

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 48 final - COD 437

Brussels, 01.03.1994

OPINION OF THE COMMISSION

pursuant to Article 189b(2)(d) of the EC Treaty
on the European Parliament's amendments to the Council's common position
regarding the proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
on the application of open network provision (ONP)
to voice telephony

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189a(2) of the EC Treaty

EXPLANATORY MEMORANDUM

In view of the fact that on 1 November 1993 the Treaty on European Union came into effect, this proposed Directive comes now under the co-decision procedure (Article 189b of the EC Treaty).

Article 189b.2(d) requests the Commission to express its opinion on the amendments proposed by the European Parliament in its second reading.

The Commission hereby presents its Opinion on the 14 Amendments proposed by the European Parliament, including, in accordance with Article 189a (second paragraph) of the EC Treaty, a Modified proposal incorporating four of the EP amendments which the Commission has accepted.

1. BACKGROUND

- a) The Commission submitted its proposal to the Council on 27 August 1992 [COM(92) 247 final - SYN 437].
- b) The Economic and Social Committee gave its favourable opinion on 25 November 1992.
- c) The European Parliament, on the first reading, adopted a favourable Resolution on 10 March 1993, including 37 amendments to the proposal of the Commission.
- d) In accordance with Article 149.3 of the EEC Treaty, the Commission adopted an amended proposal on 7 May 1993, incorporating in full or in part 25 of those amendments (COM(93)182).
- e) The Council adopted its Common Position on 30 June 1993.
- f) The Commission accepted this Common Position and informed the European Parliament of its opinion on 9 July 1993 (SEC(93)1069).
- g) The European Parliament, at the second reading debate on 27 October 1993, discussed 14 amendments to the common position, but did not vote.
- h) Following the coming into force of the Treaty on European Union on 1 November 1993, the Commission confirmed its original proposal to the European Parliament; the European Parliament confirmed its opinion in first reading on 2 December 1993; the Commission confirmed its Modified Proposal (COM(93)570); the Council confirmed its Common Position on 14 December 1993.
- i) The European Parliament voted on the second reading on 19 January 1994, adopting a favourable resolution which included 14 amendments to the Common Position.

2. PURPOSE OF THE DIRECTIVE

The proposal for a Directive on the application of open network provision to voice telephony services has three basic goals:

- to establish the rights of users of voice telephony services;
- to improve access to the public telephone network infrastructure for all users, including service providers;
- to enhance Community-wide provision of voice telephony services.

POSITION OF THE COMMISSION ON THE EP AMENDMENTS

In considering the amendments proposed by the European Parliament on second reading, the Commission can accept those which:

- i) are consistent with the Commission's initial proposal, and/or
- ii) are consistent with the Commission's position on the first reading of the European Parliament, and/or
- iii) clarify the text in a useful way.

1. Amendments accepted by the Commission

In view of the strength of feeling in the European Parliament, the Commission can accept Amendments 5, 6, 8 and 10, and has incorporated these into its Modified proposal in order to allow them to be re-considered by Council.

The amendments can be divided in two categories:

a.1) User rights and facilities

These includes the following two amendments:

- i) Amendment 5, dealing with *compulsory* compensation in cases of failure to meet the contracted service quality levels.
- ii) Amendment 6, concerning the obligation for prompt and justified explanation to users on reasons for refusal of special network access.

(Note: Amendment 6 also contains a clarification concerning the right of telecommunications organizations to request special network access for the provision of competitive services, i.e. insertion of the word 'when').

a.2) Transparency

These includes the following two amendments:

- i) Amendment 8, calling for an external audit of the financial accounts of telecommunications organizations (TOs).
- ii) Amendment 10, dealing with information availability and submission to the Commission in cases of access restriction or denial.

2. Amendments rejected by the Commission

Amendments 1, 2, 3, 4, 7, 9, 11, 12, 13 and 14 are rejected by the Commission.

Amendments linked to comitology procedures are rejected because any changes to comitology procedures require an inter-institutional agreement which would cover in a horizontal way issues of comitology in the context of Co-decision.

Specific amendments are discussed in section a) to d) below.

a) Comitology, including Consultation with the EP

Amendments 3 (second part), and 12 call for the involvement of the European Parliament in the Committee procedure.

These are rejected for the reasons given above. Moreover, it is considered inappropriate to consult the European Parliament on detailed technical changes to the Annexes of the Directive. Any significant major changes would be a result of a Review of the Directive, and the European Parliament would then be consulted in accordance with Article 32 of the Common Position;

Amendment 14 is also rejected. The Common Position foresees the use of a Regulatory Committee type IIIa in limited areas of this Directive. The two areas are:

i) Technical adjustment (Article 29 of the Common Position)

This involves updating the Annexes of the Directive to take account of new technological developments and changes in market demand.

ii) Convergence (Article 25 of the Common Position)

This involves setting harmonised targets and target dates for Community-wide provision of facilities.

Despite its preference for an advisory Committee for acts based on Article 100A, the Commission accepted the Common Position on the grounds that a Regulatory Committee type IIIa is consistent with the ONP Framework Directive¹ and the ONP Leased Lines Directive².

b) Consultation with interested parties

Amendments proposed in this area (2, 3, (part), 11 (part) and 13) include consultation with representative bodies in the telecommunications sector. These are rejected because:

i) It is important to safeguard the Commission's right of initiative.

ii) Within ONP there is already a very open and successful consultation procedure involving telecommunications organizations, users, consumers, manufacturers and service providers. In addition, the Joint Committee on Telecommunications³ provides a mechanism for consultation with trade unions.

c) Effectiveness of national regulatory authorities

Amendments 1 and 11 address the European Parliament's concern that national regulatory authorities (NRAs) should be effective in protecting user rights.

¹ OJ No. L 192, 24.7.90, p. 1.

² OJ No. L 165, 19.6.92, p. 27.

³ OJ No. L 230, 24.8.90, p. 25.

Part of amendment 1 has already been included in Article 26.1 of the Common Position, and other parts in Recital 9.

NRAs were set up under the 1990 Telecommunications Services Directive⁴. The Commission is in constant dialogue with representatives of the NRAs - in the ONP committee and via bilateral meetings - to ensure that ONP legislation is properly implemented. Day-to-day application of the legislation has to be judged at a national level.

Any shortcomings in Member States implementation can be addressed under standard infringement procedures foreseen in the Treaty.

Therefore, it is considered inappropriate to include these two amendments in the Directive.

d) Small and medium sized Telecommunications Organisations

Amendments 7 and 9 (and the associated Amendment 4) are designed to address specific interconnection issues related to small and medium sized telecommunications organizations.

The Directive sets up a mechanism by which the NRA can be called in to settle disputes about interconnection according to the principle of non-discrimination (Article 11 of the Common Position). The Commission considers that this is a better approach than addressing detailed interconnection problems in the Directive itself.

Therefore, these three amendments are considered unnecessary.

CONCLUSION

In conclusion, the Commission is of the opinion that European Parliament proposed amendments 5, 6, 8 and 10 to the Common Position reinforce the text in the areas of user rights and transparency, and add clarity to some points, being fully compatible with the goals of the proposed Directive.

The Modified proposal incorporates these amendments.

⁴ OJ No. L 192, 24.7.90, p. 10.

Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
on the application of open network provision (ONP)
to voice telephony

(presented by the Commission in accordance with Article 189a, second paragraph, of the EC Treaty)

EXPLANATORY MEMORANDUM

In view of the fact that on 1 November 1993 the Treaty on European Union came into effect, this proposed Directive comes now under the co-decision procedure (Article 189b of the EC Treaty).

In accordance with Article 189b.2(d) of the EC Treaty, the Commission is to deliver an Opinion on the amendments proposed by the European Parliament to the Common Position of the Council. The Commission has accepted four of the EP amendments, for the reasons given in section 1 of the attached Opinion.

In accordance with Article 189a (second paragraph) of the EC Treaty, the Commission hereby presents a Modified proposal incorporating four EP amendments to the Common Position of the Council which the Commission has accepted

Article 7(1)

1. National regulatory authorities shall ensure that users have a contract which specifies the service to be provided by a telecommunications organization. National regulatory authorities may require compensation and/or refund arrangements to be provided if the contracted service quality-levels are not met.

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Article 10(1)

1. National regulatory authorities shall ensure that telecommunications organizations respond to reasonable requests from users other than

a) operators of public mobile-telephony services,

b) telecommunications organizations providing voice telephony service,

for access to the fixed public telephone network at network termination points other than the network termination points referred to in Annex I.

Where in response to a particular request the telecommunications organization consider it unreasonable to provide the special network access requested, it must seek the agreement of the national regulatory authority to restrict or deny that access. Users affected should be granted the opportunity to put their case before the national regulatory authority before a decision is taken.

1. National regulatory authorities shall ensure that telecommunications organizations respond to reasonable requests from users other than

a) operators of public mobile-telephony services,

b) telecommunications organizations when providing voice telephony service,

for access to the fixed public telephone network at network termination points other than the network termination points referred to in Annex I.

Where in response to a particular request the telecommunications organization consider it unreasonable to provide the special network access requested, it must seek the agreement of the national regulatory authority to restrict or deny that access. Users affected should be granted the opportunity to put their case before the national regulatory authority before a decision is taken, and must in all cases be given a prompt and justified explanation as to why a request has been refused.

Article 13(3a) (new)

3a. National regulatory authorities shall ensure that the financial accounts of those telecommunications organizations notified in accordance with Article 26(3) are audited on an annual basis by a qualified independent auditor in order to ensure compliance with the approved cost accounting system.

Article 26(5a) (new)

5a. National regulatory authorities shall keep available and submit to the Commission on request details of individual cases where access to or use of the public telephone network or voice telephony service has been restricted or denied, including the measures taken and their justification.

ISSN 0254-1475

COM(94) 48 final

DOCUMENTS

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10 15

Catalogue number : CB-CO-94-055-EN-C

ISBN 92-77-65570-4

Office for Official Publications of the European Communities
L-2985 Luxembourg