



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 31.07.1996
COM(96) 418 final

95/0280 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of
adaptation to a competitive environment in telecommunications**

**(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 amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications. 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 14.11.1995¹, and it was formally transmitted to the EP and the Council on 10.01.1996.

The Economic and Social Committee gave a favourable Opinion on 25.04.1996². The European Parliament adopted a favourable Resolution at its First Reading on 22.05.1996, and proposed 17 amendments to the Commission proposal³.

b) **Purpose of the Directive**

The aim of the Commission proposal is to amend the two following existing ONP Directives:

- the ONP framework Directive (90/387/EEC)⁴
- the ONP leased lines Directive (92/44/EEC)⁵

in order to adapt them to the post-1998 liberalised telecommunications market.

The ONP framework Directive was adopted in 1990, and set out basic principles for harmonising conditions for access to, and use of, public telecommunications networks and services.

The ONP leased lines Directive was adopted in June 1992, and set out harmonised supply and usage conditions for leased lines, including a requirement for a minimum set of 5 types of leased lines to be available in all Member States

¹ COM(95) 543, OJ C 62, 1.03.1996, p. 3

² TRA/304, 25.04.1996

³ A4-0144/96, PV 22.05.1996

⁴ OJ L 192, 24.07.1990, p. 1

⁵ OJ L 165, 19.06.1992, p. 27

2. EP amendments accepted by the Commission

Of the 17 amendments adopted by the European Parliament at First Reading, the Commission accepted 3 in full, 3 in part, and 2 in principle, making a total of 8.

Amendments accepted in full : 2, 13, 17

Amendments accepted in part: 4, 10, 14

Amendments accepted in principle : 9, 19(part)

The Commission accepted those amendments which:

- call for examination before the year 2000 of the possibility of establishing a European regulatory authority for telecommunications [Amendments 10 (part)].
- support the need to review before the year 2000 the provisions of these two ONP Directives in the light of the developments in the market [Amendments 10 and 14 (parts)].
- are coherent with other Directives, and in particular with the Common Position reached on the proposed Interconnection Directive [Amendments 2, 4(1st part)].
- improve the clarity of the text [Amendments 13 and 17].

In addition, the Commission accepted in principle the following amendments::

Amendment 9: The Commission agrees with the concern of the Parliament in terms of providing national regulatory authorities with all necessary resources to fulfil their mission in full autonomy, but the creation of legal difficulties for national transposition of such requirement should be avoided. For this reason, such a provision should be in a recital (recital 7), instead of an article.

Amendment 19 (3rd part): The Commission can accept in principle the need for restructuring the ONP committee, but this should not be a legal requirement.

3. Amendments not accepted by the Commission

The reasons which led the Commission not to accept a number of the amendments (or parts of them) proposed by the European Parliament are given below, where the amendments are grouped into 6 categories.

**Changes to definitions and concepts
(Amendments 1, 3, 4 (2nd part), 6 and 7)**

These amendments propose changes to definitions and concepts which are inconsistent with other Directives in the telecommunications sector, and in particular with the Common Position reached on the proposed Directive on interconnection in telecommunications⁶. These would risk of reopening debates on issues commonly agreed in the other Directives, and in particular could endanger the political agreement achieved on that Common Position and accepted by the Commission. This would also go against the Parliament's wish of consistency between all EC Directives in this field.

In this category fall the definitions of 'universal service' (Amendment 3), 'essential requirements' (Amendment 4, 2nd part on 'data protection') and 'interconnection' (Amendment 6). Also fall in this category Amendments 1 and 7: the former modifying the 'significant market power' concept agreed in the Interconnection Directive, and the latter introducing the concept of 'network interconnection point', which is a new concept not defined or included in the Interconnection Directive.

**Directive on costing and financing of universal service
(Amendment 8)**

The Interconnection Directive sets out a framework for costing and financing of universal service. In addition, the Communication on universal service for telecommunications⁷ announces a Commission Communication on costing and financing of universal service by September 1996, which will provide guidelines to be used in assessing national approaches to costing and financing universal service. Therefore, the Commission does not share the need for a specific Directive on the costing and financing of universal service.

**Review of the Directive
(Amendments 10 and 14 (parts))**

The Commission accepts the need to examine what provisions of the two Directives (90/387/EEC and 92/44/EEC) should be adapted in the light of market developments, but such adaptation should be limited to these two ONP Directives.

The Commission considers inappropriate the requirement for further measures that can be proposed in the report for the full implementation of the aims of these Directives to take the form of a proposal for a single consolidated text, as this would prejudice the need for such measures.

⁶ OJ C 313, 24.11.1995, p. 7.
⁷ COM(96) 73, 13.03.1996

**Comitology
(Amendment 19(1st and 2nd parts))**

The Commission can not accept the replacement of 'Member States' by 'national regulatory authorities' proposed in the first paragraph of Amendment 19, as it goes against standard consultative committee procedures.

The Commission neither accepts the second paragraph of Amendment 19, as there is already a specific mechanism for consultation with trade unions (i.e. the Joint Committee on Telecommunications).

**Applicability of the ONP Leased Lines Directive
(Amendment 12)**

Amendment 12 would significantly reduce the scope of the Leased Lines Directive, as the fixed public telephone network is commonly used for provision of leased lines.

**Other amendments
(Amendments 15, 16 and 18)**

The Commission can not accept Amendments 15 (1st part) and 16: the former would be against standard provision in EC Directives, and the latter inconsistent with other ONP Directives.

Although agreeing with the aim of Amendment 15 (2nd part) in terms of publication of a consolidated version, the Commission considers inappropriate that it constitutes a legal requirement.

The Commission can neither accept Amendment 18, as 'net' cost is unclear and potentially too restrictive, excluding other costs which may be taken into account (e.g. general network costs).

4. Conclusion

The Commission has accepted 8 of the 17 amendments proposed by the European Parliament at First Reading either in whole, in part or in principle.

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

**Modified Proposal for a European Parliament and Council Directive
amending Council Directives 90/387/EEC and 92/44/EEC
for the purpose of adaptation to a competitive environment in telecommunications**

Original text

Amended text

**Recital 7
(based on EP amendment 9)**

7. Whereas in conformity with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities, and ensure that the national regulatory authority or authorities of each Member State will play a key role in the implementation of the regulatory framework set out in relevant Community legislation; whereas the national regulatory authorities should have the necessary means to carry out fully the tasks assigned to them;

7. Whereas in conformity with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities, and ensure that the national regulatory authority or authorities of each Member State will play a key role in the implementation of the regulatory framework set out in relevant Community legislation; whereas the national regulatory authorities should be in possession of all necessary resources, both in terms of staffing, expertise, and financial means to fulfil their mission in full autonomy;

**ARTICLE 1(2)
Article 2(3), first indent, of Directive 90/387/EEC
(based on EP amendment 2)**

3. - 'telecommunications services' means services whose provision consists wholly or partly in the transmission and/or routing of signals on telecommunications networks;

3. - 'telecommunications services' means services whose provision consists wholly or partly in the transmission and/or routing of signals on telecommunications networks, with the exception of radio broadcasting or television;

ARTICLE 1(2)
Article 2(6) of Directive 90/387/EEC
(based on EP amendment 4)

6. 'essential requirements' means the non-economic reasons in the general interest which may cause a Member State to restrict access to public telecommunications networks or public telecommunications services. These reasons are security of network operations, maintenance of network integrity and, in justified cases, interoperability of services and data protection.

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ARTICLE 1(8)
Article 8 of Directive 90/387/EEC
(based on EP amendment 10)

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 1999. The report shall be based *inter alia* on the information provided by the Member States to the Commission and to the ONP Committee. Where necessary, further measures can be proposed in the report for adapting this Directive, taking account of developments towards a fully competitive environment.

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ARTICLE 2(10)(b)
Article 10(4) of Directive 92/44/EEC
(based on EP amendment 13)

4. The national regulatory authority shall not apply the requirements of paragraph 1 where an organisation does not have significant market power in respect of a specific leased line offering in a specific geographical area.

4. The national regulatory authority shall not apply the requirements of paragraph 1 where an organisation does not have significant market power in respect of a specific leased line offering in a specific geographical area, 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).

ARTICLE 2(12)
Article 14 of Directive 92/44/EEC
(based on EP amendment 14)

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 1999. The report shall be based *inter alia* on the information provided by the Member States to the Commission and to the ONP Committee. The report shall include an assessment of the need for continuation of this Directive, taking account of developments towards a fully competitive environment. Where necessary, further measures can be proposed in the report for adapting this Directive, taking account of developments towards a fully competitive environment.

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**Annex I(3), second paragraph, fourth indent
(based on EP amendment 17)**

- tariffs must be non-discriminatory and guarantee equality of treatment.

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DOCUMENTS

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