



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.03.1996  
COM(96) 121 final

95/0207 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT 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)

(presented by the Commission pursuant to Article 189 a (2)  
of the EC-Treaty)

## EXPLANATORY MEMORANDUM

The Commission hereby presents a modified proposal for a European Parliament 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). The modified proposal incorporates those amendments proposed by the European Parliament at First Reading which were accepted by the Commission.

### 1. Introduction

#### a) **Background**

The Commission adopted its proposal on 19.07.95, and it was formally transmitted to the EP and the Council on 12.09.95<sup>1</sup>.

The Economic and Social Committee gave a favourable Opinion on 28.02.96<sup>2</sup>. The European Parliament adopted a favourable Resolution at its First Reading on 14.02.96, and proposed 69 amendments to the Commission proposal<sup>3</sup>.

#### b) **Purpose of the Directive**

This Directive is an essential component of the regulatory framework for the future liberalised telecommunications sector, to be in place by 1.1.98.

It will enable new market entrants to access existing business and residential customers, on a basis which will encourage increased investment and market growth in the telecommunications services sector, within a predictable and stable regulatory environment. At the same time, it will put in place safeguards to ensure interconnection and interoperability of networks and services so that users may increasingly benefit from the European wide provision of universal telecommunications services.

The Directive lays down harmonized principles for interconnection to be implemented at a national level, under supervision of the national regulatory authorities, in accordance with the principle of subsidiarity.

---

<sup>1</sup> OJ C 313, 24.11.1995, p.7

<sup>2</sup> TRA/301, 28.02.1996

<sup>3</sup> A4-0017/96, PV 14-02-96

## 2. EP amendments accepted by the Commission

Of the 69 amendments adopted by the European Parliament at First Reading, the Commission accepted 28 in full, 13 in part, and 4 in principle (ie with some reformulation of the text), making a total of 45.

Amendments accepted in full	:	1, 2, 5, 8, 11, 14, 20, 22, 24, 28, 29, 33, 39, 40, 42, 43, 44, 46, 47, 48, 52, 56, 58, 63, 64, 65, 66, 67
Amendments accepted in part	:	3, 4, 6, 9, 12, 15, 26, 32, 36, 37, 45, 49, 57,
Amendments accepted in principle	:	23, 51, 53, 68

The Commission accepted those amendments which:

- re-inforce the importance of ensuring universal service, and a single European telecommunications market;
- concern number portability;
- emphasise the need for protection of the environment;
- increase transparency and ensure reasonable confidentiality;
- call for increased coordination between national regulatory authorities and between national regulatory authorities and the Commission;
- clarify the text in a manner consistent with the aims of the Directive;
- call for an examination of the possibility of a European regulatory authority for telecommunications, as part of the review of the Directive during 1999;
- are consistent with other EU legislation.

## 3. Amendments not accepted by the Commission

The Commission has not accepted 24 of the 69 amendments proposed by the European Parliament. The reasons are given below, where the amendments are grouped into 11 broad categories.

### **Scope of the Directive (Amendments 13, 15 (part), 55)**

The Directive concerns interconnection to public telecommunications networks and services. Amendment 13 would restrict the scope of the Directive to interconnection between public networks of the same type, and is inconsistent with part of amendment 1. On the other hand, amendment 15 (first part) would expand the scope of the Directive too far by extending the requirement for confidentiality to all telecommunications networks (public and private).

The Directive concerns interconnection within the Community, as set out in Article 1. Amendment 55 is therefore outside the scope of the Directive.

### **World Trade Organisation (WTO) negotiations on basic telecommunications services**

**(Amendments 10, 54)**

Negotiations on multilateral agreements for comparable and effective access to third country markets are currently underway in the context of the World Trade Organisation negotiations in Geneva. Amendment 10 is inappropriate as the Directive is due to be adopted after the conclusion of the WTO negotiations scheduled for April 1996. Amendment 54 would place inappropriate constraints on the action to be taken in the case of a lack of agreement at a multilateral level.

### **Accounting separation**

**(Amendments 6(part), 34, 35, 37, 38, 60)**

Amendments 6 (second part), 34, 35, 37 (second part) would replace the requirement for full accounting separation in Article 8 by a weaker requirement for transparent cost accounting systems. The Commission proposal represents a careful balance between the differing needs of the existing operators, the new entrants and the national regulatory authorities; this amendment would tip that balance in favour of the existing operators, while also adding to the supervisory load of the national regulatory authorities. Amendments 38 and 60 could lead to inconsistency with Commission Directive 95/51/EC<sup>4</sup> on the use of cable television networks for the provision of already liberalised telecommunications services, by proposing an additional threshold for accounting separation.

### **National regulatory authorities**

**(Amendments 16, 41)**

The need for independence of the national regulatory authorities as expressed in amendment 41 is being dealt with elsewhere, in the proposed adaptation of the ONP framework Directive (see COM(95) 543).

The possibility for the national regulatory authority to extend obligations for interconnection, as referred to in Amendment 16, is already foreseen in Article 9.6.

### **Universal service**

**(Amendments 3(parts), 17, 18, 19, 26(part), 31, 32(part), 57(parts), 59, 62, 69)**

Services which cannot at present be made available to all users everywhere cannot be accepted as part of a universal service obligation, at least for the time being. Hence amendments 3 (second part) and 57 (first and second parts) are not accepted.

Amendments 17 (first part) and 18 are not accepted because they would reduce the flexibility in the financing of universal service, by requiring Member States to set up a universal service fund.

---

<sup>4</sup> OJ L 256, 26.10.1995, p.49

Amendments 3 (last part) and 17 (second part) would provide for contributions to the cost of the universal service obligations to be shared between all operators of telecommunications networks (instead of only public networks). This would be unfair on those networks which already contribute to the cost of the universal service through payment of standard tariffs.

Amendment 19 would suppress the reference to market benefit for organisations with universal service obligations. This is an important factor to be taken into account when assessing the net burden of universal service obligations.

Amendments 26 (third part), 31, 32 (second part) and 59 could increase the cost of market entry to new players and decrease incentives to remove tariff imbalances between local and long distance calls. They would have the effect of reducing the clear distinction between interconnection charges and contributions to universal service obligations.

Amendment 62 would reduce the role of the national regulatory authority in overseeing contributions to universal service costs.

The Commission's forthcoming Communication on Universal Service For Telecommunications means that amendment 69 is not appropriate.

#### **Dispute resolution (Amendments 25, 49(part), 50)**

Amendment 25 was not accepted because amendment 51, accepted in principle, already covers the question of damages in the context of dispute resolution, and retrospective adjustments in charges are already foreseen in 9(2) of the Directive.

Amendment 49 (second part) cannot be accepted as the principles in Article 9(1) are an important reference for dispute resolution.

Amendment 50 would allow a dispute to be pursued simultaneously in national courts and at EU level, and could result in two different outcomes. This does not provide legal certainty.

#### **Review of the Directive (Amendment 12 (part))**

There are provisions in the Directive which will need to remain even after achievement of full competition, in particular those concerning universal service and dispute resolution. The second part of Amendment 12 is therefore not accepted.

#### **Commission guidelines (Amendments 7(part), 21, 30, 36(part), 61)**

Guidelines are considered the most appropriate tool for addressing complex financial issues, in that they are flexible and more easily updated than Directives. The committee procedure proposed will ensure that the guidelines have the backing of Member States. Amendments 7 (first part), 21, 30, 36 (second part), 61 would change the nature of the guidelines and/or extend their scope.

**Definition of significant market power  
(Amendment 4 (parts))**

The deletions proposed in Amendment 4 cannot be accepted as they are important factors for assessing if an organisation has significant market power. The existence of alternative means of access to the market does not justify immediate removal of obligations on those with significant market power.

**Collocation and facility sharing  
(Amendments 9 (parts) and 45 (parts))**

Amendments 9 and 45 would result in too rigid a framework for collocation and facility sharing, in particular in the area of costing. These are issues which demand a certain flexibility of approach in order to decide where the public interest lies. Amendment 45 would remove the requirement for public consultation.

**Other amendments  
(Amendment 7(part), 26(part), 27)**

Amendments 26 (first part) and 27 would result in inconsistent terminology with other ONP Directives.

Amendment 7 (second part) cannot be accepted as the interconnection point is not always the choice of the organisation providing interconnection.

**4. Conclusion**

The Commission has accepted 45 of the 69 amendments proposed by the European Parliament at First Reading either in whole, in part or in principle.

In accordance with Article 189a paragraph 2 of the EC Treaty, the Commission amends its initial proposal, incorporating these amendments.

Amended Proposal for a European Parliament 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)

*Original text*

*Amended text*

**Recital 1**

Whereas from 1 January 1998 (with transition periods for certain Member States) the provision of telecommunications services and infrastructure in the Community will be liberalized; whereas the Council's Resolution of 7 February 1994 on universal service principles in the telecommunications sector<sup>(3)</sup> recognizes that in order to promote Community-wide telecommunications services there is a need to ensure interconnection of public networks and, in the future competitive environment, interconnection between different national and Community operators; whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (ONP)<sup>(4)</sup> lays down harmonized principles for open and efficient access to, and use of, public telecommunications networks and, where applicable, services; whereas the Council's Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market<sup>(5)</sup> recognizes that open network provision measures provide an appropriate framework for harmonizing interconnection conditions;

Whereas from 1 January 1998 (with, subject to certain conditions, the possibility of transition periods in some Member States) the provision of telecommunications services and infrastructure in the Community will be liberalized; whereas in order to promote Community-wide telecommunications services there is a need to ensure interconnection of networks between different national and Community operators; whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (ONP)<sup>(4)</sup> lays down harmonized principles for open and efficient access to, and use of, public telecommunications networks and, where applicable, services; whereas the Council's Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market<sup>(5)</sup> recognizes that open network provision measures provide an appropriate framework for harmonizing interconnection conditions;

#### Recital 4

Whereas, following the removal of special and exclusive rights for telecommunications services and infrastructure in the Community, the provision of telecommunications networks or services may require some form of authorization by Member States; whereas all organizations authorized to provide public telecommunications networks or public telecommunications services in all or part of the Community should be free to negotiate interconnection agreements on a commercial basis in accordance with Community law, subject to supervision and intervention by national regulatory authorities; whereas it is necessary to ensure adequate interconnection within the Community of certain networks and services essential for the social and economic well-being of Community users, notably public telephone networks and services, and leased lines;

Whereas, following the removal of special and exclusive rights for telecommunications services and infrastructure in the Community, the provision of telecommunications networks or services may require some form of authorization by the relevant public authority, in accordance with the subsidiarity principle; whereas all organizations authorized to provide public telecommunications networks or public telecommunications services in all or part of the Community should be free to negotiate interconnection agreements on a commercial basis in accordance with Community law, subject to supervision and intervention by the relevant authorities; whereas it is necessary to ensure adequate interconnection within the Community of certain networks and services essential for the social and economic well-being of Community users, notably public telephone networks and services, and leased lines;

#### Recital 6

Whereas the Resolution of 7 February 1994 sets out conditions for financing a universal voice telephony service; whereas obligations for the provision of universal service contribute to the Community objective of socio-economical cohesion and territorial equity; whereas there may be more than one organization in a Member State with universal service obligations; whereas the calculation of the net cost of universal service should take due account of costs and revenues, as well as economic externalities and the intangible benefits resulting from providing universal service but, in order not to hinder the on-going process of tariff rebalancing, should not include elements which are due to historic tariff imbalances; whereas costs of universal service obligations should be calculated on the basis of transparent procedures; whereas financial contributions related to the sharing of universal service obligations should be unbundled from charges for interconnection;

Whereas obligations for the provision of universal service contribute to the Community objective of socio-economical cohesion and territorial equity; whereas the aim should be to introduce new technologies like the integrated services digital network (ISDN) as soon as possible and on as broad a basis as possible in the Member States; whereas the current level of deployment of ISDN in Member States means that it cannot be made available to all users everywhere and therefore it cannot at present be subject to a universal service obligation; whereas there may be more than one organization in a Member State with obligations of providing universal service; whereas the calculation of the net cost of universal service should take due account of costs and revenues, as well as economic externalities and the intangible benefits resulting from providing universal service but, in order not to hinder the on-going process of tariff rebalancing, should not include elements which are due to historic tariff imbalances, given that the fixed costs associated with the existing network are at present partly taken into account in the tariff shared by all users of that network; whereas costs of universal service obligations should be calculated on the basis of transparent procedures; whereas financial contributions related to the sharing of the cost of universal service obligations should be unbundled from charges for interconnection;

#### Recital 7

Whereas it is important to lay down principles to guarantee transparency, access to information, non-discrimination and equality of access, in particular for organizations with significant market power; whereas the market power of an organization depends on a number of factors including its share of the relevant product or service market in the relevant geographical market, its turnover relative to the size of the market, its ability to influence market conditions, its control of the means of access to end-users, its access to financial resources, its experience providing products and services in the market; whereas, for the purpose of this Directive, an organization with a share of more than 25% of a particular telecommunications market in the geographical area in a Member State within which it is authorized to operate would be presumed to enjoy significant market power, unless its national regulatory authority determined that this was not the case; whereas, for an organization falling below this threshold market share, the national regulatory authority may nevertheless determine that the organization enjoyed significant market power;

Whereas it is important to lay down principles to guarantee transparency, access to information, non-discrimination and equality of access, in particular for organizations with significant market power; whereas the market power of an organization depends on a number of factors including its share of the relevant product or service market in the relevant geographical market, its turnover relative to the size of the market, its ability to influence market conditions, its control of the means of access to end-users, its international links, its access to financial resources, its experience providing products and services in the market; whereas, for the purpose of this Directive, an organization with a share of more than 25% of a particular telecommunications market in the geographical area in a Member State within which it is authorized to operate would be presumed to enjoy significant market power, unless the relevant regulatory authority determined that this was not the case; whereas, for an organization falling below this threshold market share, the relevant regulatory authority may nevertheless determine that the organization enjoyed significant market power;

#### Recital 8

Whereas pricing for interconnection is a key factor to determine the structure and the intensity of competition in the transformation process towards a liberalized market; whereas organizations with significant market power must be able to demonstrate that their interconnection charges are set on the basis of objective criteria and follow the principles of transparency and cost orientation, and are sufficiently unbundled in terms of network and service elements offered; whereas publication of a list of interconnection services and charges enhances the necessary transparency and non-discrimination; whereas flexibility in the methods of charging for interconnection traffic should be possible, including capacity-based charging; whereas the level of charges should promote productivity and encourage efficient and sustainable market entry, and should not be below a limit calculated by the use of long-run incremental cost and cost allocation and attribution methods based on actual cost causation, nor above a limit set by the stand-alone cost of providing the interconnection in question;

Whereas pricing for interconnection is a key factor to determine the structure and the intensity of competition in the transformation process towards a liberalized market; whereas organizations with significant market power must be able to demonstrate that their interconnection charges are set on the basis of objective criteria and follow the principles of transparency and cost orientation, and are sufficiently unbundled in terms of network and service elements offered; whereas publication of a list of interconnection services, charges, terms and conditions enhances the necessary transparency and non-discrimination; whereas flexibility in the methods of charging for interconnection traffic should be possible, including capacity-based charging; whereas the level of charges should promote productivity and encourage efficient and sustainable market entry, and should not be below a limit calculated by the use of long-run incremental cost and cost allocation and attribution methods based on actual cost causation, nor above a limit set by the stand-alone cost of providing the interconnection in question;

#### Recital 9

Whereas appropriate accounting separation between interconnection activities and other activities ensures transparency of internal cost-transfers; whereas, where an organization with special or exclusive rights in a non-telecommunications field also provides telecommunications services, accounting separation is an appropriate means to discourage unfair cross-subsidies;

Whereas where an organization enjoys significant market power, appropriate accounting separation between interconnection activities and other activities ensures transparency of internal cost-transfers; whereas, where an organization with special or exclusive rights in a non-telecommunications field also provides telecommunications services, accounting separation is an appropriate means to discourage unfair cross-subsidies;

#### Recital 11

Whereas, in accordance with Directive 90/387/EEC, the essential requirements upon which restrictions on access to and usage of public telecommunications networks or services are justified are limited to security of network operations, maintenance of network integrity, interoperability of services in justified cases, and protection of data as appropriate;

Whereas, in accordance with Directive 90/387/EEC, the essential requirements upon which restrictions on access to and usage of public telecommunications networks or services are justified are limited to security of network operations, maintenance of network integrity, interoperability of services in justified cases, and protection of data as appropriate; whereas the reasons for these restrictions must be made public;

#### Recital 12

Whereas facility-sharing can be of benefit for town planning, environmental, economic or other reasons, and should be encouraged by national regulatory authorities on the basis of voluntary agreements; whereas compulsory facility-sharing may be appropriate in some circumstances, but should be imposed on organizations only after full public consultation; whereas virtual collocation may provide a satisfactory alternative to physical collocation of telecommunications equipment;

Whereas facility-sharing can be of benefit for town planning, environmental, economic or other reasons, and should be encouraged by national regulatory authorities on the basis of voluntary agreements; whereas compulsory facility-sharing may be appropriate in some circumstances, but should be imposed on organizations only after full public consultation; whereas virtual collocation may in normal circumstances provide a satisfactory alternative to physical collocation of telecommunications equipment;

#### Recital 22

Whereas the essential goal of interconnection of networks and services throughout the Community and the provision of trans-European networks and services cannot be realized satisfactorily at Member State level, and is better achieved at Community level by this Directive;

Whereas the essential goal of interconnection of networks and services throughout the Community and the provision of trans-European networks and services cannot be realized satisfactorily at Member State level, and is better achieved at Community level by this Directive; whereas it may appear desirable, when this Directive is reviewed, to envisage the possibility of establishing a European Regulatory Authority to ensure those tasks carried out by the Commission or the National Regulatory Authority according to this Directive, which would be more efficiently fulfilled through such a European Regulatory Authority;

### Article 1 par. 1

This Directive establishes a regulatory framework for securing the interconnection and interoperability of telecommunications networks and services in the Community, in an environment of open and competitive markets.

This Directive establishes a regulatory framework for securing the interconnection and interoperability of telecommunications networks and services in the Community and ensuring universal service, in an environment of open and competitive markets.

### Article 2 par. 1(h) (new)

"universal service" means a defined minimum service or set of services of specified quality which is accessible to all users everywhere and, in the light of specific national conditions, at an affordable price.

### Article 3 par. 1

Member States shall take all necessary measures to remove any restrictions which prevent organizations authorized by Member States to provide telecommunications networks and telecommunications services from negotiating interconnection agreements between themselves in accordance with Community law. The organizations concerned may be in the same Member State or in different Member States. Technical and commercial arrangements for interconnection shall be a matter for agreement between the parties involved, subject to the provisions of this Directive and the competition rules of the Treaty.

Member States shall take all necessary measures to remove any restrictions which prevent organizations authorized in Member States to provide telecommunications networks and telecommunications services from negotiating interconnection agreements between themselves in accordance with Community law. The organizations concerned may be in the same Member State or in different Member States. Technical and commercial arrangements for interconnection shall be a matter for agreement between the parties involved, subject to the provisions of this Directive and the competition rules of the Treaty.

### Article 3 par. 3

Member States shall ensure that organizations who interconnect their facilities to public telecommunications networks and/or public telecommunications services respect at all times the confidentiality of information transmitted or stored.

Member States shall ensure that organizations who interconnect their facilities to public telecommunications networks and/or public telecommunications services respect at all times the confidentiality of information transmitted or stored, except when required by their national law for the protection of public order.

### Article 5 par. 5

Where the mechanisms referred to in paragraph 4 are established, national regulatory authorities shall ensure that the principles for cost sharing, and details of the mechanism used, are open to public inspection in accordance with Article 14(2).

Where a mechanism for sharing the net cost of universal service obligations as referred to in paragraph 4 is established, national regulatory authorities shall ensure that the principles for cost sharing, and details of the mechanism used, are open to public inspection in accordance with Article 14(2).

#### Article 6 par. 1

For interconnection to the public telecommunications networks and public telecommunications services identified in Annex I provided by organizations which have been notified by national regulatory authorities as having significant market power, Member States shall ensure that:

For interconnection to the public telecommunications networks and public telecommunications services identified in Annex I provided by organizations which have significant market power, Member States shall ensure that:

#### Article 6(d)

interconnection agreements are open to public inspection, in accordance with Article 14(2), with the exception of those parts which deal with the commercial strategy of the parties. In every case, details of interconnection charges and any contributions to universal service obligations shall be published.

interconnection agreements and changes to them are communicated to the relevant national regulatory authorities and the Commission, and made available on request to interested parties, in accordance with Article 14(2), with the exception of those parts which deal with the commercial strategy of the parties. The national regulatory authority shall decide which parts deal with the commercial strategy of the parties. In every case, details of interconnection charges, terms and conditions and any contributions to universal service obligations shall be made available on request to interested parties.

#### Article 6(e) (new)

Information received from an organization seeking interconnection shall be used only for the purpose for which it was supplied. It shall not be passed on to other departments, subsidiaries or partners for whom such information could provide a competitive advantage.

#### Article 7 par. 3

Charges for interconnection shall be based on the costs of providing the interconnection services requested, and shall normally contain the following elements, each of which should be itemized separately:

Charges for interconnection shall be based on the costs of providing the interconnection services requested, and shall normally contain the following elements, each of which should be itemized separately:

- a charge to cover re-imbusement of the one-time costs incurred in providing the specific elements of the interconnection requested; (i.e. the initial cost of any engineering work needed to provide the interconnection facilities requested);
- usage charges related to the utilisation of the network elements and resources requested. These may include capacity-based charges and/or traffic related charges;

- a charge to cover re-imbusement of the one-time costs incurred in providing the specific elements of the interconnection requested; (i.e. the initial and subsequent cost of any engineering work needed to provide the interconnection facilities requested);
- usage charges related to the utilisation of the network elements and resources requested. These may include capacity-based charges and/or traffic related charges;

Annex IV indicates, for information only, the types of costs that may be included in each of these tariff elements. Where other tariff elements are applied, these must be transparent and based on objective criteria, and approved by the national regulatory authority.

Charges for interconnection may include bulk discount schemes. In some cases, these may be available only to organizations identified in Annex II. Such schemes shall be based on objective criteria and applied in a non-discriminatory manner.

Annex IV indicates the types of costs that may be included in each of these tariff elements. Where other tariff elements are applied, these must be transparent and based on objective criteria, and approved by the national regulatory authority.

Charges for interconnection may include bulk discount schemes. In some cases, these may be available only to organizations identified in Annex II. Such schemes shall be based on objective criteria and applied in a non-discriminatory manner.

#### Article 7 par. 5

National regulatory authorities shall ensure the publication, in accordance with Article 14(1), of a list of interconnection services and associated tariffs broken down into components, according to market needs.

National regulatory authorities shall ensure the publication, in accordance with Article 14(1), of terms and conditions for interconnection. This shall include a list of interconnection services and relevant tariffs broken down into components, according to market needs.

#### Article 7 par. 5a (new)

In order to provide a common basis for the derivation of interconnection charges, the Commission shall draw up, acting in accordance with the procedure in Article 15, guidelines on cost accounting systems in relation to interconnection.

#### Article 7 par. 8

Member States shall ensure that published interconnection charges and charges related to the sharing of the cost of universal service obligations are made available to the ONP Committee at the request of the Commission.

Member States shall ensure that published interconnection charges, terms and conditions, and charges related to the sharing of the cost of universal service obligations are made available to the ONP Committee at the request of the Commission.

#### Article 7 par. 9

In order to provide a common basis for the derivation of interconnection charges, the Commission shall, if necessary, draw up, acting in accordance with the procedure laid down in Article 15, recommendations on cost accounting systems in relation to interconnection.

(deleted)

### Article 8 par. 3a (new)

The Commission shall, acting in accordance with the procedure laid down in Article 15, draw up guidelines on accounting separation in relation to interconnection.

### Article 8 par. 4

The financial accounts of organizations providing public telecommunications networks or public telecommunications services shall be drawn up, published and submitted to independent audit. The audit shall be carried out in accordance with the relevant rules of national legislation.

The first subparagraph shall also apply to the separate accounts required in paragraphs 1 and 2.

The financial accounts of organizations providing public telecommunications networks or public telecommunications services shall be drawn up, submitted to independent audit and published. The audit shall be carried out in accordance with the relevant rules of national legislation, and its results shall be made public.

The first subparagraph shall also apply to the separate accounts established as required in paragraphs 1 and 2.

### Article 8 par. 6

Where appropriate, the Commission shall, acting in accordance with the procedure laid down in Article 15, draw up guidelines on accounting separation in relation to interconnection.

(deleted)

### Article 9 par. 1

National regulatory authorities shall encourage and secure adequate interconnection in the interests of all users, exercising their responsibility in a way that provides maximum economic efficiency and gives the maximum benefit to end-users.

In particular, national regulatory authorities shall take into account:

- the need to ensure satisfactory end-to-end communications for users;
- the need to stimulate a competitive market;

National regulatory authorities shall encourage and secure adequate interconnection in the interests of all users, exercising their responsibility in a way that provides maximum economic efficiency and gives the maximum benefit to end-users.

In particular, national regulatory authorities shall take into account:

- the need to ensure satisfactory end-to-end communications for users;
- the need to stimulate a competitive market;
- the need to ensure the fair and proper development of a seamless harmonious European telecommunication home market, thus coordinate their policies, guidelines and actions with their counterparts in other Member States and with the Commission;

- the need to promote the establishment and development of trans-European networks and services, and the interconnection and interoperability of national networks and services, as well as access to such networks and services;
- the principles of non-discrimination (including equal access) and proportionality;
- the need to maintain the universal service.

- the need to promote the establishment and development of trans-European networks and services, and the interconnection and interoperability of national networks and services, as well as access to such networks and services;
- the principles of non-discrimination (including equal access) and proportionality;
- the need to maintain the universal service.

#### Article 9 par. 5

In the event of an interconnection dispute between organizations operating under authorizations granted by the same Member State, the national regulatory authority of that Member State shall, on request of either party, take steps with a view to resolving the dispute.

In the event of an interconnection dispute between organizations operating under authorizations granted by the same Member State, the national regulatory authority of that Member State shall, on request of either party, take steps with a view to resolving the dispute.

In so doing, the national regulatory authority shall take into account, *inter alia*:

In so doing, the national regulatory authority shall take into account, *inter alia*:

- the user interest,
- regulatory obligations or constraints imposed on any of the parties,
- the desirability of stimulating innovative market offerings, and of providing users with a wide range of telecommunications services at a national and at a Community level,
- the availability of technically and commercially viable alternatives to the interconnection requested,
- the desirability of ensuring equal access arrangements,
- the need to maintain the integrity of the public telecommunications network and the interoperability of services,
- the nature of the request in relation to the resources available to meet the request,
- the relative market positions of the parties,
- the public interest (e.g. the protection of the environment).

- the user interest,
- the need to maintain a universal service,
- regulatory obligations or constraints imposed on any of the parties,
- the desirability of stimulating innovative market offerings, and of providing users with a wide range of telecommunications services at a national and at a Community level,
- the availability of technically and commercially viable alternatives to the interconnection requested,
- the desirability of ensuring equal access arrangements,
- the need to maintain the integrity of the public telecommunications network and the interoperability of services,
- the nature of the request in relation to the resources available to meet the request,
- the relative market positions of the parties,
- the public interest (e.g. the protection of the environment).

#### Article 9 par. 6a (new)

National regulatory authorities shall provide help and assistance to their counterparts in other Member States whenever required in order to implement this Directive. The Commission may at any time request a National regulatory authority to intervene on specific issues. National Regulatory Authorities shall take due account of the Commission's request and inform the Commission in detail and without undue delay of the steps taken.

#### Article 10(e) (new)

Protection of the environment : Member States may impose conditions in interconnection agreements in order to ensure the protection of environment or comply with objectives of town planning, and in particular to impose physical collocation of lines and ducts. The need to protect the environment does not constitute a valid reason for refusal to negotiate terms of interconnection.

#### Article 11 par. 1

Where an organization is granted a general right under national legislation to install facilities for telecommunications purposes on, over or under public or private land, or may take advantage of a procedure for the expropriation or use of property for telecommunications purposes, national regulatory authorities shall encourage the sharing of such facilities and property with other organizations providing public telecommunications services:

Where an organization is granted a general right under national legislation to install facilities for telecommunications purposes on, over or under public or private land, or may take advantage of a procedure for the expropriation or use of property for telecommunications purposes, national regulatory authorities shall encourage the sharing of such facilities and property with other organizations providing public telecommunications networks and services.

#### Article 12 par. 2

In order to ensure full interoperability of European-wide networks and services, Member States shall take all necessary steps to ensure the coordination of their national positions in international organizations and fora where numbering decisions are taken, taking into account possible future developments in numbering at a European level.

In order to ensure full interoperability of European-wide networks and services, Member States shall ensure the coordination of their national positions in international organizations and fora where numbering decisions are taken, taking into account possible future developments in numbering at a European level.

### Article 12 par. 3

Member States shall ensure that national telecommunications numbering plans are controlled by the national regulatory authority, in order to guarantee independence from organizations providing public telecommunications networks or public telecommunications services. In order to ensure effective competition, national regulatory authorities shall ensure that the procedures for allocating individual numbers and/or numbering ranges are transparent, equitable and timely and the allocation is carried out in an objective, transparent and non-discriminatory manner. National regulatory authorities may lay down conditions for the use of certain prefixes or certain short codes, in particular where these are used for services of general public interest (e.g. freephone services, kiosk billed services, directory services, emergency services), or to ensure equal access.

Member States shall ensure that national telecommunications numbering plans are controlled by the national regulatory authority, in order to guarantee independence from organizations providing public telecommunications networks or public telecommunications services and facilitate number portability. In order to ensure effective competition, national regulatory authorities shall ensure that the procedures for allocating individual numbers and/or numbering ranges are transparent, equitable and timely and the allocation is carried out in an objective, transparent and non-discriminatory manner. National regulatory authorities may lay down conditions for the use of certain prefixes or certain short codes, in particular where these are used for services of general public interest (e.g. freephone services, kiosk billed services, directory services, emergency services), or to ensure equal access.

### Article 12 par. 5

National regulatory authorities shall encourage the earliest possible introduction of the facility whereby end-users who so request can retain their national number at a specific location independent of the organization providing service, and shall ensure that this facility is available at least in all major centers of population before 1 January 2003.

National regulatory authorities shall encourage the earliest possible introduction of the facility whereby end-users who so request can retain, against a reasonable contribution, their national number at a specific location independent of the organization providing service, and shall ensure that this facility is available at least in all major centers of population before 1 January 2003. If this facility is not yet in use, national regulatory authorities shall ensure that, once a user has changed supplier, a telephone call to his old number is rerouted to the user, or that during a reasonable period callers are given an indication of the new number.

### Article 16 par. 2

Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the principles set out in Article 9(1).

Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts and shall inform the Commission in order to bring about a resolution of the dispute, in accordance with the principles set out in Article 9(1).

#### Article 16 par. 5

The position agreed in accordance with the procedure referred to in paragraph 4 shall form the basis of a solution to be implemented at a national level without delay. If an agreed position is not reached, or if an agreed position is not implemented within a reasonable time which shall not, except in justified cases, exceed two months, the appropriate solution shall be adopted by the Commission in accordance with the procedure laid down in Article 15.

The position agreed in accordance with the procedure referred to in paragraph 4 shall form the basis of a solution to be implemented at a national level without delay. If an agreed position is not reached, or if an agreed position is not implemented within a reasonable time which shall not, except in justified cases, exceed two months, the appropriate solution shall be adopted by the Commission in accordance with the procedure laid down in Article 15. This solution does not prejudice the possibilities which exist in national legislation for one party to claim in the relevant courts for the granting of damages if it appears that the behaviour of another party has led to financial losses due to distortion of competition. However, issues which have been settled at EU level cannot be questioned under these claims.

#### Article 17 par. 2

National regulatory authorities shall notify to the Commission by 31 January 1997, and immediately thereafter in the event of any change, the names of those organizations which:

- have universal service obligations for the provision of the public telecommunications networks and services identified in Annex I, Part I;
- are subject to the provisions of this Directive concerning organizations with significant market power;
- are covered by Annex II.

The Commission may request national regulatory authorities to provide their reasons for classifying an organization as having significant market power.

National regulatory authorities shall notify to the Commission by 31 January 1997, and immediately thereafter in the event of any change, the names of those organizations which:

- have universal service obligations for the provision of the public telecommunications networks and services identified in Annex I, Part I;
- are subject to the provisions of this Directive concerning organizations with significant market power;
- are covered by Annex II.

The Commission may request national regulatory authorities to provide their reasons for classifying an organization as having significant market power or for not classifying an organization as such.

#### Article 19 par. 1

Deferment from the obligations under Articles 3(1) and 9(3) may be requested by those Member States identified in the Council's Resolution of 22 July 1993 who benefit from an additional transition period for the liberalization of telecommunications services. Deferments granted on these grounds shall not exceed the transition periods set out in the said Resolution.

Member States with less developed networks which are granted an additional period of up to five years in which to implement all or some of the obligations under Directive 96/.../EC may request a corresponding deferment of some or all the requirements of Articles 3(1) and 9(3), to the extent justified by any special or exclusive rights for telecommunications services and infrastructure allowed under Community law.

## Article 19 par. 2

Deferment from the obligations under Article 12(5) may be requested where the Member State concerned can prove that they would impose an excessive burden on certain organizations or classes of organization.

The Member State shall inform the Commission of the reasons for requesting a deferment, the date by which the requirements can be met, and the measures envisaged in order to meet this deadline. The Commission shall consider the request taking into account the particular situation in that Member State and the need to ensure a coherent regulatory environment at a Community level, and shall inform the Member State whether it deems that the particular situation in that Member State justifies a deferment and, if so, until which date such deferment is justified.

Deferment from the obligations under Article 12(5) may be requested where the Member State concerned can prove that they would impose an excessive burden on certain organizations or classes of organization.

The Member State shall inform the Commission of the reasons for requesting a deferment, the date by which the requirements can be met, and the measures envisaged in order to meet this deadline. The Commission shall consider the request taking into account the particular situation in that Member State and the existing possibilities of otherwise meeting the requirements, and shall inform the Member State whether it deems that the particular situation in that Member State justifies a deferment and, if so, until which date such deferment is justified.

## Article 21 par. 2

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 2000. For this purpose, the Commission may request information from the Member States. Where necessary, further measures can be proposed in the report for the full implementation of the aims of this Directive.

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 1999. For this purpose, the Commission may request information from the Member States. Where necessary, the report shall examine what provisions of this Directive should be adapted in the light of the developments in the market. Further measures can be proposed in the report for the full implementation of the aims of this Directive; in particular, the report shall examine the possibility of establishing a European regulatory authority to ensure those tasks carried out by the Commission or the national regulatory authorities according to this Directive, which would be more efficiently fulfilled through such a European Regulatory Authority.

## Annex I, Part 1

### The fixed public telephone service

The fixed public telephone service means the provision to end-users at fixed locations of a service for the originating and receiving of national and international calls, and may include access to emergency (112) services, the provision of operator assistance, directory information services, provision of public pay phones, provision of service under special terms and/or provision of special facilities for customers with disabilities.

### The fixed public telephone service

The fixed public telephone service means the provision to end-users at fixed locations of a service for the originating and receiving of national and international calls, and includes access to emergency (112) services, the provision of operator assistance, directory information services, provision of public pay phones, provision of service under special terms and/or provision of special facilities for customers with disabilities.

## Annex II par. 4

Organizations included in this category at their own request, under relevant national licensing or authorization schemes.

Organizations providing telecommunication services which are included in this category at their own request, under relevant national licensing or authorization schemes.

### Annex VII, Part 2. (n) (new)

Provision of facility sharing.

### Annex VII, Part 2. (o) (new)

Maintenance and quality of interconnection services.

### Annex VII, Part 2. (p) (new)

Protection of confidential information.

### Annex VII, Part 3. (b)

Provision of facility sharing.

(deleted)

### Annex VII, Part 3. (c)

Maintenance and quality of interconnection services.

(deleted)

ISSN 0254-1475

COM(96) 121 final

# DOCUMENTS

EN

15

---

Catalogue number : CB-CO-96-131-EN-C

ISBN 92-78-01831-7

---

Office for Official Publications of the European Communities

L-2985 Luxembourg