



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 09.12.1996

SEC(96) 2284 final

95/0282 (COD)

COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 189 b (2) of the EC-Treaty

ON THE COMMON POSITION OF THE COUNCIL

on the proposal for a Directive of

the European Parliament and the Council

on a common framework for general authorisations and individual licences

in the field of telecommunications services

1. BACKGROUND

On 14 November 1995 the Commission adopted a proposal for a European Parliament and Council Directive on a common framework for general authorisations and individual licences in the field of telecommunications services (COM (95) 545)¹.

The Economic and Social Committee gave a favourable Opinion on the Commission's proposal on 24 April 1996².

The European Parliament gave its opinion in first reading on 22 May 1996, and proposed 37 amendments to this proposal³.

On 31 July 1996 the Commission adopted a modified proposal in conformity with Article 189a(2) of the Treaty, incorporating most of the EP amendments (COM (96) 342)⁴.

On 9 December 1996 the Council, acting in accordance with Article 189b(2) of the Treaty, adopted a Common Position on the proposed Directive.

The present Communication gives the Commission's opinion on the Council Common Position, in accordance with Article 189b(2) of the Treaty.

2. PURPOSE OF THE COMMISSION PROPOSAL

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 harmonise national conditions and procedures for general authorisations and individual licences for telecommunications services and is an important part of the new regulatory environment supporting telecommunications liberalisation.

While more competition is to be introduced in the telecommunications sector, authorisations 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 lays down a common framework for national authorisations regimes and provides for mechanisms aimed at facilitating the provision of cross-border networks and services.

3. AMENDMENTS SUBMITTED BY THE EUROPEAN PARLIAMENT IN THE FIRST READING

¹ OJ C 90 of 27.3.96, p. 5.

² CES/530 of 1996.

³ A4-0142/96, PV 12905.

⁴ OJ C 291 of 4.10.96, p 12.

In the first reading, the European Parliament proposed 37 amendments to the Commission's initial proposal.

The Commission accepted 23 amendments in full, 2 in part and 1 in principle (i.e. with some drafting changes), 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 modified proposal adopted by the Commission in July⁵ presents the reasons why the Commission has not accepted the other amendments proposed by the European Parliament.

In the Common Position, the Council has accepted, fully or in principle, a number of the amendments proposed by the European Parliament and accepted by the Commission : amendments 4, 5, 7, 11, 12, 16, 17, 18, 31, 33 and 34, as well as, partly, amendment 13 are in this case.

4. COMMENTS ON THE COMMON POSITION⁶

- (1) Compared to the Commission's initial proposal, Article 1 on the scope of the Directive has been amended in two respects. Firstly, following European Parliament amendment 7, the Council has made it clear that authorisations granted for the purpose of establishing telecommunications networks are falling under the scope of the Directive, together with authorisations for the purpose of providing telecommunications services. This clarification has also been made in a number of other Articles of the Directive. Secondly, a new paragraph 2 has been added in order to clarify the link between the Directive and other public policies in fields such as public security, public morality or the content of audio-visual programmes.
- (2) Article 2 now only contains definitions which are necessary in the context of the Directive. This is why amendment 9 of the European Parliament, which excluded radio and television broadcasting from the scope of the Directive by means of an addition to the definition of telecommunications services, was no longer applicable. However, by reference to definitions given in Directive 90/387/EEC (the "ONP-framework" Directive) as currently being amended⁷, and in the

⁵ See footnote 4.

⁶ Unless otherwise indicated, the following comments refer to the Articles as numbered in the Common Position. This numbering may vary from the Commission's initial proposal, in which case this is mentioned.

⁷ Common Position on a Directive of the European Parliament and of the Council amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications, not yet published.

forthcoming Interconnection Directive⁸, the definition of telecommunications services will be applicable to the Directive, including the wording "with the exception of radio and television broadcasting". The concern of the European Parliament is thus taken into account.

In addition, the definition of authorisations (both general authorisations and individual licences) has been specified, *inter alia* in order to specify that they concern market entry conditions and procedures which are specific to the telecommunications sector, and accompanied with a new recital on general authorisations. The definition of the one-stop-shopping has been extended to notification procedures in the context of general authorisations.

- (3) Article 3 (principles) has not been modified, except by addition of a new paragraph 4 taking over Article 12 of the initial Commission's proposal with regard to the need to facilitate cross-border services (see point (11)-A of the present comments).
- (4) Article 4, dealing with conditions attached to general authorisations, has been subject only to very few changes, mainly for the purpose of legal clarity. Following European Parliament amendment 11, reference is now made to publication of information in the Official Journal of the European Communities (OJEC).
- (5) Article 5 on procedures for general authorisations has been subject to the same kind of modifications as Article 4, including incorporation of amendment 12 of the European Parliament, which requires publication of information in the OJEC. In addition, the waiting period in case of a notification procedure has been extended to four weeks, instead of two. Although the Commission would have preferred the shorter period, this has been accepted.
- (6) Article 6 on fees for general authorisations has been simplified and clarified, in particular to avoid any confusion with the financial contributions to universal service as well as to cover all relevant administrative costs incurred in the course of issuing and enforcing a general authorisation.
- (7) Important changes have been brought to Article 7 (scope of individual licences). The approach initially proposed by the Commission, which defined limitatively the situations which may give rise to individual licences is now accompanied with a provision (Article 7(2) of the Common Position) allowing Member States to require individual licences for the provision of voice telephony, of public telecommunication networks as well as of other networks involving the use of radiofrequencies. This issue triggered a lot of debate in Council and in that context the Commission, whilst in favour of a narrower scope for individual licences, accepted the compromise, it being understood that this compromise includes a reference (in Article 23 of the Common Position) to the need to re-examine the scope of individual licences when reviewing the Directive by 1 January 2000.

⁸ Common Position of the Council on the proposal for a European Parliament and Council Directive on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision, OJ C 220, 29.7.96, p. 13.

Main other modifications brought to Article 7 are as follows :

- Most of amendment 13 of the European Parliament has been incorporated, with the exception of the reference to points 4.5 and 4.8 of Annex I⁹ at littera d) of Article 7(1). This amendment states that where individual licences are issued to impose obligations relating to the mandatory provision of public telecommunications services, the attached conditions should be restricted to those mentioned in points 4.5 and 4.8 of Annex I (universal service, quality, availability and permanence of the service). The Council rejected this proposition, arguing that other conditions mentioned in this Annex may also be legitimately attached to licences in this case. Given the safeguards offered by the text of the Common Position, in particular the principle according to which the conditions attached to individual licences "shall relate only to the situations justifying the grant of such a licence", the Commission can accept the Council's position which does not prejudice its initial approach.
 - Certain parts of Article 7(1) have been slightly reworded with a view to clarify legal aspects, and littera (c) has been deleted because it was felt irrelevant in that context.
 - The initial Articles 7(2) and 7(3), which provided for temporary individual licences have been deleted ; consequently amendments 14 and 15 are no longer valid. More precisely, the Commission proposed with these Articles 7(2) and 7(3) a mechanism allowing new entrants to be granted an authorisation even where individual licensing or general authorisations schemes are not available, for instance in case of a new service. The European Parliament endorsed this approach and even strengthened it by imposing additional obligations on Member States. The Council accepted the Commission's proposal in the principle but decided to deal with the issue in the final section (see point (19) of the present comments), rather than in the one on individual licences. Furthermore, the drafting of this provision has been subject to a lot of discussions, the Council wishing to give national regulatory authorities more flexibility in the granting or refusal of authorisations in such cases. In that context, the Commission nevertheless accepted this compromise reflecting Article 2 (3) of Directive 90/388/EEC as last amended by Directive 96/19/EC., which maintains guarantees for new entrants.
- (8) Article 8 on conditions which may be attached to individual licences has been amended so as to clarify the relationship of such licences with general authorisations, as well as to take into account the particular case of comparative bidding, now explicitly foreseen by the Directive. Amongst the main other changes, a reference to the publication of information in the OJEC is now included (as is also the case in Article 9) and a new paragraph, dealing with the situation where a Member State amends an individual licence, has also been added.

⁹ Annex 1 of the initial Commission's proposal has become the unique Annex of the Common Position, following deletion of Annex II of the initial proposal (see point XII).

- (9) Article 9 on procedures for the granting of individual licences has been modified mainly in order to give Member States sufficient flexibility in issuing licences. Paragraph 2, second indent, has been specified so as to allow, where justified, longer time limits for answering to an application than the six weeks period proposed by the Commission. A certain amount of flexibility was indeed necessary in this field, as also requested by amendment 16 of the European Parliament which is thus taken into account. Moreover, the procedures for withdrawing or suspending a licence have been further detailed and a new paragraph has been added in order to cover the situation of harmful interferences.
- (10) Article 10 (situations where the number of individual licences may be limited) has been changed firstly with the addition of a reference to numbering as a reason for temporarily limiting the number of individual licences ; however this has been accompanied with some safeguards, amongst them a reference to the applicable Community legislation (which includes Commission Directive 96/19/EC)¹⁰, aimed at ensuring that Member States only resort to this possibility in limited and strictly justified situations. In this context it is important to note that according to Article 3b of Directive 90/388/EEC as amended by Commission Directive 96/19/EC, Member States have to ensure the availability of adequate numbers for all telecommunications services before 1 July 1997.

Article 10 has also been amended in order to incorporate amendments 17 and 18 of the European Parliament, which are essentially aimed at clarifying the text. As far as amendment 19 is concerned, the Council has not accepted it. This amendment calls for the reference in paragraph 4 of obligations for Member States to review frequency availability and to inform the Commission. It was firstly argued that the requirement to review periodically frequency availability is already dealt with earlier in the Article ; secondly the obligation for Member States to inform the Commission every two years was felt to be too onerous. Although an explicit obligation would have been useful, the Commission considers that there are other ways to call for action if the situation requires this. In addition, Article 3b of Commission Directive 90/388/EEC as amended by Commission Directive 96/2/EC provides for an obligation of the Member States to review the designation of frequencies at regular intervals and to publish or make available national frequency plans for mobile and personal communications services.

- (11) Changes in paragraph 1 of Article 11, which deals with fees for individual licences, mirror those described earlier on Article 6 (see point (6) of the present comments). Concerning paragraph 2, its wording has been slightly adapted for legal clarity purposes. Amendment 20 of the European Parliament which relates to this paragraph has not been taken over. This amendment specified the notion of "scarce resources" (in the context of the possibility for Member States to impose fees not related to administrative costs) by referring to frequencies, numbers and rights of ways. In its modified proposal¹¹ the Commission accepted only part of this amendment, namely the reference to numbers and frequencies, but not that to

¹⁰ Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets, OJ L 74, 22.3.96; p. 13.

¹¹ See footnote 4.

rights of ways. The Council preferred to stick to the Commission's initial proposal, which does not specify the concept of scarce resources in that context.

(11)-A The Council could not accept the co-ordination mechanism proposed by the Commission and deleted Article 13 of the initial proposal. Only the general principle included in Article 12 of the Commission's initial proposal was kept (it has been transferred to Article 3(4) of the Common Position). The recital proposed by the Commission was maintained and filled out. Although the Commission has strongly defended its original proposal for a co-ordination mechanism in case of licensing conditions being too divergent, there was no Member States' support for such a procedure. Following this deletion of the co-ordination mechanism, amendments 21 and 22 of the European Parliament are no longer valid.

(12) Article 12 of the Common Position (Article 14 of the Commission's initial proposal) which deals with harmonisation has been subject to a number of changes. First of all, Annex II as well as paragraph 1 of the Commission's initial proposal have been deleted on the ground that it did not appear necessary in this context to include a list of telecommunications services and networks to be harmonised. Other references to this Annex II in the text have been deleted accordingly.

Secondly, the Council narrowed down the scope of the proposed harmonisation, by restricting it to general authorisations. Given that there was no support for its proposal to cover also the procedures for the granting of individual licences and the setting of fees, the Commission, in a spirit of compromise, accepted the Council's position. As a consequence, amendment 23 of the European Parliament, which modifies the title of the Article on harmonisation to align it to the content of the initial proposal was no longer relevant. Moreover the Council did not accept the reference proposed by the European Parliament to aim at "light-handed regulation" (amendment 24). Although this is regrettable the Directive urges in various other provisions the Member States to limit their licensing regimes to what is strictly necessary.

Thirdly, in paragraph 1 of the Common Position (paragraph 2 of the Commission's initial proposal), following a Council's request that the implementation powers conferred on the Commission in this Article be accompanied with sufficiently detailed guidelines, a reference to some relevant provisions of the Directive was added in order to define better the principles along which the harmonisation shall be conducted.

Fourthly, paragraph 3 of the Commission's initial proposal has been split into two paragraphs (paragraphs 2 and 3 of the Common Position) and paragraph 3 of the Common Position has been changed in order firstly to clarify the relationship between the Commission and the harmonisation bodies referred to in the Article and, secondly, to replace the consultative committee initially proposed by a regulatory one (see points (14) to (17) of the present comments).

Finally, paragraph 4 on the Commission's initial proposal has been deleted, the Council being of the opinion that the general review clause of the Directive

(Article 23 of the Common Position) should be applicable here, rather than any other specific review procedures.

- (13) Article 13 of the Common Position (Article 15 of the Commission's initial proposal) on the establishment of a one-stop shopping procedure has been subject mainly to minor drafting changes aimed at improving its legal clarity and certainty. However on one aspect a substantial modification has been introduced, consisting in the addition at the beginning of the Article of the words "Where appropriate and in conjunction with CEPT/ECTRA and CEPT/ERC¹²". The Commission, though recognising that such a reference is justified in its principle, would have preferred a drafting giving greater flexibility to the European Community in its relationships with CEPT/ECTRA and CEPT/ERC. Apart from this change, it should be noted that this one-stop-shopping has been extended to notification procedures in the context of general authorisations -as already mentioned, see point (2) of the present comments- ; this may prove useful for undertakings wishing to operate in countries where such notifications procedures exist. Two recitals have also been introduced, the one on linguistic aspects of the procedure, the other one urging Member States to shorten as far as possible the time periods necessary to bring answers to applicants.
- (14) Articles 14 to 17 of the Common Position (Articles 16 and 17 of the Commission's initial proposal) deal with committee issues. The Council, whilst recognising the need for a committee in order to assist the Commission in the tasks defined by the Directive, changed its name into "the Licensing Committee" (instead that of "the European Union Telecommunications Committee). As far as the type of procedure is concerned, the Council, after having strongly insisted to replace the advisory committee proposed by the Commission with a regulatory committee (type IIIb procedure)¹³, suggested the introduction of a management committee (type Iib procedure). Whilst regretting such a procedure which appears inappropriate in the context of a Directive based on Article 100A of the Treaty and dealing with internal market issues, the Commission accepted this change in a spirit of compromise.
- (17) Article 17 of the Common Position (Article 17 of the Commission's initial proposal) on the establishment of a one-stop shopping procedure has been subject mainly to minor drafting changes aimed at improving its legal clarity and certainty. However on one aspect a substantial modification has been introduced, consisting in the addition at the beginning of the Article of the words "Where appropriate and in conjunction with CEPT/ECTRA and CEPT/ERC¹²". The Commission, though recognising that such a reference is justified in its principle, would have preferred a drafting giving greater flexibility to the European Community in its relationships with CEPT/ECTRA and CEPT/ERC. Apart from this change, it should be noted that this one-stop-shopping has been extended to notification procedures in the context of general authorisations -as already mentioned, see point (2) of the present comments- ; this may prove useful for undertakings wishing to operate in countries where such notifications procedures exist. Two recitals have also been introduced, the one on linguistic aspects of the procedure, the other one urging Member States to shorten as far as possible the time periods necessary to bring answers to applicants.
- (18) Article 18 of the Common Position (also numbered Article 18 in the Commission's initial proposal) on third countries has been simplified and modified by the Council. Although the Commission would have preferred to keep it, paragraph 3 of the Commission's initial proposal which strengthened the possibilities of action at Community level has been deleted.
- (19) Article 19 on new services is new and has been introduced by the Council in order to replace Articles 7(2) and 7(3) of the Commission's initial proposal, for the reasons and in the context explained in point (7) of the present comments.
- (20) Article 20 of the Common Position on confidentiality as been changed firstly so as to allow Member States to disclose confidential information where this proves

¹² CEPT : Conférence Européenne des Postes et Télécommunications ; ECTRA : European Committee for Telecommunications Regulatory Affairs ; ERC : European Radiofrequencies Committee.

¹³ See Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission, O.J. L 197, 18.7.87, p 33.

absolutely necessary -and subject to certain safeguards-, secondly so as to be applicable only to national regulatory authorities and not to Community institutions, which are already subject in this field to general rules in the framework of the Treaty. This latter change has been accompanied with a new recital.

- (21) Article 21 of the Common Position on notification of information to the Commission has been modified in two ways. On the one hand, paragraph 1 and 2 have been simplified and clarified. On the other hand, the Council deleted paragraph 3 because it could not accept the infringement procedure proposed in that paragraph, on the ground that the normal procedure under Article 169 of the Treaty should suffice. The Commission would have preferred a more light-handed instrument but accepted the deletion, in a spirit of compromise. As a consequence of this deletion, amendment 28 of the European Parliament was no longer valid.
- (22) Article 22 of the Common Position (Article 21 of the Commission's initial proposal) deals with authorisations existing at the date of entry into force of the Directive. This provision has been considerably detailed and specified, so as to cover all relevant aspects of this issue and to give a certain amount of flexibility to Member States, whilst ensuring that no unjustified clauses subsist in such authorisations. Two recitals have also been added.
- (23) The "review clause" in Article 23 of the Common Position has been shortened both with a view to simplification and because paragraph 3 on third countries as included in the Commission's initial proposal was considered to be unnecessary by the Council, following discussions on the provisions relating to third countries (see point (18) of the present comments). Following the addition of a new paragraph 2 to Article 7 extending the scope of individual licences, a reference to the need to re-examine this scope when reviewing the Directive has also been added (see point (7) of the present comments).

The Council has not been able to accept European Parliament amendment 30, which requested that the report to be prepared by the Commission when the Directive is reviewed (i.e. before 1 January 2000) should cover institutional arrangements and numbering issues. Nor has the Council accepted that, following European Parliament amendment 6, a reference to a European Regulatory Authority be added in the recitals of the Common Position (recital 19 of the Commission's initial proposal). The Commission considers that such issues can, if necessary, be dealt with in the review, even if not explicitly stated in the Directive.

- (24) The wording of Article 24 of the Common Position on deferments now mirrors the drafting agreed upon in the context of the Common Position on the Interconnection Directive¹⁴. The list of Articles which may give rise to a deferment has been adapted.
- (25) Article 25 of the Common Position (Article 24 of the Commission's initial proposal) incorporates amendment 31 of the European Parliament with regard

¹⁴ See footnote 8.

mainly to publication of authorisation schemes. In addition the date of 1 July 1997 for bringing into force the laws, regulations and administrative provisions necessary to comply with the Directive has been replaced by the words "as soon as possible and in any event not later than 31 December 1997", which now seems more realistic. It is recalled in this context that the deadlines resulting from existing Community law are not affected by this provision.

(Annex) As explained in point 14 of the present comments, the Annex of the Common Position takes over Annex 1 of the Commission's initial proposal. This Annex has been subject to some changes, but keeps most of its initial physiognomy. Drafting changes have been introduced, aimed at improving the legal clarity of the text or at maintaining consistency with modifications brought to the main text of the Directive (in particular the addition of a new paragraph 2 to Article 1 and some of the changes made in Article 7(1)). Moreover, a few additional licensing conditions have been added. They concern the provision of statistical information to national regulatory authorities, conditions with a view to preventing anti-competitive behaviour in telecommunications markets and, in conformity with Community law or the European union commitments vis-à-vis third countries, conditions on ownership. A recital aimed at clarifying the nature of conditions which may be imposed in order to ensure compliance with essential requirements has also been added.

Finally, with regard to amendment 32 of the European Parliament on the possibility of licensing conditions on coverage of low population areas, it should be pointed out that both the Council and the Commission share the views expressed by the European Parliament in this amendment. However the Council noted that the concerns were already covered by several provisions in the Annex : in particular by point 4.5 on universal service, point 4.8 on quality, availability and permanence of services as well as on the possibility for Member States to impose the mandatory provision of public telecommunications services, new point 4.9a following amendment 34 on ONP conditions, point 4.3 on town and country planning requirements, and in the recitals.

Reci- Apart from the addition of a few recitals as mentioned in the above comments, a few changes have been brought to the initial recitals. These changes consist essentially in mirroring some of the compromises reached on the main text. This concerns the recitals on individual licences and general authorisations, on the one stop shopping procedure, on trans-European networks and services, on third countries and on committees. Recital 18 (in the Commission's initial proposal) has been deleted, following deletion of Article 20 paragraph 3 of the Commission's initial proposal.

Other changes consist in taking over amendments 4 and 5 of the European Parliament. Concerning amendment 2 of the European Parliament, which insisted on the obstacles likely to be faced by new entrants after the full liberalisation, the Commission, although it accepted (except the reference to number portability) in its modified proposal¹⁵, can endorse the position taken by the Council, which refused

¹⁵ See footnote 4.

this amendment as a whole on the grounds that the general concerns expressed there are dealt with in the wider context of the regulatory framework being prepared in view of the opening up of markets to full competition by 1998, in particular in the proposed Directive on Interconnection¹⁶.

5. COMMISSION'S POSITION ON THE COMMON POSITION

The Council has made a number of changes to the Commission proposal which, together with the amendments proposed by the European Parliament and accepted by the Council, strengthen the proposed Directive or represent compromises which the Commission is prepared to accept because they do not prejudice the fundamental aims of the Commission's original proposal.

The Commission considers that the Council's work has resulted in useful contributions to its proposal and finds the overall balance of the amendments a positive one. The Commission can therefore give its support to the Common Position as adopted by the Council.

¹⁶ See footnote 8.