



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.10.1997
COM(97) 504 final

COMMUNICATION FROM THE COMMISSION

TO THE COUNCIL, THE EUROPEAN PARLIAMENT,
THE ECONOMIC AND SOCIAL COMMITTEE
AND THE COMMITTEE OF THE REGIONS

**on the implementation of
the telecommunications regulatory package: first update**

1. The preparations for EU implementation of the telecommunications regulatory package: the Commission's assessment of the state of play as of 15 September 1997

Considerable efforts at EU and national level as well as close cooperation between the Member States and the Commission services are under way with the aim of implementing the EU telecommunications package by 1 January 1998. This Communication provides an overview of the activities as well as an indication of the state of play as of 15 September 1997 as far as the Commission can judge the situation on the basis of the available data.

The most important objective of the current phase is the timely transposition of Community law. This Communication seeks to provide an overview of the achievements on transposition so far and, as far as possible, provides first indications of the effective operational implementation of the legislation. The latter, of course, will provide a better measure of functioning of the deregulated EU telecommunications market but it will only be during the course of 1998 that sufficient data will become available to enable firm conclusions to be reached.

At this time, the Commission is encouraged by the evidence of substantial progress in the transposition of the regulatory package and believes that, if joint efforts continue, the Community will have achieved a major milestone by 1.1. 98.

However, in a small number of Member States, considerably more effort is required than that made to date, while in some other Member States work remains to be done on certain aspects.

The Commission has received a number of official and unofficial complaints concerning national measures which, although accurately transposing Community law, are not being applied correctly in practice. The Commission will in this context be broadening its examination and will not hesitate, wherever necessary, to take action under the infringement procedure.

A more detailed overview of the situation is as follows:

1.1 Abolition of special and exclusive rights

Virtually all of the Member States (nine out of ten) required to abolish special and exclusive rights over the provision of voice telephony by 1 January 1998 have adopted the necessary measures. The remaining Member State (Belgium) has draft measures in hand. Four Member States have abolished special and exclusive rights in advance of the deadline.

The abolition of prohibitions on the *provision of liberalised services over alternative infrastructure* and on *direct interconnection of mobile networks with mobile networks and PSTN in other Member States* represent important preparatory steps towards full liberalisation. As regards the former, nine Member States have adopted the necessary provisions. The remainder have either some provisions in place (Belgium, Spain, Italy) or drafts in hand (Luxembourg, Portugal). There is one specific derogation (Greece). As regards the latter, eleven Member States have the main provisions in place, one has a draft (Belgium), and there are two derogations (Ireland, Portugal). One has yet to take steps to put measures in place (Greece).

In summary, the outlook for a liberalised market by 1 January 1998 is good, although further progress needs to be made in a small number of countries.

1.2 Regulatory framework

Of the eleven Member States required to notify licensing procedures for voice telephony and accompanying infrastructure under the Full Competition Directive, seven have done so and one other, in the Commission's view, should notify supplementary procedures. The main requirements on licensing in the new Licensing Directive, which are considerably wider, are met by five Member States in advance of the end-year deadline for transposition. All of the remainder have some provisions in place (Greece, France, Italy, Luxembourg, Austria, Portugal) or drafts in hand (Belgium, Spain, Netherlands).

Under the Full Competition Directive, *telecommunications organisations were required to publish their terms and conditions for interconnection* by 1 July 1997. Under the Interconnection Directive, an obligation is placed on the National Regulatory Authorities to ensure publication. This is extremely important in ensuring the necessary transparency regarding in particular the price of interconnection for new market entrants, which will in turn have an impact on investment. The incumbents in eight Member States have actually published their terms and conditions; the incumbent's tariffs (but not the full terms and conditions) have been published in one further Member State (Portugal). Publication has not been carried out in six Member States (Germany, Greece, Sweden, together with Denmark, Ireland, Luxembourg, although the latter three Member States have draft measures in hand).

A similarly important safeguard under the Full Competition Directive is the *requirement for telecommunications organisations to have cost accounting systems in place* which are suitable for ensuring the cost orientation of interconnection prices. The incumbents in seven Member States have cost accounting systems in place, while three have no provision (Greece, Luxembourg, Portugal). As far as the verification of these systems by the National Regulatory Authority, or other suitable body, for the purposes of interconnection is concerned, four Member States ensure this is carried out, in advance of the deadline in the Interconnection Directive, as do eight in advance of the new Leased Lines Directive and six in advance of the new Voice Telephony Directive. Further work clearly needs to be done, therefore, on cost accounting and the accompanying verification measures.

In a liberalised environment it is clearly important not only that *sufficient numbers are available* for allocation to all market players needing them, but also that the procedures exist for carrying out that allocation. Action has been taken in virtually all Member States to ensure such availability in accordance with the Full Competition Directive,

and by a significant number as regards the necessary procedures for allocation pursuant to the Interconnection Directive.

As regards the minimum set of services making up the *universal service obligation* laid down in the Interconnection Directive and the forthcoming Voice Telephony Directive, eleven Member States have defined the obligation in their legislation, while virtually all of the remainder have some provisions in place or drafts in hand. As regards funding, only one Member State has provisions in place for a mechanism from 1 January 1998 (France), and a further two have put in place contingent mechanisms (Germany, Austria). Three Member States have a derogation, and six do not consider a funding mechanism necessary. The remainder have either some provisions in place (Italy) or a draft in hand (Belgium, Spain).

In twelve Member States, tariff rebalancing will have been carried out by 1 January 1998, or plans are in place for phasing out unbalanced tariffs after that date. Three Member State will need to take remedial action to make up for the absence of any provision (Belgium, Greece, Netherlands).

As regards the tariff principles laid down in the Interconnection Directive and the new Leased Lines and Voice Telephony Directives, seven Member States have integrated the requirements relating to cost orientation, transparency and non-discrimination fully into their legislation as regards interconnection, leased lines and voice telephony; in the remainder, the main provisions are in place regarding up to two of these areas (Austria, Finland), or in one area (Ireland), or else some provisions or drafts are in existence (Belgium, Germany, Greece, Spain, Luxembourg).

In summary, gaps remain in the national legislation of some Member States, in particular regarding supervision of the cost accounting systems put in place by the telecommunications organisations, and the setting out of the tariff principles laid down in the ONP directives, particularly for interconnection. Some work remains to be done to complete the licensing framework. In a small number of Member States considerably more effort is needed to fill in the more extensive gaps in their legislation.

1.3 National Regulatory Authorities

As regards the establishment of National Regulatory Authorities which are independent of the incumbent operator and endowed with appropriate powers, virtually all of the necessary transposition measures have been taken.

1.4. Remaining transposition problems

Although the situation is encouraging as far as transposition is concerned, the Commission considers that a number of provisions, contained in various directives which should already be transposed, are still not fully or adequately transposed in a significant number of Member States.

Such is in particular the case of certain provisions which are vital to the effective functioning of a liberalised market. These include, inter alia, the publication of terms and conditions for interconnection as well as the notification of draft licensing and/or declaration procedures; the lifting restrictions on the establishment and use of alternative infrastructure for the provision of already liberalised service; and the establishment of cost accounting systems.

The Commission considers this situation is unacceptable both from a legal and from an economic and competition point of view. In these cases, therefore, the Commission intends to take action under the infringement procedure.

1.5 Effective application of the new legislative environment in the market place

At a practical level, there are encouraging signs that the transposition of the key principles of the package is already resulting in rapidly increasing market activity. This is true particularly in relation to the mobile sector, and is also evidenced by the creation of international alliances and the amount of investment by market entrants in new technology, as well as the offering of new services by both incumbents and new entrants. There is also evidence that national regulators are testing their powers in order in particular to ensure that the rules on access are applied equitably as between incumbents and new entrants.

There have, on the other hand, been a number of reports concerning national measures which, although accurately transposing Community law, are not being applied correctly in practice, such as the incomplete liberalisation of alternative infrastructure, long delays in granting authorisations, discouraging licensing fees, and interconnection fees leading to anti-competitive price squeezes.

A number of official and unofficial complaints to this effect have been received. Where pertinent, the points arising have been dealt with in the bilateral meetings. In some cases the complaints in question have formed the basis for the opening of infringement proceedings.

The Commission will in this context be broadening its examination of national legislation to ensure that not only the salient issues but also the supporting detail is transposed correctly into national law.

1.6 Infringement procedures

The Commission stresses that the monitoring process continues. It will pay particular attention to all cases of failure to notify transposition and of incorrect transposition, on the one hand, and all cases of failure to implement national law in accordance with the principles laid down in the directives, on the other.

In view of the importance of completion of the implementation of the telecommunications package in all Member States in order to ensure a level playing field in the single market, the Commission will not hesitate, wherever necessary, to take action under the infringement procedure.

2. Overview of the process

The directives making up the EC telecommunications regulatory package set the deadline of 1 January 1998 for the creation of a liberalised and harmonised European telecommunications market. Virtually all of the directives are now in place, and must in principle be transposed into national legislation not later than end-1997.

The overwhelming importance of the implementation of the package is recognised throughout the Union, not least by market players. First, a liberalised single telecoms market is essential for the emergence of the Information Society in Europe, with all that this implies for growth, employment and living standards. Second, the 1 January 1998 deadline is given added importance by the Community's commitment to open its market in accordance with the WTO agreement on basic telecommunications services.

On 29 May 1997 the Commission adopted a first Communication to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on progress in implementation. The purpose of the Communication was to review the status of the whole package of Directives, including those not yet in force; to set out the Commission's approach to the task of ensuring both transposition and effective implementation of the legislation, stressing the use of informal measures combined with full application of the infringement procedure; and, in particular, to focus on a number of key issues in the legislation which can be regarded as providing an indication of progress towards transposition of the package by the date set for full liberalisation.

These key issues were listed in Annex II to the Communication and an assessment given by the Commission, on the basis of a first round of bilateral contacts, as to the state of transposition in each Member State. In addition, the Commission stated its intention of holding further bilateral meetings with the Member States to promote transposition, and of convening meetings of the National Regulatory Authorities to ensure transparency and consistency. As regards the latter, a meeting devoted principally to implementation was held on 25 July; a further meeting will be held in the Autumn, at which specific implementation issues will be discussed in detail.

The Council, at its meeting of 27 June 1997, considered the Communication and asked the Commission to confer swiftly with the Member States and to report on progress to its next and subsequent meetings.

3. The recent work undertaken

The second round of bilateral meetings with Member States' representatives took place in Brussels between 10 July and 12 September. The discussions centred on bringing up to date the assessment in Annex II to the 29 May Communication, in the light of information, backed by documentary evidence, provided by the Member States. The attention of Member States' representatives was drawn to the Commission's intention of presenting the results of this assessment **based on texts or draft texts in its possession as at 15 September 1997**. Since the division in the 29 May Annex of the directives into 'existing' and 'forthcoming' measures is no longer relevant, the results of this assessment have been entered in a table (attached, with explanatory notes) which lists the previous key issues by thematic content.

Since the first round of bilateral meetings held during the first quarter of 1997, a large number of texts, including adopted primary and secondary legislation, draft legislation and legislation already adopted but not previously notified, has been forwarded to the Commission. This material, together with the information provided during the second

round of bilateral meetings, provides evidence of substantial progress in transposing the regulatory package.

4. Next report

The Commission intends to submit an updated report at the beginning of 1998, on the basis of further bilateral contacts with the Member States. At this stage it is envisaged that that report will give a broader picture of the state of transposition than is possible on the basis of a limited number of key issues. In particular, it will also propose a series of **indicators of the state of real and effective implementation of the measures transposed into national law, and will give an initial view of the operation of the European telecommunications market on the basis of relevant economic indicators.**

ANNEX - TRANSPOSITION AT 15 SEPTEMBER 1997

1. ABOLITION OF SPECIAL AND EXCLUSIVE RIGHTS

	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Alternative infrastructure for liberalised services by 1.7.96 (by 15.11.96 for mobile infrastructure) (96/2/EC; 96/19/EC)	o	✓	✓	D 1.10.1997	o	✓	✓	o	⇒	✓	✓	⇒	✓	✓	✓
Direct interconnection of mobile networks with mobile and PSTN in other MSs by 15.11.96 (96/2/EC)	⇒	✓	✓		✓	✓	D 1.1.1999	✓	✓	✓	✓	D 1.1.1999	✓	✓	✓
Full competition by 1.1.98				D	D		D		D			D			
- voice telephony	⇒	✓	✓	31.12.2000	30.11.1999	✓	1.1.2000	✓	1.7.1998	✓	✓	1.1.2000	✓	✓	✓
- infrastructure for voice services (96/19/EC)	⇒	✓	✓	D 31.12.2000	D 30.11.1999	✓	D 1.1.2000	✓	D 1.7.1998	✓	✓	D 1.1.2000	✓	✓	✓

2. REGULATORY FRAMEWORK

	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Draft licensing/declaration procedures notified to the Commission by 1.1.97 (96/19/EC)		✓	✓	D 31.12.1999	D 1.1.1998	•	D 1.1.1999	⇒		✓	✓	D 1.1.1999	✓	✓	✓
Provisions on licensing in conformity with Licensing directive (97/13/EC)	⇒	✓	✓	•	⇒	•	⇒	•	•	⇒	•	•	✓	✓	✓
Terms and conditions for interconnection published by telecoms organisations by 1.7.97 (96/19/EC)	✓	⇒			✓	✓	⇒	✓	⇒	✓	✓	•	✓		✓
Cost accounting system for pricing interconnection in place (96/19/EC; 97/33/EC)	⇒	✓	✓		✓	✓	⇒	✓		⇒	✓		•	•	✓
Cost accounting system verified by NRA															
- for I/C	⇒	✓	•		⇒	✓	⇒	•		⇒	✓		⇒	•	✓
- for leased lines		✓	•		✓	✓	✓	•		✓	✓		•	✓	✓
- for voice telephony (97/33/EC; new leased lines dir.; new voice telephony dir.)		✓	•			✓	⇒	•		⇒	✓		✓	✓	✓
Availability of numbers by 1.7.97															
- fixed	✓	✓	✓	D	⇒	✓	D	✓	✓	✓	✓	D	✓	✓	✓
- mobile (96/19/EC; 97/33/EC)	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Procedures for allocating numbers (97/33/EC)	✓	✓	✓		⇒	✓	•	⇒	•	✓	⇒	•	✓	✓	✓

2. REGULATORY FRAMEWORK (continued)

	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Universal service obligations defined	✓	✓	✓		⇒	✓	✓	✓	⇒	✓	✓	○	✓	✓	✓
Affordability defined (97/33/EC, new voice telephony dir.)	⇒	✓	✓			✓		✓		⇒	✓	○	✓	✓	✓
Funding mechanism for USO, if any, notified to the Commission by 1.7.97 (96/19/EC)	⇒	n.a.	✓	D 18.3.1998	D 1.8.1998	✓	D 1.4.1998	○	n.a.	n.a.	✓	D 12.11.199	n.a.	n.a.	n.a.
Provisions on funding mechanism for USO (97/33/EC)	⇒	n.a.	n.a.	D	⇒	✓	D	○	n.a.	n.a.	n.a.	D	n.a.	n.a.	n.a.
Tariff rebalancing - by 1.1.98			✓										✓	✓	✓
- if not, plans for phasing out (96/19/EC)		✓			✓	✓	✓	✓	✓		✓	✓			
Tariff principles - for I/C	⇒	✓	○		⇒	✓	⇒	✓	⇒	✓	⇒	✓	✓	✓	✓
- for leased lines	○	✓	○	○	○	✓	✓	✓		✓	✓	✓	○	✓	✓
- for voice telephony (97/33/EC, new leased lines dir. new voice telephony dir.)	⇒	✓	○	○	○	✓	⇒	✓		✓	✓	✓	✓	✓	✓

3. NRAs

	B	DK	D	EL	E	F	IRL	I	L	NL	A	P	FIN	S	UK
Independent NRA (new leased lines dir.)	○	✓	✓	✓	✓	✓	✓	✓	○	✓	✓	✓	✓	✓	✓
with powers on:															
- I/C	⇒	✓	✓		✓	✓	⇒	✓	✓	✓	○	○	✓	✓	✓
- licensing	○	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
- numbers	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
- Universal service	○	✓	✓		✓	✓	⇒	✓	✓	✓	✓	○	✓	✓	✓
- dispute resolution (97/13/EC, 97/33/EC, new leased lines dir., new voice telephony dir.)	⇒	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

✓ = main provisions in place

○ = some provisions in place

⇒ = draft measures communicated to the Commission

n.a. = not applicable

D = derogation granted

1. Format

In view of the adoption of most of the outstanding legislation making up the legislative package, the distinction in the Communication of 29 May 1997 between 'existing' and 'forthcoming' directives has been removed, and at the same time the key issues have been grouped together by theme.

The symbols used are substantially the same as those in the 29 May Communication, and correspond to the following situations:

- ✓ = the *main* provisions concerning this subject are in place; this does not preclude the possibility that certain specific issues may still need to be addressed, which may in certain circumstances result in infringement proceedings
- = some provisions are in place but further legislative action is required
- ⇒ = draft measures have been communicated to the Commission
- n.a. = not applicable
- D = derogation granted; where 'D' appears without a date, this indicates that the derogation is implicit in the Commission's decision pursuant to Article 90.

2. Assessment criteria

Alternative infrastructure for liberalised services

In the Commission's view, the obligation in Directive 90/388/EEC, as amended, to remove all restrictions on the provision of telecommunications services other than voice telephony over alternative networks covers not only the provisions of services over existing infrastructure but also the provision of services over infrastructure *to be established*. The latter criterion has been taken into account in the Commission's assessment of progress on this issue.

Terms and conditions for interconnection published by telecoms organisations

The purpose of this provision is to ensure that new entrants have ready access to the standard terms and conditions of the TOs. The Commission therefore examined in the bilateral meetings whether terms and conditions had *actually been published*, rather than merely whether provision had been made for publication.

As regards the Member States granted derogations under the competition directives, the Commission has examined whether the TOs in those countries have published their offers for those services not covered by the derogations, viz. all services other than voice telephony.

Cost accounting system for pricing interconnection in place

Similarly, the Commission examined whether cost accounting systems were *actually in place* in the telecommunications organisations.

Availability of numbers

The criterion used is the actual availability of numbers. No check has been carried out at this stage on whether the competent authorities are allocating numbers in an appropriate manner. In view of the material difficulty, where there are no complaints from operators, of verifying whether numbers are actually available, the Commission has in certain cases accepted specific assurances from the Member States.

Universal service obligations defined

The Commission checked under this heading whether the minimum set of universal service obligations had been transposed. Where obligations are laid down in national legislation which go beyond that minimum set, it must be clear that the financing mechanism referred to in the following box should not cover those supplementary obligations.

Funding mechanism for universal service obligations in place

Where Member States consider that a funding mechanism is *a priori* not necessary, or have notified a contingent funding mechanism, the entry 'n.a.' has been made in this box.

ISSN 0254-1475

COM(97) 504 final

DOCUMENTS

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15 16 08

Catalogue number : CB-CO-97-523-EN-C

ISBN 92-78-25774-5

Office for Official Publications of the European Communities

L-2985 Luxembourg