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DOCUMENTS

Proposal for a

COUNCIL DIRECTIVE

on the establishment of the internal market for
telecommunications services through the
implementation of Open Network Provision
(ONP)

(presented by the Commission)

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COMMISSION OF THE EUROPEAN COMMUNITIES

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PROPOSAL FOR A COUNCIL DIRECTIVE ON THE ESTABLISHMENT OF THE INTERNAL MARKET FOR TELECOMMUNICATIONS SERVICES THROUGH THE IMPLEMENTATION OF OPEN NETWORK PROVISION (O N P)

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(88) 825 final - SYN 187

Brussels, 9 January 1989

Proposal for a
COUNCIL DIRECTIVE

on the establishment of the internal market for telecommunications
services through the implementation of Open Network Provision (ONP)

(presented by the Commission)

A SUMMARY

The establishment of an open Community-wide market for telecommunications services up to 1992 was defined as a major policy goal in the Green Paper on the Development of the Common Market for Telecommunications Services and Equipment (COM(87)290) and further specified in the action plan announced on the basis of the broad consensus achieved in COM(88)48 ("Implementing the Green Paper on the Development of the Common Market for Telecommunications Services and Equipment / State of Discussions and Proposals by the Commission").

The progressive establishment of harmonized conditions for open access to, and the open use of, the public telecommunications network infrastructure and public telecommunications services (Open Network Provision - O N P) has been generally recognized as central to the achievement of an effective Community telecommunications market, together with the rapid adaptation of the sector of telecommunications services to the requirements and obligations of the Treaty. The Council in its Resolution on the development of the Common Market for Telecommunications Services and Equipment up to 1992¹ of 30 June 1988 identified the "rapid definition, by Council Directives, of technical conditions, usage conditions and tariff principles for Open Network Provision" as of crucial importance for "treating progressively an open common market for telecommunications services, particularly for value-added services". This was confirmed by the opinion of the European Parliament, the opinion of the Economic and Social Committee and the broad range of comments received from all parties concerned.

In the meantime, definition work has substantially progressed. The Commission now considers it appropriate to establish a framework for the progressive process of harmonization. This is the purpose of the draft Directive herewith presented.

Based on the procedures established by this framework Directive, specific Directives will then be submitted by the Commission to the Council progressively for each specific area concerned.

¹ 88/C257/01.

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The Commission considers that the stable framework thus created will contribute substantially to the orderly and progressive establishment of harmonized conditions for open provision of public networks and services in the Community, as required for the development of a competitive Community-wide telecommunications market up to 1992. The progress of internal harmonization will also contribute to the development of the Community's position in bilateral and multilateral relations.

B EXPLANATORY MEMORANDUM

D) INTRODUCTION

The establishment of harmonized conditions for open access to, and the open use of, the public telecommunications network infrastructure and public telecommunications services (Open Network Provision - ONP) in the Community has been identified as essential for the achievement of a common market for telecommunications services up to 1992, in which the free provision of services provided via telecommunications networks is ensured.

The Green Paper on the Development of the Common Market for Telecommunications Services and Equipment (COM(87)290) defined the development of the conditions for Open Network Provision (ONP) as a progressive and participatory process:

*Clear definition by Community Directive of general requirements imposed by Telecommunications Administrations on providers of competitive services for use of the network, including definitions regarding network infrastructure provision.

*This must include clear interconnect and access obligations by Telecommunications Administrations for trans-frontier service providers in order to prevent Treaty infringements.

*Consensus must be achieved on [harmonized] standards, frequencies, and tariff principles, in order to agree on the general conditions imposed for service provision on the competitive sector. Details of this Directive on Open Network Provision (ONP) should be prepared in consultation with the Member States, the Telecommunications Administrations and the other parties concerned, in the framework of the Senior Officials Group on Telecommunications (SOG-T).

*The Council, in its Resolution on the development of the Common Market for Telecommunications Services and Equipment up to 1992² of 30 June 1985, adopting the major Green Paper objectives, stated as an overall policy goal:

"creating progressively an open, common market for telecommunications services, particularly for value-added services. Due account must be taken of the competition rules of the Treaty. Rapid definition, by Council Directives, of technical conditions, usage conditions and tariff principles for Open Network Provision, starting with harmonized conditions for the use of leased lines, is of crucial importance and closely linked with the creation of an open common market for non-reserved telecommunications services".

The European Parliament, in its Resolution on Posts and Telecommunications³, supporting the main positions of the Green Paper, emphasized the key role of harmonized Community-wide conditions of access and use of the public telecommunications networks and services provided by the Telecommunications Administrations and asked the Commission to propose a Directive concerning the free access of private providers to the telecommunications networks in the Community.

² see footnote 1.

³ Resolution of 14.12.1988.

The importance of Open Network Provision was further emphasized by the opinion of the Economic and Social Committee on the Green Paper⁴, as it was by the wide range of comments received during the broad consultation process following the publication of the Green Paper, which involved user organizations; telecommunications, data processing and services industries, the trade unions and the organizations representing consumers' interests in this field.

The Commission specified its proposals for the working out of Open Network Provision further in its plan for priority actions to follow up the Green Paper, published in November 1988 ("Implementing the Green Paper on the Development of the Common Market for Telecommunications Services and Equipment" - State of Discussions and Proposals by the Commission" - COM(88)48).

In order to ensure rapid progress with the development of ONP, the Senior Officials Group on Telecommunications (SOG-T) assigned the task of making proposals for the definition and development of principles for ONP to its sub-group for Analysis and Forecasting (GAP).

The first resultant GAP report was adopted by SOG-T on 13 April 1988. It established a Reference Framework for Open Network Provision⁵.

Currently, work on the first specific area of investigation - access to leased lines - is underway.

The Commission reported on the current progress of work on the definition of Open Network Provision in its Communication of 5 December 1988 - "Telecommunications: Progress on the definition of Open Network Provision (ONP) - short status report" (COM(88)718).

It stated that substantial progress on the definition of Open Network Provision had been made and considered it now "timely to set up a firm political and legal base for a continuous, progressive process to establish harmonized Open Network Provision conditions in the European Community, to dedicate the necessary resources to this process, and to ensure user and industry participation".

"To this end, the Commission envisages a (Council) Framework Directive (Article 100 A), defining the progressive process of harmonization, based on the Reference Framework for Open Network Provision proposed in the GAP report⁶ adopted by the Senior Officials Group on Telecommunications."

This draft Directive is herewith presented.

⁴ OJ C 336, 31.12.1987, p. 46 and
OJ C 175, 4.7.1988, p. 36.

⁵ Report by the "Analysis and Forecasting Group" (GAP) on Open Network Provision (ONP) in the Community, Brussels, 20 January 1988.

⁶ see footnote 5.

II) THE GENERAL CONTEXT: THE IMPLEMENTATION OF THE COMMON MARKET FOR TELECOMMUNICATIONS SERVICES UP TO 1992

As the discussions on the Green Paper have shown, a consistent approach to the issue of the implementation of the common market for telecommunications services must take due account of the requirement to ensure public service for all on the one hand, while abolishing undue restrictions on the other.

Document COM(88)48 summarized the general reactions resulting from the consultation on the Green Paper as follows :

"a broad consensus on the liberalization of value-added services, the high value end of the overall spectrum of telecommunications services.

"the acceptance of the continuation of exclusive provision for network infrastructure. This has met acceptance in most comments while receiving some criticism from both sides.

"the degree of competition in services other than value-added services. There is broad general support for accepting exclusive provision of voice telephony, as long as it is defined as switched voice telephony intended for the general public and as long as this is subject to review.

"A number of comments hold that either special authorization schemes or exclusive provision for other services, in particular telex and switched data communications intended for general public use, are required. Special authorization schemes have been suggested as a possible option for movement towards market opening in this area.

"Generally, comments hold that a broad provision of efficient Europe-wide and world-wide communications to the public must be ensured."

The Council, in its Resolution of 30 June, stated :

"Whereas the creation of an open common market in telecommunications services and equipment is compatible with continued exclusive provision or special rights of Telecommunications Administrations as regards the supply and the operation of the network infrastructure and the provision of a limited number of basic services where such exclusive provision is deemed essential, at this stage, for safeguarding the public service role;

"Whereas the arguments in favour of continued exclusive provision or special rights, where they exist, must be weighed carefully against the obligations of the Telecommunications Administrations which will be retained but also against the restrictions which this may impose on those connected to the network concerning present and future application for their own use, shared use or provision to third parties; whereas this should take account of the fact that the development of trade must not be affected to such an extent as would run counter to the interests of the Community".

In reviewing its approach to the issue, the Commission has been guided by two basic considerations :

- On the one hand, its duty of surveillance and its obligation to end restrictions which constitute infringements of the Treaty ;

- On the other hand, the need to create the conditions for an open Community-wide market, by progressive harmonization.

In this context, it seems useful to recall the respective roles of Article 100A and the duties of the Commission under Article 90 (3) of the Treaty.

On the one hand, Article 100A aims "at the approximation of the provisions laid down by law, regulation, or administrative action in Member States which have as their object the establishment and functioning of the internal market". The latter comprises, according to Article 8A, referred to in Article 100A, "an area without internal frontiers in which the free movement of goods, persons, services, and capital is ensured in accordance with the provisions of this Treaty".

Article 100A has therefore a function of harmonization, in order to abolish barriers resulting from a divergence of national legislation or regulations.

On the other hand, the Treaty, and in particular Article 90, entrusts to the Commission a specific obligation of surveillance and a duty to act with regard to Member States concerning their obligations under Article 90 (1) "not to enact nor maintain in force any measure contrary to the rules contained in the Treaty", with regard to "public undertakings and undertakings which Member States grant special or exclusive rights".

In the field of telecommunications services, this concerns in particular restrictions on the freedom to provide services within the Community (Article 59), as well as compliance with the Treaty's competition rules applying to undertakings (Articles 85 and 86).

The Commission therefore considers that Article 100A and Article 90 are complementary and cannot be substituted for each other. Accordingly, the Commission considers a two-pronged approach appropriate, emphasizing the complementarity of progressive harmonization (Open Network Provision - ONP) via Council Directives (Article 100A) and action under the Commission's obligation of surveillance and duty to act with regard to compliance with Treaty rules (Article 90(3)) via a Commission Directive.

Open Network Provision aims at providing the framework for harmonization facilitating the progressive implementation of a common market for telecommunications services. Correspondingly, the proposed draft Framework Directive is based on Article 100a of the Treaty. It will be complemented by a Commission Directive on competition in the markets for telecommunications services, which the Commission intends to issue shortly under its mandate under Article 90(3) of the Treaty, to adjust the exercise of exclusive or special rights in this area to the requirements and obligations of the Treaty.

The proposed Directive takes into account recent developments in international aspects of telecommunications policy. The progress of internal harmonization will also contribute to the development of the Community's position in bilateral and multilateral relations. The Community and the Member States are discussing questions of mutual access to telecommunications services in the framework of the ITU, the GATT and the OECD.

III) THE APPROACH ADOPTED

The primary goal of the proposed Directive is the establishment of a structural (i.e. procedural and organizational) framework for the development of harmonized conditions for Open Network Provision.

The overall approach chosen is based on the report and the Reference Framework established by SOG-T's subgroup GAP⁷ and adopted by SOG-T in April 1988. The work included a series of hearings with the participation of all interested parties, in particular user organizations, service providers and industry.

COM(88)718 on progress on the definition of Open Network Provision (O N P) summarizes the main results of the report as follows :

- harmonized ONP conditions should follow a number of basic guide-lines : conditions must be based on objective criteria ; conditions must be transparent and published in an appropriate manner ; conditions must not discriminate between nationals of Member States ; conditions must guarantee equality of access ;
- the development and implementation of ONP conditions should be progressive. The emphasis should be on the development of harmonized offerings specifically suited for value-added service providers but available to all users ;
- the importance of the development of open network standards is emphasized, in the framework of the overall Community approach to European standardization.*

The reference framework defines the following three main areas for the development of harmonized ONP conditions:

- definition of harmonized technical interfaces and service features

It is proposed that existing technical interfaces should be used wherever possible. Where new technical standards are required for ONP offerings, the European Telecommunications Standards Institute (ETSI) should be requested to develop them, in accordance with evolving European standards taking account, as appropriate, of international standardization.

- definition of harmonized usage conditions

Common usage conditions which should apply for ONP offerings are indicated in the report. These refer to a number of parameters including : provision time ; contractual period ; quality of service ; conditions for shared use, third party use, resale of capacity and network inter-connection, as compatible with Community Treaty rules.

- definition of harmonized tariff principles

The report indicates a number of guide-lines on tariff principles. In particular it proposes that tariffs for ONP offerings should be cost-oriented, be properly published, and apply to all users on a non-discriminatory basis.*

Building on these recommendations, the enclosed draft Directive aims to provide the guiding principles and the structural framework within which ONP will gradually develop. Consequently, "Open Network Provision" is the end-product of the regulatory procedure which is instituted by the proposed Directive rather than its immediate result.

IV) MAJOR ELEMENTS OF THE PROPOSED DIRECTIVE

The regulatory and legislative means by which the proposed Directive aims to achieve harmonized open access to and use of the public telecommunications network infrastructure and public telecommunications services are substantive rules concerning the "basic principles" and "essential requirements" with which the ONP conditions must comply; procedural rules according to which Council Directives will be prepared on the basis of Commission proposals; and organizational rules.

Art. 1 - 2 concern the scope of application of ONP conditions.

Art. 3 concerns the basic principles with which ONP conditions must comply and the essential requirements upon which they must be based.

Arts. 4-6 provide for the definition of ONP conditions in various stages.

Art. 7 foresees a progressive process for the mutual recognition of declaration and/or licensing ("authorization") procedures in the Community.

Art. 8 foresees a general review process for 1992 concerning the implementation of Open Network Provision.

Art. 9 establishes the Senior Officials Group (SOG-T) as an advisory committee to assist in the implementation of the Directive.

Art. 10 and 11 concern the bringing into force of the Directive.

Major elements of the draft Directive are reviewed below:

Scope of application

Harmonized ONP conditions must be implemented by the Member States "for open access to, and open use of, the public network infrastructure and public services" (Art. 1).

The scope of application of ONP conditions is defined, in the proposed Directive, with regard to "telecommunications organizations" and with regard to certain telecommunications areas. "Telecommunications organizations" means the administrations or private operating agencies recognized in the Community, providing public telecommunications networks and/or public telecommunications services (Art. 2 (1)).

The Directive states that "ONP conditions will apply to those public telecommunications networks and public telecommunications services for which the telecommunications organizations are in law or in fact the sole or main providers either singly or jointly".

For specific areas, where there are other providers of comparable importance, those other providers may be included under "telecommunications organizations" on decision by the Council, acting on proposal by the Commission.

These provisions are intended to ensure, on the one hand the main objective of ONP, i.e. harmonized open access to the basic public network infrastructure and basic public services provided by the Telecommunications Administrations, and to provide, on the other hand, for harmonized open access to basic public services also in areas where other providers may be of comparable importance.

Criteria for ONP

The substantive criteria for ONP are defined in the proposed Directive,

- in terms of basic principles with which ONP conditions must comply (Art. 3 (1)), and
- in terms of certain essential requirements upon which ONP conditions must be based (Art. 3 (2)).

According to Art. 3(3) ONP conditions may additionally be derived from the exercise of exclusive or special rights granted by Member States, as far as these "are compatible with Community law".

The essential difference between the "basic principles" and the "essential requirements" is their regulatory thrust. Whereas the "basic principles" are oriented towards harmonized liberalization of telecommunications service provision, the "essential requirements" delineate the conditions which may be imposed.

Art. 3 (2) of the proposed Directive provides that ONP conditions "must be based on essential requirements" and enumerates these requirements which are of a non-economic nature and, for reasons of general public interest,

"can be considered of such importance as to necessitate compliance as a matter of legal obligation for granting access to, and using public telecommunications networks and services"

The basic principles (objectivity, transparency, non-discrimination, equality of access) have also been emphasized by the GAP report cited above.⁸

As regards the essential requirements listed in Art. 3 (2) (security of network operations, maintenance of network integrity, in justified cases, inter-operability of services and protection of data; as well as the essential requirements in general applicable to the connection of terminal equipment to the network⁹), the Green Paper¹⁰ has set out the key role of these requirements.

The Council has, in its Resolution of 30 June 1988¹¹, emphasized network integrity as "one of the essential elements for a common market in telecommunications services" "working on the principle of full interconnectivity between all public networks concerned in the Community", underlined the need for "appropriate measures in standardization" to promote the creation of Europe-wide services, and stated the need "to protect personal data".

⁸ see footnote 5.

⁹ see Council Directive on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment, 86/361/EEC of 24 July 1986.

¹⁰ Green Paper (COM(87) 290).

¹¹ Council Resolution on the development of the Common Market for Telecommunications Services and Equipment up to 1992, 30 June 1988, 88/C257/01.

As regards inter-operability "in justified cases", "within the framework of Community law", the Green Paper has emphasized the need for "requirements regarding standards for the network infrastructure and services provided by the Telecommunications Administrations or service providers of comparable importance, in order to maintain or create Community-wide inter-operability. These requirements must build in particular on Directives 83/187/EEC and 86/361/EEC, Decision 87/95/EEC and Recommendation 86/659/EEC". Further, with Recommendation 81/679/EEC concerning the ratification of the Council of Europe convention for the protection of individuals with regard to automatic processing of personal data, the Commission has expressed the importance which it accords to this area.

Procedural rules

Arts. 4 - 6 contain, in essence, a nine-step procedure involving

- the Commission,
- the Council,
- the Senior Officials Group on Telecommunications (SOG-T) and its sub-group GAP (Group for Analysis and Forecasting), and
- various standardization organizations, in particular the European Telecommunications Standards Institute (ETSI), and CEN/CENELEC.

Step 1: Definition of areas which ONP conditions shall concern

The first step in the definition of ONP conditions is the definition of areas for which detailed ONP conditions are to be drawn up. These areas (i.e. access to network resources, access to basic switched services) will be defined by the Council on a proposal from the Commission in an Annex to the proposed Directive.

Step 2: Definition of priority areas

The second step toward the definition of ONP conditions is the definition of priority areas for which ONP conditions will be drawn up. These priority areas are defined on the basis of the areas designated by the Council.

Initially, the priority areas will be defined in an Annex to the proposed Directive. Later on, updates of this list will be drawn up by the Commission after consultation with the Senior Officials Group on Telecommunications (SOG-T).

There is a need to keep the procedure for defining "priority areas" flexible and to allow for consultation with technical experts. This need is better served by the proposed two-step procedure than by a procedure which would entrust the Council with both the designation of "specific areas" and the determination of "priorities".

Step 3: Analysis and reports on priority areas

On the basis of the priority decision the Commission requests SOG-T to prepare detailed analytical reports according to defined time schedules on the priority areas chosen.

This corresponds to the proven procedure currently followed, with the major role being played by SOG-T's sub-group GAP. In COM(88) 701 ("Progress on the definition of Open Network Provision - short status report"), the Commission considered this procedure as satisfactory. However, it urged more user and industry participation in the national delegations to GAP and extensive use of hearings of user organizations, industry and the other parties concerned.

Step 4: The Commission invites public comment on the reports (see below)

Step 5: The Commission then requests the standardization organizations to draw up European standards as a basis for harmonized technical interfaces and/or service features, where required

According to the recent evolution of the European standardization system the main role is foreseen as falling to ETSI, created according to the proposals in the Green Paper, in co-operation with CEN/CENELEC as appropriate.

This procedure is in accordance with the Commission's policy of delegating the elaboration of common, Community-wide standards to standardization bodies rather than embarking on lengthy law-making procedures.

Step 6: Publication of reference to European Standards, taking account, as appropriate, of international standardization, drawn up as a basis for harmonized technical interfaces and/or service features for ONP

Step 7: The Commission submits proposals for each priority area, based on the elements listed in the ONP reference framework, as applicable to the area concerned (Art. 6)

This concludes the preparatory phase. At this procedural junction, the transformation of ONP conditions into Community law begins.

Consequently, the Commission synthesizes at this stage the information and proposals received from the various actors during the preceding phases of the decision-making process, i.e.:

- the detailed analysis of ONP conditions prepared by SOG-T / GAP,
- the public comments received from the parties concerned during the public comment phase,
- the European standards prepared by the respective standardization organizations as a basis for technical interfaces and/or service features, where required, and
- scrutiny with regard to compatibility with Community law.

Step 8: The Council adopts the Directive on ONP conditions for the area in question

Step 9: Member States implement the Directive on ONP conditions for the area in question

Public comment

The Commission considers it essential that the process of working out ONP conditions should allow for the full input by all parties concerned, in particular user organizations, industry, trade unions and organizations representing consumer interests.

Art. 5 foresees therefore that the Commission shall invite public comment by the "parties concerned" on the reports established in consultation with SOG-T, in particular by GAP.

Progressive mutual recognition of licensing procedures

A major aim of the progressive harmonization process implied by the progressive implementation of Open Network Provision must be the mutual recognition of declaration (registration) and/or licensing (authorization) procedures, where those procedures are required in Member States for the provision of telecommunications services via public telecommunications networks, as far as compatible with Community-law.

Mutual recognition must imply for the service provider that ultimately a single registration/license obtained in any Member State will entitle him or her to provide services throughout the Community, without having to undertake any additional procedures.

The Commission considers that the time-scale for achieving this goal will depend on the progress of harmonization of conditions through the establishment of ONP.

Art. 7 foresees that the Council, on proposal by the Commission, shall adopt measures towards this end. These proposals should take account of the difference in telecommunications network and services development in the Community, which may exist in the area concerned.

External aspects

The Council, in its Resolution of 30 June 1988¹², emphasized the importance of "fully taking into account the external aspects of Community measures on telecommunications". The progressive establishment of Open Network Provision in the Community corresponds to world-wide trends in telecommunications markets, such as the development of Open Network Architecture (ONA) in the United States.

The Community attaches major importance to the continued growth of cross-border telecommunications services, to the contribution of telecommunications services provided by companies, firms, or persons established in a Member States of the Community to the growth of the Community market, and to the increased participation of community service providers in third country markets. It will therefore be necessary, as detailed Directives are elaborated, to ensure that these objectives are taken into account with a view to reaching a situation where the realization of the more open Community market for telecommunications services will, where appropriate, be accompanied by reciprocal market opening elsewhere. This can be achieved either in the framework of multilateral negotiations, in particular in the GATT, or through bilateral negotiations.

12 see footnote 11.

Additional aspects

The draft Directive does not address communications via satellite which need special consideration, nor does it address the problems of mass media, meaning broadcasting and television, for which the Commission has submitted proposals to Council.

Finally, the draft Directive is using a basic set of definitions set out in Art. 2. It is the progressive working out of the ONP conditions which will lead, by itself, to more detailed definitions; in particular, the progressive harmonized definition of network termination points and network usage conditions will lead to a progressive indirect delineation of the central concept of public network infrastructure.

V) CONCLUSIONS

The progressive establishment of harmonized conditions for open access to, and open use of, the public telecommunications network infrastructure and public telecommunications services is central to the achievement of an effective Community market for telecommunications services, as emphasized by the Council in its Resolution of 30 June 1988.

The attached draft Directive will establish a stable framework for this process.

The Council is therefore requested to adopt the attached proposal for a Directive.

**PROPOSAL FOR A COUNCIL DIRECTIVE ON THE
ESTABLISHMENT OF THE INTERNAL MARKET FOR
TELECOMMUNICATIONS SERVICES
THROUGH THE IMPLEMENTATION OF
OPEN NETWORK PROVISION (O N P)**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 100a thereof ;

Having regard to the proposal from the Commission ;

In co-operation with the European Parliament¹³ ;

Having regard to the opinion of the Economic and Social Committee¹⁴ ;

1. **Whereas Article 8a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of services is ensured, in accordance with the other provisions of the Treaty ;**
2. **Whereas the Commission has submitted a Green Paper on the Development of the Common Market for Telecommunications Services and Equipment (COM(87)290), dated 30th June 1987, and a Communication on the Implementation of the Green Paper up to 1992 (COM(88)48), dated 9th February 1988 ;**
3. **Whereas the Council has adopted on 30th June 1988 a Resolution on the development of the common market for telecommunications services and equipment up to 1992¹⁵ ;**

¹³ J C ...

¹⁴ J C ...

¹⁵ ...

4. Whereas the Commission has issued a Directive on competition in the markets in telecommunications services¹⁶ ;
5. Whereas, given the obstacles resulting from diverging laws, regulations, or administrative actions in the Member States, the full establishment of a Community-wide market in telecommunications services can only be achieved by the rapid introduction of harmonized principles and conditions for Open Network Provision, in order to avoid a series of contentious cases and lengthy conflict, in particular for trans-frontier provision of services ;
6. Whereas, since situations differ, and technical and administrative constraints exist in the Member States, progress towards this objective should be made in stages ;
7. Whereas the conditions of Open Network Provision must be consistent with certain principles and should not restrict access to networks and services except for reasons of general public interest, hereinafter referred to as 'essential requirements' ;
8. Whereas the definition and interpretation of such principles and essential requirements must take full account of the fact that any restrictions of the right to provide services within and between Member States must be objectively justified, must follow the principle of proportionality and must not be excessive in relation to the aim pursued ;
9. Whereas the working out in detail of harmonized conditions of Open Network Provision must be a progressive process and should be prepared in consultation with the Member States, the Telecommunications Administrations and the other parties concerned, and in particular with the assistance of the Senior Officials Group on Telecommunications (SOG-T) ;

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10. **Whereas the definition of harmonized conditions for Open Network Provision must be a process open to all parties concerned and therefore sufficient time should be given for public comment ;**
11. **Whereas the Community-wide definition of harmonized technical interfaces and access conditions must be based on the definition of common technical specifications based on international standards and specifications ;**
12. **Whereas work in this area must take full account, inter alia, of the framework provided by Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, Council Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment and Council Decision 87/95/EEC on standardization in the field of information technology and telecommunications ;**
13. **Whereas the formal adoption of the statutes of the European Telecommunications Standards Institute (ETSI) on 12 February 1988, and of the associated internal rules, has created a new mechanism for producing European telecommunications standards ;**
14. **Whereas the general guide-lines agreed with the Joint European Standards Institution CEN-CENELEC henceforth make it possible to entrust specialized technical harmonization work to this body ;**
15. **Whereas the Community-wide definition and implementation of clear harmonized network termination points establishing the physical interface between the network infrastructure and users' and other service providers' equipment will be an essential element of the overall concept of Open Network Provision ;**
16. **Whereas Commission Directive 88/301/EEC on competition in the markets in**

telecommunications terminal equipment¹⁷ requires Member States to ensure that users who so request shall be given access to public network termination points within a reasonable time period ;

17. Whereas the principal aim of the establishment of an internal market in telecommunications services must be the freedom to provide services in the whole of the Community once authorized or legally provided in a Member State ;
18. Whereas this will require the mutual recognition of licensing procedures for services provision where such authorization may be required ;
19. Whereas such mutual recognition of licensing procedures required must depend on progress on the harmonization of the conditions for service provision, by the progressive implementation of Open Network Provision ;
20. Whereas in its Resolution of 30th June on the development of the common market for telecommunications services and equipment up to 1992 the Council considered the taking fully into account of the external aspects of Community measures on telecommunications to be a major policy goal ;
21. Whereas in accordance with the Council Decision of 28 November 1988, the Member States have accompanied their signature of the Final Acts of the World Administrative Telegraph and Telephone Conference (WATTC-88) by a joint declaration stating that they will apply the International Telecommunications Regulations in accordance with their obligations under the EEC Treaty ;
22. Whereas the Community attaches major importance to the continued growth of cross-

border telecommunications services, to the contribution of telecommunications services provided by companies, firms or natural persons established in a Member State of the Community to the growth of the Community market, and to the increased participation of Community service providers in third country markets ; whereas it will therefore be necessary, as detailed Directives are elaborated, to ensure that these objectives are taken into account with a view to reaching a situation where the realization of the more open Community market for telecommunications services will, where appropriate, be accompanied by reciprocal market opening elsewhere ;

Whereas this can be achieved either in the framework of multilateral negotiations, in particular in the GATT, or through bilateral negotiations ,

23. Whereas this Directive should not address the problems of mass media, meaning broadcasting and distribution of television programmes via telecommunications means, in particular cable television networks, which need special consideration ;
24. Whereas this Directive should not address communication via satellite for which, according to the Council Resolution of 30th June 1988, a common position should be worked out ;
25. Whereas the establishment of harmonized technical conditions, usage conditions and tariff principles under Open Network Provision according to this Directive addresses with priority public telecommunications networks and public telecommunications services for which Telecommunications Administrations are in law or in fact the sole or main providers ;

26. Whereas the effects on the working of the internal market of any remaining conditions for access to telecommunications services which have not been harmonized should be reviewed by the Council and the Commission during 1992, taking account of technological development ;

HAS ADOPTED THIS DIRECTIVE :**Article 1**

This Directive provides for the harmonization of conditions for open access to, and open use of, the public telecommunications network infrastructure and public telecommunications services.

These conditions will apply in particular also for the provision of services via these telecommunications means within and between Member States, including in particular the provision of services by companies, firms or natural persons established in a Member State of the Community other than that of the company, firm or natural person for whom the services are intended, in order to establish a common market for telecommunications services.

Article 2

For the purposes of this Directive :

- 1. 'Telecommunications organizations' means the administrations or private operating agencies recognized in the Community, providing public telecommunications networks and/or public telecommunications services.**

The bodies listed in Annex 1 fulfil these criteria.

- 2. 'Public network' means a public telecommunications infrastructure which provides for the transmission of services between and including defined termination points, be it by wire, radio link, or any other electromagnetic or optical means.**

3. 'Public network termination point' means the physical connection and technical access specifications required to gain access to, and to communicate efficiently via, a public network.
4. 'Open Network Provision Conditions' means the conditions harmonized according to the provisions set forth in this Directive which may be imposed on users and/or providers of services for access to and use of the public network and/or public telecommunications services (hereinafter referred to as 'ONP conditions').

ONP can include in particular harmonized conditions with regard to :

- technical interfaces, including the definition and implementation of public network termination points, where required ;
- usage conditions, including access to frequencies where required ;
- tariff principles.

ONP conditions will apply to the areas defined according to Article 4. ONP conditions will apply to access or use of those public telecommunications networks and public telecommunications services for which the telecommunications organizations defined under 1. are in law or in fact the sole or main providers either singly or jointly.

For specific areas, where other service providers are of comparable importance, the Council, acting by a qualified majority on a proposal from the Commission, shall supplement as necessary the bodies listed under 1.

5. 'Essential requirements' means requirements of a non-economic nature which, for reasons of general public interest, can be considered of such importance as to necessitate compliance as a matter of legal obligation for gaining access to, and using public telecommunications networks and services, within the framework of Community law.
6. 'Technical specifications', 'standards' and 'terminal equipment' are given the same meaning as in Article 2 of Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment.

Article 3

1. ONP conditions must comply with a number of basic principles. These principles are that :
 - conditions must be based on objective criteria ;
 - conditions must be transparent, and published in an appropriate manner ;
 - conditions must guarantee equality of access, and must be non-discriminatory, in accordance with Community law.
2. ONP conditions must be based on essential requirements, within the framework of Community law. These essential requirements are :
 - security of network operations ;
 - maintenance of network integrity ;

- interoperability of services, in justified cases ;
 - protection of data, in justified cases ;
 - the essential requirements in general applicable to the connection of terminal equipment to the network.
3. ONP conditions must not allow for any additional restrictions on the use of the public network and/or public services except those which may be derived from the exercise of exclusive or special rights granted by Member States, and are compatible with Community law.
 4. The Council, acting by a qualified majority on a proposal from the Commission shall supplement as necessary the lists drawn up under 1. and 2..

Article 4

1. ONP conditions shall be defined in stages, in accordance with the procedure set out hereafter.
2. ONP conditions shall concern the areas listed in Annex 2.

The Council, acting by a qualified majority on a proposal from the Commission, shall supplement as necessary this list.

3. The priority areas for which ONP conditions shall be drawn up initially are listed in Annex 3.

The Commission shall draw up each year, after consulting the Committee referred in Article 9, an updated list of priority areas.

4. For the priority areas chosen, the Commission shall :
 - (1) carry out detailed analysis, in consultation with the Committee referred to in Article 9, according to defined time schedules, and establish reports on the results of this analysis ;
 - (2) request, on the basis of the reports on this analysis, taking into consideration the comments received during the public comment period according to Article 5.1, and with due regard to the general programme of standardization in the information technology sector, the European Telecommunications Standards Institute (ETSI) to draw up European standards, taking account, as appropriate, of international standardization as a basis for harmonized technical interfaces and/or service features where required, within specified time limits; in so doing, it shall co-ordinate, in particular, with the Joint European Standards Institution CEN-CENELEC ;
 - (3) draw up ONP conditions in accordance with the elements listed in the ONP reference framework in Annex 4, based on the general principles and requirements set out in Article 3.

Article 5

1. The Commission shall invite, by publication in the Official Journal of the European Communities, public comment by all parties concerned on the reports established according to Article 4.4(1). The period for public comment will be no less than three months from the date of publication.

2. Reference to European standards drawn up as a basis for harmonized technical interfaces and/or service features for ONP according to Article 4.4(2) shall be published in the Official Journal of the European Communities.

Article 6

Following the completion of the procedures set forth in Articles 4 and 5, and acting by a qualified majority on the proposal from the Commission, the Council shall adopt detailed Directives for the establishment of ONP conditions for each area which shall include :

- a time schedule for the implementation of harmonized technical interfaces and/or service features where required, including the implementation of harmonized public network termination points, as appropriate ;

- details of harmonized usage conditions ;

- details of harmonized tariff principles ;

and any other aspects of relevance.

Article 7

1. Depending on the progress of harmonization of conditions through the establishment of ONP according to the procedures set out under Articles 4, 5, and 6, the Council acting by qualified majority on a proposal from the Commission shall adopt measures specifying the conditions under which the mutual recognition of declaration and/or licensing procedures for the provision of services via public networks shall be ensured where such declaration or license is required by Member States.

The measures shall eliminate any requirement for additional declaration or licensing in other Member States, once a service is legally produced in a Member State.

2. Towards this end, the Council acting by a qualified majority on a proposal by the Commission shall adopt measures for harmonising declaration and/or licensing procedures, where required.
3. In accordance with Article 8c of the Treaty, these proposals may take into account, to the extent required up to the end of 1992, the effort that certain economies showing differences in development of these services, will have to sustain during the establishment of the harmonized conditions and declaration and/or licensing schemes referred to under 1. and 2..

Article 8

During 1992, the Council, on the basis of a report by the Commission, shall review the effect on the working of the internal market of any remaining conditions for access to telecommunications services which have not been harmonized, taking account of technological development and in accordance with the general procedure foreseen under Article 100b of the Treaty.

Article 9

1. The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission. This committee shall be the Senior Officials Group on Telecommunications (SOG-T).

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

4. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 10

1. Member States shall bring into force the laws regulations and administrative provisions necessary in order to comply with this Directive by 1at the latest. They shall forthwith inform the Commission thereof.

2. Member States shall ensure that the texts of the provisions of national law which they adopt in the field governed by this Directive are communicated to the Commission.

Article 11

This Directive is addressed to the Member States.

Done at Brussels,

*ANNEX 1***BODIES FULFILLING THE CRITERIA OF ARTICLE 2.1****Belgium**

Régie des Télégraphes et des Téléphones /

Regie van Telegrafie en Telefonie

Denmark

København Telefon Aktieselskab

Jydsk Telefon

Fyns Kommunale Telefonselskab

Post-og Telegrafvæsenet

Statens Teletjeneste

Federal Republic of Germany

Deutsche Bundespost

France

Direction Générale des Télécommunications (France Télécom)

and Transpac

Greece

Ote / Hellenic Telecommunications Organization

Ireland

Telecom Eireann

Italy

Amministrazione delle Poste e delle Telecomunicazioni

Azienda di Stato per i Servizi Telefonici

Società Italiana per l'Esercizio Telefonico SpA

Italcable

Telespazio SpA

Luxembourg

Administration des Postes et des Télécommunications

The Netherlands

Post, Telegraaf en Telefoon

Portugal

Correios e Telecomunicacoes de Portugal

Telefones de Lisboa e Porto

Companhia Portuguesa Radio Marconi

Spain

Compania Telefonica Nacional de España

United Kingdom

British Telecommunications plc

Mercury Communications Ltd

City of Kingston-Upon-Hull

*ANNEX 2***AREAS FOR WHICH OPEN NETWORK CONDITIONS
ARE TO BE DRAWN UP IN ACCORDANCE WITH ARTICLE 4.2**

ONP conditions shall be drawn up progressively for the following areas :

Access to network resources :

- leased lines ;
- new types of access to the local network infrastructure, such as access, under certain conditions, to the circuits connecting subscriber premises to the public network exchange, without disruption to the basic service for which this connection may be provided (e.g. telephony, telex) ;
- ISDN (Integrated Services Digital Network) network resources ;
- broadband network resources, according to progress on definition and technological development.

Access to basic switched services intended for general public use :

- voice telephony service ;
- telex service ;
- circuit switched public data services ;
- packet switched public data services ;

- ISDN (*Integrated Services Digital Network*) services, as applicable ;
- mobile services, as applicable ;
- broadband services, as applicable and according to progress on definition and technological development.

ANNEX 3

**PRIORITY AREAS FOR WHICH ONP
CONDITIONS SHALL BE DRAWN UP INITIALLY IN
ACCORDANCE WITH ARTICLE 43**

Access to :

- leased lines ;

- packet switched public data services ;

- ISDN network resources and services, as applicable.

ANNEX 4

REFERENCE FRAMEWORK FOR THE ELABORATION OF ONP CONDITIONS IN ACCORDANCE WITH ARTICLE 4.4(3)

The elaboration of ONP conditions should proceed according to the following reference framework :

1 Definition of harmonized technical interfaces and service features

For ONP conditions the following scheme should be taken into account for the definition of technical interfaces at appropriate termination points :

- For existing services, existing interfaces should be adopted. Enhancement of such interfaces may be considered for additional capabilities ;
- For entirely new services existing interfaces should also be adopted, as far as applicable. When existing interfaces are not suitable, enhancements, or new interfaces, will have to be specified ;

For services and networks that are yet to be introduced, but for which the standardization programme has already commenced, ONP requirements should be taken into account when specifying new interfaces.

ONP requirements must be, wherever possible, in line with the on-going work on CCITT and CEPT recommendations.

Work in this area shall take full account of the framework given by Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, Council Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment and Council Decision 87/95/EEC on standardization in the field of information technology and telecommunications.

Work shall include the full definition of network termination points where required and not covered under appropriate procedures elsewhere.

ONP offerings shall in general present increased versatility compared with existing offerings. Correspondingly, additional features should be identified where required.

Under ONP such additional features may be classified as :

- inclusive if they are provided in association with a specific interface and included in the standard offering ;
- optional if they can be requested as an option with regard to a specific ONP offering, subject to an additional tariff.

Work shall include the elaboration of proposals for time schedules for introduction of interfaces and service features, taking account of the environment of telecommunications networks and services in the Community.

2. Definition of harmonized usage conditions

Usage conditions shall identify conditions of access and of supply, as far as required.

They may include in particular the following attributes as applicable :

- maximum provision time (delivery period) ;
- minimum contractual period ;
- quality of service, including, as applicable :
 - . availability
 - . mean time to repair
 - . transmission quality
- maintenance and fault reporting, including, as applicable :
 - . access to network maintenance facilities
 - . access to network diagnostic facilities
 - . access to network fault reporting facilities

- conditions for resale of capacity ;
- conditions for shared use ;
- conditions for third party use ;
- conditions for interconnection with public and private networks ;

Usage conditions may include conditions regarding access to frequencies, as applicable, and measures concerning protection of personal data and confidentiality of transactions, where required.

3. Definition of harmonized tariff principles

Fair and open access of users and competitive service providers to network resources and services requires a clear definition of tariff principles. Tariff principles must be guided by the general principles applying to ONP :

- tariffs must be based on objective criteria and must not impose directly or indirectly unfair purchases or selling prices. They must be, in particular, cost-oriented ;
- tariffs must be transparent and must be properly published. With regard to service elements, tariffs must be sufficiently unbundled, in order to avoid obligations and charges for users, which have no connection with the subject of the uses sought. In particular, specific network or service features should be charged independently of the charge for transmission via the network (bearer capability) .
- tariffs must be non-discriminatory and guarantee equality of treatment.

Specific charges for access to network resources or services must be justified on the basis of objective criteria, based on, inter alia, fair sharing in the global cost of the resources used.

4. Common principles

The definition of harmonized usase conditions and tariff principles under 2. and 3. will take due account of the applicable competition rules of the Treaty.