

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE

on the mutual recognition of licences and other national
authorizations to operate telecommunications services,
including the establishment of a Single Community
Telecommunications Licence and the setting up of
a Community Telecommunications Committee (CTC)

(presented by the Commission)

SUMMARY

This proposal aims at establishing a balanced and efficient procedure for the mutual recognition of licences or other authorizations for the provision of telecommunications services issued by Member States. This includes the situation where a Member State grants general authorizations for certain services which do not require an individual application.

The proposal also sets up a new committee - the Community Telecommunications Committee (CTC) - to assist the Commission in the implementation of the recognition procedure.

This proposal is an essential step towards allowing service providers to reap the full benefits of the Community-wide market for telecommunications.

EXPLANATORY MEMORANDUM

I. Introduction

According to Community Law as specified by Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services¹, Member States may subject any telecommunication service to licensing or declaration procedures necessary to warrant compliance with the essential requirements or special and exclusive rights. These procedures must be based on objective criteria, applied without discrimination and in proportion to their objective.

As a consequence, services providers wanting to operate telecommunications services in more than one Member State generally must apply for licences or declare their intent to operate the relevant service in each Member State in which they wish to operate before they can start operation.

Such time-consuming parallel applications are without any doubt restricting the provision of Community-wide telecommunications services and keep the Community telecommunications services market divided in twelve national markets. This repetitive and cumbersome procedure is clearly contradicting one of the principal aims of the establishment of an internal market in telecommunications services which is the creation of conditions to promote the development of Europe-wide services.

This is the reason why the Council, in Article 7 of its Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision², has explicitly provided for the adoption of measures for harmonizing declaration and/or licensing procedures for the provision of services via public telecommunications networks, with a view to establish conditions in which there would be mutual recognition of declarations and/or licensing procedures.

This proposal aims to implement the provisions of the mentioned Article 7 of Directive 90/387/EEC of 28 June 1990.

1 OJ No L 192, 24.7.1990, p.10

2 OJ No L 192, 24.7.1990, p.1

2. Approach chosen

The proposed directive aims at establishing balanced and efficient procedures for mutual recognition of licences and other authorizations for the provision of telecommunications services. It provides the principle that any service provider authorized and supervised by the competent authorities of any Member State may operate the services covered by the authorization in all other Member States without the need to wait for complete harmonization of the licensing conditions. Provisions for the harmonization of licensing conditions for service categories wherever possible are also included.

The procedures have been drafted in order to take account of the specific situation in the telecommunications sector.

Indeed, the legislations of many Member States do not request any licensing or declaration for value added services. This absence of formal authorisation has been taken into account in the proposed approach.

Another difficulty arises from the stage of harmonisation of the essential requirements applicable to telecommunications services. Mutual recognition implies that a level of protection of the essential requirements is obtained which will be practicable and valid in every Member State. This situation will be largely achieved by the specification of the relevant essential requirements in the Council Directive on the application of open network provision to leased lines³, which is currently still under examination, and by the Council Directive on the application of open network provision to voice telephony, of which a proposal will be shortly submitted. As regards data protection, the minimum necessary level of protection will be achieved under the future Council Directive concerning the protection of data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital networks (ISDN) and public digital mobile networks⁴.

Since the harmonization at Community-level of these essential requirements is still not fully achieved, a Member State might deem it necessary to impose conditions on the operation of telecommunications services, which differ from those imposed by other Member States, to warrant compliance with the essential requirements which are, for the time being, only broadly defined in Commission directive 90/388/EEC of 28 June 1990.

³ OJ No C 58/10, 1991

⁴ See the Commission's proposal published in the OJ C 277 of 5 November 1990, p. 12

For this reason, the proposed directive provides for a specific procedure enabling each Member State and the Commission to assess whether the conditions of authorizations granted by other Member States suffice to warrant compliance with the essential requirements, and, if deemed necessary, to propose additional conditions to be affixed to those of the authorization for which mutual recognition is requested.

Furthermore, differences still exist as far as the scope of the services subject to special or exclusive rights are concerned, e.g. with regard to the simple resale of leased line capacity in view of the provision of packet or circuit switched data services. The proposed directive grants therefore the right to each Member State to oppose the mutual recognition of authorizations granted by other Member States, whenever this would encroach on special or exclusive rights compatible with Community Law.

3. Recognition procedure by individual decision

In the approach chosen the Single Community Telecommunications Licence is not an additional licence. It is to be seen as the recognition that a national authorization can be used to operate the service covered by this authorization in all other Member States. This national authorization can take the form of a licence, a declaration or a general regulatory authorization arising e.g. from a class licence or a legislation.

A central role in the administration of the procedure will be carried out by the Community Telecommunications Committee (CTC), which the proposed Directive will set up, composed of representatives of the National Regulatory Authorities.

In the procedure of the proposed directive, the National Regulatory Authorities will play an essential part. They will in general be the interface with the companies requesting the mutual recognition of their authorization.

The procedure also provides for the possibility of consulting the European Committee for Telecommunications Regulatory Affairs (ECTRA) set up in the framework of the European Conference of Postal and Telecommunications Administrations (CEPT) if the applicant intends to extend the provision of services to CEPT countries other than Member States.

One of the key features of the proposed directive is the procedure for the amendment or modification of National Authorizations. In those cases where otherwise mutual recognition could not be achieved, the proposed directive provides for a procedure to

amend or modify National Authorizations in view of their mutual recognition for the operation of Community-wide services. The exclusion in the Single Community Telecommunications Licence of certain services covered in the National Authorization, is the most obvious example of such an amendment. Another case is the exclusion in the Single Community Licence of certain services for those Member States where their provision is subject to special and exclusive rights compatible with Community Law.

A further case where this procedure shall be applied is when the current conditions of an authorization transformed into a Single Community Telecommunications Licence no longer suffice to warrant compliance with the essential requirements. In that case, the procedure also offers an alternative to the withdrawal of the Single Community Telecommunications Licence.

4. Recognition by service category

The proposed directive also provides that full harmonisation of the conditions to which the provisions of telecommunications service is subject should be sought where appropriate. Such harmonisation should be based on the work realised in the wider context of the CEPT by ECTRA. It is therefore provided that mandate should be given by the Community to ECTRA to develop appropriate harmonised conditions.

Where harmonisation has been realised, individual decision for the granting of a Single Community Telecommunications Licence will not be necessary and the publication of the categories of services concerned will be sufficient to guarantee the same rights as those resulting from an individual licence. It should also be possible to provide that the same simplified procedure could be applied to categories of services for which harmonisation is not deemed necessary.

5. The Community Telecommunications Committee (CTC)

The proposed directive sets up a Committee which shall assist the Commission in establishing a Community regulatory framework in the field of telecommunications. In order to establish balanced relations between the regulatory coordination at the Community level and the action of the National Regulatory Authorities the Committee should be composed of representatives of the National Regulatory Authorities.

The creation of a new Committee is necessary since the existing two regulatory Committees in this sector - the ONP-committee and the ACTE-committee - have both a specific competence, whereas the CTC which will assist the Commission in the implementation of this Directive should have a much broader scope. The area of the licensing of services is indeed closely related to problems of numbering and general tariffing principles for telecommunications services. Moreover, the proposed Directive should be eventually extended to services presently excluded, such as mobile and satellite services. The Committee will then also have to consider certain aspects of radio frequencies and numbering.

In addition the CTC shall build on the experience of two broad policy advisory bodies : SOGT and the Joint Committee on telecommunications. The Senior Official Group on Telecommunications has played a strategic role in the establishment of the Community Telecommunications Policy. It should continue its vital contribution to the formulation of the general telecommunications policy goals of the Community in the future. In order to increase this role, the Member States should enlarge the composition of their delegates in order to include representatives of the service providers and industry, whose views could be of great importance for the formulation of the Community policy. Their potential contribution has been shown at various occasions by the useful comments these associations submitted about consultative documents issued by the Commission.

The Commission shall coordinate the action of all existing committees. It should hear the opinion of the CTC in this respect with regard to the setting up of general priorities for the Community Telecommunications policy as well as, where appropriate, also in respect of cooperation with any other Committees and Bodies in the area of technical competence, in particular the European Telecommunications Standards Institute (ETSI) and the European Committee for Standardisation / European Committee for Electrotechnical Standardisation (CEN - CENELEC) for technical aspects and standards, and the European Radiocommunications Committee - European Radiocommunications Office (ERC/ ERO) in the field of Radio frequencies. The Commission should also hear the opinion of the CTC concerning links with other relevant committees or bodies set up in the framework of the European Conference of Postal and Telecommunications Administrations (CEPT), such as ECTRA (European Committee for Telecommunications Regulatory Affairs).

In its fields of interests, the CTC shall take account of developments within ITU and its specialised bodies CCITT (International Telegraph and Telephone Consultative Committee) and CCIR (International Radio Consultative Committee) on all issues whose scope is broader than the Community.

Should the proposed procedure prove inadequate, the Commission shall, on the basis of experience acquired by the implementation of the proposed directive, assess whether a new structure for support is necessary for the performance of its tasks under this Directive and all other relevant Council Decisions and Directives. If such a structure appears to be necessary and compatible with the general orientations of the Commission, the Commission should examine, in consultation with the CTC, the appropriate conditions for the setting up of such a structure.

6. Aims of the proposal and Outline of the contents

Underlying the proposed directive is the aim to create conditions for the Community-wide provision of telecommunications services while respecting the concern of the Member States to ensure compliance with essential requirements and special or exclusive rights which are granted in conformity with Community Law.

Article 1 establishes the overall objective of the Directive i.e. to provide a procedure to allow for the Community-wide provisions of services authorized in one Member State.

Article 2 defines the terms used.

Article 3 specifies the scope of the Directive i.e. which National Authorizations will be concerned by the established mutual recognition procedure.

Article 4 ensures the right to apply for mutual recognition of all National Authorizations covered by the Directive.

Article 5 sets out the legal characteristics of the Single Community Telecommunications Licence.

Article 6 calls for the establishment of procedures for the application of the right to mutual recognition.

Article 7 sets out time limits for the notification by the National Regulatory Authority of the application received, and for its examination by the Community Telecommunications Committee.

Article 8 provides for the consultation of ECTRA if the applicant intends to provide services also in CEPT countries outside the Community

Article 9 covers the granting of mutual recognition of a National Authorization by its transformation into a Single Community Telecommunications Licence.

Article 10 sets out the grounds that a Member State may invoke to oppose the granting of a Single Community Telecommunications Licence to the holder of a National Authorization.

Articles 11 to 13 cover the granting of mutual recognition of a National Authorization through a Single Community Telecommunications Licence, with amended conditions in comparison with the original National Authorization.

Article 14 provides for the harmonization of licensing conditions for certain telecommunications services in consultation with ECTRA.

Article 15 sets out the simplified procedure for recognition by service category.

Articles 16 to 19 set out procedural provisions regarding fees, alternative procedures and withdrawal of Single Community Telecommunications Licences.

Article 20 sets up the CTC.

Article 21 sets out the procedures for the CTC.

Articles 22 to 27 are standard clauses regarding the confidentiality of information covered by the obligation of professional secrecy, the information of the public, the revision of the Directive and the implementation of the Directive by the Member States.

7. Conclusion

The draft directive aims at facilitating substantially the provision of telecommunications services in the Community. It takes full account of the primary role of the National Regulatory Authorities in accordance with the principle of subsidiarity.

The Council is therefore requested to adopt the attached proposal for a directive.

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on the mutual recognition of licences and other national authorizations to operate telecommunications services, including the establishment of a Single Community Telecommunications Licence and the setting up of a Community Telecommunications Committee (CTC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2), 66 and 100a thereof,

Having regard to the proposal from the Commission¹,

In cooperation with the European Parliament²,

Having regard to the opinion of the Economic and Social Committee³,

1. 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 provision⁴, and in particular Article 7 thereof, provides that the Council shall, where required, adopt measures for harmonizing declaration and/or licensing procedures for the provision of services via public telecommunications networks, with a view to establishing conditions in which there would be mutual recognition of declaration and/or licensing procedures;
2. Whereas under the Directives adopted further to Directive 90/387/EEC and in particular Directive / /EEC⁵ [Council Directive on the application of open network provision to leased lines], essential requirements are being harmonized in a way which facilitates the mutual recognition of national licences, declarations and other authorizations to operate certain services without licences;

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4 OJ No L 192, 24.7.1990, p. 1.

5 OJ No L

3. Whereas Article 7 of Directive 90/387/EEC provides for the harmonization of the declaration and/or licensing procedures as regards services operated via the public telecommunications network; whereas there is moreover a necessary link between licences granted for the operation of mobile and satellite services and the exclusive use of certain frequencies; whereas the mutual recognition of licences granted for the operation of such services can for this reason only be envisaged in conjunction with the allocation of the required frequencies in the other Member States; whereas the use of frequencies in the Member States has so far been harmonized only to a limited extent so that diverging bandwidths, frequencies and standards are still used for many mobile services; whereas the mutual recognition of licences for the operation of mobile and satellite services therefore requires additional measures as regards the allocation and coordination of frequencies; whereas this will be dealt with in specific directives; whereas for these reasons telecommunications services such as mobile radio services and satellite services are not at this stage covered by this Directive; whereas specific provisions would have to be adopted to extend mutual recognition of licences to these services, taking account of their particular characteristics;
4. Whereas this Directive concerns only the recognition of authorizations to provide telecommunications services granted by Member States; whereas negotiations with third countries are under way in that respect, especially in the framework of the General Agreement on Tariffs and Trade (GATT); whereas the question of the mutual recognition of authorizations granted by third countries will be dealt with at a later stage, in the light of the results of these negotiations;
5. Whereas the approach adopted for the mutual recognition of national licences and other authorizations is to establish procedures whereby undertakings may have their national authorizations transformed into a Single Community Telecommunications Licence which will be recognized throughout the Community; whereas this can be achieved through mutual recognition in respect of individual applications, whereby individual national authorizations to operate are recognized as Single Community Telecommunications Licences; whereas this can also be achieved through mutual recognition in respect of service categories, whereby a Single Community Telecommunications Licence will be granted to all providers of a category of services;

6. Whereas the Single Community Telecommunications Licence will allow telecommunications service providers to pursue any or all of the activities for which they hold an authorization from one Member State throughout the Community by establishing branches or by providing services; whereas the Single Community Telecommunications Licence will not free its holders from the obligation to comply with national legislation that is not specifically related to telecommunications;
7. Whereas the Member States, acting under Community law, have created national regulatory authorities responsible, inter alia, for granting licences and monitoring other authorizations to provide telecommunications services; whereas, in accordance with the principle of subsidiarity, these authorities should in principle initiate the mutual recognition procedure; whereas certain telecommunications services may be provided in some Member States without any specific procedure being required; whereas mutual recognition demands at least that the regulatory authority of the Member State that granted an authorization should certify the validity of an individual licence or, in the case of a general regulatory authorization, that the applicant may lawfully operate the relevant telecommunications service under this authorization; whereas Member States should therefore provide for a procedure for collecting the information necessary for that purpose;
8. Whereas applicants may intend to provide services not only throughout the Community but also in countries belonging to the European Conference of Postal and Telecommunications Administrations (CEPT) other than Member States; whereas in order to take advantage of the expertise of national regulatory authorities in a wider European context it may be appropriate in that case to ask the European Committee for Telecommunications Regulatory Affairs (ECTRA) set up under the CEPT to give an opinion on the licensing conditions which should be imposed;
9. Whereas the system for the mutual recognition of national licences and other authorizations to operate telecommunications services by the issuing of Single Community Telecommunications Licences must operate in a coherent manner and allow national regulatory authorities, if they deem it necessary, to object to the mutual recognition of licences or other

authorizations granted by other Member States; whereas the task of monitoring the operation of the system should therefore be entrusted to a Community-level body in which the regulatory authorities of all the Member States participate;

10. Whereas such objections by Member States must be based on objective and non-discriminatory grounds and formulated in writing; whereas the Commission should make a preliminary assessment of objections in order to ensure that they are compatible with Community law;
11. Whereas a procedure must be established to grant partial mutual recognition of national authorizations when objections made against full recognition are well founded; whereas the new conditions can be fixed either by agreement between the holder of the national authorization and the representatives of the Member States objecting or by a decision taken in accordance with this Directive; whereas when such a decision imposes conditions pertaining to data protection, the Working Party on the Protection of Personal Data should, where appropriate, be consulted in accordance with Council Directives .../.../EEC⁶ [Council Directive concerning the protection of individuals in relation to the processing of personal data] and .../.../EEC⁷ [Council Directive concerning the protection of data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital networks (ISDN) and public digital mobile networks];
12. Whereas in implementing this Directive it might turn out to be unnecessary to require individual applications for mutual recognition in respect of certain categories of services; whereas a simplified procedure should therefore be introduced to allow for the Community-wide provision of such categories of services; whereas exemptions by service categories will be decided in accordance with the procedure laid down in this Directive; whereas the Commission should in this context give ECTRA a mandate to harmonize licensing conditions;
13. Whereas this new mutual recognition procedure may increase the national regulatory authorities' current workload and entail new costs; whereas these authorities should have the right to pass on the extra costs incurred to applicants;

6 Commission proposal, OJ No C 277, 5.11.1990, p. 3.

7 Commission proposal, OJ No C 277, 5.11.1990, p. 12.

14. Whereas the need for flexibility and efficiency dictates that, besides the normal application procedure for mutual recognition of licences or other authorizations through the national regulatory authorities, it should be possible, where necessary, for requests for recognition to be submitted through the national regulatory authority of another Member State, for example when combined with a request for recognition of a licence granted by that Member State, or to be submitted directly to the Commission;
15. Whereas the national regulatory authorities should take appropriate measures to ensure that the holders of Single Community Telecommunications Licences comply with the terms of these licences; whereas, however, these measures should be subject to review by the Commission; whereas in order to guarantee consistency in applying the system Community-wide, decisions withdrawing or modifying Single Community Telecommunications Licences should only be taken at Community level;
16. Whereas when the conditions set out in a Single Community Telecommunications Licence no longer suffice to ensure compliance with essential requirements under Community law, the need to modify or withdraw that Licence must be assessed at Community level;
17. Whereas this requires an efficient procedure for the modification and withdrawal of Single Community Telecommunications Licences, at the same time guaranteeing the rights of the defence in the assessment of such non-compliance;
18. Whereas the issue of service licensing is closely related with aspects of the telecommunications industry for which two regulatory committees are currently responsible: network access which is the domain of the ONP-committee, and type approval of the equipment to be used for the provision of the relevant services which falls within the province of the Approvals Committee for Terminal Equipment (ACTE); whereas it is therefore necessary to adopt a broad approach at this stage and to set up Community Telecommunications Committee (CTC) to assist the Commission in the implementation of this Directive; whereas this Committee, made up of representatives of the national regulatory authorities, should establish

a balance between regulatory coordination at Community level and action by the national regulatory authorities, in line with the principle of subsidiarity; whereas this Committee will adopt its rules of procedure, which may provide, in particular, for the constitution of technical subcommittees for the examination of individual applications;

19. Whereas the confidentiality of data covered by professional secrecy which are collected in accordance with the procedures laid down in this Directive must at all events be guaranteed;

20. Whereas, however, the transparency of the mutual recognition procedure must be ensured; whereas the list of individuals or companies that have been granted Single Community Telecommunications Licences should be made public, as well as the licensing conditions when they do not include business secrets; whereas the national regulatory authorities must be clearly identified,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope and definitions

Article 1

Objective

The purpose of this Directive is to establish a single market in telecommunications services by setting up procedures allowing a service provider who is authorized to operate telecommunications services in one Member State, whether by a licence or by other means, to provide some or all of those services throughout the Community without having to obtain individual licences or authorizations from other Member States.

Article 2

Definitions.

The definitions given in Directive 90/387/CEE shall apply, where relevant to this Directive. In addition, for the purposes of this Directive:

1. 'national regulatory authority' means the body or bodies in each Member State, legally distinct and functionally independent of the telecommunications organizations, entrusted by the Member States, inter alia, with the regulatory functions addressed in this Directive;
2. 'national authorizations' means individual authorizations such as licences or declarations, or general regulatory authorizations, for example in the form of legislation or class licences, which allow the provision of telecommunications services in a Member State, in conformity with Community law;
3. 'CTC' means the Community Telecommunications Committee established by Article 20 of this Directive;

4. 'Single Community Telecommunications Licence' means the document which constitutes evidence of mutual recognition of a national authorization, allowing its holder to operate the telecommunications service or services specified in the Licence within the Community under the terms set out in the Licence.

Article 3

Scope

This Directive shall apply to all national authorizations relating to the provision of telecommunications services on public telecommunications networks.

It shall not apply to national authorizations for the provision of mobile radio services and satellite services.

CHAPTER II

Mutual recognition of national authorizations

Article 4

Right to mutual recognition

Each Member State shall ensure that any national authorization to provide a telecommunications service under its national law may be granted recognition in the form of a Single Community Telecommunications Licence, in accordance with the procedures laid down in Chapter III or IV.

Article 5

Single Community Telecommunications Licence

1. Member States shall ensure that undertakings which have been granted a Single Community Telecommunications Licence are allowed to start providing the telecommunications services specified in that Licence on their territory without delay.

2. Member States shall ensure that the only restrictions imposed on the provision of services by the licensees are those recognized by the relevant Single Community Telecommunications Licence.
3. Paragraphs 1 and 2 shall not prevent Member States from making the provision of services under a Single Community Telecommunications Licence subject to national legislation not specifically related to telecommunications services.
4. A Member State may make the provision of services under a Single Community Telecommunications Licence subject to preliminary notification whereby licence holders inform the national regulatory authority of their intention to provide these services.

CHAPTER III

Mutual recognition by individual application

Article 6

Application for recognition

Member States shall ensure that appropriate procedures are established to enable the holders of national authorizations to apply for recognition of those authorizations under Article 4 through the national regulatory authority of the authorizing Member State.

Article 7

Transmission to the Commission

1. Member States shall ensure that their national regulatory authorities transmit applications for recognition of national authorizations to the Commission no later than one month after receiving them.

An application shall include the following:

- (a) a copy of the national authorization on the basis of which the applicant operates telecommunications services in the Member State concerned;
 - (b) certification by the national regulatory authority that an individual authorization is valid or, in the case of a general regulatory authorization, that the services concerned may lawfully be provided by the applicant under the authorization;
 - (c) the information specified in the Annex, unless this is already covered by the national authorization referred to in (a).
2. The Commission shall inform the national regulatory authorities of applications received without delay. When a national regulatory authority intends to raise an objection against the recognition of a national authorization, it shall inform the Commission within one month of being informed of the application.
3. National regulatory authorities which have informed the Commission that they intend to raise an objection in accordance with paragraph 2 may submit their objections in writing within two months of being notified of the application. An objection must be duly substantiated as specified in Article 10.

Article 8

Consultation of ECTRA

Where an applicant has formally indicated that he intends to seek an extension of his national authorization to CEPT countries other than Member States, the Commission may, where appropriate, request ECTRA to give its opinion within one month on any objections submitted in accordance with Article 7, subject to the application of the obligations laid down in Article 22 to the members of ECTRA.

Article 9

Granting recognition of national authorizations

1. If no national regulatory authority has informed the Commission of its intention to raise an objection within the period laid down in Article 7(2) or raised an objection within the period specified in Article 7(3), recognition shall be granted by the Commission and notified in accordance with paragraph 3.
2. If it appears to the Commission that no objection raised by national regulatory authorities is compatible with Community law, recognition shall be granted by the Commission in accordance with the procedure laid down in Article 21(1) within one month of receiving the objections and shall be notified in accordance with paragraph 3.
3. The Commission shall notify the national regulatory authorities of the Member States and the applicant of the recognition of a national authorization without delay. This written notification shall bear the title "Single Community Telecommunications Licence" and shall be considered as proof of the recognition of a national authorization allowing its holder to operate the telecommunications services mentioned therein within the Community.

Article 10

Objections

1. Objections by a national regulatory authority under Article 7(3) shall be based only on the grounds:
 - that the applicant does not provide sufficient guarantees to ensure compliance with essential requirements laid down by Community law, in particular those harmonized under the relevant directives on Open Network Provision;

- that, as regards packet- or circuit-switched data services, the Member State represented by the national regulatory authority objecting has made their operation subject to a set of public service specifications, adopted in accordance with Article 3 of Commission Directive 90/388/EEC⁸, which differ from those in force in the Member State where the applicant holds an authorization to operate;
 - that the applicant's authorization pertains to a service which, in the Member State represented by the national regulatory authority objecting, is still subject to special or exclusive rights compatible with Community law, and in particular Commission Directive 90/388/EEC.
2. Objections shall be addressed to the Commission, for examination in accordance with the procedure laid down in Articles 11, 12 and 13.

Article 11

Examination of objections

If it appears to the Commission that objections made by a national regulatory authority in accordance with Article 10 are compatible with Community law, the conciliation procedure laid down in Article 12 may be initiated.

Article 12

Conciliation procedure

Without prejudice to:

- (a) any action that the Commission or any Member State might take pursuant to the Treaty, and in particular Articles 169 and 170 thereof;
- (b) the rights of the applicant or any other person under applicable national law;

⁸ OJ No L 192, 24.7.1990, p. 10.

the following conciliation procedure may be applied:

- (1) the chairman of the CTC shall convene as soon as possible a working group including at least two members of the CTC and the chairman of the CTC or another representative of the Commission appointed by him;
- (2) the working group shall meet within ten days. The chairman of the CTC may decide, on a proposal from any member of the working group, to invite a maximum of two other persons as experts to advise it;
- (3) the working group shall give the applicant concerned, the national regulatory authorities of the Member States and the telecommunications organizations involved the opportunity to present their arguments orally or in writing;
- (4) the working group shall endeavour to reach agreement between the service provider and the national regulatory authorities of the Member States involved;
- (5) the applicant and the members of the CTC involved shall bear their own costs of participating in this conciliation procedure;
- (6) if an agreement is reached, where appropriate taking into account the opinion given in accordance with Article 8, recognition shall be granted by the Commission subject to the terms of the agreement being added to or substituted in the national authorization for which recognition was sought;
- (7) the application shall then be subject to the procedure of Article 9(3).

Article 13

Supplementary conditions

1. If the conciliation procedure provided for in Article 11 is not initiated within two weeks of the CTC being consulted or if no agreement is reached under the procedure set out in Article 12 within three months of the first meeting of the working group, the supplementary conditions specific

to some Member States which are necessary to safeguard essential requirements or special or exclusive rights in those Member States and which are to be included in the Single Community Licence shall be adopted, where appropriate taking into account the opinion given in accordance with Article 8. Recognition subject to these conditions shall be granted in accordance with the procedure laid down in Article 21(1).

2. Where the supplementary conditions referred to in paragraph 1 pertain to data protection, the procedure laid down in the relevant Council Directives on the protection of personal data shall be followed where appropriate.
3. The application shall then be subject to the procedure of Article 9(3).

CHAPTER IV

Recognition by service category

Article 14

Harmonization of licensing conditions in consultation with ECTRA

1. The Commission may, where appropriate, request ECTRA to determine harmonized licensing conditions for certain telecommunications services.
2. Where harmonized licensing conditions have been determined under paragraph 1, a decision on whether the provision of services may only be authorized subject to those conditions shall be taken in accordance with the procedure laid down in Article 21(1).
3. It may further be decided, in accordance with the procedure laid down in Article 21(1), that recognition by service category may be granted for certain categories of telecommunications services which have not been the subject of harmonization under paragraph 2.
4. In cases covered by paragraphs 2 and 3 of this Article, no objections may be raised and therefore an individual application for recognition is not required.

Article 15

Procedure for recognition by service category

1. Articles 6, 7, 9 and 10 shall not apply to services covered by a decision taken under Article 14(2) or (3). Such a decision may also provide that preliminary notification under Article 5(4) shall be required for these services.
2. A decision taken under Article 14(3) may include special conditions based on the grounds specified in Article 10(1) and these shall be complied with by the providers of the services covered.
3. The Commission shall publish a list of the categories of services covered by decisions adopted under Article 14(2) and (3), including any relevant conditions, in the Official Journal of the European Communities and update it whenever necessary.
4. Publication in the Official Journal under paragraph 3 shall be equivalent to granting recognition of a national licence under Article 9. All rights and obligations resulting from the granting of a Single Community Telecommunications Licence shall apply to the providers of services covered by a decision under Article 14(2) or (3).

CHAPTER V

Procedural provisions

Article 16

Fees

Member States may allow their national regulatory authority to impose a reasonable fee to cover the administrative costs incurred in processing applications for Single Community Telecommunications Licences and monitoring the Single Community Telecommunications Licences granted.

Article 17

Submission of applications through another
national regulatory authority

1. Member States shall ensure that, under the procedure established pursuant to Article 6, their national regulatory authorities also transmit requests for recognition of national authorizations granted in other Member States.
2. In the case of an application submitted through another national regulatory authority, the Commission shall request the national regulatory authority of the Member State that granted the authorization in question to supply the certification referred to in Article 7(1)(b). The national regulatory authority shall supply the information requested within one month.

Article 18

Direct submission

1. If an application has been pending before a national regulatory authority for longer than the period laid down in Article 7(1) or if the national regulatory authority has approved direct submission, the applicant may submit his application for recognition direct to the Commission. Such applications shall include the particulars referred to in Article 7(1)(a) and (c) and shall be examined by the Commission under Article 7(2).
2. In the case of an application submitted directly, the Commission shall request the national regulatory authority of the Member State that granted the authorization in question to supply the certification referred to in Article 7(1)(b). The national regulatory authority shall supply the information requested within one month.
3. The procedure for direct applications, including any fees, shall be adopted in accordance with the procedure laid down in Article 21(1).

Article 19

Implementation, modification and withdrawal of licences

1. If a national regulatory authority considers that a licensee no longer complies with the conditions of a Single Community Telecommunications Licence, it may take appropriate measures to ensure compliance with these conditions or may request the Commission to initiate the procedure set out in paragraph 4.
2. National regulatory authorities shall inform the Commission of any measures taken under paragraph 1 without delay. The Commission may, after having given the undertakings involved the opportunity of being heard, decide whether the measures taken shall be maintained or modified.
3. If a national regulatory authority considers that the conditions set out in a Single Community Telecommunications Licence no longer suffice to ensure compliance with essential requirements or special or exclusive rights under Community law, it shall request the Commission to initiate the procedure set out in paragraph 4.
4. The Commission, after having given the undertakings involved the opportunity of being heard, shall consider whether the Single Community Telecommunications Licence should be maintained, whether the conciliation procedure laid down in Article 12 shall be initiated, whether the Single Community Telecommunications Licence should be modified in accordance with the procedure laid down in Article 13 or whether that Licence should be withdrawn, in accordance with the procedure laid down in Article 21(1).
5. The Commission shall notify the undertaking involved and the national regulatory authorities of decisions taken under paragraphs 2 and 4.

CHAPTER VI

Community Telecommunications Committee

Article 20

Membership of the CTC

The Commission shall be assisted by the Community Telecommunications Committee, made up of representatives of the national regulatory authorities of the Member States and chaired by a representative of the Commission.

Article 21

Procedures for the CTC

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

The opinion shall be recorded in the minutes; in addition each Member State shall have the right to ask to have its position recorded in the minutes. The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

2. The Commission shall, where necessary, inform the Committee on the outcome of consultations with the representatives of the telecommunications organizations, users, consumers, manufacturers, service providers and trade unions.

In addition, the Committee, taking account of the Community's telecommunications policy, shall foster the exchange of information between the Member States and between the Member States and the Commission on the situation and development of regulatory activities regarding the authorization of telecommunications services.

CHAPTER VII

Final provisions

Article 22

Confidentiality

1. Without prejudice to the provisions of Articles 8 and 23, the Commission and the national regulatory authorities, their officials and other servants, and experts called in pursuant to point 2 of Article 12 shall not disclose any information covered by professional secrecy that is acquired by them in the course of implementing this Directive.
2. The provisions of paragraph 1 shall not prevent publication of information on licensing conditions which do not include information of a confidential nature.

Article 23

Information on licences

At least once a year, a list of the Single Community Licences granted and a list of the national regulatory authorities, including an indication of whether they accept direct submissions in accordance with Article 18, shall be published by the Commission in the Official Journal of the European Communities.

Article 24

Notification

Before 1 July 1993, Member States shall supply the Commission with particulars of their national regulatory authorities, including whether they allow direct submission as provided for in Article 18 and for which services. They shall inform the Commission of any subsequent changes.

Article 25

Review

In the light of the implementation of this Directive up to 1 January 1995, the Commission shall review whether a modification of its provisions is necessary.

Article 26

Implementation of the Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before [1 July 1993]. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.
3. They shall submit to the Commission a list of their representatives to the CTC no later than two months after the adoption of this Directive. The CTC shall take up its functions three months after the adoption of this Directive.

Article 27

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

INFORMATION REQUIREMENT IN ACCORDANCE WITH ARTICLE 7(1)(c)

1. Name and address of the company/person applying and, if applicable, ownership, date, place and form of incorporation.
2. Nature of the telecommunications services operated in the relevant Member State, with details under which the equipment was approved for connection to the public telecommunications network.
3. National authorization for the operation of the service(s) mentioned under point 2 in the Member State concerned, specifying the legal ground (law, licence, class licence, etc).
4. Indication whether the presumption of conformity provided for in Article 6(1) of Directive 91/263/EEC on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity, is applicable to the equipment which will be used.
5. The standards applied for the services concerned.
6. The measures envisaged to ensure data protection.

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