



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on a common framework for general authorizations and individual licences
in the field of telecommunications services

(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 a common framework for general authorizations and individual licences in the field of telecommunications services. 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 14.11.95, and it was formally transmitted to the European Parliament and the Council on 30.1.96¹.

The Economic and Social Committee gave a favourable Opinion on 24.4.96². The European Parliament adopted a favourable Resolution at its First Reading on 22.5.96, and proposed 37 amendments to the Commission's proposal³.

b) **Purpose of the Directive**

By 1 January 1998 full competition is to be introduced in most Member States in the provision of telecommunications services and network infrastructures. The proposed directive will allow undertakings to benefit from a Union-wide market for telecommunications and as such is an important part of the new regulatory environment supporting telecommunications liberalization.

While more competition is to be introduced in the telecommunications sector, authorizations regimes remain necessary in order to ensure that certain public interest objectives are attained, including the provision of universal service. At the same time, national regulatory frameworks must be competition-friendly, and priority must be given to light authorisations schemes. In that context, the proposed directive will lay down a common framework for national authorizations regimes and provide for mechanisms aimed at facilitating the provision of cross-border networks and services.

¹ O.J. C 90, 27.03.96, page 5.

² CES/530 of 1996.

³ A4-142/96, PV 12905

2. EP amendments accepted by the Commission

Of the 37 amendments adopted by the European Parliament at first Reading, the Commission accepted 23 in full, 2 in part and 1 in principle, making a total of 26.

Amendments accepted in full : 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 17,
18, 19, 21, 23, 24, 28, 30, 31, 32, 33, 34

Amendments accepted in part : 2, 20

Amendment accepted in principle : 22

The Commission accepted those amendments which :

- increase the transparency of the proposed regulatory framework for authorizations,
- improve the clarity of the text, in particular with regard to its scope,
- offer better guarantees to new entrants,
- introduce flexibility in the procedures for the granting of authorizations and the conditions attached to authorizations,
- support the need to review in the future the balance between regulation at the European level and at the national level, including the possibility of a European Regulatory Authority for telecommunications after 1998
- are consistent with other EU legislation.

3. Amendments not accepted by the Commission

The Commission has not accepted 11 of the 37 amendments (and part of 2 other amendments) proposed by the European Parliament. The reasons are given below.

National regulatory authorities (Amendments 1 and 8)

The Commission shares the concerns of the European Parliament regarding the requirement for effective and independent national regulatory authorities, playing an active role in the development of competition and able to ensure appropriate implementation of EU legislation (and of this Directive) at national level. For this reason, the Commission has included a new provision on the independence of national regulatory authorities in the proposed Directive on the adaptation of the ONP Framework Directive to a competitive environment (COM (95) 543). It is therefore not necessary to duplicate that provision in this Directive.

Limitation of the facilitation of entry by new operators (Amendment 3)

The Directive does not provide for specific interventions favouring new entrants but introduces climate which is conducive to new entry in general.

It does not appear desirable to limit the benefit of this approach to certain categories of new entrants ; this would introduce discrimination against certain categories of new entrants which would be difficult to justify.

Incumbent operators are likely to remain dominant because availability of alternative networks is far from being widespread and therefore the need for facilitation of new entry should not be obviated.

Consistency with the proposed Directive on Interconnection (amendments 2 [reference to number portability] and 10)

It is important to ensure consistency between the different texts which are currently elaborated and discussed and which will form the regulatory package for the liberalisation of telecommunications by 1998. Both amendments would be in contradiction with the proposed Directive on Interconnection. The EP has expressed an opinion on this text during its February 1996 plenary session. The Council has reached on it a Common Position during the Telecommunications Council of March 1996.

As far as the reference to number portability in Amendment 2 is concerned, the European Parliament, in its Opinion on the proposed directive on Interconnection, suggested amendments aimed at improving the situation of consumers, and the Commission approved these amendments. The date for number portability (1 January 2003) was supported in the European Parliament Opinion on the proposed Directive on Interconnection. This is not the position taken through Amendment 2 which mentions "the late moment for introduction of number portability" as one of the major obstacles faced by new operators.

The European Parliament Opinion on the proposed Directive on Interconnection also supported the definition of universal service, which would be changed by Amendment 10. In addition, the substance of Amendment 10 proposed in the present report on that definition raises a problem, because affordability cannot be defined at the present time at the same level for all Member States.

Fees not related to administrative costs (Reference to Article 7.1 b) in Amendment 20)

Through the reference to Article 7.1.b) in this amendment Member States would be allowed to impose fees not related to administrative costs as a counterpart for access to rights of ways.

The Commission is of the opinion that such rights of ways cannot be seen as a genuine scarce resource, like for instance radiofrequencies can be. This reference to amendment 7.1.b) would allow the levy, on new entrants in the local loop, of fees not related to administrative costs. It will therefore discourage the construction of competitive infrastructure. The consultation on the Green Paper on the liberalisation of infrastructure made it clear that there is much concern in industry against such an approach.

Of course, the granting of rights of ways to network operators can be accompanied by Member States of other stringent obligations, such as environmental or town and country planning requirements, or proof of access to sufficient financial resources.

**Anticipation of deadlines
(Amendments 25 and 29)**

Both dates proposed by these amendments would result in excessively short deadlines.

As far as harmonisation is concerned (amendment 25), the review of its results needs to be done after a sufficiently long period of time, following the liberalisation of the telecommunications sector in 1998. Otherwise there is a risk that no valid conclusion be drawn from this review process. It is also necessary to take into account the time needed for setting up the harmonised general authorisations, along the procedure put forward in Article 14 of the proposed Directive. Therefore the Commission considers that a three year period after the 1 January 1998 is reasonable.

As far as the deadline for bringing into line existing licences is concerned (amendment 29), it does not appear justified to advance it to 1 July 1998, instead of 1 January 1999. Member States will need time to take the administrative steps necessary to adapt the existing authorisations to the provisions of the proposed Directive.

**Amendments linked to comitology
(Amendments 26 and 27)**

Both amendments would differ from the Council decision on comitology of 13 July 1987 : Amendment 26 on the limitation of the number of representatives in the European Union Telecommunications Committee (EUTC) to only one per Member State and Amendment 27 on a reference to publicity of meetings of the EUTC.

In addition, the publicity required by Amendment 27 would be difficult to implement, given the confidential nature of data provided by undertakings. Rights of defense will be safeguarded anyway.

**Research & training conditions in licences
(Amendment 35)**

It is not justified, in a competitive environment, to impose on market players specific conditions in these fields. Such conditions can result in the imposition of a significant financial burden on networks and services providers. In addition, Member States should be responsible for research and training policies. Finally, the amendment could also lead to the introduction of extraneous elements in universal service, which would result in erecting new barriers to entry for services for which no strong social and economical demand exists yet.

**Individual licences for telephony services between the Community and third countries
(Amendment 36)**

Individual licences for voice telephony services are normally justified because of public service requirements (Article 7 (d)) and these should be indistinctly applicable intra and extra-EC services.

**Individual licences for town and country planning or protection of environment reasons
(Amendment 39)**

Town and country planning or the protection of environment are legitimate and important public interest objectives, which as such are recognised by the proposal. However, the possibility of allowing Member States to issue individual licences in order to deal with town and country planning or the protection of environment is not necessary. The proposal already provides for possibilities to cover such concerns, mainly through Annex I. Also, some conditions linked to town and country planning or to the protection of environment can be addressed by means of general authorisations.

4. Conclusion

The Commission has accepted 26 of the 37 amendments proposed by the European Parliament either in whole, in part or in principle.

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

Amended Proposal for a European Parliament and Council Directive
on a common framework for general authorizations and individual licences
in the field of telecommunications services

Original text

Amended text

Recital 5

Whereas this Directive therefore will make a significant contribution to the entry of new operators into the market, as part of the development of the Information Society ;

Whereas this Directive therefore will make a significant contribution to the entry of new operators into the market, as part of the development of the Information Society, bearing in mind that major obstacles still exist for new operators in the sectors that have already been open to competition, as well as in those member countries where national schemes of liberalisation of telecommunications have been implemented, such as the differentiated tariff policy of the incumbent operator, insufficient transparency and high costs for interconnection, and the lack of an asymmetrical treatment ;

Recital 12

Whereas Member States should be allowed to impose specific conditions on undertakings providing public telecommunications networks and telecommunications services because of their market power; whereas the market power of an undertaking depends on a number of factors including its share of the relevant product market 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, and its experience in providing products and services in the market; whereas, for the purpose of this Directive, an undertaking 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, in accordance with the Community competition rules, that this was not the case; whereas, for an undertaking falling below this threshold market share, the national regulatory authority may nevertheless, albeit only for the purposes of applying the provisions of European Parliament and Council Directive on interconnection to public telecommunications networks and public telecommunications services in the context of Open Network Provision (ONP), determine that the undertaking enjoyed significant market power ;

Whereas Member States should be allowed to impose specific conditions on undertakings providing public telecommunications networks and telecommunications services because of their market power, the market power of an undertaking being defined by the provisions of European Parliament and Council Directive on interconnection to public telecommunications networks and public telecommunications services in the context of Open Network Provision (ONP) ;

Recital 13

Whereas telecommunications services have a role to play in strengthening social and economic cohesion, inter alia by furthering the achievement of universal service, in particular in remote, peripheral, landlocked and rural areas and islands; whereas Member States should therefore be allowed to impose universal service obligations by means of individual licence ;

Whereas telecommunications services have a role to play in strengthening social and economic cohesion, inter alia by furthering the achievement of universal service, in particular in remote, peripheral, landlocked and rural areas and islands; whereas Member States should therefore be allowed to impose universal service obligations to provide the universal service by means of individual licences ; whereas obligations to contribute to the financing of universal service are not a justification for imposing individual licences ;

Recital 19

Whereas the functioning of this Directive should be reviewed in due course; in the light of the development of the telecommunications sector and of trans-European networks, as well as in the light of experience gained from the harmonization and one-stop-shopping procedures set out in this Directive;

Whereas the functioning of this Directive should be reviewed in due course; in the light of the development of the telecommunications sector and of trans-European networks, as well as in the light of experience gained from the harmonization and one-stop-shopping procedures set out in this Directive; whereas it seems reasonable that, when this Directive is reviewed, the possibility of the creation of a European regulatory authority is considered ;

Article 1

This Directive concerns the procedures associated with the granting of authorizations and the conditions attached to such authorizations, for the purpose of providing telecommunications services.

This Directive concerns the procedures associated with the granting of authorizations and the conditions attached to such authorizations, for the purpose of providing telecommunications services and for the establishment and/or operation of any infrastructure for the provision of telecommunications services.

Article 2 par. 1 (e)

(e) "Telecommunications services" means services whose provision consists wholly or partly in the transmission and/or routing of signals on telecommunications networks.

(e) "Telecommunications services" means services whose provision consists wholly or partly in the transmission and/or routing of signals on telecommunications networks. This Directive does not apply to radio and television broadcasting;

Article 4 (2)

Member States shall ensure that the conditions attached to general authorizations are published in an appropriate manner so as to provide easy access to that information for interested parties. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned.

Member States shall ensure that the conditions attached to general authorizations are published in an appropriate manner so as to provide easy access to that information for interested parties. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned and in the Official Journal of the European Communities.

Article 5 (4)

Member States shall ensure that information concerning the procedures relating to general authorizations is published in an appropriate manner, so as to provide easy access to that information. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned.

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Article 7 (1)

Member States may, in addition to conditions attached to general authorizations for the telecommunications services, including those services mentioned in Annex II, require individual licences imposing conditions as listed in Annex I, point 4, but only for the following purposes :

- (a) to allow the licensee access to specific radio frequencies or numbers;
- (b) to give the licensee particular rights with regard to access to public or private land;
- (c) to grant the licensee rights to provide public telecommunications infrastructure between the Community and third countries;
- (d) to impose obligations on the licensee relating to the mandatory provision of public telecommunications services;
- (e) to impose specific obligations, in conformity with Community competition rules, where the licensee has significant market power in relation to the provision of public telecommunications networks and telecommunications services.

Member States may, in addition to conditions attached to general authorizations, require individual licences imposing conditions as listed in Annex I, point 4, but only for the following purposes :

- (a) to allow the licensee access to specific radio frequencies or numbers;
- (b) to give the licensee particular rights with regard to access to public or private land;
- (c) to grant the licensee rights to provide public telecommunications infrastructure between the Community and third countries;
- (d) to impose obligations and requirements on the licensee relating to the mandatory provision of public telecommunications services as defined in Annex I, points 4.5 and 4.8;
- (e) to impose specific obligations, in conformity with Community competition rules, where the licensee has significant market power as defined by the provisions of European Parliament and Council Directive ... on interconnection to public telecommunications networks and public telecommunications services in the context of Open Network Provision in relation to the provision of public telecommunications networks and telecommunications services.

Article 7 (2)

Undertakings wishing to provide services which are not yet covered by a general authorization and which cannot be provided without authorization, or wishing to enjoy additional rights not granted by the applicable general authorization, may apply for an individual licence.

National regulatory authorities must within two weeks grant a temporary individual licence to undertakings wishing to provide services which are not yet covered by a general authorization and which cannot be provided without authorization, or wishing to enjoy additional rights not granted by the applicable general authorization, or prove that the service has to be subject to an individual licence procedure for the purposes of paragraph 1. Member States shall lay down an appropriate procedure for appealing against a negative decision to an institution independent of the national regulatory authority.

Article 7 (3)

In the situations addressed in paragraph 2 Member States shall, as rapidly as possible, either consent to the provision of the service concerned or the establishment and/or operation of infrastructure concerned without authorization, or grant the relevant general authorizations in accordance with Section II.

In the situations addressed in paragraph 2 Member States shall, within one month, either consent to the provision of the service concerned or the establishment and/or operation of infrastructure concerned without authorization, or grant the relevant general authorizations in accordance with Section II.

Article 9(3) second indent

- it shall set reasonable time limits; inter alia it shall communicate to the applicant a decision on the application as soon as possible but not later than six weeks after it has received the application.

- it shall set reasonable time limits; inter alia it shall communicate to the applicant a decision on the application as soon as possible but not later than six weeks after it has received the application. Extension is possible in situations that are set out in advance, in particular to ensure transparency and coordination with other Member States.

Article 10 (1)

Member States may a priori limit the number of individual licences for any category of telecommunications services, only to the extent required to ensure the efficient use of radio frequencies and in conformity with Community competition rules.

Member States may a priori limit the number of individual licences for any category of telecommunications services, and for establishment and/or operation of telecommunications infrastructure, only to the extent required to ensure the efficient use of radio frequencies and in conformity with Community competition rules.

Article 10 (2), introduction

Where a Member State intends to limit the number of individual licences granted, it shall:

Where a Member State is entitled by virtue of the preceding paragraph to limit the number of individual licences granted, it shall:

Article 10 (4)

Where a Member State finds, either on its own initiative or following a request by an undertaking, either at the time of entry into force of this Directive or at a later time, that the number of individual licences can be increased, it shall publish this fact and invite applications for additional licences.

Member States shall periodically review whether any opportunities exist to increase the availability of frequencies. They shall inform the Commission every two years on the situation and any measures taken. Where a Member State finds, that the number of individual licences can be increased, it shall publish this fact and invite applications for additional licences.

Article 11, second paragraph

In addition, where resources are scarce, Member States may allow their national regulatory authorities to impose, in a non-discriminatory manner, a fee for the granting of an individual licence. This fee shall reflect the need for the optimal use of this resource as well as for the introduction and the development of innovative services and competition.

In addition, where the resources mentioned in Article 7 (1) (a) are scarce, Member States may allow their national regulatory authorities to impose, in a non-discriminatory manner, a fee for the granting of an individual licence. This fee shall reflect the need for the optimal use of this resource as well as for the introduction and the development of innovative services and competition.

Article 13, Title

Coordination of authorization procedures

Coordination of general authorization procedures and individual licence procedures

(Article 13 to be moved and placed after Article 15)

Article 13 (1)

An undertaking intending to provide a telecommunications service or to establish a telecommunications infrastructure in more than one Member State may request the national regulatory authorities concerned to coordinate their authorizations procedures in order to issue the necessary authorizations on substantially the same conditions.

Pending harmonization on the basis of Article 14, the national regulatory authority concerned shall allow derogations to their general authorizations at the request of an undertaking intending to provide a telecommunications service or to establish a telecommunications infrastructure in more than one Member State in order to enable the undertaking to operate in the Member States concerned on substantially the same conditions.

The national regulatory authority concerned shall issue the necessary individual licences on substantially the same conditions on the request of an undertaking intending to provide a telecommunications service or to establish a telecommunications infrastructure in more than one Member State.

Article 14, Title

Harmonization

Harmonization of general authorizations and procedures

Article 14 (2), first paragraph

Wherever necessary, the conditions attached to general authorizations for the provision of the telecommunications services listed in Annex II, the procedures for the grant of general authorizations and individual licences, and the setting of fees shall be harmonized.

Wherever necessary, with a view to ensuring light-handed regulation, the conditions attached to general authorizations for the provision of the telecommunications services listed in Annex II, the procedures for the grant of general authorizations and individual licences, and the setting of fees shall be harmonized.

Article 20 (3)

At the request of a Member State or on its own initiative the Commission shall examine any conditions, criteria and/or procedures set out in a national authorization, in particular with regard to the justifiability of the measures and their compliance with the principle of proportionality. The Commission shall, within one month of receipt of a request and following the procedure set out in Article 17, decide whether the Member State may continue to apply the measure. The Commission shall communicate its decision to the Council and to the Member States.

At the request of a Member State or on its own initiative the Commission may examine at any time any conditions, criteria and/or procedures set out in a national authorization, in particular with regard to the justifiability of the measures and their compliance with the principle of proportionality. The Commission shall, within one month of receipt of a request and following the procedure set out in Article 17, decide whether the Member State may continue to apply the measure. The Commission shall communicate its decision to the Council and to the Member States.

Article 22 (2)

Before 1 January 2000 the Commission will review whether an amendment of the provisions of this Directive is necessary, on the basis of a report to be supplied to the European Parliament and Council. The report shall include an assessment, on the basis of the experience gained, of the need for further development of the regulatory structures as regards authorizations, in particular in relation to harmonization and to trans-European services and networks.

Before 1 January 2000 the Commission will review whether an amendment of the provisions of this Directive is necessary, on the basis of a report to be supplied to the European Parliament and Council. The report shall include an assessment, on the basis of the experience gained, of the need for further development of the regulatory structures as regards authorizations, in particular in relation to harmonization and to trans-European services and networks, the institutional arrangements, as well as numbering plans and number portability.

Article 24

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1997. They shall immediately inform the Commission thereof.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive and publish the conditions and procedures attached to authorizations by 1 July 1997. They shall immediately 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.

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2. Member States shall notify to the Commission a list of representatives to the European Union Telecommunications Committee not later than two months after publication of this Directive.

Deleted

Annex I (4.5a) (new)

(4.5a) Compliance with substantive obligations concerning coverage of low population areas in particular.

Annex I (4.6.)

4.6. Conditions applied to operators having a significant market position, as notified by Member States under the directive on interconnection, aiming at ensuring interconnection or specific monitoring requirements.

4.6. Conditions applied to operators having a significant market position, as notified by Member States under the directive on interconnection, aiming at ensuring interconnection or the control of significant market power.

Annex I (4.9a) (new)

(4.9a.) Specific conditions related to the supply of leased lines in conformity with Directive 92/44/EEC as modified by Directive 96/...EC amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications

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