



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 DECISION ON THE CO-ORDINATED  
INTRODUCTION OF MOBILE AND WIRELESS COMMUNICATIONS (UMTS) IN THE  
COMMUNITY**

## **1. BACKGROUND**

On 11 February 1998, the Commission adopted its proposal for a European Parliament and Council Decision on the co-ordinated introduction of mobile and wireless communications (UMTS) in the Community<sup>1</sup>, which was formally transmitted to Parliament and Council on 3 March 1998.

The Economic and Social Committee gave its opinion on 29 April 1998 and the Committee of the Regions gave its opinion on [17 September] 1998.

Pursuant to co-decision procedure, the European Parliament adopted its opinion in first reading on 18 June 1998, and proposed 10 Amendments to the Commission proposal<sup>2</sup>.

The Commission adopted an amended proposal<sup>3</sup> incorporating most amendments of the Parliament; this amended proposal was transmitted to Council on 28 July 1998.

The Council, acting in accordance with Article 189 b(2) of the EC Treaty, formally adopted a common position on 24 September 1998.

## **2. PURPOSE OF THE ORIGINAL COMMISSION PROPOSAL FOR A DECISION**

The Commission's proposal for a decision aims at facilitating within the existing Community legal framework - such as the Licensing Directive 97/13/EC- the rapid introduction of compatible third generation mobile communications (UMTS) networks and services in the Community on the basis of internal market principles and in accordance with commercial demand by means of co-ordination of national licensing regimes.

## **3. COMMENTS ON THE COMMON POSITION OF THE COUNCIL**

### **3.1. GENERAL OBSERVATIONS ON COMMON POSITION**

The Council has adopted a favourable stand towards the proposal of the Commission and the amendments of Parliament accepted by the Commission.

The Commission considers that the Council's common position is acceptable.

### **3.2. Amendments submitted by European Parliament in first reading**

In its first reading, the Parliament proposed 10 amendments to the Commission's proposal. The Commission accepted 6 amendments in full, 2 partially while rejecting two.

More information is provided in the Commission's explanatory memorandum to the amended proposal indicating how the amendments submitted by the European Parliament in first reading were taken into account by the Commission.

The approach adopted by Council in its common position generally meets the substance of the amendments presented by Parliament in first reading (see Table in annex).

- Amendments accepted by the Commission and integrated by the Council in its Common Position : see Table in annex.
- Amendments accepted by the Commission but not integrated by the Council in the Common position (and position of the Commission in this respect): not applicable; no amendment which had been accepted by the Commission has been rejected by the Council.

Differences between Commission's amended proposal and common position – explanation. See point 3.3. below.

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<sup>1</sup> OJ N°C 131, 29.4.1998, p. 9

<sup>2</sup> European Parliament Doc. A4-0221/3

<sup>3</sup> COM(98) 496 final

### **3.3. New provisions introduced by Council compared to Commission's original proposal and position of the Commission**

The Council's common position does not change the basic objective of the original proposal and generally meets the amendments of Parliament. The Council nevertheless brought some modifications to the original proposal.

With one exception, these modifications do not modify the substance and principles of the Commission's proposal.

- (1) The main difference with the original proposal consists in the addition of a paragraph in article 3 which will allow Member States to ask for a deferment of up to 12 months of the deadlines set by article 3.1., in the case of exceptional technical problems in adjusting their national frequency plans.
- (2) The additional amendments brought to the original proposal by Council have the following objectives:
  - they take into consideration Parliament amendments accepted by the Commission.
  - they specify the meaning of the text:
    - Clear separation with second generation mobile communications systems;
    - Clear regime for cross-border transnational roaming, to be distinguished from national roaming which falls under Member States jurisdiction;
    - Annex I associates capabilities of networks with minimum characteristics listed in Annex I, leaving to the market the decision as to whether actually providing the services associated therewith;
    - Harmonisation mandates to CEPT/ECTRA to focus in particular on frequency harmonisation;
    - Reflect ERC decision 97/7 on making spectrum available for UMTS;
    - Align certain provisions of the decision with those of the Council and Parliament Decision 710/97/EC on satellite personal communications services;
    - The notion of co-ordination now associated with the introduction of UMTS and not with the introduction of national authorisation regimes, which will be based on harmonisation where required.
    - Reflect obligations under the Licensing Directive, in particular as to the possibility for progressive introduction of UMTS, and the link with articles 36 and 56 of the EC Treaty.
    - Adaptation of the text to indicate that most requirements will refer to the provision of networks rather than to provision of services, as under the Licensing Directive most authorisations are in fact required for networks.
    - To put the text in line with current Council legislative practice;
  - bring the text in line with latest ETSI results and with latest applications requirements:
    - annex I rewording;
    - reference to security of communications;
  - refer to market forces for following issues:
    - definition of terminals configuration;
    - market demand should be taken into consideration when introducing UMTS;
    - replacement of the granting to organisations of rights and obligations to negotiate roaming agreements by the encouragement given to organisations by Member States to negotiate roaming agreements.
  - introduce more flexibility in the granting of mandates to CEPT/ECTRA.
  - a few recitals have been shortened by focusing on the essential parts related to the provisions of the decision.

Recital/Article (original numbering)	Modifications by Council compared to original proposal	Position of Commission
Title	Add the words "third generation" after "introduction of" and the words "a system" reading "a third generation mobile and wireless communications system" to bring the title into line with the definition in article 2.	Commission agrees.  The aim is to show a clear difference with the second generation as defined in recital 24 (GSM 900 and 1800 as well as its foreseen evolution such as GSM+) indicating that UMTS represents a system of a new technology generation, as also defined in article 2.
Rec.2	Deletion of the words "after consulting the industry and other parties concerned, and considering the trade, industry, frequency and standardisation aspects of UMTS"; and the words "and proposed policy orientations and actions to increase investment security in UMTS and to prepare the necessary regulatory framework so as to promote innovation and flexibility by industry."	Agrees. Deleted words are not essential; the substance of this wording is included in the Commission's Communication.
Rec.4	Deletion of the words "UMTS is not a single system of network but a modular concept; whereas subsequent to the current second generation of mobile systems".  Replacement of "ubiquitous" by "seamless".	Agrees. Reference to and definition of the second generation mobile communications will be better provided in recital 24.
Rec.7	Deletion of the last whereas "whereas early decisions on harmonisation of authorisations and co-ordination of the introduction of UMTS services should aim at creating a favourable climate for investment and deployment of UMTS"	Agrees. The reference to the creation of a favourable climate for investment and deployment of UMTS is reintroduced in recital 8.
Rec. 8	Deletion of the first sentence: "Whereas this requires specific regulatory action at Community level on licensing procedures, spectrum availability and harmonisation and standardisation". This is duplicate of following whereas. Read the second whereas as follows: "whereas in order to create a favourable climate for investment and deployment of UMTS and allow the development of..."; this wording is taken over from Recital 7. Add the words "early and specific action at Community level is necessary" to insist on the urgency of measures. Replace "Member States should ensure" by " Member States should allow" since the aim of the decision is that Member States give the opportunity for introduction of UMTS, but not ensure its introduction. Refer to both "UMTS services and networks". Replace "simultaneous introduction" by "co-ordinated introduction" to reflect the	Commission agrees.

	<p>wording used in the articles, article 1 in particular; delete "by means of a coordinated approach".</p> <p>Add the words "and pursuant to European standards for UMTS approved or developed by ETSI, where available, including in particular a common, open and internationally competitive air-interface standard": this reference to standards has been taken over from recital 23 and reflects article 3.2.</p>	
Rec. 9	<p>Deletion of the abbreviated denominations of the Licensing Directive and the Interconnection Directive.</p> <p>Addition of the reference to the Directive on personal data 97/66/EC.</p> <p>Addition of a sentence relating to the possibility for Member States to impose conditions of public interest in conformity with Article 36 and 56 of the EC Treaty.</p>	<p>Agrees.</p> <p>The reference to public interest requirements and Articles 36 and 56 of the EC Treaty also reflect the wording of the Licensing Directive 97/13/EC.</p>
Rec. 10	<p>Council accepts EP amendments to introduce the words and put the stress on "organisations providing UMTS networks". Council further decided to stress that organisations providing both UMTS networks and services over those networks should be able to enter the market without unnecessary constraints or excessive fees.</p> <p>Since network providers mentioned in the first part of recital 10 will most likely need an individual license, in order to avoid possible confusion with the second part of recital 10 which provides that as a general rule general authorisations or declarations will be sufficient as provided in the Licensing Directive, Council has deleted the second part of recital 10.</p>	<p>Agrees</p>
Rec. 11	<p>Addition of the terms "establishment and/or" in l) before "operation of UMTS networks" in order to be in line with article 10 of the Licensing Directive.</p> <p>Under iii), replacement of the words "made accessible to any organisation and should not be reserved to existing operators of other systems" by the more neutral wording: "granted on the basis of objective, non-discriminatory, detailed and proportionate criteria, regardless of whether or not individual applicants for licenses are existing operators of other systems".</p> <p>This wording refers to the principles of non-discrimination and proportionality which the Parliament has emphasised in its amendments.</p>	<p>Commission agrees.</p>
Rec. 12	<p>Council replaces the words "whereas conditions to be attached to authorisations should be defined in such a way as to secure Community-wide and pan-European services as well as roaming capabilities through co-ordinated introduction; whereas Europe-wide roaming will enable industry to meet user and societal needs;" by the</p>	<p>Commission agrees.</p> <p>New wording refers to transnational roaming as in article 3.2. as well as to the obligations of Member States</p>

	<p>words "whereas licenses should allow and Member States should encourage transnational roaming in order to secure Community-wide and pan-European services".</p> <p>Deletion of the words "whereas the conditions listed in the annex of the Licensing Directive may be imposed on a UMTS system by a Member State even where no part of that system is located within the territory of that Member State".</p> <p>The last two whereas are replaced by the following wording: "whereas there should be co-operation with the European Conference of Postal and Telecommunications Administrations (CEPT) through the European Committee for Telecommunications Regulatory Affairs (ECTRA) for UMTS; whereas in particular mandates may be issued, when necessary, to establish a one-stop-shopping procedure for services".</p>	<p>concerning transnational roaming. Social and societal needs are covered in recital 32.</p> <p>This reference to situations where no part of the system is located in the territory of a Member State is quite hypothetical and has no correspondance in the articles.</p> <p>The reference to CEPT/ECTRA and mandates is made shorter and implicitly refers to the provisions of the Licensing Directive as to the one-stop-shopping procedure. This does not exclude the possibility for the Commission to grant mandates to CEPT/ECTRA for the harmonisation of licensing conditions and procedures.</p>
Rec.13	<p>Replace the words "estimated demand should therefore determine" by the words "estimated demand should therefore be taken into consideration when determining".</p>	<p>Commission agrees. This change does not make the impact of estimated demand the only criterion to determine the amount of spectrum to be allocated to UMTS.</p>
Rec. 14	<p>Deletion of the words "whereas according to CEPT rules, CEPT country members which also include Community Member States, are free to commit themselves to implement ERC decisions", and the word "therefore" in the next whereas.</p> <p>Put the words "in the Community" after "implementation", rather than after "are taken".</p> <p>Replacement of the words "Member States will provide the Commission with regular information" by the words "Member States should be encouraged to provide the Commission with regular information".</p>	<p>Commission agrees.</p> <p>Deleted words are not necessary.</p> <p>This change in the order of words makes the sentence easier to understand.</p> <p>The obligation for Member States to inform the Commission about the implementation of ERC measures has been made less imperative. Article 10 still provides that Member States shall give the Commission such information as it may require for the purpose of verifying the implementation of this decision.</p>
Rec. 15	<p>Deletion of the words "whereas measures adopted by the ERC and ECTRA are, if consistent with Community law, a basis for the use of the relevant frequencies and for the preparation of the criteria for the authorisation of UMTS".</p>	<p>Commission agrees.</p> <p>Deletion of this general statement which is not really necessary for the decision and is a restatement of Council resolution of 19 November 1992 on the implementation in the Community of the ERC decisions.</p>

Rec. 16	<p>Deletion of the words "whereas it already appears that additional frequency spectrum capacity will be necessary to meet the demand in the Community and to ensure introduction of UMTS in Europe even before 1 January 2002;" Council believes that it is not appropriate to put at this stage in the Decision a reference to an extension of the FPLMTS bands designated in WARC 92.</p> <p>Replace "therefor" by "for this spectrum".</p> <p>Acceptance of the amendment of Parliament to replace "by 2005" by "within a few years".</p> <p>As to the last part of the recital, Council preferred to delete the specific reference to certain frequency bands since there is no common agreement on this matter. Therefore, the addition of a reference to non-discrimination proposed by Parliament had become without object and has been dropped. Reference to the principle of non-discrimination has been added to recital 11.</p>	Commission agrees.
Rec. 17	Replacement of the words "in the WRC 99 agenda" by "in the next WRC agenda".	Commission agrees.
Rec. 19	Deletion of the original text of recital 19 on Europe-wide roaming which is already covered in recital 12 and replacement with the following text: <i>"whereas specific co-operation among operators may be necessary to provide coverage of less populated areas; whereas this Decision does not prevent Member States from imposing appropriate forms of national roaming between authorised operators on their territory to the extent needed to ensure balanced and non-discriminatory competition."</i>	Commission agrees. This recital relates to Article 4.2. and provides for additional understanding on how to ensure better coverage of less populated areas.
Rec.20	Reference is now made to the new codification directive 98/13/EC on terminal equipment.	Commission agrees.
Rec. 21	At the end of recital 20, replacement of the words "and will allow the putting into service of UMTS in the Community" by "including for UMTS".	This is in line with the latest legislative development; replacement of the last words of the recital makes the text easier to read.
Rec. 22	Deletion of recital 21 which refers to the Interconnection directive.	Commission agrees as the interconnection directive is not mentioned as such in the articles of the Decision.
Rec. 23	Deletion of recital 22 which relates to roaming agreements in view of seamless Community coverage.	Commission agrees as recital 12 already covers Community roaming.
	Deletion of recital 23 which relates to action required at Community level and to standardisation.	Commission agrees as recital 8 already refers to common, open and internationally competitive standard

		for air-interface.	
Rec. 24 (new 21)	Recital 24 has been redrafted in order to provide for a definition of the second generation compared to third generation mobile communications, and to replace the paragraph on terminals included in Annex I. It has not been considered necessary to apply minimum capabilities obligations as to terminals. Minimal characteristics apply to the system and not to terminals. Manufacturers will be responsible under market forces to provide terminals which ensure hybrid use of e.g. UMTS /GSM, terrestrial/satellite communications.	Commission agrees. It is necessary to provide for a definition of second generation mobile communications to be able to draw a line with third generation. Reference to terminals has been taken out of annex I and added to recitals in order not to impose specific obligations on terminal manufacturers; terminals will be determined by the market demand.	
Rec. 24bis (new 22)	Addition of a recital on security of communications.	Commission agrees. The level of security will be at least commensurate with that of second generation. Secure UTMS communications are essential given likely applications such as electronic commerce.	
Rec.25 (new 23)	Recital 25 has been shortened without changing the substance.	Commission agrees.	
Rec. 26 (new 24)	The last sentence of recital 26 has been deleted, as it was not really necessary for the decision.	Commission agrees.	
Rec. 27	Deletion of recital 27.	Commission agrees. Standardisation is already covered in recitals 8, 26 and 32.	
Rec.28	Deletion of recital 28	Commission agrees. Standardisation already covered in recitals 8, 26 and 32.	
Rec. 29 (new 25)	Addition of the words "and may issue further mandates in the future".	Commission agrees. Commission remains free to grant additional mandates when necessary.	
Rec. 30	Deletion of the reference to the intellectual property rights mechanisms of ETSI since this is not directly related to the decision.	Commission agrees.	
Rec. 31	Deletion of recital 31 relating to R&D programmes. This is not directly covered in this decision. It is subject to parallel Community action.	Commission agrees.	



Rec.32 (new 26)	Replace the words "UMTS development" by "development of UMTS and relevant standards" to include standardisation in the shaping of all aspects of the information society.	Commission agrees.
Rec.33	Deletion of the recital, which is not really relevant to the Decision. Standardisation is covered in Recital 32.	Commission agrees.
Rec. 34	Deletion of the recital since the substance of it is already covered in recitals 8 and 25.	Commission agrees.
Rec. 35	Replacement of recital 35 by recital 36 which combines both bilateral and multilateral international agreements as well as international negotiation and implementation measures thereof.	Commission agrees.
Rec. 36 (new 27)	Combination of recitals 35, 36, 37, 38 and 39 into recital 36. Addition of the words "including those relating to on tariffs such as in the Information Technology Agreement, and from the Istanbul Convention on the elimination of customs duties on personal effects and professional equipment" from recital 37, as well as the words "whereas these may need to be supplemented by specific bilateral or multilateral agreements and negotiations which the Commission may start on the basis of mandates from the Council" from recitals 38 and 39.	Commission agrees.
Rec. 37	Recital deleted; its substance has been introduced in recital 36.	Commission agrees.
Rec. 38	Recital deleted; its substance has been introduced in recital 36.	Commission agrees.
Rec. 39	Recital deleted; its substance has been introduced in recital 36.	Commission agrees.
Rec. 40 (new 28)	The words "the Committee should act as a consultative committee according to the procedure laid down in Article 16 or as a type II b management committee according to the procedure laid down in Article 17 of Directive 97/13/EC" are replaced by "whereas in implementing this Decision the Commission, assisted by the Committee, should cooperate closely with relevant outside bodies". Without being too detailed, this change includes a reference to the Licensing Committee and to the co-operation with ERC/ECTRA.	Commission agrees.
Art.1	Introduction of the words "and co-ordinated" after "rapid"; deletion of the words "by means of co-ordination of national licensing regimes". Co-ordination will apply to the introduction of UMTS. Requirements regarding national authorisation systems are covered in article 3.	Commission agrees.

Art.2	<p>Insert "and wireless" after "mobile";</p> <p>Delete "wireless" before "multimedia"</p> <p>Deletion of "current" before second generation; recital 24 refers to second generation mobile communications;</p> <p>Insert "capable of" before combining" the use of terrestrial and satellite components: such combination should not be mandatory.</p> <p>Replace "capable of providing" by "capable of supporting". Accept amendment 5 of Parliament and replace "it shall include" by "This system shall at least be capable of supporting".</p> <p>This change makes no obligation for network operators to actually implement and provide all the characteristics and services related thereto listed in annex I but only to ensure that the system shall be capable of supporting them so that a service provider could provide them on this network.</p> <p>Article 3.2. as revised in the common position now refers to the definition of article 2, which in turn refers to Annex 1.</p>	Commission agrees.
Art.3 Title	<p>In the title of the article, add the word "approach" so that the co-ordinated authorisation would not be compulsory but a general principle for action by Member States who will adopt the national measures they consider necessary pursuant to article 3.</p>	Commission agrees.
Art. 3.1.	<p>Add "and progressive" before "introduction of the UMTS services on their territory": this makes clear that from 1.1.2002 there is no obligation for Member States to ensure that 100% of the national territory be immediately covered but that, as it has been the case for other systems, gradual coverage obligations may be imposed on license holders.</p> <p>Replacement of the word "harmonised" by "co-ordinated" to put it in line with the title of article 3.</p>	Commission agrees.
New 3.2.	<p>Addition of a paragraph allowing Member States to ask for an additional implementation period of up to 12 months beyond the dates of 2000 and 2002 only as far as justified by exceptional technical difficulties in achieving the necessary adjustments in their frequency plans. The request must be filed before 1.1.2000 and must be accepted by the Commission.</p>	<p>Commission agrees although it insists on the exceptional character of such deferment. The date of 1.1.2002 is justified by ITU planning, industry demand, competitive pressure from the rest of the world and is reflected in ERC decision 97/77. The date of 1.1.2000 is justified by</p>

		<p>the fact that industry needs sufficient time to plan the heavy investments required to start UMTS by 2000.</p> <p>Effective implementation of obligations under article 3.1. will depend upon the availability of frequencies harmonised pursuant to article 5. Should a member state believe that required frequencies would not be available within the set deadlines, it may ask for a deferment subject to a reasoned decision by the Commission.</p>
Original 3.2.	<p>Original article 3.2. has been redrafted to include the wording of original article 3.3. regarding the reference to the characteristics listed in Annex 1. New article 3.3. now refers to article 2 which defines UMTS and itself refers to annex 1: addition of the terms " as defined in Article 2". This is a guarantee that frequencies reserved for UMTS will effectively be used for UMTS the minimum characteristics of which are defined in article 2 and Annex 1.</p> <p>Addition of the terms "in compliance with Community legislation in force" as proposed by Parliament in its amendment 6.</p> <p>Deletion of the word "services" after UMTS; this refers to UMTS system that will require most authorisations as well as an individual license.</p> <p>Addition of the words "for UMTS" after standards to restrict it to UMTS.</p> <p>Replacement of the word "adopted" by "approved or developed" to broaden the scope of the provision regarding standards.</p> <p>Replacement of "support roaming" by "allow cross-border roaming" to make clear that Member States cannot prevent cross-border roaming. It is important to stress that this decision mainly applies to cross-border roaming.</p>	<p>Commission agrees.</p>
3.3.	<p>Deletion of 3.3. and insertion of substance in new 3.3.. Since in agreement with Parliament's amendment 5, Council has included the reference to minimum capabilities into article 2 to which new article 3.3. now refers, Council has concluded that original article 3.3. had become superfluous and deleted it; the words "in compliance with Community legislation in force" have been added in new article 3.3. which produces the same result as the Parliament's amendment.</p>	<p>Commission agrees.</p>
3.4.	<p>Council agrees in substance with Parliament amendment 7 to add a reference to frequency spectrum efficiency. It has also redrafted the text slightly to reflect</p>	<p>Commission agrees.</p>

	<p>article 10 of the Licensing Directive which provides that Member States may only limit the number of individual licences to the extent required to ensure the efficient use of radio frequencies; the new text also provides that the co-operation procedure with the Licensing Committee and CEPT will apply to the determination of whether potential types of systems are incompatible. The terms "types of" are added before "systems" to stress that this process would only apply to general types of systems and not to each system individually.</p> <p>Article 3.4. also refers to the "co-ordination of the Member States approach" instead of the "co-ordination of the authorisation procedures" in line with the title of article 3 and comitology.</p>	
4.1.	<p>Replace "ensure that organisations" by "encourage organisations" and deletion of the words "have rights and obligations", so that no specific obligations could be imposed on organisations: they will remain free to accept or refuse to enter into a roaming agreement.</p> <p>Addition of "cross-border" roaming to make clear that this paragraph does not apply to national roaming.</p> <p>Deletion of the words "with other organisations providing UMTS networks" as unnecessary.</p>	Commission agrees.
4.2.	Deletion of the words "including the promotion of agreements with operators".	Commission agrees. Recital 19 has also been modified so as to recognise the right of Member States to adopt any appropriate solutions in conformity with Community law in order to ensure appropriate coverage of less populated areas.
5.1	<p>Deletion of the words "and the conditions attached to authorisations for UMTS networks and services without prejudice to the provisions of the Licensing Directive regarding individual licenses" and addition of the words "inter alia" before "to harmonise frequency use".</p> <p>Addition of a new 5.2. "The timetable for the first mandates is set out in Annex II". This indicates that annex II is not exhaustive.</p>	Commission agrees. This change does however not affect the right for Commission to grant mandates to CEPT/ECTRA for harmonisation of conditions and procedures for authorisations for UMTS networks and services, in particular pursuant to the Licensing Directive.
Art.6	Replacement of the word "standard" by "Recommendation" in the expression "ITU IMT 2000 standard". This better reflects current situation in ITU.	Commission agrees.

Art. 8	Replacement of the term "telecommunications organisations" by the term "organisations providing telecommunications services and networks" which reflects the new terminology in use.	Commission agrees.
Art. 9.1	Put the terms "in third countries" at the end of the sentence to better reflect the situation.	Commission agrees.
Art. 9.2.	Delete the terms "make proposals to take all necessary actions to" as proposed in amendment 8 of the Parliament.	Commission agrees.
Art. 9.3.	Addition of the following paragraph: "Measures taken pursuant to this article shall be without prejudice to the Community's and Member States' obligations pursuant to relevant international agreements". This reflects article 9.3 of the Council and Parliament Decision 710/97/EC of 24.3.97 on S-PCS.	Commission agrees.
Art. 11	Replacement of the whole text of article 11 by a reference to article 20 of Directive 97/13/EC that contains the same text as deleted wording.	Commission agrees.
Art. 12	Replacement of the words "on the 20 <sup>th</sup> day after its publication" by "on the day of its publication". This is in line with the new legislative practice.	Commission agrees.
Annex I Title	Change the title into "Characteristics which UMTS shall be capable of supporting" in line with Parliament amendment 5 to article 2.	Commission agrees.
Annex I First section and point 1	Replace "Services" by "System capabilities needed to accommodate service features". Read point 1 as follows: "Multimedia capability; full mobility and low mobility applications in different geographical environments beyond the capability of the second-generation systems such as GSM". This fully reflects Parliament amendment 9.	Commission agrees.
Annex I point 4	Add the following words after "Service portability across distinct UMTS environments: "where appropriate (e.g. public/private/business; fixed/mobile". This further illustrates service portability.	Commission agrees.
Annex I point 5	Deletion of the words "indoor, outdoor and far outdoor" and of the words "GSM/UMTS". This makes the rest of the sentence easier to read. There is no need to refer to various types of distances since it is referred to one seamless environment.	Commission agrees.

Annex I 2d section	Deletion of the heading on terminals to be replaced by additional reference to terminals under recital 24.	Commission agrees.
Annex I 3d section – first bullet	Add the term "terrestrial" before "air interface" and the words "supporting asymmetric traffic and allowing for bandwidth/data rate on demand in harmonised frequency bands". These changes reflect the latest development in ETSI.	Commission agrees.
Annex I 3d section – 2d bullet	Add the terms "including the use of paired and unpaired frequency". This change reflects the latest development in ETSI.	Commission agrees.
Annex I 4 <sup>m</sup> section	Replacement of original 4 <sup>m</sup> section on Core network starting with the words "Evolution from GSM system family" and read "Call handling, service control and location and mobility management including full roaming functionality based on an evolution of existing core network systems, for example on an evolved GSM core network, taking the convergence between fixed and mobile networks into account." This text fully reflects amendment 11 of the Parliament.	Commission agrees.
Annex II – first par.	Replace the precise date of February 1999 by "from February 1999" to give more flexibility in the Committee's work schedule while keeping deadlines as early as possible. Delete the reference to specific frequency bands "and freeing or refarming of the 900, 1800, 1900 MHz bands". As in recital 16, Council decided to delete specific reference to certain frequency bands as this will be determined more appropriately taking into account market demand when drafting the mandates.	Commission agrees.
Annex II – 2d par.	Delete the paragraph "Mandates to CEPT for harmonisation of conditions attached to authorisations".	Commission agrees with deletion while stressing, as it does in article 5, that this change does not affect its right to grant mandates to CEPT/ECTRA for harmonisation of conditions and procedures for authorisations for UMTS networks and services, in particular pursuant to the Licensing Directive.
Annex II – 3d par.	As in 1 <sup>st</sup> par., read "From February 1999" to make the timetable more flexible given the Committee's intervention and the uncertainty as to the precise date of	Commission agrees.

	<p>adoption of the Decision. Read also "to issue mandates to CEPT to establish a one-stop-shopping procedure for services where necessary": editorial change without modification on substance.</p>	
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### **3.4. Problems regarding committee procedures that arose when common position was adopted and Commission's position**

No problem arose regarding committee procedures. These are procedures of the Licensing Committee which was created by the Licensing Directive 97/13/EC and which is also used in the context of Council and Parliament Decision 710/97/EC on satellite personal communications services.

### **4. CONCLUSIONS AND GENERAL REMARKS**

The modifications made to the Commission's original proposal by the Council in its common position reflect the amendments of the European Parliament as accepted by the Commission, and make the text more precise or complete in conformity with the main objectives of the original proposal of the Commission. Therefore, the Commission can accept the common position reached by the Council.



ANNEX

to the Communication from the Commission to the Parliament pursuant to Article 189 B(2) of the Treaty on the common position of the Council on the Proposal for a

European Parliament and Council Decision on the co-ordinated introduction of mobile and wireless communications (UMTS) in the Community  
COM(95)58 final - 98/0051(COD)

POSITION OF THE COUNCIL ON THE PARLIAMENT'S AMENDMENTS AND COMMENTS BY THE COMMISSION

No. of amendment	Recital/article of the original proposal	Content of the EP amendment in first reading	Position of the Commission re. EP's first reading	Position of the Council on EP's amendments	Commission's comments on the position of the Council re. EP's amendments
1	Recital 10	Parliament proposes to change the terms "UMTS service providers" into "organisations providing UMTS networks". Excessive fees should not be imposed to applicants for UMTS authorisations.	The EP amendment is in line with the need to put the focus on network operators rather than on service providers. Commission supports the elimination of excessive fees as also provided in article 6 of the Licensing Directive 97/13/EC.	Council accepts EP amendments. As to the terms "UMTS service providers", Council further decided to stress that organisations providing both UMTS networks and UMTS services should be able to enter the market without unnecessary constraints or excessive fees. Since network providers referred to in the first part of recital 10 are most likely to need an individual license, in order to avoid possible confusion due to the second part of recital 10 which provides that the general rule will be general authorisations or declarations, which is in fact a restatement of a general principle of the Licensing Directive, the Council decided to delete the last part of recital 10.	Commission accepts the deletion of the last part of recital 10.

3 (and 2)	Recital 16	<p>Parliament proposed to change the timing from "2005" to "within a number of years", by when additional frequency spectrum is likely to become necessary.</p> <p>Parliament also proposed to specify that freeing or refarming of the 900, 1800 and 1900 MHz bands should be made with a view to ensuring non-discrimination.</p>	<p>Commission accepted the change of timing since the reference to 2005 was indicative and some flexibility may be introduced and will be influenced by demand from the market.</p> <p>Frequency freeing and refarming must take place while ensuring non-discrimination, which is one of the principles already provided in the Licensing Directive.</p>	<p>Council accepted the replacement of 2005 by "within a few years" given the flexibility allowed.</p> <p>As to the last part of the recital, Council preferred to delete the specific reference to the refarming and freeing of certain frequency bands since there is no common agreement on this matter at this stage. Therefore, the addition of a reference to non-discrimination had become without object and has been dropped. This is also reflected in the changes in Annex II.</p>	Commission agrees.
4	Recital 22	<p>Parliament proposed to include coverage of less populated areas in the scope of roaming agreements that organisations providing UMTS networks should have rights and obligations to negotiate in view of ensuring Community-wide roaming.</p>	<p>Commission rejected this amendment for editorial reasons as less populated areas are already covered in recital 19 on national roaming; it is out of context in recital 22 that addresses cross-border roaming.</p>	<p>Council did not take that amendment into account.</p>	Commission agrees.
5	Article 2	<p>Parliament proposes to read the last sentence: "This system shall at least be capable of supporting" in order to make clear that the list in annex I includes the minimum capabilities which the UMTS system shall be capable of supporting.</p>	<p>Commission agrees that the purpose of Annex I is to provide for a list of minimum capabilities the system should be able to support. There is no obligation though for each operator to effectively offer the services corresponding to such capabilities.</p>	<p>Council agrees with Parliament.</p> <p>Council moreover deleted article 3.3 and included the idea of article 3.3 into article 2 as amended by Parliament. The last sentence of article 2 now reads "This system shall at least be capable of supporting the characteristics referred to under Annex I."</p>	Commission agrees.
6	Article 3(3)	<p>Parliament adds a reference to Community law and in particular to the principles of</p>	<p>Commission partly accepts the amendment. Commission believes that this amendment is superfluous as</p>	<p>Council agrees with Commission.</p> <p>Since in agreement with Parliament's</p>	Commission agrees.

		<p>Community law applies anyway and as there is no need to repeat that the principles of non-discrimination and transparency are part of Community law. Moreover, the proposed wording is not best positioned in article 3.3. as article 3.3. purpose is to make annex I applicable to national licensing procedures. Therefore, although the Commission accepts the addition of the words "in compliance with the Community legislation in force" as proposed in amendment 6, it rejects the addition of a specific reference to the principles of non-discrimination and transparency. Commission also proposes to move the words "in compliance with the Community legislation in force" to the beginning of article 3.2. after "shall ensure".</p>	<p>amendment, Council has included the reference to minimum capabilities into article 2, Council has concluded that article 3.3. had become superfluous and deleted it; the words "in compliance with Community legislation" have been added in new article 3.3. which produces the same result as the Parliament's amendment.</p>	
<p>non-discrimination and transparency.</p>		<p>Commission agrees in substance with the addition of the words "for reasons of frequency spectrum efficiency" which reflects the underlying idea of article 3.4. and is in conformity with article 10 of the Licensing Directive.</p> <p>Recital 11 of the proposal also makes clear that pursuant to the Licensing Directive and Commission Directive 96/2/EC the number of UMTS licenses may only be limited for reasons of demonstrated lack of frequency spectrum capacity. Commission therefore also proposes to add the words "in accordance with existing Community law", considering that the terms "efficient use of frequency spectrum" need to be interpreted in the</p>	<p>Community law applies anyway and as there is no need to repeat that the principles of non-discrimination and transparency are part of Community law. Moreover, the proposed wording is not best positioned in article 3.3. as article 3.3. purpose is to make annex I applicable to national licensing procedures. Therefore, although the Commission accepts the addition of the words "in compliance with the Community legislation in force" as proposed in amendment 6, it rejects the addition of a specific reference to the principles of non-discrimination and transparency. Commission also proposes to move the words "in compliance with the Community legislation in force" to the beginning of article 3.2. after "shall ensure".</p>	
<p>7</p>	<p>Article 3(4)</p>	<p>Parliament stresses that the justification for limiting the number of UMTS services authorisations in case of incompatibility of potential systems is the lack of frequency spectrum.</p>	<p>Council agrees in substance with Parliament's amendment. It nevertheless redrafted the text to make it in line with the text of article 10 of the Licensing Directive. The new text also refers to potential types of systems being incompatible and to the co-ordination of the Member States approach instead of the co-ordination of the authorisation procedures.</p>	<p>Commission agrees.</p>

8	Article 9(2)	Parliament proposes deleting the words "make proposals to take all necessary actions to" so that the Commission will be directly entitled to seek effective implementation of international agreements applicable to UMTS.	light of existing Community law. Commission agrees. The words deleted by the Parliament are superfluous since article 9 par. 1 already allows the Commission to take all measures to facilitate the introduction of UMTS services and the free circulation of UMTS equipment in third countries.	Council agrees with Parliament.	Commission agrees.
9	Annex I, 1 part	Parliament proposes redrafting the title to make clear that annex I refers to "system capabilities needed to accommodate service features". The new wording is also more precise as to the levels of application mobility: "full mobility and low mobility in different geographical environments beyond the capability of the second generation systems such as GSM".	Commission agrees. This amendment makes clear that UMTS will be a complete technological change compared to GSM-type second generation.	Council agrees with Parliament.	Commission agrees.
10	Annex I pt 5	Parliament proposes replacing "full roaming between GSM" with "full roaming with all GSM services".	Commission disagrees. The exact wording of the proposal as published in English in the Official Journal is "full roaming with GSM" so that the replacement of the word "between" by "with" is not necessary. The words "all" and "services" are not acceptable: Commission does not intend to impose roaming with all possible GSM services; the purpose of the requirement is to create the possibility for roaming with GSM as far as necessary according to	Council agrees with the Commission and does not accept the Parliament amendment.	Commission agrees.

11	Annex 1, 3d sect.	<p>The Parliament's amendment regarding the minimum capabilities linked to the core network takes into consideration call handling, service control and location and mobility management, in line with comments received . Parliament also stresses the need to take into account convergence between fixed and mobile networks.</p>	<p>market demand. As to "services", the purpose of this paragraph is to allow roaming between networks and not between services.</p> <p>Commission agrees with Parliament's amendment.</p>	Council agrees with Parliament.	Commission agrees.
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