



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION

**TO THE COUNCIL, THE EUROPEAN PARLIAMENT,
THE ECONOMIC AND SOCIAL COMMITTEE
AND THE COMMITTEE OF THE REGIONS**

on the implementation of the telecommunications regulatory package

**Communication from the Commission to the Council, the European Parliament, the
Economic and Social Committee and the Committee of the Regions on the
implementation of the telecommunications regulatory package**

1. Background

The Community telecommunications regulatory framework, which has as its objective the creation of a **liberalised and harmonised European market** on the basis of Articles 90 and 100a of the Treaty, is now nearing completion. A relatively small number of directives, already in a more or less finalised state, remains to be adopted formally. The date for full liberalisation, set for 1 January 1998, is little more than six months away, and indeed many of the intermediate deadlines laid down in the framework are approaching or have passed.

In its Resolution of 21 November 1996¹, the Council recognised that the “liberalisation of telecommunications markets, within the agreed timetable, will stimulate (the) private and public investment necessary for the development of the information society in Europe”. This would in turn “support the promotion of high level employment and the raising of living standards and quality of life in the Community”.

In this context, the Council stressed that

- **“rapid adoption and effective implementation** of the regulatory framework ... is **crucial for ensuring the development of competition for the benefit of all users”**,

and urged the Member States to

- **“ensure the consistent and effective transposition of the ... package within the agreed time scales”**.

The importance of the 1 January 1998 deadline was reinforced by the conclusion of the **agreement in the World Trade Organisation on basic telecommunications services** on 15 February 1997. Under the agreement, GATS general obligations will apply to the supply of all public and private telecommunications services. The Community’s commitment to open its telecoms market in most EC Member States by 1 January 1998 will therefore be subject to WTO dispute settlement rules and procedures, including telecoms-specific disciplines.

This Communication reviews briefly the current status of the legislation involved and the progress made to date in implementing it, assesses some of the problems remaining to be surmounted, and, finally, indicates how the Commission intends to continue its efforts to ensure full implementation by 1 January 1998.

This Communication deals exclusively with the state of implementation of EC legislation on telecommunications liberalisation and regulatory disciplines by the EC Member States. It

¹ Council Resolution of 21 November 1996 on new policy priorities regarding the information society, OJ No C 376, 12.12.1996, p. 1

does not deal with the implementation of the commitments made by the EC and its Member States in the framework of WTO.

2. The regulatory package

The Community regulatory framework has evolved out of three basic principles, first set out in the 1987 Green Paper on the development of a common market for telecommunications services and equipment. These are:

(a) Liberalisation of areas under monopoly

The supply of terminal equipment was liberalised in 1988, followed by the supply of value-added services, data communications and voice and data services for corporate networks and closed user groups in 1990 (“Services Directive”²). The process was completed by the adoption of four directives³ amending the latter measure, liberalising

- the provision of satellite services and equipment (“Satellite Directive”);
- the use of cable TV networks for the provision of liberalised services (“Cable Directive”);
- the provision of mobile communications services and infrastructure (“Mobile Directive”);
- the provision of voice telephony and infrastructure (“Full Competition Directive”).

The latter directive leaves open the possibility of additional implementation periods for full liberalisation of up to five years for Member States with less-developed networks or up to two years for those with small networks, provided they are needed to achieve the necessary structural adjustments.

(b) Harmonisation of the European market

The harmonisation legislation lays down a body of rules for the creation of a European market based on common principles for access to public telecommunications networks and services (“open network provision” - “ONP”), a common regulatory environment and harmonised standards for services and technologies.

² Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, OJ No 192, 24.7.1990, p. 10.

³ Commission Directive 94/46/EC of 13 October 1994 with regard to satellite communications, OJ No L 268, 19.10.1994, p. 15; Commission Directive 95/51/EC of 18 October 1995 with regard to the abolition of restrictions on the use of cable television networks for the provision of already liberalised telecommunications services, OJ No L 256, 26.10.1995, p. 49; Commission Directive 96/2/EC of 16 January 1996 with regard to mobile and personal communications, OJ No 20, 26.1.1996, p. 59; Commission Directive 96/19/EC of 13 March 1996 with regard to the implementation of full competition in telecommunications markets, OJ No L 74, 22.3.1996, p. 13.

A framework for access, laying down rules for technical interfaces, tariffing principles and usage conditions, was adopted in 1990 (“ONP Framework Directive”). In 1992, a Council Directive was adopted concerning the harmonised provision of leased lines. The 1995 Voice Telephony Directive extends the rules on access and use, in particular to the fixed public telephone network and the voice telephony service, and thereby defines the basic elements of a universal service. Proposals have been tabled to amend, first, the Framework Directive to include in particular a requirement concerning the independence of national regulatory authorities, and second, the Leased Lines and Voice Telephony Directives to adjust them to a liberalised environment. The adaptation of the Leased Lines and Framework Directives is expected to be agreed in mid 1997; a Common Position on the adaptation of the Voice Telephony Directive was agreed by the Council in March 1997.

The final text has been agreed of an Interconnection Directive, which lays down rules governing access for new entrants to existing telecommunications networks for the provision of public telecommunications services, on the basis of ONP principles. A Licensing Directive adopted on 10 April 1997 provides for a Community licensing framework based on a ‘light’ regulatory approach designed to encourage the entry of service providers and operators. A decision concerning a licensing system for satellite-based Personal Communications Systems using harmonised licensing conditions has also been adopted. A conciliation will shortly be initiated on a directive on data protection and privacy, laying down principles, on the basis of common rules and agreed standards, governing the confidentiality of communications over public networks or involving the use of publicly available services.

Three directives were adopted between 1987 and 1991 on the reservation of frequency band for the provision of GSM and DECT (Digital Cordless Telephone) services and of channels for ERMES (European Radio Messaging System) services.

As regards terminal equipment, a directive was adopted in 1991 on the mutual recognition of conformity with Community essential requirements, and amended in 1993. These rules were also extended to satellite earth station equipment in 1993. A replacement directive based on self-declaration of conformity with non-mandatory standards will be proposed before the end of the second quarter of this year.

(c) Application of competition rules

In 1991 the Commission published guidelines on the full application of EC competition rules (Articles 85, 86, and the Merger Regulation) to the emerging liberalised Community telecommunications market. In addition the Commission issued in 1996 a notice on the application of the competition rules to access to telecommunications networks.

Despite the fact that the liberalisation and harmonisation directives are based on different Treaty provisions, Articles 90 and 100a respectively, it should be clear that market opening and Community regulatory reform are two aspects of the same process. It is therefore inevitable that there will be a very tight interlinkage between the directives adopted under each of these legal bases.

Annex I gives an overview of the competition and harmonisation legislation, including the main elements remaining to be adopted, and sets out the principal provisions of each, including key indicators, with deadlines for implementation.

3. The Commission's approach

The adoption and implementation of the telecommunications regulatory package have presented, and continue to present, considerable challenges. The Commission has, therefore, taken great care to employ an approach which is flexible but which maintains as its sole objective the effective implementation of a body of uniform liberalisation and harmonisation rules throughout the Union. It has, in consequence, and subject to the constraints on the resources available, attempted a 'twin-track' approach to ensuring compliance using

- informal channels to support the Member States' efforts to implement, involving bilateral meetings (see below), bilateral contacts in committees (ACTE, ONP) and national capitals, and a series of workshops/conferences,

backed up if necessary by rapid recourse to

- the formal procedures laid down in the Treaty (Article 169 - infringement proceedings, and Article 171 - enforcement of Court of Justice judgements).

This approach has been endorsed inter alia by the High Level Group of national regulators meeting on 25 October 1996.

As far as **informal measures** are concerned, the Commission's services have in particular carried out a programme of bilateral meetings with the authorities in each of the Member States responsible for the transposition of the legislation into national law. In some cases the National Regulatory Authority or ministerial department constituting the embryo regulator has been involved. The object of these meetings was, first, to **assist Member States in the implementation process**; second, to carry out an **assessment of the state of implementation** of the regulatory package; and third, to **examine the prospects for full implementation by 1 January 1998**.

4. State of implementation

In arriving at an assessment of the state of implementation, the Commission has taken into account a number of factors:

(i) Member States with less-developed networks or very small networks have requested additional implementation periods for certain of the deadlines laid down in the Mobile and Full Competition Directives. The Commission has decided to grant additional implementation periods to Ireland, Luxembourg and Portugal. Decisions regarding Greece and Spain are pending. These derogations relate only to certain provisions of the competition directives, however, and are without prejudice to the obligation on the part of the Member States concerned to implement on time all other provisions of the regulatory package.

(ii) The first priority for the Commission is to ensure the full and correct transposition of the legislation into national law. Given that a number of the deadlines for transposition and notification to the Commission under the package have not yet passed, the process of monitoring this process will continue at least until the deadlines for implementation laid down

in the directives, which in most cases is the end of 1997, and beyond for those Member States granted additional implementation periods.

(iii) Full and effective implementation requires, moreover, an effort on the part of the Member States to ensure that the measures transposed into law are correctly applied. Monitoring of full implementation calls for a corresponding judgement on the part of the Commission as to whether the measures concerned have had the desired effect on the operation of the market. For example, the Interconnection Directive will require cost-orientated interconnection rates, which can be regarded as a key element on the opening up of the market. The Full Competition Directive, in accordance with the logic of the liberalisation process, requires that tariff rebalancing be carried out by 1 January 1998 to remove the distortions previously set up by the cross-subsidisation of certain areas of activity by others. Pending the adoption of the whole package, the Commission has begun testing the state of the market against these and other key indicators. **Work on this aspect will naturally increase in importance as 1 January 1998 approaches, and beyond.**

(iv) The Commission has identified a series of regulatory issues such as carrier pre-selection, and carrier selection (see in particular the Communication on Numbering⁴), unbundled access to the local loop and number portability. National measures addressing these and similar matters are evidence of the carrying forward of the liberalisation and harmonisation processes in advance of any Community initiatives.

The Commission is currently assessing, in the light of these factors, the legislation and draft legislation communicated to it by the Member States; further verification will be necessary. On this basis, the Commission's assessment of the current state of implementation of the framework and the prospects for 1 January 1998 is as follows. A breakdown of the Commission's view of Member States' performance as measured against the transposition of certain key indicators is given at Annex II. A country-by-country analysis is given in Annex III.

As far as the objectives of the directives are concerned, the Commission's view is that there is a full commitment on the part of all of the Member States to give effect to the principles laid down in the package, and indeed, a considerable degree of progress appears to have been made throughout the Community in translating that commitment into legislative action.

As far as the transposition of the package into national law is concerned, the Member States can in the Commission's view be divided into the following broad categories:

- those (Denmark, Finland, Sweden, UK) which have introduced a wide measure of liberalisation and harmonisation. Apart from minor points remaining to be clarified and in certain cases the need for formal transposition of particular aspects of the directives remaining to be adopted, these countries can be regarded as having transposed virtually the entire package and, in all four cases, to have taken account of some of the additional regulatory issues referred to above;

⁴ COM 97/203.

- those (France, Germany, The Netherlands) where wide-ranging measures have recently been, or are in the process of being, adopted, and where transposition of the package can be expected by end 1997. In addition, Germany and France have taken account in their legislation of certain of the additional regulatory issues;

- those (Austria, Ireland, Italy, Luxembourg) where, subject to the derogations referred to above for Luxembourg and Ireland, significant steps to transpose have been taken. In the case of these countries, the main principles of the package will have been transposed, but the national legislative timetable is tight, and considerable efforts will be required by these Member States to enable the adoption of all the secondary legislation necessary to ensure complete transposition by end 1997;

- those where transposition is less advanced for other reasons (Belgium, Greece, Portugal and Spain).

To be taken into account are those where full liberalisation is likely to be deferred as a result of circumstances of the kind for which additional implementation periods pursuant to Directives 96/2/EC and 96/19/EC have been requested (Greece, Ireland, Luxembourg, Portugal and Spain having submitted their request, the Commission has so far granted derogations to Ireland, Luxembourg and Portugal).

This assessment together with that in the annexes is of necessity a synthesis of widely diverging factors and conditions in the Member States and of starting points in the liberalisation process.

5. Future action

During the period leading up to 1 January 1998, the Commission will continue its efforts to ensure full implementation of the regulatory package, on the basis of the twin-track approach outlined above, with **expedited recourse to infringement proceedings in the event of failure to implement in correct and timely fashion:**

- **Effective application of national transposition measures**

As the transposition process is completed, the Commission will turn its attention to providing an “operational” assessment of whether the national rules in place are being applied effectively. In order to do so, it will

- monitor the **effectiveness of transposition on the basis of the key indicators identified in Annex II;**
- monitor the extent to **which new operators and services are appearing on the market;**
- invite market players to keep it informed of areas where the rules are not being applied correctly. Any **substantiated complaints will naturally be followed up as appropriate in the context of the infringement procedure;**

- monitor the adoption of **advanced regulation** supplementary to that contained in the package.

- **Transparency**

The Commission will continue to provide the European Parliament and Council with assessments of the ongoing implementation process, and will forward these to the Economic and Social Committee. It also proposes to provide information on its web site, to keep a wider public informed of progress..

- **Assessment of national licensing schemes**

Under the Full Competition Directive the Member States must notify by 1 January 1997 their draft licensing schemes. The Commission is required to take a formal position on these schemes before 1 July 1997.

- **High Level Meeting of National Regulators and other committees**

The High Level Meeting, the ONP and ACTE Committees and, once set up, the Licensing Committee, are also appropriate fora for fostering exchanges of information.

- **Bilaterals**

Further such meetings will be held at the initiative of the Commission or Member States.

- **Internal Commission measures**

The Commission has taken a number of internal organisational measures to ensure an integrated approach, in particular the setting up of a joint team involving the relevant services. These measures will if necessary be strengthened in the period leading up to 1 January 1998.

Annex I

This annex lists the main provisions of the regulatory package, with the deadlines set in the Directives for the communication of the national measures adopted, and highlights certain key indicators of progress in implementation, the status of which is analysed in Annex II.

**TELECOMMUNICATIONS REGULATORY FRAMEWORK
MAIN PROVISIONS**

ADOPTED MEASURES

LIBERALISATION

<i>Directive</i>	<i>Date of Adoption</i>	<i>Main provisions</i>	<i>Deadlines for communication of measures adopted</i>
Services 90/388/EC	28.06.1990	<p>Liberalised provision of value added services and of data and voice services to corporate network and closed groups of users</p> <p>Liberalised provision of data communications</p> <p>Separation between regulatory and operational activities</p>	<p>31 December 1990</p> <p>31 December 1992</p> <p>1 July 1991</p>
Satellites 94/46/EC	13.10.1994	Liberalisation of satellite services and terminals	August 1995
Cable TV 95/51/EC	18.10.1995	Liberalisation of the use of Cable TV for the provision of liberalised services	1 November 1996
Mobile communications 96/2/EC	16.01.1996	<p>Liberalisation of mobile communications</p> <p>All restrictions on direct interconnection with PSTN abroad and between mobile networks to be lifted</p> <p>Mobile operators to be allowed to build their own fixed infrastructure and to use that of third parties</p>	<p>15 November 1996</p> <p>15 November 1996</p> <p>15 November 1996 (operators allowed since 15.02.1996)</p>
Full competition 96/19/EC	13.03.1996	<p>Full liberalisation of voice telephony and infrastructure</p> <p>Alternative infrastructure can be used for the provision of liberalised services</p> <p>Member States to communicate draft licensing or declaration procedures regarding voice telephony and the provision of public telecommunications networks</p> <p>Member States to decide that a national scheme is necessary to share the net cost of providing Universal Service</p> <p>Member States to publish licensing or declaration procedures for voice telephony and public telecommunications networks</p> <p>Member States to ensure availability of adequate numbers for telecommunications services</p> <p>Telecommunications organisations (TOs) to publish standard terms and conditions for interconnection</p> <p>Member States to ensure that tariff rebalancing is completed</p>	<p>1 January 1998</p> <p>1 July 1996</p> <p>1 January 1997</p> <p>1 January 1997</p> <p>1 July 1997</p> <p>1 July 1997</p> <p>1 July 1997</p> <p>1 July 1997</p> <p>1 January 1998</p>

HARMONISATION

<i>Directive</i>	<i>Date of Adoption</i>	<i>Main provisions</i>	<i>Deadlines for communication of measures adopted</i>
ONP Framework 90/387/EEC	28.06.1990	Harmonised conditions of access to public networks and services not yet opened to competition (harmonisation concerning technical interfaces, tariffing principles, usage conditions)	31 December 1990
ONP leased lines 92/44/EEC	5.06.1992	<p>Provision of minimum set of leased lines</p> <p>Member States to make available information on leased lines</p> <p>Member States to ensure that offerings continue for a reasonable period of time</p> <p>Member States to ensure that, when access and usage of leased lines is restricted, this is only at ensuring compliance with essential requirements</p> <p>Member States to ensure cost orientation and transparency of tariffs</p> <p>Member States to ensure that telecoms organisations establish a cost accounting system</p> <p>NRAs (National Regulatory Authorities) establish procedures to authorise TOs to refuse/interrupt the provision of leased lines</p> <p>NRAs to ensure that TOs adhere to the principle of non discrimination</p> <p>NRAs to establish procedures to authorise telecoms organisations to vary tariffs and supply conditions</p>	<p>5 June 1993</p> <p>1 January 1993</p> <p>5 June 1993</p> <p>5 June 1993</p> <p>5 June 1993</p> <p>31 December 1993</p> <p>5 June 1993</p> <p>5 June 1993</p> <p>5 June 1993</p>
ONP Voice Telephony 95/62/EEC	13.12.1995	<p>Member States to notify its NRAs</p> <p>Member State to ensure that the TOs provide a fixed public telephone network and a voice telephony service</p> <p>TOs to establish a cost accounting system which is suitable for cost oriented tariffs</p> <p>TOs to respond to user connection request with estimate date</p> <p>TOs to respond to reasonable request for interconnection from other TOs and mobile operators, and to reasonable user requests for special access</p> <p>NRAs to establish procedures to authorise the TOs to refuse/interrupt connection</p> <p>NRAs to ensure supervision on interconnection agreements</p> <p>Right to appeal to NRAs</p>	13 December 1996

<i>Directive</i>	<i>Date of adoption</i>	<i>Main provisions</i>	<i>Deadlines for communication of measures adopted</i>
Licensing	10.04.1997	<p>Conditions and procedure for general authorisation / individual licences to be published_</p> <p>Appeal procedures to be established</p> <p>General authorisations to be used as much as possible and to include only conditions in line with EC law</p> <p>Individual licences - scope limited; - can only include conditions in line with EC law</p> <p>No limitation to the number of individual licences except for frequencies or for the time necessary to make available sufficient numbers in accordance with EC law (see Directive 96/19/EC)</p> <p>Fees to cover only the administrative costs (except for scarce resources)</p> <p>Authorisation to be granted for new services</p>	31 December 1997
Satellite - PCS (Decision)	24.03.1997 (entry into force on the 20th day after publication)	<p>Member States to ensure that any national licensing regime for the provision of S-PCS services is "organised in frequency bands" which are harmonised by the CEPT</p> <p>Member States allowed to attach to authorisations the same conditions as those defined by the Licensing Directive</p> <p>Member States to support a one-stop-shopping procedure for licensing</p> <p>Member States to co-ordinate their authorisation procedures in some case</p>	

FREQUENCIES

<i>Directive</i>	<i>Date of Adoption</i>	<i>Main provisions</i>	<i>Deadlines for communication of measures adopted</i>
GSM 87/372/EEC	25.06.1987	Reservation of frequency band for the provision of the service	1 January 1991
ERMES 90/544/EEC	9.10.1990	Reservation of channels for the provision of the service	31 December 1992
DECT 91/287/EEC	3.06.1991	Reservation of frequency band for the provision of the service	1 January 1992

TELECOMMUNICATIONS TERMINAL EQUIPMENT

<i>Directive</i>	<i>Date of Adoption</i>	<i>Main provisions</i>	<i>Deadlines for communication of measures adopted</i>
Terminal equipment 91/263/EEC as amended by 93/68/EEC	29.04.1991	Mutual recognition of conformity regarding terminal equipment intended for connection to public telecommunications networks EC type approval procedures based on CTRs (binding) and harmonised standards (voluntary) CE marking	6 November 1992
Satellite earth station equipment 93/97/EEC	29.10.1993	Extension of the same rules to satellite earth station equipment	1 May 1995

EUROPEAN-WIDE NUMBERS

<i>Decision</i>	<i>Date of Adoption</i>	<i>Main provisions</i>	<i>Deadlines for communication of measures adopted</i>
Emergency call number (112) 91/396/EEC	29.07.1991	Introduction of a single European emergency call number (112)	31 December 1992
International access code 92/264/EEC	11.05.1992	Introduction of a standard international telephone access code in the Community	31 December 1992

FUTURE MEASURES

HARMONISATION

<i>Directive</i>	<i>Current status</i>	<i>Main provisions</i>	<i>Adoption expected</i>
Interconnection	Joint text approved by the Conciliation Committee on 20.03.1997	<p>All restrictions on interconnection between organisations authorised to provide public telecommunication networks and publicly available telecommunication services to be lifted</p> <p><u>Organisations having a significant market power:</u></p> <ul style="list-style-type: none"> - to meet all reasonable request for access to the network - to maintain separated and transparent cost accounting systems, and to offer cost-oriented tariffs - to publish an adequate reference interconnection offer <p>Dispute resolution procedures to be put in place</p> <p>NRAs to ensure non-discrimination and to inspect all interconnection agreements in their entirety</p> <p>NRAs to:</p> <ul style="list-style-type: none"> - ensure adequate availability of numbers; - control/publish numbering plans; - ensure numbering portability between networks in all major centres of population by 1 January 2003 <p>Member States to establish a mechanism to share the net cost of universal service (if universal services obligations -USOs- represent an unfair burden)</p> <p>Costing of USOs to be subject to transparency and accounting requirements</p>	end of second quarter 1997
Amendment of Directives ONP framework and ONP leased lines	Common Position: 12.09.1996 Conciliation procedure to start formally by end May/early June	<p>(Amendment to existing directives to adjust them to a competitive environment)</p> <p><u>Independence of NRAs:</u></p> <ul style="list-style-type: none"> - NRAs to be legally distinct from and functionally independent of all organisations operating in telecoms markets; - effective structural separation to be ensured in case Member States retain ownership or control of organisation providing network or services <p>NRAs may decide not to apply <u>transparency</u> and <u>cost-orientation</u>:</p> <ul style="list-style-type: none"> - to organisations which do not have significant market power - where sufficient competition is in place in the relevant market <p>Member States to encourages the provision of additional types of leased lines</p>	end of second quarter 1997

<i>Directive</i>	<i>Current status</i>	<i>Main provisions</i>	<i>Adoption/CP expected</i>
Amendment of Directive ONP Voice Telephony	political agreement reached on 6.03.1997	<p>Member States to ensure <u>availability</u> and <u>affordability</u> of:</p> <ul style="list-style-type: none"> - fixed telephone network connection and access to telephone services - directories services - public pay phones - operator assistance - emergency services <p>Member States to ensure that operators (including mobile) provide users with <u>contracts</u> and publish or give access to information</p> <p>Member States to promote quality of service, and availability of itemised billing, tone dialling and selective call barring</p> <p>Member States to ensure that telecommunication organisations having a significant market power do not deny negotiations for special network access</p> <p>Requirement for cost accounting to be imposed only on some telecommunications organisations</p> <p>Consultative mechanism with users to be in place</p>	common position expected by end of second quarter 1997
Data protection and privacy for digital services	Common Position: 12.09.1996 Conciliation procedure to start formally by end May	<p>Member State to ensure security of services and network and confidentiality of communications</p> <p>Operators providing a telecommunications services to take appropriate measures to safeguard security of its services and right to privacy of its customers</p>	end of second quarter 1997

Annex II

This annex analyses the Commission's view of the status of certain key indicators of progress by the Member States in transposing the regulatory package as a whole.

Nothing in the Annex should be construed as representing a definitive legal assessment by the Commission of conformity with Community law.

1998 PACKAGE - STATUS OF KEY INDICATORS

Existing directives

	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Alternative infrastructure for liberalised services by 1.7.96 (by 15.11.96 for mobile infrastructure) <i>(96/2/EC ; 96/19/EC)</i>	✓	✓	✓	d	•	✓	D 1.7.199 7	⇒	D 1.7.199 7	✓	⇒	D 1.7.199 7	✓	✓	✓
Direct interconnection of mobile networks with mobile and PSTN in other MSs by 15.11.96 <i>(96/2/EC)</i>		✓	✓		⇒	✓	D 1.1.199 9	⇒	⇒	✓	⇒	D 1.1.199 9	✓	✓	✓
Full competition by 1.1.98 <i>(measures notified by 11.1.97)</i> <i>(96/19/EC)</i>															
• voice telephony		✓	✓	d	d	✓	D 1.1.200 0	⇒	D 1.7.199 8	⇒	⇒	D 1.1.200 0	✓	✓	✓
• infrastructure for voice services		✓	✓	d	d	✓	D 1.1.200 0	⇒	D 1.7.199 8	⇒	⇒	D 1.1.200 0	✓	✓	✓
• international services		✓	✓	d	d	✓	D	⇒	D	⇒	⇒	D	✓	✓	✓
• infrastructure for international services		✓	✓	d	d	✓	D	⇒	D	⇒	⇒	D	✓	✓	✓
Availability of numbers by 1.7.97 - fixed - mobile <i>(96/19/EC; I/C dir.)</i>		✓ ✓	✓ ✓	d	d d	✓ ✓	D	⇒ ⇒	•	✓	⇒	D	✓ ✓	✓ ✓	✓ ✓
Funding mechanism for USO, if any, notified to the Commission by 1.7.97 <i>(96/19/EC; I/C dir.)</i>		n.a.	n.a.	d	⇒	⇒	D	⇒	•	⇒	⇒	D	n.a.	n.a.	n.a.
Terms and conditions for interconnection published by telecoms organisations by 1.7.97 <i>(96/19/EC; I/C dir.)</i>		✓	✓	d	✓	✓	D		•			D	✓	✓	✓
Cost accounting system for pricing interconnection in place <i>(96/19/EC; I/C dir.)</i>		✓	✓		⇒	✓		⇒		⇒	⇒		⇒	⇒	•
Tariff rebalancing - by 1.1.98 - if not, plans for phasing out <i>(96/19/EC)</i>		✓			✓								✓	✓	✓

Draft licensing/declaration procedures notified to the Commission by 1.1.97 (96/19/EC)		✓	✓	d	d		D		D	⇒	⇒	D	✓	✓	✓
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Forthcoming directives

	B	DK	D	EL	E	F	IR L	I	L	NL	A	P	FIN	S	UK
Independent NRA <i>(new leased lines dir.)</i>	•	✓	✓	✓	✓	✓	•	⇒	•	⇒	⇒	✓	✓	✓	✓
with powers on:															
- I/C		✓	✓		✓	✓	•	⇒	•	⇒	⇒		✓	✓	✓
- licensing	•	✓	✓		✓	✓	•	⇒	•	⇒	⇒	✓	✓	✓	✓
- numbers	•	✓	✓		⇒	✓	•	⇒	•	⇒	⇒	✓	✓	✓	✓
- Universal service	•	✓	✓		✓	✓	•	⇒	•	⇒	⇒	✓	✓	✓	✓
- dispute resolution <i>(Licensing dir.; I/C dir.; new leased lines dir.; new voice telephony dir)</i>		✓	✓	•	✓	✓	•	⇒	•	⇒	⇒	✓	✓	✓	✓
Universal service obligations defined	✓	✓	✓		⇒	✓		⇒		⇒		•	⇒	⇒	•
Affordability defined <i>(I/C dir.; new voice telephony dir.)</i>	•	✓	✓			✓		⇒				•			
Funding mechanism for USO, if any, in place <i>(I/C dir.)</i>	•	n.a.	n.a.		⇒	⇒	D	⇒	•	⇒	⇒		n.a.	n.a.	n.a.
Cost accounting system verified and approved by NRA															
- for I/C		✓	✓		⇒	✓		⇒		⇒	⇒		⇒	⇒	•
- for leased lines		✓	✓		✓	✓		⇒		⇒	⇒		•	•	•
- for voice telephony <i>(I/C dir.; new leased lines dir.; new voice telephony dir)</i>		✓	✓			✓		⇒		⇒	⇒		•	•	•
Tariff principles															
- for I/C		✓	✓		⇒	✓		⇒		⇒	⇒		⇒	⇒	•
- for leased lines		✓	✓		✓	✓		⇒		⇒	⇒		•	•	•
- for voice telephony <i>(I/C dir.; new leased lines dir.; new voice telephony dir)</i>		✓	✓			✓		⇒		⇒	⇒		•	•	•
Procedures for allocating numbers <i>(I/C dir.)</i>	•	✓	✓		⇒	✓	•	⇒	•	⇒	⇒		•	•	•
Provisions on licensing <i>(Licensing dir.)</i>	•	n.a.	✓	•	⇒	✓		⇒	•	⇒	⇒	•	⇒	⇒	•

✓ = main provisions in place

n.a. = not applicable

• = some provisions in place

D = derogation granted

⇒ = draft measures communicated to the Commission

d = derogation requested

Legenda

96/2/EC: Commission Directive amending Directive 90/388/EC with regard to personal and mobile communications.

96/19/EC: Commission Directive amending Directive 90/388/EC with regard to the implementation of full competition in telecommunications markets.

Licensing directive: EP and Council Directive on a common framework for general authorisation and individual licences in the field of telecommunications services.

I/C directive: proposed EP and Council Directive on Interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP).

New leased lines directive: proposed EP and Council Directive amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications.

New voice telephony directive: proposed EP and Council Directive on the application of ONP to voice telephony and on universal service for telecommunications in a competitive environment (replacing directive 95/62/EEC).

Annex III

This annex gives a short assessment for each Member State of the Commission's view of the state of transposition of the regulatory framework.

Nothing in the Annex should be construed as representing a definitive legal assessment by the Commission of conformity with Community law.

BELGIUM

Transposition

The current framework is based on the Law of 21 March 1991, as amended by the Law of 20 December 1995. Three Royal Decrees were adopted on 28 October 1996, under which a system for authorising alternative infrastructures for the provision of non-reserved services is established. The general principles for the provision of universal service are also laid down. Further Royal Decrees are expected in the coming months.

Outstanding matters

The regulatory framework is largely incomplete (with, as stated above, only three of the 39 Royal Decrees envisaged having been adopted so far). Essential further secondary legislation is needed to complete the reform of the regulatory framework (interconnection, universal service financing scheme, new numbering plan). On interconnection, in particular, no implementing measure is available nor is it possible to foresee whether the incumbent will publish its interconnection conditions by 1 July 1997. The Commission also considers the transposition of the existing Leased Lines Directive to be incomplete.

Some concern exists regarding Belgium's approach to the regime for new infrastructure (only existing alternative infrastructure is liberalised and can be licensed).

Another outstanding problem concerns the National Regulatory Authority (IBPT/BIPT), the legislation for which would not appear to endow it with the powers and independence necessary to carry out the range of tasks laid down in the package.

DENMARK

Transposition

Denmark began work relatively early on restructuring the market and the corresponding legal framework, with basic legislation being adopted in 1990. The main liberalisation framework is in place although some provisions will not come into force before 1 January 1998. The body of harmonisation legislation also appears to have been transposed. An independent regulatory authority (Telestyrelsen) has been established, the rules governing which state explicitly the NRA's independence of both operators and the Ministry.

Outstanding matters

A detailed Interconnection Bill was released for public comment in April 1997. Apart from the fact that the Commission has been consulted on the interpretation of a particular aspect of the Interconnection Directive, there would appear to be no difficulties.

Other regulation

Carrier selection for national long-distance and international calls is implemented.

GERMANY

Transposition

A Law on Telecommunications (TKG) was adopted in July 1996, coming partly into force on 1 August 1996. This provides a broad framework for the transposition of the whole telecommunications package. From 1 January 1998 onwards, the voice telephony market will be liberalised, removing the remaining exclusive rights of Deutsche Telekom AG. The TKG establishes a national regulatory authority (Regulierungsbehörde) from 1 January 1998 which in formal terms is independent in relation to the telecommunications operators and also to a certain extent to the Ministry for Economic Affairs. Possible problems in regards of the independence of the NRA may be caused through the influence of the advisory council, which in certain areas has certain rights of co-decision. Planned licence fees of up to DM 40 million do not reflect the obligation in the Licensing Directive of cost-orientation, and could have the effect of deterring new entrants.

Outstanding matters

The secondary legislation necessary to implement a number of important areas of the package have not yet been adopted (e.g. ordinances concerning fees for licences and numbers, numbering and frequency plans). However, these acts are in preparation and a detailed timetable for adoption laid down.

Other regulation

The obligation to provide unbundled access to the local loop is laid down in the decree on access to networks (NetzzugangsVO), although doubts remain as to the technical feasibility of such access.

GREECE

Transposition

In October 1994, Greece adopted a new telecommunications law (Law n° 2246/94) establishing the National Telecommunications Committee ("EET") as the regulatory authority. EET began to operate in July 1995. The Presidential Decree defining EET's internal rules has not yet been adopted. On 6 February 1997 the Law was amended to bring into general use a declaration procedure for the provision of already liberalised services. A licence is still required in cases where there is a need for access to radio frequencies, numbers or satellites. Certain of the provisions are not, however, in conformity with the Licensing Directive.

The Greek Authorities requested additional implementation periods on the basis of Directive 96/19/EC, and in particular until 1 January 2003 (instead of 1 January 1998) as regards the abolition of the exclusive rights currently granted to OTE for the provision of voice telephony and the underlying network infrastructure; and until 1 July 2001 (instead of 1 July 1996) for the liberalisation of alternative infrastructure. The Commission Decision is expected for the end of May 1997.

Outstanding matters

Despite recent initiatives by the Greek Government, Greece has accumulated considerable delay in transposing. In particular, Directives 93/97/EEC, 94/46/EEC, 95/51/EC, 95/47/EC, 95/62/EC and 96/2/EC are not yet transposed in Greece. The Commission also regards the transposition of the Leased Lines Directive as being incomplete. In addition, the granting of a third mobile licence to OTE raises problems concerning its conformity with Community legislation (in particular as regards the procedure). A time-table has been transmitted to the Commission on the implementation of these directives.

As far as the Commission is aware, there are no drafts on the implementation of the forthcoming directives.

SPAIN

Transposition

Basic provisions are set up in the 1987 Law on Telecommunications as amended in 1992. By Royal Law-Decree 6/1996 adopted on 7 June 1996, the Spanish Government created a new regulatory body, the structure and functions of which were laid down in Royal Decree 1994/1996. A second operator was created by Royal Law Decree 6/1996 and a licence granted. A provision is included in the Budget Law of 1997 concerning the liberalisation of the provision of telecommunications services using alternative infrastructures from 1 January 1997. Newly-established networks are not yet liberalised.

The Spanish Authorities are drafting a new basic bill (to replace the 1987 Law). The adoption of the bill is expected by the end of 1997.

Outstanding matters

A considerable quantity of the package remains to be transposed, in particular the ONP Voice Telephony Directive. In addition, the Spanish Government requested derogations on the basis of Community Directive 96/19/EC. Additional periods were requested until 1 January 1998 (instead of 1 January 1997) as regards notification of licensing schemes for the provision of voice telephony and the establishment of public telecommunications networks; until 1 August 1998 (instead of 1 July 1997) as regards publication and the entry into force of declaration and licensing procedures for the provision of voice telephony and the establishment of public telecommunications networks; and until 30 November 1998 (instead of 1 July 1997) to ensure that adequate numbers are available for all operators of telecommunications services

FRANCE

Transposition

In July 1996 the French Parliament adopted a new framework law ("Loi de régulation des télécommunications", N° 96-659). The main objective of the new legislation, which is to be supplemented by a series of Decrees, is to liberalise the telecommunications

market before 1 January 1998. The Law establishes a new regulatory body, the ART (“Autorité Réglementaire des Télécommunications”) and secures a minimum level of independence for ART’s board members. ART is charged with the implementation of legislation and the control of the effective application of regulation. However, in spite of the transfer of a number of significant competences to the new body, key regulatory powers remain with the Telecommunications Minister (granting of individual licences, establishment of tariffs for universal service).

Outstanding matters

The Law is generally in conformity with the Community regulatory framework. However some aspects are clearly not in line, in particular the obligation on licensees to spend at least 5% of their annual turnover on research and development. Most of the individual decrees implementing the most important provisions of the Law were adopted recently; their conformity is under examination, although the drafts previously submitted appear largely to implement the framework.

Other regulation

France has introduced a system of carrier selection based on digit codes.

IRELAND

Transposition

A National Regulatory Authority (the post of Director of Telecommunications) was formally established in December 1996, but is not yet operational. Ireland has implemented the Frequencies Directives as well as the main principles of the Framework Directive and the Leased Lines Directive.

Ireland requested additional implementation periods for certain obligations under Directive 96/2/EC and 96/19/EC, and the Commission decided on 22 November 1996 to grant certain of them. These were: 1) for the liberalisation of voice telephony and underlying networks: until 1 January 2000, 2) for the liberalisation of the provision of already liberalised services on own/alternative networks: until 1 July 1997 and 3) for direct international interconnection of mobile networks with other networks (mobile or fixed): until 1 January 1999.

No drafts are available of legislation transposing the forthcoming Directives.

Outstanding matters

The ONP Voice Telephony Directive has not been transposed, although legislation is currently under preparation, but without a set date for adoption. For the Terminal Directives, there are still no formal notifications (although the Irish authorities have notified informally transposing measures for the Terminal Directive (Directive 91/263) and its amending directive 93/68).

ITALY

Transposition

Italy is currently engaged in an effort to remove its past implementational deficit and to bring its legislation in line with Community law. Two Bills have been submitted to the Parliament to review thoroughly the regulatory framework and to establish a National Regulatory Authority for the telecommunications and TV sectors. In parallel, the Italian government is in the process of adopting a ministerial regulation, based on a mandate by the Parliament, with the aim of transposing those directives which are not yet implemented (Cable TV, Mobile Communications, Full Competition, ONP Voice Telephony), together with forthcoming Community legislation.

The draft regulation is expected to cover the basic principles of the "1998 package", including interconnection, universal service, licensing, data protection.

Outstanding matters

The Bill on the new Authority is expected to be adopted by end May; adoption of the draft regulation is envisaged in June 1997. However, a number of detailed implementing measures will remain to be enacted afterwards (including licensing procedures, universal service scheme) to render the new framework operational. There is also some concern regarding the licensing of the third mobile operator (DCS 1800) and the allocation of frequency (extension band) to GSM services pursuant to Directive 87/372/EEC, although solutions appear to be in view following adoption of Decree-Law n. 115 on 30 April 1997.

LUXEMBOURG

Transposition

The Frequencies Directives (Directives 87/372, 90/544 and 91/287) have been implemented. Further progress in implementation has been made with the adoption of a new framework law on 21 March 1997, which provides a basis for the transposition of the package of EC Directives. In addition, two regulations have been adopted on terminals (including satellite earth station equipment) and mobile services.

Outstanding matters

The Luxembourg authorities have been granted additional implementation periods for certain obligations under Directive 96/19/EC: 1) for the abolition of exclusive rights for the provision of voice telephony and the underlying network structure, until 1 July 1998, and 2) for the lifting of restrictions on the provision of already liberalised telecommunications services on own and alternative infrastructure, until 1 July 1997.

Regulations are being drafted on licences, universal service and spectrum management and fees. The Commission's assessment is that a small number of key issues have not been addressed in the new law. Concern also exists over the use of tendering in the issue of licences, and possible lack of powers on the part of the NRA to settle interconnection disputes.

THE NETHERLANDS

Transposition

The Netherlands is in the process of reforming thoroughly the current regulatory framework, based on the 1988 "Telecommunications Act" n. 520 and on the June 1996 "Interim Law", which was adopted to establish a new licensing regime for telecommunications infrastructure. A new Telecommunications Law has been drafted and is expected to be adopted before end 1997. The new Law should transpose the basic principles of existing and forthcoming Community legislation and introduce a liberal approach, by removing all limitations to market entry (no licensing requirement) and simplifying access to resources. A new National Numbering Plan has been recently approved by the Minister and will be updated regularly. Two national infrastructure licences have been granted.

Outstanding matters

Secondary legislation is in the pipeline to implement specific aspects such as Interconnection and Universal service, and is due to be adopted by end 1997. Another Bill is currently under discussion in Parliament concerning establishment of an independent NRA. The NRA will be created by detaching a division within the Ministry and could be in place before summer. The new law will also define the divisions of tasks between the NRA and the Ministry. Moreover, a law regarding the granting of further mobile licences which could be implemented via auction procedures has been communicated to the Commission for examination. Otherwise, the only outstanding matter would appear to be certain minor problems relating to the Leased Lines Directive.

AUSTRIA

Transposition

A number of EC issues were covered in the 1994 Telecommunications Act and in secondary legislation on services as well as terminal equipment. It is intended to complete formal transposition with the adoption of the draft Telekommunikationsgesetz (TKG), which provides a framework covering the outstanding matters, including those contained in the forthcoming directives, and which is now out for consultation.

Outstanding matters

The structure of the future NRA is excluded from the TKG and will be the subject of future legislation, although its powers will be laid down in the new law. A current concern is ensuring that the NRA is endowed with resources sufficient for its tasks. Allocation of frequencies for DCS 1800 is problematic. Although the transposition of the Voice Telephony Directive appears to address most of the issues in the Directive, a review will be needed on the basis of the legislation adopted under the TKG. As far as the Directive on satellite earth station equipment is concerned, valid transposition would appear to require an explicit legal act referring to the Directive.

Other regulation

Issues such as carrier selection are in the process of evolving. As regards number portability, it is intended to make available a suitable block of numbers in the near future.

PORTUGAL

Transposition

The “Basic Law on the Establishment, Management and Exploitation of Telecommunications Infrastructures and Services” (Law 88/89, adopted on 11 September 1989), remains the main legal instrument covering telecommunications. Decree Law 283/89 establishes the Institute for Communications of Portugal (“ICP”) as the National Regulatory Authority. The ICP began operations in November 1989.

Portugal requested additional implementation periods on the basis of Commission Directives 96/2/EEC and 96/19/EC. By Decision adopted on 12 February 1997, Portugal was authorised to postpone until 1 January 1999 the lifting of restrictions on the direct interconnection of mobile telecommunications networks with foreign networks; until 1 January 2000 for the abolition of the exclusive rights currently granted to Portugal Telecom as regards the provision of voice telephony and the establishment and provision of public telecommunications networks; and until 1 July 1997 for the lifting of restrictions on the provision of already liberalised telecommunications services on alternative infrastructures.

Outstanding matters

The Portuguese Authorities notified to the Commission Decree-Law 198/94 and Ministerial Decision (“portaria”) n° 1318/95 as transposition measures for the Leased Lines Directive (92/44/EEC). The Commission considers that this transposition is incomplete. By Ministerial Decision (“portaria”) n°477/96, Portugal formally liberalised the provision of voice telephony services to closed user groups. The Commission is of the view that the licensing requirements imposed by this Decision are not in conformity with Community law.

FINLAND

Transposition

Finnish legislation appears to comply broadly with existing EC Directives. A completely new Telecommunications Act has been proposed which is intended to replace the Telecommunications Act of 1987 in its amended version. The new Act will be adopted soon and is planned to enter into force in June 1997. The complete overhaul of the law was considered necessary in order inter alia to meet the EU’s harmonisation requirements. The law also brings Finnish legislation in line with the EU legislation remaining to be adopted. The draft law takes into account in particular the main principles of the Interconnection Directive.

Outstanding matters

Most outstanding problems appear to be resolved by the new draft law, and the subsequent decisions/regulations that will be issued under it.

Other regulation

Finnish legislation has addressed certain regulatory issues in advance of EU legislation. In particular, automatic operator pre-selection has been introduced, as well as selection on a call-by-call basis as referred to in the Communication of the Commission on Numbering.

SWEDEN

Transposition

All the EC Directives currently in force have been transposed on time. The legislation appears to be broadly in conformity with the Directives, and the key issues have in the main been transposed correctly, subject to verification of certain details. Many of these are settled in draft amendments to the Telecommunications Act and secondary legislation currently before the Swedish Parliament. The draft also takes into account the principles of the recently-finalised Directives, in particular the Interconnection and Licensing Directives.

Outstanding matters

An outstanding problem concerns the re-allocation of frequencies to enable GSM to occupy the whole band allocated to it in accordance with commercial demand as required in the GSM frequencies Directive 87/372/EEC. A solution to the problem is expected in the near future.

Other regulation

Work is ongoing on a numbering policy which would introduce number portability and a competitively neutral way of gaining access to operators. The new draft law introduces accounting separation for the local loop.

UNITED KINGDOM

Transposition

The United Kingdom has transposed a large majority of the existing EC Directives. The United Kingdom is also well ahead with regard to transposition of forthcoming Directives. The main principles of the forthcoming Interconnection Directive are already in place in BT's licence conditions, even though some further changes appear necessary. A Statutory Instrument is expected in the early autumn. The transposition of the other forthcoming Directives (the Licensing Directive, the Directive amending the Leased Lines Directive and the Framework Directive, and the Directive amending the Voice Telephony Directive) appears to require some minor legislative changes, but no major problems are expected.

Outstanding matters

The UK government has requested and been granted a deferment of certain of its obligations under the ONP Leased Lines Directive: 1) for 3 years of the obligation to provide a minimum set of leased lines under Article 7.1 as regards BT and Kingston; and 2) for 5 years for the tariff and cost-accounting obligations under Article 10.1 and 10.2 as regards Mercury. Furthermore, the UK authorities have not formally notified any transposing measures for the Voice Telephony Directive. However, draft regulations implementing the Voice Telephony Directive were recently sent for consultation, and the intention is that the regulations will be in force in the summer.

Other regulation

The UK authorities have often defended “easy access” (i.e. the use of ‘smart phones’ with stored digits) rather than equal access, as proposed in the Communication on Numbering, since that represents a balance between encouraging network competition and encouraging competition in services. A cost-benefit analysis carried out by OFTEL in 1994 showed that the additional benefits of dialling parity and presubscription would not outweigh the costs of introducing it. The UK authorities also claim that the introduction of access to the copper loop (i.e. direct access to each subscriber) would not do anything to promote local competition in the UK, and could jeopardise the development of competition already under way (alternative infrastructure).