



COMMISSION OF THE EUROPEAN COMMUNITIES

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**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

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

(COM(95) 543)

## 1. BACKGROUND

On 14 November 1995 the Commission adopted a 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 (COM(95) 543)<sup>1</sup>.

The European Parliament adopted a favourable Resolution at its first reading on 22 May 1996, and proposed 17 amendments to the Commission proposal<sup>2</sup>.

The Economic and Social Committee gave a favourable Opinion on this proposal on 25 April 1996<sup>3</sup>.

On 31 July 1996 the Commission adopted a modified proposal incorporating some of the EP amendments<sup>4</sup>, in accordance with Article 189a(2) of the Treaty.

On 12 September 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's common position, in accordance with Article 189b(2) of the Treaty.

## 2. 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)<sup>5</sup>
- the ONP leased lines Directive (92/44/EEC)<sup>6</sup>

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.

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1 OJ C 62, 1.03.1996, p. 3  
2 A4-0144/96, PV 22.05.1996  
3 TRA/304, 25.04.1996  
4 COM(96) 418 final, 31.07.1996  
5 OJ L 192, 24.07.1990, p. 1  
6 OJ L 165, 19.06.1992, p. 27

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

**3. COMMENTS ON THE COMMON POSITION OF THE COUNCIL**  
(unless otherwise indicated, the references to the recitals and articles are those used in the Common Position)

**3.1 SUMMARY OF THE COMMISSION'S POSITION**

The Commission considers that the Council's common position is acceptable. The changes made provide additional clarification and do not prejudice the Commission's original aims.

**3.2 ANALYSIS OF THE COUNCIL COMMON POSITION**

**EP amendments**

At the first reading, the EP proposed 17 amendments to the Commission's proposal. 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)

**EP amendments accepted by the Commission and incorporated in the Common Position**

From the eight amendments proposed by the European Parliament and accepted by the Commission (in full, in part or in principle), the Council accepted in full: Amendments 2, 4(part) and 17.

Council accepted in part the amendment to Recital 8 proposed by the Commission based on EP Amendment 9. The part not accepted ("in full autonomy") is already covered in the first part of that recital.

The principle in EP Amendment 13 was also accepted by the Council: a new paragraph (3) was added to Article 2 of the revised Directive 92/44/EEC, which reflects the provisions defining the market power of an undertaking in the Common Position on the European Parliament and Council Directive on interconnection.

## **EP amendments accepted by the Commission and not incorporated in the Common Position**

The Council did not accept two of the amendments proposed by the European Parliament and accepted by the Commission: Amendments 10 and 14 (parts).

Both amendments proposed, in particular, a reference in Article 8 of the revised Directive 90/387/EEC to the examination, in the report that the Commission is required to present to the European Parliament and the Council before the end of 1999, of the possibility of establishing a European regulatory authority. The Commission acknowledges that such issue can anyway, and if appropriate, be dealt with in such report, even if not explicitly stated in the Directive.

## **New provisions and other modifications introduced by the Council**

The Council has made a number of other 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 provide clarifications which the Commission is prepared to accept because they do not prejudice the fundamental aims of the Commission's original proposal. The major changes are given below, where the articles are grouped into four broad categories:

### *Universal Service*

*(Articles 1(3) and 2(4) of revised Directive 90/387/EEC, Annex I and Recital 4)*

Several clarifications were made concerning references to universal service:

- *Article 1(3) of Dir. 90/387*: inclusion of a reference to "taking account of any future evolution" in the indent on guaranteeing the provision of universal service;
- *Annex I (Section 3)*: inclusion of a reference to the financing of universal service in accordance with the Interconnection Directive;
- *Recital 4*: addition of a reference to sharing of net cost of universal service obligations.

### *Alignment with other Directives*

*(Articles 2 and 5(2) of the revised Directive 90/387/EEC, Article 6(3a) of the revised Directive 92/44/EEC, and Recital 7 and 11)*

With a view to achieve coherence between the different legislative measures in the telecommunications sector, which has also been called for by the Parliament, the Council has agreed on a number of changes aligning provisions of this proposed Directive with other Directives. These are, in particular:

- *Article 2 of Dir. 90/387*: a number of definitions ('users', 'telecommunications services', 'universal service', 'essential requirements' and 'interconnection') have been changed with a view to align them with the proposed Interconnection Directive and/or Licensing Directive;
- *Articles 3(2) and 5(2) of Dir. 90/387, Article 6(3a) of Dir. 92/44, and Recital 11*: these paragraphs were aligned with the corresponding provisions in the proposed Interconnection Directive;
- *Recital 7*: new recital already included in the Interconnection Directive, pointing out that this Directive is without prejudice to the provisions of Articles 36 and 56 of the Treaty on public security, public policy and public morality.

#### *Tariff principles*

*(Articles 10(1a), 10(4) of the revised Directive 92/44/EEC, Annex I, Section 3 and Recital 14)*

- A new paragraph (1a) was added to Article 10 of the revised Directive 92/44/EEC, to bring coherence with the non-discrimination principle in Article 8(2) of the same Directive;
- A second paragraph was added to Article 10(4) of the revised Directive 92/44/EEC to further clarify that the requirements of cost orientation and transparency may be relaxed in competitive markets. Corresponding clarifications were added in the first indent of Section 3 of Annex I and in Recital 14.

#### *Other modifications*

*(Articles 2(5) and 5a(4) of the revised Directive 90/387/EEC, Articles 1 and 6(1) of the revised Directive 92/44/EEC, Annex I, Sections 4 and 5, and Recitals 6 and 9)*

- The definition of 'network termination point' in Article 2(5) of the revised Directive 90/387/EEC was clarified, to clearly show that its location is determined by National regulatory authorities;
- Article 8(4) of the revised Directive 92/44/EEC (on provision of information) was deleted, and its aim is now achieved through a more general provision in Article 5a(4) of the revised Directive 90/387/EEC;
- The drafting of the second paragraph of Article 1 of the revised Directive 92/44/EEC was improved to clarify the scope of the Directive;
- Article 6(1) of the revised Directive 92/44/EEC (on access to leased lines) was rephrased to align with Article 3(3) of the revised Directive 90/387/EEC. A new Recital 6 was introduced to reflect the same aim;

- Section 4 in Annex I was simplified, and a new reference to prefixes and short codes was added. A new section 5 on access to frequencies was added. Recital 9 was also modified;
- In Recital 8, references to the institutional autonomy and constitutional obligations of Member States and to Article 222 of the Treaty were introduced;
- Previous recitals 6 and 21 were deleted.

### 3.3 COMMITTEE PROCEDURES

The Commission regrets that the Council insisted on changing the committee procedure in Article 5(4) of the revised Directive 90/387/EEC from a type I advisory committee to a IIIA regulatory committee procedure.

### 4. CONCLUSIONS

The Commission accepts the Council's Common Position on the 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 because it retains all the important elements of the Commission proposal, and will contribute to the establishment of a coherent regulatory framework for telecommunications.