exclusive or special rights granted by Member States, and are compatible with Community law.
4. The Council, acting on a proposal from the Commission, *pursuant to Article 100a of the Treaty*, shall supplement as necessary the lists drawn up under *paragraphs 1. and 2.*
5. *The details of the application of essential requirements, in particular concerning the interoperability of services and the protection of data, shall be determined, where appropriate, by the Commission, after having consulted the Advisory Committee referred to in Article 9. Protection of data may comprise the protection of personal data, the confidentiality of voice and data transmitted and/or stored as well as the protection of privacy.*

#### Article 4

1. ONP conditions shall be defined in stages, in accordance with the procedure set out hereafter.
2. ONP conditions shall concern the areas *selected according to Annex 2*.

The Council, acting on a proposal from the Commission, *pursuant to Article 100a of the Treaty*, shall supplement as necessary *Annex 2*.

3. The Commission shall draw up each year, after consulting the Committee referred to in Article 9, a list of priority areas.
4. For the priority areas chosen, the Commission shall:
  - (1) carry out detailed analysis, in consultation with the Committee referred to in Article 9, according to defined time schedules, and establish reports on the results of this analysis;
  - (2) request, *where appropriate*, on the basis of the reports on this analysis, taking into consideration the comments received during the public comment period according to Article 5.1, and with due regard to the general programme of standardization in the information technology sector, the European Telecommunications Standards Institute (ETSI) to draw up European standards, taking account, as appropriate, of international standardization as a basis for harmonized technical interfaces and/or service features where required, within specified time limits; in so doing, it shall co-ordinate, in particular, with the Joint European Standards Institution CEN/CENELEC;
  - (3) draw up ONP conditions in accordance *with Article 3 and* with the elements listed in the ONP reference framework in *Annex 3*.

## Article 5

1. The Commission shall invite, by publication in the Official Journal of the European Communities, public comment by all parties concerned on the reports established according to Article 4.4(1). The period for public comment will be no less than three months from the date of publication.
2. Reference to European standards drawn up as a basis for harmonized technical interfaces and/or service features for ONP according to Article 4.4(2) *and accepted by the Commission*, shall be published in the Official Journal of the European Communities. *Member States shall consider those standards as suitable for Open Network Provision conditions and shall presume that a service provider who complies with those standards fulfills the relevant essential requirements.*

## Article 6

Following the completion of the procedures set forth in Articles 4 and 5, and acting on the proposal from the Commission, *pursuant to Article 100a of the Treaty*, the Council shall adopt detailed Directives for the establishment of ONP conditions for each area which shall include:

- a time schedule for the implementation of harmonized technical interfaces and/or service features where required, including the implementation of harmonized network termination points, as appropriate, *taking account of market demand*;
- details of harmonized usage conditions;
- details of harmonized tariff principles;

and any other aspects of relevance.



Article 7

1. Depending on the progress of harmonization of conditions through the establishment of ONP according to the procedures set out under Articles 4, 5 and 6, the Council acting on a proposal from the Commission, *pursuant to Article 100a of the Treaty*, shall adopt measures specifying the conditions under which the mutual recognition of declaration and/or licensing procedures for the provision of services via public *telecommunications* networks shall be ensured where such declaration or licence is required by Member States.

The measures shall eliminate any requirement for additional declaration or licensing in other Member States, once a service is legally produced in a Member State.

2. Towards this end, the Council acting on a proposal by the Commission, *pursuant to Article 100a of the Treaty*, shall adopt measures for harmonizing declaration and/or licensing procedures, where required.
3. In accordance with Article 8c of the Treaty, these proposals may take into account, to the extent required up to the end of 1992, the effort that certain economies showing differences in development of these services, will have to sustain during the establishment of the harmonized conditions and declaration and/or licensing schemes referred to under *paragraphs 1. and 2.*

Article 8

During 1992, the Council, on the basis of a report *which the Commission shall submit to the Council and the European Parliament, shall review any remaining conditions for access to telecommunications services which have not been harmonized, the effects of these conditions on the workings of the internal market for telecommunications services, and the extent to which this market needs to be further opened up, in conformity with Community law, taking account of technological development and in accordance with the procedure provided for under Article 100b of the Treaty.*

Article 9

1. The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission, *which consults the representatives of the telecommunications organizations, the users, the consumers, the manufacturers and the service providers.*
2. 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.
3. 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.
4. 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.

#### Article 10

1. Member States shall bring into force the laws, regulations and administrative provisions necessary in order to comply with this Directive by *31 December 1990* at the latest. They shall forthwith inform the Commission thereof.

*The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.*

2. Member States shall ensure that the texts of the provisions of national law which they adopt in the field governed by this Directive are communicated to the Commission.

#### Article 11

**This Directive is addressed to the Member States.**

## ANNEX 1

## BODIES FULFILLING THE CRITERIA OF ARTICLE 2.1

**Belgium**

Régie des Télégraphes et des Téléphones /

Regie van Telegrafie en Telefonie (*RTT*)

**Denmark**

Kobenhavns Telefon Aktieselskab

Jydsk Telefon

Fyns Kommunale Telefonselskab

Post-og Telegrafvaesnet

Statens Teletjeneste

**Federal Republic of Germany**

Deutsche Bundespost - *TELEKOM*

**France**

Direction Générale des Télécommunications (France Télécom)

Transpac

**Greece**

Hellenic Telecommunications Organization, *S.A. (OTE)*

**Ireland**

Telecom Eireann

**Italy**

Amministrazione delle Poste e delle Telecomunicazioni

Azienda di Stato per i Servizi Telefonici

Società Italiana per l'Esercizio Telefonico SpA

Italcable

Telespazio SpA

**Luxembourg**

Administration des Postes et des Télécommunications

**The Netherlands**

*PTT Telecommunicatie B.V.*

**Portugal**

Correios e Telecomunicacoes de Portugal

Telefones de Lisboa e Porto

Companhia Portuguesa Radio Marconi

**Spain**

*Telefónica S.A.*

**United Kingdom**

British Telecommunications plc (*BT*)

Mercury Communications Ltd

City of Kingston-upon-Hull

## ANNEX 2

**AREAS FOR WHICH OPEN NETWORK CONDITIONS  
MAY BE DRAWN UP IN ACCORDANCE WITH ARTICLE 4.2**

*ONP conditions shall concern areas vital for the efficient access to and use of public telecommunications networks and/or public telecommunications services for which exclusive or special rights exist - or may exist - in accordance with Community law and/or for which the exclusive or special rights for the public network infrastructure are a major factor for optimal provision of such services to the general public.*

*Subject to the above criteria, areas shall be selected from the following list:*

1. leased lines;
2. packet- and circuit-switched data services;
3. ISDN (Integrated Services Digital Network);
4. voice telephony service;
5. new types of access to the local network infrastructure, such as access, under certain conditions, to the circuits connecting subscriber premises to the public network exchange, without disruption to the basic service for which this connection may be provided (e.g. telephony, telex);
6. telex service;
7. mobile services, as applicable;
8. broadband network resources, according to progress on definition and technological development.

ANNEX 3  
(former Annex 4)

**REFERENCE FRAMEWORK FOR THE ELABORATION OF  
ONP CONDITIONS IN ACCORDANCE WITH ARTICLE 4.4(3)**

The elaboration of ONP conditions should proceed according to the following reference framework:

1. Definition of harmonized technical interfaces and service features

For ONP conditions the following scheme should be taken into account for the definition of technical interfaces at appropriate *network* termination points:

- For existing services, existing interfaces should be adopted. Enhancement of such interfaces may be considered for additional capabilities;
- For entirely new services existing interfaces should also be adopted, as far as applicable. When existing interfaces are not suitable, enhancements, or new interfaces, will have to be specified;
- For services and networks that are yet to be introduced, but for which the standardization programme has already commenced, ONP requirements should be taken into account when specifying new interfaces.

ONP requirements must be, wherever possible, in line with the on-going work on CCITT and CEPT recommendations.



Work in this area shall take full account of the framework given by Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, Council Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment<sup>11</sup> and Council Decision 87/95/EEC on standardization in the field of information technology and telecommunications.

Work shall include the full definition of network termination points where required and not covered under appropriate procedures elsewhere.

ONP offerings shall in general present increased versatility compared with existing offerings. Correspondingly, additional features should be identified where required.

Under ONP such additional features may be classified as:

- inclusive if they are provided in association with a specific interface and included in the standard offering;
- optional if they can be requested as an option with regard to a specific ONP offering, subject to an additional tariff.

Work shall include the elaboration of proposals for time schedules for introduction of interfaces and service features, taking account of the environment of telecommunications networks and services in the Community.

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<sup>11</sup> And any subsequent relevant Community legislation.

2. Definition of harmonized usage conditions

Usage conditions shall identify conditions of access and of supply, as far as required.

They may include in particular the following attributes as applicable:

- maximum provision time (delivery period);
- minimum contractual period;
- quality of service, including, as applicable:
  - . availability
  - . mean time to repair
  - . transmission quality
- maintenance and fault reporting, including, as applicable:
  - . access to network maintenance facilities
  - . access to network diagnostic facilities
  - . access to network fault reporting facilities
- conditions for resale of capacity;
- conditions for shared use;
- conditions for third party use;
- conditions for interconnection with public and private networks;

Usage conditions may include conditions regarding access to frequencies, as applicable, and measures concerning protection of personal data and confidentiality of transactions, where required.

### 3. Definition of harmonized tariff principles

Fair and open access of users and competitive service providers to network resources and services requires a clear definition of tariff principles. Tariff principles must be guided by the general principles applying to ONP:

- tariffs must be based on objective criteria and must not impose directly or indirectly unfair purchases or selling prices. They must be, in particular, cost-oriented;
- tariffs must be transparent and must be properly published. With regard to service elements, tariffs must be sufficiently unbundled, in order to avoid obligations and charges for users, which have no connection with the subject of the uses sought. In particular, specific network or service features should be charged independently of the charge for transmission via the network (bearer capability).
- tariffs must be non-discriminatory and guarantee equality of treatment.

Specific charges for access to network resources or services must be justified on the basis of objective criteria, based on, inter alia, fair sharing in the global cost of the resources used.

*There may be different tariffs to take account of excess traffic during peak periods and lack of traffic during off-periods, provided that the tariff differentials are commercially justifiable and do not conflict with the above principles.*

4. Common principles

The definition of harmonized usage conditions and tariff principles under 2. and 3. will take due account of the applicable competition rules of the Treaty.

*ONP conditions shall be drawn up in such a way as not to limit the service providers' freedom of action nor the telecommunications organizations' responsibility for the functioning of the network and the perfect condition of communications channels.*

*Member States shall create, in accordance with Community law, the conditions enabling the telecommunications organizations to satisfy the new conditions deriving from ONP.*

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