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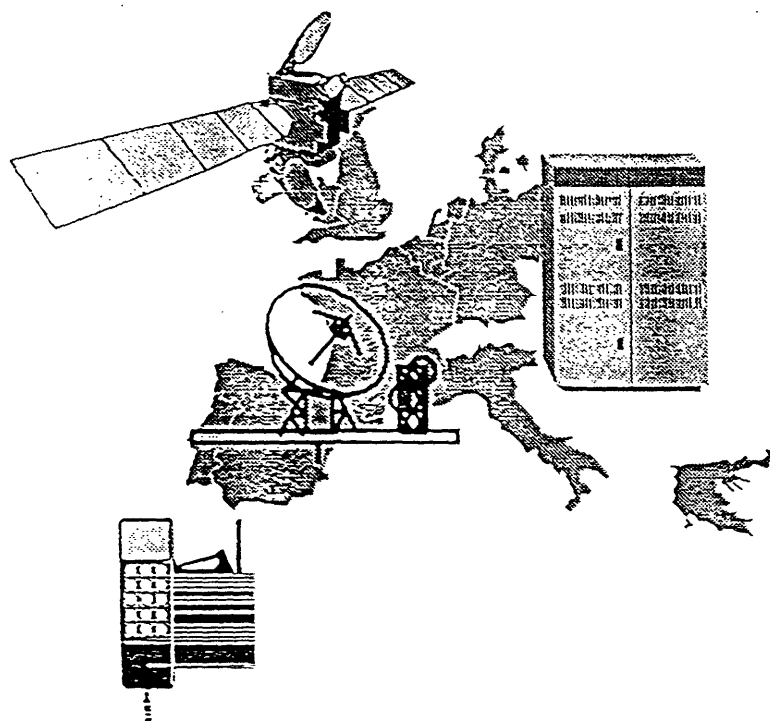
Telecommunications, Information Market and Exploitation of Research

Telecommunications and postal services

Regulatory aspects of network access, satellite communications, mobile communications, and frequencies

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OFFICIAL DOCUMENTS
COMMUNITY
TELECOMMUNICATIONS POLICY

**OFFICIAL DOCUMENTS
OF COMMUNITY TELECOMMUNICATIONS POLICY
UPDATE JANUARY 1994**

This publication is intended to facilitate easy reference to European Community legislation related to the field of Telecommunications Policy.

It represents a compilation of EC Directives, Decisions, Regulations and Recommendations adopted since 1984.

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in the Official Journal of the European Union**

The documents reprinted hereafter have been officially adopted, which means they are stable and will not be amended, although they may of course be superseded by later documents on the same subject.

Reprints of official documents
as published in the Official Journal of the European Union

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This list does not include the basic policy documents published by the Commission in this field. (They should be ordered separately.) :

- Green Paper on the development of the Common Market for Telecommunications services and equipment (COM(87)290, 30.06.87)
- Green Paper on a common approach in the field of satellite communications in the European Community (COM(90)490, 20.11.90)
- 1992 Review of the Situation in the telecommunications services sector (SEC(92) 1048) and Communication to the Council and European Parliament on the consultation on the review of the situation in the telecommunications sector (COM(93) 159 final)

Reference should also be made to the White Paper on Growth, Competitiveness and Employment (COM (93) 700, 05.12.93) which forms inter-alia a comprehensive framework for the development of trans-European networks and which will substantially influence Community telecommunications policy in this area in the future.

Policy documents in neighbouring fields, such as the Green Paper on the development of the single market for postal services (COM(91)476, 11.06.92) have not been included.

Also not included are references to specific IT application programmes such as: Drive, Delta, Aim and the Insis and Caddia programmes and the implementation of the information services market (programme IMPACT). Most of the former programmes are now integrated in the general programme on telematics systems: 91/353/EEC.

Reports on the above initiatives are also not included.

**REPRINTS OF OFFICIAL DOCUMENTS AS PUBLISHED
IN THE OFFICIAL JOURNAL OF THE
EUROPEAN UNION**

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 12 November 1984

concerning the implementation of harmonization in the field of telecommunications

(84/549/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Whereas there is a need to use the full potential of telecommunications in order to assure the economic development of the Community;

Whereas in this context it is essential to achieve, amongst others, the following two objectives:

- the creation of a range of harmonized telematic⁽³⁾ services offering users throughout Europe the chance to communicate efficiently and economically,
- the creation of a dynamic Community market for telecommunications equipment;

Whereas the introduction of the new integrated services digital networks (ISDNs), and of new broad-

band communication services, of special use notably to business users, by all telecommunications administrations and private operating agencies recognized by the Community and offering telecommunications services, hereinafter referred to as the 'telecommunications administrations', offers a prime opportunity for the harmonization that is essential to achieve these objectives;

Whereas it is necessary to support the Community telecommunications administrations in the implementation of the urgent harmonization programmes established by the European Conference of Postal and Telecommunications Administrations (CEPT), the European Committee for Standardization (CEN)/the European Committee for Electrotechnical Standardization (Cenelec), the International Telegraph and Telephone Consultative Committee (CCITT) and the International Organization for Standardization (ISO) and to assist them in ensuring that the necessary resources, particularly of skilled manpower, are available to them,

HEREBY RECOMMENDS:

that the Governments of the Member States ensure that:

— the telecommunications administrations:

1. consult each other, preferably in the framework of CEPT, before they introduce any new service, notably between Member States, with a view to establishing common guidelines so that the necessary innovation takes place under conditions compatible with harmonization;

⁽¹⁾ OJ No C 144, 15. 6. 1981, p. 71.

⁽²⁾ OJ No C 138, 9. 6. 1981, p. 26.

⁽³⁾ The word 'telematic' applies to all those services, systems, apparatus and products which are based on the combined use of electronic techniques of information, i.e. digital processing and transmission. The word 'telematic' is a generic term and does not of course refer to any particular commercial product under that name.

2. ensure that all new services that are introduced from 1985 onwards are introduced on the basis of a common harmonized approach, notably with regard to services between Member States, so that compatible services are offered throughout Europe, taking into account the progress of work in CEPT, CEN/Cenelec, CCITT and ISO;
3. from 1986 onwards, when they order digital transmission and switching systems that are designed for progressive integration of services,

do so taking full account of recognized standards in the Community,

- the Commission is regularly informed of the progress of work, which it will examine periodically with the Senior Officials Group on Telecommunications set up by the Council on 4 November 1983.

COUNCIL RECOMMENDATION

of 12 November 1984

concerning the first phase of opening up access to public telecommunications contracts

(84/550/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (⁽¹⁾),

Having regard to the opinion of the Economic and Social Committee (⁽²⁾),

Having regard to the communication from the Commission to the Council on telecommunications of 18 May 1984,

Having regard to the growing importance of telecommunications for the economic development of the Community,

Whereas, with a view to attaining the basic Treaty objective of creating a common market, the Council Declaration of December 1976 invited the Commission to propose measures whereby supply contracts awarded by the bodies in Member States responsible for telecommunications services can become subject to effective competition at Community level, on a reciprocal basis;

Whereas at the present stage of development it seems appropriate to differentiate between terminal apparatus on the one hand and switching and transmission apparatus forming part of the public networks on the other hand;

Whereas the Commission and the Member States have taken steps to develop a common market for telecommunications equipment, in particular by contributing to the elimination of barriers to trade, by means of measures that should lead progressively to the definition of common type-approval specifications for terminal apparatus and mutual recognition by administrations of type approvals for such apparatus,

Whereas the harmonization programme now being undertaken by the telecommunications administrations within the framework of the European Conference

of Postal and Telecommunications Administrations (CEPT) should open up increasing possibilities for cross-frontier procurement during the 1980s;

Whereas for the purposes of this recommendation:

- 'telecommunications administrations' means the administrations and recognized private operating agencies recognized by the Community and offering telecommunications services,
- 'terminal apparatus' means apparatus connected to the extremities of a public telecommunications network to send, process or receive information,
- 'conventional terminals' means telephone apparatus for main telephone sets, private automatic exchanges (PABX) for conventional telephony, ordinary teleprinters and modems,
- 'new telematic terminals' means terminal apparatus other than conventional terminals,
- 'switching and transmission apparatus' means any apparatus other than terminal apparatus that is purchased by telecommunications administrations for use in their networks;

Whereas the purpose of this recommendation is to develop a common market for telecommunications equipment; whereas it therefore aims to offer telecommunications administrations a wider choice and to meet the absolute necessity to establish or consolidate a European industrial potential in the technologies concerned;

Whereas it is therefore to the Community's advantage that the telecommunications administrations should, in the course of an experimental phase, gradually contribute to the creation of this common market by inviting tenders, in the other Community countries on a non-discriminatory basis for at least a minimum proportion of their supply contracts.

HEREBY RECOMMENDS:

- that the Governments of the Member States ensure that the telecommunications administrations provide opportunities for undertakings established in the other Community countries, following their usual procedures and on a non-discriminatory basis, to tender for:

(⁽¹⁾) OJ No C 144, 15. 6. 1981, p. 71.

(⁽²⁾) OJ No C 138, 9. 6. 1981, p. 26.

1. all new telematic terminals and all conventional terminals for which there are common type-approval specifications;
 2. their contracts for switching and transmission apparatus and conventional terminal apparatus for which there are no common type-approval specifications for at least 10 % in value of their annual orders,
- that the Governments of the Member States report to the Commission at the end of each six-month period, starting at the end of 1984, on the measures taken by the telecommunications administrations to implement this policy, their practical effects, the problems encountered and any further action needed. These data will be examined by the Commission with the Senior Officials Group on Telecommunications set up by the Council on 4 November 1983.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 25 July 1985

on a definition phase for a Community action in the field of telecommunications technologies — R & D programme in advanced communications technologies for Europe (RACE)

(85/372/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Whereas the Community has as its task, by establishing a common market and progressively approximating the economic policies of Member States *inter alia* to promote throughout the Community a harmonious development of economic activities and closer relations between the Member States;

Whereas the Heads of State or of Government, meeting in Stuttgart, Athens, Fontainebleau and Brussels, emphasized the importance of telecommunications as a major source for economic growth and social development;

Whereas the European Parliament, in its assessment of the situation and development of telecommunications, stressed the key role of telecommunications for the future political, social and economic development of the Community;

Whereas on 17 December 1984 the Council agreed on the main elements of a Community telecommunica-

tions policy, including the objective of developing advanced telecommunications services and networks by actions at Community level;

Whereas, with the emergence of new services and the progressive convergence of telecommunications, data processing and entertainment, the evolution may develop towards a Europe-wide integrated broadband network (integrated broadband communications, IBC) capable of supporting a wide range of customers and service providers;

Whereas developments in telecommunications will benefit the international competitiveness of the European economies in general and of the telecommunications industries in particular;

Whereas, in response to the requirement of using fully the economic and market potential of telecommunications, the Commission has submitted a programme of action which has been recognized as a base for further work by the Council;

Whereas R & D can make a major contribution, notably by facilitating the evolution towards future integrated broadband communications in terms of transnational connections, and also at regional and local levels;

Whereas the Council approved, in its resolution of 25 July 1983⁽³⁾, the principle of framework programmes for Community research, development and demonstra-

(¹) OJ No C 175, 15. 7. 1985.

(²) OJ No C 188, 29. 7. 1985, p. 16.

(³) OJ No C 208, 4. 8. 1983, p. 1.

tion, the scientific and technical objectives for the period 1984 to 1987, and in particular the importance given to the goal of promoting industrial competitiveness;

Whereas the Council, on 4 June 1985, recognized the importance of the rapid establishment of a definition phase for the RACE programme (R & D programme in Advanced Telecommunications Technologies for Europe) in order to prepare a general European framework for the development of advanced systems of communications for the future and to promote technical and industrial cooperation;

Whereas the constitution or consolidation of a specifically European industrial potential in the technologies concerned is an urgent necessity; whereas the beneficiaries must be network operators, research establishments, undertakings, including small and medium-sized enterprises, and other bodies in the Community which are best suited to attain these objectives;

Whereas it will not be possible to define and examine a Community R & D programme in this sector until the definition phase produces the relevant conclusions;

Whereas the Treaty has not provided the specific powers necessary for the adoption of this Decision;

Whereas the Scientific and Technical Research Committee (Crest) has expressed its opinion,

HAS DECIDED AS FOLLOWS:

Article 1

1. A definition phase for a Community action in the field of telecommunications technologies as described in the Annex is hereby adopted for a maximum period of 18 months beginning on 1 July 1985.

2. The activity is designed essentially to define precise objectives and to develop the approach to technological cooperation at Community level in concertation with public and private actions in the field of telecommunications technologies undertaken at national and international levels.

Article 2

1. The definition phase shall consist of two parts. Part I shall comprise analytical work required for the formulation of a reference model for integrated broadband communications (IBC) to be carried out by appropriate organizations, groups and other bodies and including, where required, contract work.

Part II shall comprise technology evaluation and exploration projects carried out by means of contracts, as required to clarify technology options and establish techno-economic feasibility of the reference model.

The contracts shall be concluded with network operators, research establishments, undertakings, including small and medium-sized enterprises, and other bodies established in the Community, hereinafter referred to as 'partners'. The work shall be carried out in the Community.

2. The projects of Part II shall be executed by means of shared cost contracts. The contractors shall bear a substantial proportion of the costs, normally at least 50 % of the total expenditure on any project.

In exceptional cases as specified in Article 6 (3), different conditions from those laid down in this paragraph may be adopted in accordance with the procedure in Article 7.

3. The activity will take account of requirements regarding the development of standards and common functional specifications to serve the interests of European industry, users and telecommunications operators in this field.

Article 3

1. Where contracts are required for the implementation of Part I, they shall be awarded by restricted tendering procedure.

2. The contracts for Part II shall be awarded by open tendering procedure and involve the participation of at least two independent industrial partners not all established in the same Member State. The open invitation to tender shall be published in the *Official Journal of the European Communities*.

Article 4

1. The Community shall contribute to the performance of the action within the limits of the appropriations entered to this end in the general budget of the European Communities.

2. The amount of the appropriations estimated necessary for the Community's contribution to Part I shall be calculated on the basis of Article 2 (1), and charged to the relevant part of the general budget of the European Communities.

The funds estimated necessary for Part II amount to 14 million ECU, including expenditure on a staff of 12, and will be used in accordance with the procedure laid down in Article 6 (3).

Article 5

The Commission shall ensure that the definition phase is properly performed and establish the appropriate implementation measures.

Article 6

1. The Commission shall be assisted in the performance of the task referred to in Article 5 by a Committee. The Committee, consisting of two representatives of each Member State, shall be set up by the Commission on the basis of nomination by the Member States.

Members of the Committee may be assisted by experts or advisers depending on the nature of the issues under consideration.

The Committee shall be chaired by a Commission representative.

The proceedings of the Committee shall be confidential. The Committee shall adopt its own rules of procedure. The secretarial services shall be provided by the Commission.

2. The Commission may consult the Committee on any matter falling within the scope of this Decision. In addition, the Commission shall inform the Committee regularly in advance, of projects falling below the thresholds referred to in paragraph 3, fourth and fifth indents.

3. The Commission shall consult the Committee, in accordance with the procedure laid down in Article 7, on:

- the work to be undertaken in Part II; such consultation will have to be completed within a maximum period of three months following this Decision,
- any departure from the general conditions laid down in Articles 2 and 3,
- the evaluation of work undertaken in respect of Part I, by appropriate organizations, groups and other bodies,
- the contracts which may be necessary for the implementation of Part I, as well as the resultant Community financial contribution when the contracts require a Community contribution exceeding 100 000 ECU,
- the assessment of the proposed projects relating to Part II and the proposed level of cost-sharing referred to in Article 2 (2) as well as the Community's financial contribution to their execution when these projects require a Community contribution exceeding 400 000 ECU.

Article 7

1. Where the procedure laid down in this Article is to be followed, the chairman shall refer the matter to

the Committee, either on his own initiative or at the request of one of its members.

2. The Commission representative shall submit to the Committee a proposal for the measures to be taken. The Committee shall deliver its opinion on the proposal within a period that may be decided by the chairman in the light of the urgency of the matter and which shall normally be one month and shall in no case exceed two months. The opinion shall be adopted by a qualified majority. Within the Committee, the votes of the Member States shall be weighted in accordance with Article 148 (2) of the Treaty. The chairman shall not vote.

3. The Commission shall implement the measures where its proposals are in accordance with the opinion of the Committee. Where the proposal is not in accordance with the opinion, or where no such opinion is issued, the Commission may submit to the Council a proposal in the form of a draft Decision. The Council shall act by a qualified majority.

If the Council has not acted within a period which shall normally be one month and shall in no case exceed two months from the date on which the matter was referred to it:

- the Commission proposal shall be deemed to be rejected if it concerns matters falling under the second and third indents of Article 6 (3)
- the Commission may take a decision corresponding to its proposal if it concerns matters falling under the fourth and fifth indents of Article 6 (3).

Article 8

With regard to the concertation activities provided for in Article 1 (2), the Member States and the Commission shall exchange all appropriate information to which they have access and which they are free to disclose concerning activities in the areas covered by this Decision, whether or not planned or carried out under their authority.

Information shall be exchanged according to a procedure to be defined by the Commission after consulting the Committee, and will be treated as confidential at the supplier's request.

Done at Brussels, 25 July 1985.

For the Council

The President

J. POOS

ANNEX**RACE DEFINITION PHASE****Summary of areas****PART I***Development of an IBC reference model*

- I.1. Development of an IBC network reference model
- I.2. Definition of the IBC terminal environment
- I.3. Future application assessment

PART II*Technology evaluation and exploration*

- II.1. High-speed integrated circuits
- II.2. High complexity integrated circuits
- II.3. Integrated opto-electronics
- II.4. Broadband switching
- II.5. Passive optical components
- II.6. Components for high bit-rate long-haul links
- II.7. Dedicated communication software
- II.8. Large area flat panel display technology

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I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 9 June 1986

on the use of videoconference and videophone techniques for intergovernmental applications

(86/C 160/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Whereas on 28 February 1984 the Council requested the Commission to undertake an analysis of the use of videoconference and videophone techniques to improve contact between Member States and the Community institutions;

Whereas the Council adopted the Commission communication on telecommunications dated 18 May 1984 (COM(84) 277 final), which included an analysis of intergovernmental videoconference and videophone applications as a line of action;

Whereas the Council, on 17 December 1984, agreed on the major objectives for a Community effort in the field of telecommunications, which included reference to the definition and implementation of an intergovernmental videoconference and videophone project;

Whereas the Commission has submitted the feasibility study requested;

Noting the feasibility study and the conclusions of the Commission,

INVITES THE MEMBER STATES:

1. To implement an initial operational intergovernmental videoconference and videophone system which takes account of the potential of videoconference and videophone techniques, in order to improve and make more efficient the bilateral and multilateral exchange of information between the Governments of the Member States and the Community institutions; to

that end, to entrust such implementation to the telecommunications authorities;

2. To complete the necessary installations, in accordance with the requirements they have ascertained;
3. To encourage the telecommunications authorities of Member States to proceed actively with establishment of the trans-Community broadband communications necessary to support an intergovernmental video conference and videophone system;

INVITES THE EUROPEAN PARLIAMENT AND THE COMMISSION:

1. To examine conditions for their participation in an initial operational intergovernmental videoconference and videophone system;

FURTHERMORE, INVITES THE COMMISSION:

1. To continue the cooperation that has been established with telecommunications authorities and users during the preparation of the feasibility study and in particular resolve problems specific to the use of videoconference and videophone facilities by Governments and the Community institutions, such as confidentiality, simultaneous interpretation and the possibility of multilateral conferences;
2. To submit a report to the Council on the experience gained during 1987, also covering the financial aspects of putting this resolution into practice, so that the applicability of the system to intergovernmental communications may be assessed and a decision taken as to whether the use of videoconference and videophone facilities for such communications should be encouraged further.

COUNCIL DIRECTIVE

of 24 July 1986

on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment

(86/361/EEC)

THE COUNCIL¹ OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas the mutual recognition of type approval for telecommunications terminal equipment features in the Commission communication to the Council of 18 May 1984 on telecommunications, in the Council recommendations of 12 November 1984 concerning the implementation of harmonization in the field of telecommunications and the first phase of opening up access to public telecommunications contracts, and in the Council conclusions of 17 December 1984 concerning a Community telecommunications policy;

Whereas the market in telecommunications terminal equipment and use of the full potential of the new telecommunications services are of considerable importance for the economic development of the Community;

Whereas it is absolutely essential to establish or consolidate a specifically European industrial potential in the technologies concerned;

Whereas it is highly desirable to make rapid progress towards establishing a common market in this sector, in particular in order to offer the industry an improved base for its operations and to facilitate the adoption of a joint position with respect to third countries;

Whereas the mutual recognition of type approval for telecommunications terminal equipment constitutes a major step towards the creation of an open and unified market for such equipment;

Whereas, since situations differ and technical and administrative constraints exist in the Member States, progress towards this objective should be made in stages;

Whereas in particular the mutual recognition of conformity tests on mass-produced terminal equipment should

constitute an initial stage of the mutual recognition of type approval for such equipment;

Whereas such an approach must be based on the definition of common technical specifications based on international standards and specifications and on the harmonization of general technical requirements for testing, measuring and approval procedures in the areas of telecommunications and information technology;

Whereas a general standardization programme is being implemented in the field of information technology in compliance with the Standards Code of the General Agreement on Tariffs and Trade (GATT);

Whereas there is a need for a more comprehensive framework to be drawn up in preparation for a second stage which would create an open and unified market in telecommunications terminal equipment, bearing in mind that for telecommunications this has to include both the free movement of equipment and unimpeded connection to networks, in accordance with the harmonized requirements;

Whereas Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits⁽⁴⁾ and Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽⁵⁾ are applicable, *inter alia*, to the fields of telecommunications and information technology;

Whereas the Memorandum of Understanding between the European Conference of Postal and Telecommunications Administrations (CEPT) and the Commission concerning standards and type approval for telecommunications equipment and the general guidelines agreed with the Joint European Standards Institution CEN-CENELEC henceforth make it possible to entrust specialized technical harmonization work to those bodies;

Whereas the mechanism introduced by certain CEPT administrations, including those of the Community Member States, under the agreement drawn up at Copenhagen on 15 November 1985, incorporates a formal adoption procedure and an undertaking to implement certain CEPT recommendations, which are then designated as 'NETS' (Normes européennes de télécommunications);

⁽¹⁾ OJ No C 36, 17. 2. 1986, p. 55.

⁽²⁾ OJ No C 303, 25. 11. 1985, p. 2.

⁽³⁾ OJ No L 77, 26. 3. 1973, p. 29.

⁽⁴⁾ OJ No L 109, 26. 4. 1983, p. 8.

Whereas it is necessary to set up a Committee, with the task of assisting the Commission in implementing this Directive and in progressively implementing the mutual recognition of type approval for terminal equipment,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Member States shall implement the mutual recognition of the results of tests of conformity with common conformity specifications for mass-produced telecommunications terminal equipment in accordance with the detailed rules set out in this Directive.

Article 2

For the purposes of this Directive:

1. 'telecommunications administrations' means the administrations or private operating agencies recognized in the Community and providing public telecommunications services;
2. 'terminal equipment' means equipment directly or indirectly connected to the termination of a public telecommunications network to send, process or receive information;
3. 'technical specification' means a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marking and labelling;
4. 'international technical specification in telecommunications' means the technical specification of all or some characteristics of a product, recommended by such organizations as the Comité international téléphonique et téléphonique (CCITT) or the CEPT;
5. 'common technical specification' means a technical specification drawn up with a view to uniform application in all Member States of the Community;
6. 'standard' means a technical specification adopted by a recognized standards body for repeated or continuous application, compliance with which is not compulsory;
7. 'international standard' means a standard adopted by a recognized international standards body;
8. 'approved testing laboratory' means a laboratory the conformity of which with the accreditation system established by the CEPT in close cooperation with specialized organizations and any relevant national accreditation organizations has been verified, with particular reference to the relevant ISO guides, by the appropriate Member State or a body recognized as competent by that State and which is approved by that Member State or body recognized as competent for conducting conformity tests on terminal equipment;
9. 'certificate of conformity' means the document certifying that a product or service conforms to given standards or technical specifications;
10. 'type approval of terminal equipment' means the confirmation delivered by the competent authority of a Member State that a particular terminal equipment type is authorized or recognized as suitable to be connected to a particular public telecommunications network;
11. 'conformity specification' means a document giving a precise and full description of the technical characteristics of the relevant terminal equipment (such as safety, technical parameters, functions and procedures and service requirements) together with a precise definition of the tests and test methods enabling the conformity of the terminal equipment with the prescribed technical characteristics to be verified;
12. 'type approval specification' means a specification setting out the full and precise requirements that must be satisfied by terminal equipment to be granted type approval. It includes the conformity specification and also administrative requirements and, where appropriate, requirements concerning quality control operations to be carried out during the manufacture of the equipment;
13. 'common conformity specification' means a conformity specification used in all the Community Member States by the authority competent for testing the conformity of terminal equipment. It also includes, where appropriate, requirements made necessary in a given State by historical network peculiarities or established national provisions concerning the use of radio frequencies;
14. 'common type approval specification' means a type approval specification which is used in all the Community Member States by all the authorities empowered to grant type approval for terminal equipment. It includes the common conformity specification and also administrative requirements and, where appropriate, requirements concerning quality control operations to be carried out during the manufacture of the equipment;
15. 'NET' (Norme européenne de télécommunications) is an approved technical specification recommendation of the CEPT or part or parts thereof which the signatories of the Memorandum of Understanding, established at the meeting of Directors-General of CEPT Administrations, in Copenhagen on 15 November 1985, adopted in accordance with the procedures set down in that Memorandum;

16. 'mutual recognition of the results of conformity tests on terminal equipment' means a situation where, when an approved laboratory or the competent authority in a Member State issues a certificate, accompanied by test data and identification details, stating that a terminal is in conformity with a common conformity specification or a part thereof, that certificate is recognized in the other Member States, so that if the terminal in question is the subject of an application for type approval in another Member State, it no longer has to be subjected to the tests for verifying conformity with that specification, or with the part of that specification concerning the tests carried out;

17. 'essential requirements' means those aspects of common conformity specifications of such importance as to necessitate compliance as a matter of legal obligation for the implementation of the mutual recognition of the results of conformity tests on terminal equipment as an integral part of the type approval procedure. These essential requirements are at present:

- user safety in so far as this requirement is not covered by Directive 73/23/EEC,
- safety of employees of public telecommunications network operators in so far as this requirement is not covered by Directive 73/23/EEC,
- protection of public telecommunications networks from harm,
- interworking of terminal equipment, in justified cases.

Article 3

The Council, acting in accordance with the rules of the Treaty on a proposal from the Commission, shall supplement as necessary the list of essential requirements and shall make them more specific where necessary for certain products.

Article 4

The Commission shall:

1. draw up each year, after consulting the Committee referred to in Article 5 and with due regard to the general programme of standardization in the information technology sector:
 - a list of international standards and international technical specifications in telecommunications to be harmonized,
 - a list of terminal equipment for which common conformity specifications should be drafted as a matter of priority, on the basis above all of the essential requirements,
 - a timetable for this work;
2. request the CEPT to draw up the common conformity specifications in the form of NETs, within the speci-

fied time limits; in so doing the latter shall, when appropriate, consult other specialized standardization organizations such as the European Committee for Standardization (CEN) and the European Committee for Electrotechnical Standardization (CENELEC).

Article 5

1. In carrying out the tasks referred to in Article 4, the Commission shall be assisted by a Committee, which shall be the Working Party of Senior Officials on Telecommunications. The members of the Committee may be assisted by experts or advisers according to the nature of the question under discussion. The Committee shall be chaired by a Commission representative.

2. Apart from the cases listed in this Directive, the Commission shall consult the Committee on:

- (a) the broad objectives and the future needs of the telecommunications standardization policy;
- (b) problems raised by the approval of testing laboratories, and in particular the accreditation system referred to in Article 2 (8) and any amendment to that system which may appear necessary;
- (c) the effect of technological progress on specification work already under way and the possible need to give a new or revised mandate to the CEPT.

At the request of its Chairman or of a Member State, the Committee may consider any question relating to the implementation of this Directive.

3. The Committee shall adopt its own rules of procedure.

4. The Secretariat of the Committee shall be provided by the Commission.

Article 6

1. For the purposes of this Directive, a 'NET' shall be regarded as the equivalent of the common conformity specification.

Reference to NETs shall be published in the *Official Journal of the European Communities*.

2. Without prejudice to the cases referred to in Article 8, the competent authorities of the Member States shall not have any further tests carried out in respect of a particular type of terminal equipment where results of tests carried out in accordance with Article 7 have given rise to the issue of a certificate of conformity with the relevant common conformity specification, the references to which are published in the *Official Journal of the European Communities*. Such certificate of conformity shall be recognized for the purposes of type approval of the terminal equipment in question.

3. The common conformity specifications shall be used in all Member States by the competent authorities for any verification demanded for type approval purposes of the relevant terminal equipment.

The procedure for exceptions referred to in Article 7 (4) may also be applied by the competent authorities of the Member States in respect to the first subparagraph.

Article 7

1. Member States shall inform the Commission of the authority or authorities competent in their territory to issue type approval for terminal equipment. The Commission shall publish a list of these authorities in the *Official Journal of the European Communities*.

2. Member States shall send the Commission a list of the laboratories which they have approved, or which have been approved by bodies recognized by them as competent, for the purpose of verifying the conformity of terminal equipment with the common conformity specifications. They shall regularly submit a report on the activities of these laboratories in the field covered by this Directive. Such lists and reports shall be transmitted to the Committee referred to in Article 5 for information.

3. For the purposes of Article 6, the certificate of conformity issued by the approved laboratory which has carried out the tests must be accompanied by the data obtained from the measurements performed during the conformity tests, all the information necessary for precise identification of the terminal equipment on which the tests were made and a precise indication of the common conformity specification, or part thereof, used for the tests.

4. Member States shall ensure that telecommunications administrations use common conformity specifications when purchasing terminal equipment covered by such specifications except in the following cases:

- (a) where the equipment is to replace equipment connected to the network before the adoption of common conformity specification and is to the same technical specification as the equipment it replaces, or where, during any transition period between two systems, which is accepted as necessary and which is defined within the NET, a Member State needs to add a limited number of pieces of equipment complying with the specification of the first system. In both cases, the Commission shall be informed when such a waiver is invoked and kept informed of the number of pieces of equipment involved; this information shall be given to the Committee referred to in Article 5;
- (b) where a careful consultation of the market — i.e. including the publication of a call for declarations of

interest in the *Official Journal of the European Communities* — shows there is no offer at economically acceptable conditions for such terminal equipment complying with those common conformity specifications. In this case, on the basis of an unavoidable need, a Member State may, for a limited period of time, apply only a part of the characteristics set out in the common conformity specifications. The Member State shall inform the Commission immediately and also state what departures from the common conformity specification it intends to permit. The Commission shall consult the Committee referred to in Article 5 as a matter of urgency and may request the CEPT to revise the particular common conformity specification. In addition, the Committee shall review the situation at least every six months during the period when this waiver is applied.

In the event that a request for revision is not made to the CEPT then his waiver shall cease when another Member State presents evidence to the Committee that terminal equipment conforming to that common conformity specification has been connected to its public telecommunication networks on a normal commercial basis.

However, a Member State may have the waiver extended provided that the Commission, on the advice of the Committee referred to in Article 5, agrees that the technical and economic conditions are sufficiently different in the two Member States as to warrant such an extension.

5. The Member States shall consult within the Committee referred to in Article 5, so as to create conditions of fair competition for carrying out the same series of conformity tests in all the approved laboratories.

Article 8

1. A Member State may, after examining the common conformity specification and the test results, suspend recognition of a certificate of conformity issued for the purpose of type approval:

- (a) if it discovers shortcomings regarding the application of the common conformity specification;
- (b) if it discovers that the common conformity specification itself fails to meet the essential requirements which it is supposed to cover.

If it exercises this option, the Member State concerned shall immediately inform the Commission and the other Member States, stating the reasons for its decision.

2. Where the decision of the Member State concerns the electrical safety of users of terminal equipment, the procedures set out in Article 9 of Directive 73/23/EEC shall apply.

3. If the reasons given for the Member State's decision are as described in paragraph 1 (a), the Commission shall immediately consult the Member States concerned. If no agreement is reached within four weeks, the Commission shall seek the opinion of one of the approved laboratories notified in accordance with Article 7 which is based outside the territory of the Member States concerned. The Commission shall communicate the opinion of this laboratory to all the Member States, which may submit their comments to it within a period of one month.

After taking note of any such comments the Commission shall, if necessary, formulate appropriate recommendations or opinions.

If in preparing its opinion a laboratory consulted unavoidably incurs expenditure, which may if necessary include additional tests, the Commission will defray that expenditure on production of documentary evidence. If, however, further to an opinion a decision to suspend recognition of a certificate of conformity is not maintained, the Member State which took it shall reimburse the Commission, in accordance with the procedures for payment then negotiated with the Member State.

4. If the reasons invoked in support of the Member State's decision are as described in paragraph 1 (b), the Commission shall refer the matter to the Committee referred to in Article 5, which shall express its opinion as a matter of urgency. On the basis of that opinion the Commission shall decide whether or not to withdraw the common specification in question from the list published in the *Official Journal of the European Communities*. If it withdraws the specification, the Commission shall inform the CEPT and may entrust it with a further brief.

5. If a Member State considers that terminal equipment which has already been approved does not meet one or more of the essential requirements, it may revoke the

type approval granted and shall in that case immediately apply the procedures set out in paragraphs 1 and 2.

Article 9

The Commission shall examine the detailed rules for the second stage of the establishment of a market in telecommunications terminal equipment without internal frontiers covering, in particular, the implementation of mutual recognition of type approval for terminal equipment. To this end it shall submit proposals to the Council within a period of two years following the implementation of this Directive.

Article 10

This Directive shall not prejudice the application of Directive 83/189/EEC.

Article 11

1. Member States shall introduce the measures necessary to comply with this Directive within a period of not more than one year following adoption thereof. It shall forthwith inform the Commission thereof.

2. Member States shall ensure that the Commission is informed of the main provisions of national law which they adopt in the field governed by this Directive.

Article 12

This Directive is addressed to the Member States.

Done at Brussels, 24 July 1986.

For the Council

The President

A. CLARK

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3300/86

of 27 October 1986

instituting a Community programme for the development of certain less-favoured regions of the Community by improving access to advanced telecommunications services (STAR programme)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1787/84 of 19 June 1984 on the European Regional Development Fund⁽¹⁾, and in particular Article 7 (4) thereof,

Having regard to the proposal from the Commission⁽²⁾,

Having regard to the opinion of the European Parliament⁽³⁾,

Having regard to the opinion of the Economic and Social Committee⁽⁴⁾,

Whereas Article 7 of Regulation (EEC) No 1787/84, hereinafter referred to as the 'Fund Regulation', provides for participation by the Fund in Community programmes the purpose of which is to help in solving serious problems affecting the socio-economic situation in one or more regions and which are designed to provide a better link between the Community's objectives for the structural development or conversion of regions and the objectives of other Community policies;

Whereas Ireland, the Mezzogiorno, Northern Ireland, Corsica and the French overseas departments, the regions in Greece and in Portugal and certain regions in Spain have to contend with particularly serious economic problems; whereas the level of telecommunications services, especially of advanced services intended for the productive sector in those regions, is inadequate and whereas this shortcoming has an adverse effect on both their socio-economic situation and their development prospects;

Whereas on 29 and 30 March 1985 the European Council endorsed objectives aimed at strengthening the technological base and competitiveness of Community industry; whereas those objectives include 'achieving a breakthrough in telecommunications'; whereas one of the lines of action adopted on 17 December 1984 by the Council in this field is designed to ensure 'improved access for less-favoured regions of the Community to the benefits of the development of advanced services and networks';

Whereas fuller integration of the least-favoured regions into telecommunications networks and appropriate use by them of advanced telecommunications services are necessary if they are to reduce 'the extent to which they lag behind in terms of economic development, since such services will reduce their isolation, will allow them to participate in the Community's technological breakthrough and will foster job creation;

Whereas use of advanced telecommunications services presupposes the establishment of the necessary infrastructures such as major links for the regions of the new networks, digitalization to promote more rapid introduction of integrated-services digital networks, the creation of additional capacities essential to the provision of advanced services notably in the field of high-speed data transmission, and the establishment and development of cellular radio infrastructures in a way compatible with the coordinated introduction of a future pan-European radio-telephony cellular digital system;

Whereas the establishment of modern telecommunications infrastructures must be accompanied by measures to promote the supply of, and the demand for, advanced services facilitating optimum use of those infrastructures; whereas such promotion includes aid for the preparation of regional or local programmes for the coordinated use of telecommunication systems, advisory and publicity measures, demonstration projects, aid for small and medium-sized enterprises in order to encourage them to use advanced systems and to promote their activities in the telecommunications fields, service centres, experimental tele-commuting projects and the development of regional specialized information services;

⁽¹⁾ OJ No L 169, 28. 6. 1984, p. 1.

⁽²⁾ OJ No C 147, 14. 6. 1986, p. 4 and OJ No C 194, 1. 8. 1986, p. 7.

⁽³⁾ OJ No C 176, 14. 7. 1986, p. 189.

⁽⁴⁾ OJ No C 263, 20. 10. 1986, p. 35.

Whereas the Member States concerned have communicated the necessary information to the Commission;

Whereas, by helping the least-favoured regions to exploit the new telecommunications potential, the Community programme contributes to the furtherance of both regional development objectives and the Community's objectives in the field of telecommunications; whereas the level of Community participation must, therefore, be the maximum permissible under the Fund Regulation and whereas, at the same time, the programme is given priority in the management of Fund resources;

Whereas Council Regulation (EEC) No 2615/80⁽¹⁾, as amended by Regulation (EEC) No 214/84⁽²⁾, and Regulation (EEC) No 215/84⁽³⁾ instituting specific Community measures contributing to the development of certain regions in the context of Community enlargement permit the financing of certain measures in the telecommunications field and whereas aid granted under those Regulations should not be combined with aid granted under this Community programme;

Whereas Community assistance must be provided in the form of multiannual programmes drawn up by the competent authorities in the Member States concerned; whereas, in order to ensure sound financial management of the Fund, Member States will need to transmit such assistance programmes to the Commission within a specific period following the entry into force of the Community programme; whereas it is for the Commission, in adopting those programmes, to ensure that the operations proposed therein are in keeping with this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

A Community programme within the meaning of Article 7 of the Fund Regulation is hereby established in order to contribute to the development of certain less-favoured regions of the Community by improving access to advanced telecommunications services.

Article 2

The purpose of the Community programme shall be to contribute to strengthening the economic base in the regions concerned, to foster job creation and to help raise technological standards in those regions, by improving the supply of advanced telecommunications services and by integrating those regions into large telecommunications networks. To that end, the programme shall provide for the implementation in all the regions defined in

Article 3, and in the light of socio-economic needs, regional potential and long-term regional telecommunications requirements of a series of consistent, multiannual measures establishing modern telecommunications infrastructures and promoting the supply of, and the demand for, advanced telecommunications services.

The Community programme shall thereby seek to provide a better link between the Community's objectives for the structural development of regions and the objectives of Community telecommunications policy.

Article 3

1. The Community programme shall concern regions satisfying all the following conditions simultaneously:

- (a) a particularly difficult economic situation compared with the Community as a whole;
- (b) peripheral or insular geographical location;
- (c) inadequate supply of telecommunications services, notably advanced services for the productive sector;
- (d) as a general rule, eligibility under a national regional aid scheme.

2. The regions satisfying the conditions set out in paragraph 1 are:

- (a) in Spain:
 - the regions eligible for the national regional aid scheme as they will be determined by the Commission pursuant to Article 92 of the Treaty;
- (b) in France:
 - Corsica and the overseas departments;
- (c) in Greece:
 - all regions, except the nomos of Attica;
- (d) Ireland;
- (e) in Italy:
 - the regions and zones of the Mezzogiorno;
- (f) in Portugal:
 - all regions, except the Lisbon area;
- (g) in the United Kingdom:
 - Northern Ireland.

3. Exceptionally, the Community programme shall also apply to:

- the nomos of Attica and the Lisbon area in the case of operations provided for in Article 4,
- the autonomous community of Madrid, except the municipality of Madrid, in the case of both operations provided for in Article 4 (1) (a) and (c) and the feasibility studies relating to such operations pursuant to Article 4 (1) (f),

in so far as such operations are technically necessary for the consistency, continuity and full implementation of the Star programme as a whole.

⁽¹⁾ OJ No L 271, 15. 10. 1980, p. 1.

⁽²⁾ OJ No L 27, 31. 1. 1984, p. 1.

⁽³⁾ OJ No L 27, 31. 1. 1984, p. 5.

Article 4

The Fund may participate, under the Community programme, in the following operations:

1. Establishment of the basic equipment needed for advanced telecommunications services in order:

- (a) to integrate the less-favoured regions into the new advanced telecommunications networks being set up across the Community and to provide major telecommunication links. Investment projects may include land-based (including submarine) systems, notably those using optical fibres, and satellite systems;
- (b) to encourage digitalization with a view to more rapid introduction of integrated-services digital networks for firms and consumers.

Investment projects may include:

- introduction of signalling systems between switches essential for integrated-services digital networks,
- digitalization of transmission lines and switching centres, including installation of digital switches and additional work on local switches for the digitalization of links to final users,
- digitalization of links to final users,

with a view to carrying out the operations prior to the introduction of integrated-services digital networks;

- (c) to set in place and develop, pending the introduction of integrated-services digital networks, additional capacity essential to provision of advanced telecommunications services, notably in the field of data transmission. Investment projects may include establishment of the transmission lines and provision of equipment enabling the public to use the service, such as the establishment and development of packet switching networks, data bases and videotex access points, including the transformation of pilot schemes already financed by the Community into fully-operational systems;
- (d) to establish and develop cellular radio infrastructures in a way compatible with the coordinated introduction of a future pan-European radio-telephony cellular digital system;
- (e) to establish and develop laboratories to check and measure telecommunications material;

- (f) to carry out feasibility studies relating to the investment projects specified in (a) to (e).

2. Promotion of the supply of, and the demand for, advanced telecommunications services. The following operations shall be eligible under this heading:

- (a) preparation of local or regional programmes for the coordinated use of advanced telecommunications systems. This shall include technical and economic feasibility studies on the provision of new telecommunications services to users, notably small and medium-sized enterprises (SME) in the industrial and service sectors, including tourism; such studies shall take account of socio-economic development prospects and plans for the territories concerned;
- (b) measures to promote the use of advanced telecommunications services. Such measures shall include publicity and information campaigns aimed at making potential users aware of the existence and advantages of modern telecommunications services, either through conventional marketing channels or by way of seminars, courses and briefings. Priority shall be given to measures for SME, including those involved in the field of tourism and in other sectors with a high development potential;
- (c) measures to demonstrate, by means of specific integrated applications, the advantages of using advanced telecommunications services. Such measures shall include demonstration projects for SME, including those involved in the field of tourism and in other sectors with a high development potential;
- (d) aid to encourage individual SME or groups of SME to use advanced telecommunications services and to promote the introduction of new activities or the adaptation of existing activities in the field of telecommunications.

Such aid may take the form of:

- (i) expert studies on the potential economies to be achieved through greater use of advanced telecommunications services, including computerized services available via data-transmission networks;
- (ii) if the studies referred to in (i) so justify, equipment (such as terminals, modems, videotex servers and teletext message systems) giving users access to advanced telecommunications services;
- (iii) investment in new undertakings or to facilitate the adaptation of existing undertakings to market potential in the field of telecommunications goods and services.

- (e) establishment and development of telecommunications service centres, except in those of the main urban areas where such centres arise spontaneously, with a view to:
- (i) providing user services, in particular advanced data-transmission, videotex and videocommunication services, even in sparsely populated areas;
 - (ii) providing common services for two or more SME;
- (f) implementation of experimental distance working projects;
- (g) the provision of regional services using computerized telecommunications facilities in the sphere of specialized information, including information compiled at Community level and of particular interest to certain users, notably SME, including those involved in the field of tourism.
- (a) studies relating to the presentation of local or regional programmes referred to in Article 4 (2) (a): 50 % of public expenditure;
- (b) measures to promote the use of advanced telecommunications services referred to in Article 4 (2) (b): aid covering 50 % of the cost of publicity and information campaigns;
- (c) demonstration measures referred to in Article 4 (2) (c): 50 % of public expenditure;
- (d) aid for SME referred to in Article 4 (2) (d):
- (i) expert studies: either 70 % of their cost or 50 % of the public expenditure resulting from the granting of aid in respect of them;
 - (ii) equipment: 50 % of the public expenditure resulting from the grant of investment aid;
 - (iii) in the case of investment in industrial and telecommunications service activities: 50 % of the public expenditure arising from the granting of investment aid under the national regional aid scheme;

Article 5

1. The Community programme shall be financed jointly by the Member State concerned and the Community. Assistance from the Fund, which may not exceed 55 % of the total public expenditure taken into account in the programme, shall be provided from the appropriations entered for this purpose in the general budget of the European Communities. The Community contribution shall be as follows:

- (1) Operations relating to the basic equipment referred to in Article 4 (1):
- (a) infrastructure investment projects, the cost of which is borne wholly or partly by public authorities or by any other body responsible, in the same way as a public authority, for the implementation of infrastructure projects: 55 % of the total cost borne by the public authorities or other comparable body;
 - (b) investment projects in the industrial, craft industry and service sectors: 50 % of the public expenditure resulting from the grant of investment aid;
 - (c) feasibility studies: either 70 % of their cost or 50 % of the public expenditure resulting from the granting of aid in respect of them.
- (2) Promotion of the supply of, and the demand for, advanced telecommunications services:
- (i) operations relating to user service centres:
 - 50 % of the public expenditure resulting from the granting of aid for equipment associated with telecommunications;
 - (ii) operations relating to common services:
 - 50 % of the public expenditure resulting from the granting of aid;
- (f) implementation of experimental distance working projects referred to in Article 4 (2) (f):
- (i) feasibility studies: either 70 % of their cost or 50 % of the public expenditure resulting from the granting of aid;
 - (ii) project implementation: 50 % of the public expenditure resulting from the granting of aid;
- (g) provision of regional services in the sphere of specialized information referred to in Article 4 (2) (g): aid covering part of business expenditure on the development and operation of such services. The aid shall be degressive and shall be granted for three years. It shall cover 70 % of expenditure in the first year and shall not exceed 50 % of total expenditure over the three-year period.

2. As regards the Portuguese regions, the rates of the Fund's contribution provided for in paragraph 1 shall be increased until 31 December 1990 by 20 points, with a maximum rate of 70 %.

3. A Member State may request lower rates of contribution from the Fund than those provided for in paragraphs 1 and 2.

Article 6

1. All or part of the aid may be in the form of a capital grant or an interest subsidy.

2. The following shall be eligible for Fund assistance in respect of operations referred to in Article 5: public authorities, local and regional authorities, other bodies, businesses, cooperatives or individuals.

3. (a) Aid granted under the Community programme shall not be combined with aid granted elsewhere in the Fund Regulation or in Regulations (EEC) No 2615/80 or (EEC) No 215/84.

(b) In addition, the aid referred to in Article 5 (1) point 2 (d), (e), (f) and (g) may not have the effect of reducing the share of expenditure met by recipient businesses to less than 20 % of total expenditure.

Article 7

All the operations referred to in Article 4 shall also satisfy the following:

— the Fund's contribution to the promotional measures provided for in Article 4 (2) may not be less than 15 % of the total contribution to the programme; the contribution from the Fund to the feasibility studies

referred to in Article 4 (2) (a) may not exceed 5 % of the total contribution to the programme; the contribution from the Fund to the production aid referred to in Article 4 (2) (d) (iii) may not exceed 5 % of the total contribution to the programme,

— the programme shall cover projects which are consistent with the Community's objectives regarding telecommunications and information technology standards, particularly in view of the progress made towards these objectives by the European Conference of Postal and Telecommunications Administrations (CEPT) and the European Committee for Standardization (CEN)/European Committee for Electrotechnical Standardization (Cenelec).

Article 8

1. The duration of the programme shall be five years from the date of entry into force of this Regulation.

2. The intervention programme shall be submitted to the Commission within six months of the entry into force of this Regulation: in exceptional circumstances the Commission may extend that period by one month.

Article 9

The amount of Fund assistance may not exceed the amount laid down by the Commission when adopting the programme agreement referred to in Article 13 (1) of the Fund Regulation.

Article 10

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 27 October 1986.

For the Council

The President

G. HOWE

COUNCIL DIRECTIVE

of 3 November 1986

on the adoption of common technical specifications of the MAC/packet family
of standards for direct satellite television broadcasting

(86/529/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, in the near future, satellites for direct television broadcasting will be brought into service by several European countries and subsequently new television sets corresponding to public needs will be introduced by the manufacturers;

Whereas the use of common technical specifications for direct satellite broadcasting of television programmes and possibly for their redistribution by cable is necessary in order to attain the objectives set out hereafter;

Whereas the implementation of common technical specifications simplifies the broadcasting of television programmes in all countries of the Community and makes a significant contribution to European unification and to the development of a true European identity;

Whereas the technical capability to transmit simultaneously on several sound channels opens the way to truly pan-European multilingual television programmes;

Whereas the implementation of common technical specifications leads to the creation of a large unified market, on which products will be freely exchanged without any technical barriers, which will be of great economic benefit for the European consumer electronics industry as regards its competitiveness;

Whereas it is indispensable that a guarantee be given to manufacturers and operators in respect of their investments and supplies, by the application of common technical standards at Community level;

Whereas the European Broadcasting Union (EBU) and the European manufacturers of the relevant branch represented by their associations have perfected and published

technical specifications forming part of the MAC/packet family for the direct television broadcasting and the redistribution of programmes by cable; whereas these specifications have been confirmed at international level by the International Radio Consultative Committee (CCIR);

Whereas the MAC/packet family now includes:

- for direct satellite broadcasting: the system C-MAC/packet and the system D2-MAC/packet with frequency modulation,
- for cable distribution: the system D-MAC/packet and the system D2-MAC/packet;

Whereas these systems are very largely compatible with each other on the operational level;

Whereas these systems make it possible to meet the service and economic requirements in the different national contexts;

Whereas, in view of the foreseeable technical progress in this sector, account should now be taken of any subsequent developments of the existing systems and provision made for an eventual review of this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For direct operational satellite television broadcasting, and subsequent redistribution by cable, Member States shall take all measures by law or administrative action to ensure the use of only the following systems:

- in the case of direct broadcasting by satellite of television programmes, the MAC/packet systems referred to in the first indent and note 2 of recommendation AE/650 of the CCIR entitled *Television standard for satellite broadcasting in the channels defined by WARC BS-77 and RARC SAT-83*, approved at the 16th plenary assembly at Dubrovnik, May 1986 (i.e. the C-MAC/packet system or the D2-MAC/packet system),
- in the case of redistribution by cable of these programmes, the MAC cable system corresponding to the satellite broadcasting system should be preferred. However, television redistribution by cable may continue to use existing techniques, conversion from the MAC/packet system used for the satellite broadcast link being made at the receiver terminal incorporated in the cable network,

⁽¹⁾ OJ No C 59, 14. 3. 1986, p. 3.

⁽²⁾ Opinion delivered on 22 October 1986 (not yet published in the Official Journal).

⁽³⁾ OJ No C 189, 28. 7. 1986, p. 4.

— any systems which evolve from those MAC/packet systems referred to in the first and second indent, which are subsequently defined by the European standardization bodies and/or the competent international bodies and which are operationally compatible with them.

Member States shall select the system or systems of the MAC/packet family which is or are more appropriate to the present or future structure of their direct broadcasting by satellite or cable distribution networks and shall inform the Commission of their selection.

Article 2

For the purposes of this Directive, direct broadcasting by satellite means a broadcasting satellite service as defined in the Radio Regulations of the International Telecommunications Union, i.e. using channels assigned to Member States in the 11,7 to 12,5 GHz band at the World Broadcasting Satellite Administrative Radio Conference

(Geneva 1977) and intended for display on 625 lines domestic TV receivers.

Article 3

This Directive shall apply until 31 December 1991 at the latest. The Commission is invited to submit to the Council, in advance of that date, proposals for measures to be adopted for the replacement of this Directive.

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 3 November 1986.

For the Council

The President

A. CLARK

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 December 1986

on standardization in the field of information technology and telecommunications

(87/95/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Whereas the standards applicable in the field of information technology and the activities necessary for their preparation must, in particular, take account of:

- the complexity of the technical specifications and the precision required to ensure the exchange of information and data and the compatible operating of systems;
- the need to ensure rapid publication of standards so that undue delays do not result in the early obsolescence of texts that have been overtaken by the speed of technological change;
- the need to encourage the application of international standards for exchange of information and data on a basis which will establish their credibility from the standpoint of practical implementation;
- the economic importance of the role played by standardization in contributing to the creation of a Community market in this field;

Whereas Directive 83/189/EEC⁽³⁾ enables the Commission, the Member States and the standards institutions to

be informed of the intentions of standards institutions to draw up or to amend a standard, and whereas, under the terms of that Directive, the Commission may establish terms of reference for work on standardization of common interest to be undertaken jointly and at an early stage;

Whereas that Directive does not contain all the provisions necessary for the implementation of a Community policy on standardization in the field of information technology and telecommunications;

Whereas the increasing amount of technical overlap between the different fields of standardization, particularly in the case of information technology and telecommunications, is such as to justify close cooperation between standards institutions, which should collaborate in order to deal with these matters of common interest;

Whereas agreements have been recently concluded by the Commission within the framework of the Memorandum of Understanding signed with the European Conference of Postal and Telecommunications Administrations (CEPT) and in the context of the general guidelines approved with the joint standardization organization European Committee for Standardization/European Committee for Electrotechnical Standardization (CEN/CENELEC);

Whereas Directive 86/361/EEC⁽⁴⁾ sets out programmes for work on common technical specifications (corresponding to Normes Européennes de Télécommunication (NETs)) for this field by the European Conference of Postal and Telecommunications Administrations in consultation, where appropriate, with the European Committee for Standardization and the European Committee for Electrotechnical Standardization;

⁽¹⁾ OJ No C 36, 17. 2. 1986, p. 55.

⁽²⁾ OJ No C 303, 25. 11. 1985, p. 2.

⁽³⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽⁴⁾ OJ No L 217, 5. 8. 1986, p. 21.

Whereas the field of public procurement orders is suitably placed to encourage wider acceptance of open systems interconnection information and data exchange standards through reference to them in purchasing;

Whereas it is necessary to entrust a committee with the task of assisting the Commission in its pursuance and management of the objectives and activities laid down by the Decision,

HAS DECIDED AS FOLLOWS:

Article 1

For the purposes of this Decision:

1. '*technical specifications*' means a specification contained in a document which lays down the characteristics required of a product, such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marking or labelling;
2. '*common technical specification*' means a technical specification drawn up with a view to uniform application in all the Member States of the Community;
3. '*standard*' means a technical specification approved by a recognized standards body for repeated or continuous application, compliance with which is not compulsory;
4. '*international standard*' means a standard adopted by a recognized international standards body;
5. '*Draft International Standard (DIS)*' means a draft standard adopted by a recognized international standards body;
6. '*international technical specification in telecommunications*' means the technical specification of all or some characteristics of a product, recommended by such organizations as the Comité international télégraphique et téléphonique (CCITT) or the CEPT;
7. '*European standard*' means a standard which has been approved pursuant to the statutes of the standards bodies with which the Community has concluded agreements;
8. '*European pre-standard*' means a standard adopted under the reference (EPS) in accordance with the statutory rules of the standards bodies with which the Community has concluded agreements;
9. '*functional standard*' means a standard worked out to yield a complex function required to ensure systems interoperability and generally obtained by the linking together of several existing reference standards and adopted in accordance with the statutory rules of standards bodies;
10. '*functional specification*': the specification which defines, in the field of telecommunications, the application of one or more open system interconnection standards in support of a specific requirement for communication between information technology systems (standards recommended by such organizations as the 'Comité international télégraphique et téléphonique' (CCITT) or the CEPT);
11. '*technical regulation*' means the technical specifications, including the relevant administrative provisions, the observance of which is compulsory, *de jure* or *de facto*, in the case of marketing or use in a Member State or a major part thereof, except those laid down by local authorities;
12. '*certification of conformity*' means the activity whereby the conformity of a product or service to given standards or other technical specifications is certified by means of a certificate or mark of conformity;
13. '*information technology*' means the systems, equipment, components and software required to ensure the retrieval, processing and storage of information in all centres of human activity (home, office, factory, etc.), the application of which generally requires the use of electronics or similar technology;
14. '*public procurement orders*' means those:
 - defined in Article 1 of Directive 77/62/EEC⁽¹⁾;
 - concluded for the supply of equipment relating to information technology and telecommunications, irrespective of the sector of activity of the contracting authority;
15. '*telecommunications authorities*' means recognized authorities or private enterprises in the Community which provide public telecommunications services.

Article 2

In order to promote standardization in Europe and the preparation and application of standards in the field of information technology and functional specifications in the field of telecommunications, the following measures, subject to Article 3 (2) and Article 4, shall be implemented at Community level:

- (a) regular, at least annual, determination on the basis of international standards, draft international standards or equivalent documents, of the priority standardization requirements with a view to the preparation of work

⁽¹⁾ OJ No L 13, 15. 1. 1977, p. 1.

programmes and the commissioning of such European standards and functional specifications as may be deemed necessary to ensure the exchange of information and data and systems interoperability;

(b) on the basis of international standardization activities :

— the European standards institutions and specialized technical bodies in the information technology and telecommunications sector shall be invited to establish European standards, European prestandards or telecommunications functional specifications having recourse, if necessary, to the drafting of functional standards, to ensure the precision required by users for exchange of information and data and systems interoperability. Such bodies shall base their work on international standards, draft international standards or international technical specifications in telecommunications. Where an international standard, draft international standard or international technical specification in telecommunications offers clear provisions allowing its uniform application, these provisions will be adopted unaltered in the European standard, European prestandard, or telecommunication functional specification. Only where such clear provisions do not exist in the international standard, draft international standard or international technical specification in telecommunications, the European standard, European prestandard, or telecommunication functional specification will be written to clarify or, where necessary, supplement the international standard, draft international standard or international technical specification in telecommunications while avoiding divergence from it;

— the same bodies shall be invited to prepare technical specifications which may form the basis of European standards or European prestandards in the absence of, or as a contribution to the production of, agreed international standards for the exchange of information and data and systems interoperability;

measures to facilitate the application of the standards and functional specifications, in particular by means of coordinating Member States' activities in :

— the verification of the conformity of products and services to the standards and functional specifications on the basis of test requirements specified ;

— the certification of conformity to standards and functional specifications in accordance with properly harmonized procedures.

promotion of the application of standards and functional specifications relating to information technology and telecommunications in public sector orders and technical regulations.

Article 3

1. The specific objectives of the measures proposed are described in the Annex to this Decision.

2. This Decision shall cover :

— standards in the field of Information Technology as set out in Article 5

— functional specifications for the services specifically offered over public telecommunications networks for exchange of information and data between information technology systems.

3. This Decision shall not cover :

— common technical specifications for terminal equipment connected to the public telecommunications networks, which are covered by Directive 86/361/EEC

— specifications for the equipment forming any part of the telecommunications networks themselves.

Article 4

In determining requirements as regards standardization and in drawing up a work programme for standardization and the preparation of functional specifications, the Commission shall refer in particular to the information communicated to it pursuant to Directive 83/189/EEC.

The Commission, after consulting the Committee provided for in Article 7, shall entrust the technical work to the competent European standards organizations or specialised technical bodies (CEN, CENELEC and CEPT) requesting them, if necessary, to draw up corresponding European standards or functional specifications. The mandates to be given to these organizations shall be referred for agreement to the Committee provided for under Article 5 of Directive 83/189/EEC in accordance with the procedures of the said Directive. No mandate shall be issued which overlaps with any part of work programmes commenced or drawn up under Directive 86/361/EEC.

Article 5

1. Taking account of the differences between existing national procedures, Member States shall take the necessary steps to ensure that reference is made to :

— European standards and European prestandards as described in Article 2 (b) ;

— international standards when accepted in the country of the contracting authority ;

in public procurement orders relating to information technology so that these standards are used as the basis for the exchange of information and data for systems interoperability.

2. In order to provide end-to-end compatibility, Member States shall take the necessary steps to ensure that their telecommunications administrations use functional specifications for the means of access to their public telecommunication networks for those services specifically intended for exchange of information and data between information technology systems which themselves use the standards mentioned in paragraph 1.

3. Application of this Article shall take account of special circumstances as outlined below which may justify the use of standards and specifications other than those provided for in this Decision :

- the need for operational continuity in existing systems, but only as part of clearly defined and recorded strategies for subsequent transition to international or European standards or functional specifications ;
- the genuinely innovative nature of certain projects ;
- where the standard or functional specification in question is technically inadequate for its purpose on the grounds that it does not provide the appropriate means of achieving information and data exchange or systems interoperability, or that the means (including testing) do not exist to establish satisfactorily conformity of a product to that standard or functional specification or where, in the case of European Pre-Standards, these lack the necessary stability for application. It shall be open to other Member States to demonstrate to the Committee referred to in Article 7 that equipment conforming to the standard had been used satisfactorily, and that use of this waiver was not justified ;
- where, after careful consultation of the market, it is found that important reasons related to cost-effectiveness make use of the standard or functional specification in question inappropriate. It would be open to other Member States to demonstrate to the Committee referred to in Article 7 that equipment conforming to that standard had been used satisfactorily on a normal commercial basis, and that use of this waiver was not justified.

4. In addition, Member States may require reference, on the same basis as in paragraph 1, to draft international standards.

5. Contracting authorities relying upon paragraph 3 shall record their reasons for doing so, if possible, in the initial tender documents issued in respect of the procurement, and in all cases shall record these reasons in their internal documentation and shall supply such information on request to tendering companies and to the Committee referred to in Article 7 whilst respecting

commercial confidentiality. It shall also be possible for complaints about use of derogations referred to in paragraph 3 to be made direct to the Commission.

6. The Commission shall ensure that the provisions of this Article are applied in the case of all Community projects and programmes, including public procurement orders financed from the Community budget.

7. Contracting authorities, if they consider it necessary, may apply other specifications to contracts of a value lower than 100 000 ECU, provided that these purchases will not prevent the use of the standards mentioned in paragraphs 1 and 2 in any contract of a greater value than the sum mentioned in this paragraph. The need for the derogation or the level of the threshold established in this paragraph will be reviewed within three years of the bringing into application of this Decision.

Article 6

When drafting or amending technical regulations in areas covered by this Decision, Member States shall refer to the standards referred to in Article 5 whenever these meet in an appropriate fashion the required technical specifications of the regulation.

Article 7

1. An advisory committee, called the 'Senior Officials Group on standardization in the field of Information Technology' shall assist the Commission in its pursuance of the objectives and its management of the activities laid down by the Decision. It shall consist of representatives appointed by the Member States, who may call on the assistance of experts or advisers : its chairman shall be a representative of the Commission. For telecommunication issues the competent committee is the 'Senior Officials Group for Telecommunications' provided for in Article 5 of Directive 86/361/EEC.

2. The Commission shall consult the Committee when determining Community priorities, implementing measures referred to in the Annex, when dealing with matters concerning the verification of conformity to standards, monitoring the implementation of Article 5 and other matters relating to standardization in the field of information technology and telecommunications, or other fields which these overlap. It shall also consult the Committee on the report referred to in Article 8.

3. The Commission shall coordinate the activities of these Committees with the Committee provided for in Article 5 of Directive 83/189/EEC in particular where there is a potential overlap in issuing requests to European standards institutions under this Decision and that Directive.

4. Any questions regarding the implementation of this Decision may be submitted to the Committee at the request of the Chairman or a Member State.

5. The Committee shall meet at least twice a year.

6. The Committee shall adopt its own rules of procedure.

7. The Secretariat of the Committee shall be provided by the Commission.

Article 8

Every two years the Commission shall submit a progress report to the European Parliament and the Council on standardization activities in the information technology sector. This report shall refer to the implementing arrangements adopted within the Community, the results obtained, the application of those results in public procurement contracts and national technical regulations, and, in particular, their practical significance for certification.

Article 9

This Decision shall not prejudice the application of Directive 83/189/EEC and Directive 86/361/EEC.

Article 10

This Decision shall be brought into application one year from the date of its publication in the *Official Journal of the European Communities*.

Article 11

This Decision is addressed to the Member States.

Done at Brussels, 22 December 1986.

For the Council

The President

G. SHAW

ANNEX

MEASURES FOR STANDARDIZATION IN THE FIELD OF INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS

1. Aims

- (a) to contribute to the integration of the internal Community market in the information technology and telecommunications sector;
- (b) to improve the international competitiveness of Community manufacturers by allowing for greater market uptake in the Community of equipment manufactured to recognized European and international standards;
- (c) to facilitate the exchange of information throughout the Community, by reducing the obstacles created by incompatibilities arising from the absence of standards or their lack of precision;
- (d) to ensure that user requirements are taken into account by giving users greater freedom to assemble their systems in a manner guaranteeing operating compatibility and, consequently, improved performance at a lower cost;
- (e) to promote the application of standards and functional specifications in public sector orders.

2. Description of measures and activities to be undertaken

2.1. *Preparation of work programmes and definition of priorities*

The drawing-up of work programmes and assignment of priorities taking account of Community requirements and the economic impact of these activities from the standpoint of users, producers and telecommunications administrations. The tasks to be performed at this level may include, in particular:

- 2.1.1. gathering detailed information on the basis of national and international programmes, presentation of that information in a form which facilitates comparative analysis and preparation of the summaries required for the work of the Committee;
- 2.1.2. The dissemination of that information, the examination of requirements and the consultation of interested parties;
- 2.1.3. synchronization of the work programmes with international standardization activities;
- 2.1.4. the management of work programmes;
- 2.1.5. the preparation of reports describing the execution of the activities and the practical results of their implementation.

2.2. *The execution of standardization activities in the field of information technology*

Execution of the work programmes necessitates the implementation of a series of activities, responsibility for which is generally entrusted to CEN/CENELEC and to the CEPT and which correspond to the different stages of activity that must be completed in order to ensure the credibility of standards.

These activities include:

- 2.2.1. the refinement of international standards in an effort to remove the ambiguities and options that distort the function of standards designed to guarantee the exchange of information and the compatible operation of systems;
- 2.2.2. the drafting of prestandards in cases justified by the excessive delays of international standardization procedures, or of standards required in the Community context in the absence of international standards;
- 2.2.3. the definition of the conditions to be fulfilled in order to establish complete conformity to a standard;
- 2.2.4. the preparation of test standards or test specifications included in the standards and the organization of procedures and structures to enable test laboratories to check conformity to those standards on a properly harmonized basis.

2.3. *Activities affecting the telecommunications sector*

The standardization measures which concern the telecommunications sector include two types of activity :

- the drafting of functional specifications, based on international or European standards/specifications where they exist, for the means of access to public telecommunication networks for those services specifically intended for exchange of information and data between information technology systems. This technical work comes under the harmonization activities carried out in the telecommunications section and is entrusted to CEPT following the procedures described in Directive 86/361/EEC,
- the work to be carried out in the field common to information technology and to telecommunications requires increased cooperation between the competent technical bodies (i.e. CEN/CENELEC/CEPT). It should raise the degree of convergence so that the standards and functional specifications can be applied in as many ways as possible and in a harmonized manner following the procedure described in Directive 83/189/EEC.

2.4. *Complementary measures*

This part of the programme covers the following measures :

2.4.1. specific metrological activities relating to :

- promotion of the development of test and validation instruments and formal description techniques,
- support for the case of references, particularly in the case of applications requiring the use of functional standards based on a number of standards in combination ;

2.4.2. the promotion of the preparation of manuals giving guidance on the application of standards for the final user ;

2.4.3. the promotion of demonstrations in respect of the operating compatibility achieved as a result of the application of a standard. The main aim of this action will be to make the test and metrological instruments defined in 2.4.1. available for use in different projects and to ensure that development standards are experimented with ;

2.4.4. the promotion of arrangements that go beyond the framework of industrial standardization, depend on agreements concluded in particular fields of professional activity and contribute to the efficient exchange of information (travel agency transactions, automation of money transactions, computerization of customs documents, robotics, office automation, micro-computing, etc.) ;

2.4.5. studies and projects relating specifically to standardization in the field of information technology.

3. **Measures relating to the application of standards in the public procurement sector**

Determination of the most efficient methods of ensuring the rapid application of the standards and technical specifications within the context of the present Decision while assuring appropriate linking with activities depending on Directive 77/62/EEC⁽¹⁾.

⁽¹⁾ OJ No L 13, 15. 1. 1977, p. 1.

COUNCIL RECOMMENDATION

of 22 December 1986

on the coordinated introduction of the integrated services digital network (ISDN) in the European Community

(86/659/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas recommendation 84/549/EEC ⁽⁴⁾ calls for the introduction of services on the basis of a common harmonized approach in the field of telecommunications;

Whereas the resources offered by the telecommunications networks should be utilized to the full to maintain the Community's worldwide competitiveness in the light of the rapid pace of development in the telecommunications sector;

Whereas the technical resources afforded by the integrated services digital network (ISDN) make it possible to provide a range of harmonized and compatible services for all Community users and to create new means of communication using sound, the written word and images;

Whereas current investment in digital switching and digital transmission equipment in the Member States makes it possible to envisage the development of the integrated services digital network;

Whereas a coordinated policy for the introduction of the ISDN will make possible the establishment of a European market in telephone and data-processing terminals capable of creating, by virtue of its size, the indispensable development conditions which will enable the European telecommunications industries to maintain and increase their share of world markets;

Whereas it is appropriate to implement Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽⁵⁾;

Whereas consideration should be given to Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the

mutual recognition of type approval for telecommunications terminal equipment ⁽⁶⁾ and to Council Regulation (EEC) No 3300/86 of 27 October 1986 instituting a Community programme for the development of certain less-favoured regions of the Community by improving access to advanced telecommunications (STAR programme) ⁽⁷⁾;

Whereas it is appropriate to make use of the potential of the Community's financial instruments in order to promote the development of the Member States' infrastructure;

Whereas the implementation of such policy should pay proper attention to user privacy protection;

Whereas the implementation of such a policy will lead to closer cooperation, at Community level, between the telecommunications industry and the administrations and the recognized private operating agencies offering telecommunications services, hereinafter referred to as 'telecommunications administrations';

Whereas a favourable opinion has been delivered by the senior officials group on telecommunications (SOGT) according to which the detailed recommendations drawn up by the analysis and forecasting group (GAP) provide a strategic basis for the development of an ISDN that will truly enable European users to communicate efficiently and economically;

Whereas favourable opinions on these recommendations have been delivered by the telecommunications administrations, by the European Conference of Postal and Telecommunications Administrations (CEPT) and by the telecommunications equipment manufacturers in the Member States,

HEREBY RECOMMENDS:

1. that the telecommunications administrations implement the detailed recommendations concerning the coordinated introduction of the integrated services digital network (ISDN) in the Community, as described in the Annex;
2. that implementation of these recommendations focuses particularly on:
 - (a) standardization and implementation of the S/T interface;
 - (b) the timetable set out;
 - (c) the network-penetration objectives, as compatible with commercial strategies;

⁽¹⁾ OJ No C 157, 24. 6. 1986, p. 3.

⁽²⁾ Opinion delivered on 12 December 1986 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 17 September 1986 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 298, 16. 11. 1984, p. 49.

⁽⁵⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽⁶⁾ OJ No L 217, 5. 8. 1986, p. 21.

⁽⁷⁾ OJ No L 305, 30. 10. 1986, p. 1.

3. that the telecommunications administrations continue the harmonization work within the CEPT, particularly concerning the objectives and timetable drawn up in the Annex for those specifications on ISDN which have still to be completed;
4. that the telecommunications administrations undertake all those measures which will facilitate the coordinated introduction of the ISDN, particularly those relating to implementation of CEPT specifications in equipment concerned by ISDN;
5. that the Community financial instruments take this recommendation into account within the framework of their interventions, particularly as regards the investment required for ISDN implementation;
6. the Member State Governments encourage telecommunications administrations to implement this recommendation;
7. that Member State Governments inform the Commission at the end of each year, from the end of 1987, of the measures taken and problems which may be encountered in the course of implementing this recommendation. The progress of work will be actively examined by the Commission and the SOGT set up by the Council on 4 November 1983 in order to ascertain whether the priorities and the implementation of the programme as a whole is satisfactorily achieved. The progress of work will be the subject of an annual report from the Commission to the European Parliament.

Done at Brussels, 22 December 1986.

For the Council
The President
G. SHAW

ANNEX

DETAILED RECOMMENDATIONS CONCERNING THE COORDINATED INTRODUCTION OF THE INTEGRATED SERVICES DIGITAL NETWORK (ISDN) IN THE COMMUNITY

1. RECOMMENDATIONS ESTABLISHED FOR THE RAPID CONVERGENCE OF EUROPEAN ACTIVITY ON THE INTRODUCTION OF ISDN

All the following recommendations are related and should not be dissociated.

1.1. General philosophy

All Member States are in agreement that ISDN (subscriber access at 144 Kbit/s and 2 Mbit/s) should be considered as a natural evolution of the telephone network, i.e. it should be used by both professional and residential subscribers and the existing structure of the current telephone network should not be fundamentally changed by this evolution. The first decisions must take this into account.

Nevertheless, the speed of market penetration will depend on numerous economic, social and cultural factors and of course, on the impact of the network itself, i.e. the dissemination or actual penetration of the new services at any point in time.

It is clear that in all Member States, the professional sector has significantly greater expectations and requirements for the services than the residential sector.

The professional sector will be penetrated through the supply of multiservice PABXs and of ISDN accesses. In this sector, a major submission is that the terminals connected to ISDN basic access and behind the PABXs should also be compatible, which necessitates the use of a common standard for both public and private networks.

A significant demand from the residential sector will only develop following a sustained policy of anticipated supply launched over such a period as to attain a critical mass of new service penetration and thus creating in effect a 'snowball' reaction.

This policy should be supported by marketing and tariffing activities to help stimulate demand.

1.2. Definition of the interface between the public and private network

A standard physical interface between ISDN terminals and the public network is recommended.

This should be at the CCITT S or T reference point and should be in accordance with CCITT and CEPT recommendations.

In the case of basic access (i.e. 144 Kbit/s) the physical interfaces at the S and T reference points must be identical. This terminal interface should also be offered by PABX manufacturers so that common design of terminals can be achieved.

The above statements imply that for basic access at least the NT1 function is provided by the public network operator.

Agreement is urgently needed between telecommunications administrations, within the framework of CEPT, on a standard physical interface at the T reference point for primary rate access (i.e. 2048 Kbit/s).

Clearly, during a transitional phase of several years PABX multiservices will use different standards but as soon as possible these PABXs ought to be able to offer, in addition to these standards, the S interface. The manufacturers's representatives consulted were in agreement on this point.

2. SERVICES TO BE DEFINED AND SPECIFIED IN DETAIL BY THE END OF 1986 IN ORDER TO BE PROVIDED IN ALL MEMBER STATES STARTING FROM 1988

The following items will have to be specified in detail at the latest by the end of 1986.

(a) *Bearer services*

Circuit switched transparent at 64 Kbit/s;

(b) *Teleservices*

- Telephony 3,1 kHz at 64 Kbit/s,
- Facsimile at 64 Kbit/s (Group IV),

- Teletex at 64 Kbit/s,
- Mixed-mode teletex/facsimile at 64 Kbit/s.

(c) *Supplementary services*

In order to enhance the services, a common set of supplementary services among the Member States should be implemented. These supplementary services are intended to be added to those already available in the telephone network and to those inherent in the definition of ISDN protocols. (Procedures for subaddressing, terminal portability, user to user signalling in call control messages have to be specified, although their implementation is foreseen at a later stage.)

The telecommunications administrations are invited to establish, within the framework of CEPT, the following supplementary services:

- call-waiting,
- calling-line identification,
- closed-user-group (this service might be implemented later by some countries),
- direct-dialling-in.

(d) *Adaptors* (for connection of existing terminals to the ISDN via the S interface)

- adaptor X 21,
- adaptor X 25 on the B channel (for access to packet switched services),
- A/D adaptor specified according to national needs.

Note 1

Special attention should be given to the definition of personal computer use on the bearer service at 64 Kbit/s.

Note 2

Special attention should be given to compatibility between circuit switched and packet switched services, where compatibility may be realized in the terminal or in the network.

3. **SERVICES TO BE SPECIFIED BY THE END OF 1987 AND WHICH MIGHT BE IMPLEMENTED DURING THE PERIOD 1988 to 1993**

(The precise date of introduction of such services will be decided as soon as possible.)

(a) *Bearer service*

Packet bearer service on D channel

The telecommunications administrations are invited to study within the framework of CEPT the usefulness of teleservices, in particular videotex, teletex, message handling and teleaction on packet bearer service.

(b) *Teleservices at 64 Kbit/s*

In order to augment demand, the following list of teleservices should be considered with priority:

- Telephony (7 kHz at 64 Kbit/s),
- Audioconference at 64 Kbit/s,
- Videotex alphanumeric at 64 Kbit/s,
- Image transmission and computer communication at 64 Kbit/s. For these two teleservices, the telecommunications administrations are asked to identify, within the framework of CEPT, possible services and produce detailed specifications of first services.

(c) *Adaptors*

- X 21 bis,
- for asynchronous terminals (V 24).

(d) *Supplementary services*

The telecommunications administrations are invited to study, within the framework of CEPT, by the end of 1987, the following list of supplementary services based on CEPT's own list.

- Advice of charge,
- Completion of call meeting busy,

- Conference call,
- Diversion,
- Freephone,
- Malicious call identification,
- Three party call,
- Called user identification.

Note

The provision of these supplementary services assumes the availability of an ISDN user part (ISUP). Should the ISUP not be available, their provision via the telephone user part (TUP) + may be restricted.

4. SERVICES TO BE SPECIFIED BY THE END OF 1990

(a) *Teleservices based on packet service*

(If the telecommunications administrations agree on the need to specify such packet services, referred to in paragraph 3 (a).

- Teletex,
- Videotex,
- Message handling (see CCITT recommendation X 400,
- Teleaction, set of services providing to the users a reliable transfer of small volumens of packed-sized information. This service may be adapted to several teleservices: tele-alarm, telesupervision, tele-alert, telecommand, telemetry, teleshopping, etc.

(b) *Teleservices based on 64 Kbit/s*

- Audiography at 64 Kbit/s,
- Alphaphotographic videotex at 64 Kbit/s,
- If possible, viewphone at 64 Kbit/s.

(c) *Supplementary services*

Work to be continued.

5. NUMBERING, ADDRESSING AND SIGNALLING

The achievement of the full CEPT specifications on ISUP, signalling connection control part (SCCP) and transaction capabilities (TCAP) is recommended to the telecommunications administrations in order to reach a common standard within Europe at the earliest opportunity.

As an interim solution, it is recommended to all telecommunications administrations that, starting from 1988 and when CCITT No 7 is introduced, international digital exchanges (linked by digital circuits or possibly also by analogue circuits) should be interconnected by means of the enhanced telephone user part (TUP +) for both PSTN and ISDN services.

The telecommunication administrations should provide within the framework of CEPT detailed technical specifications on TUP + by the end of 1986.

It is required that interworking with the existing public telephone network is also achieved, including some means for identifying different teleservices and terminals.

Note

The TUP + is based on the red book TUP of CCITT enhanced to meet ISDN requirements, including the supplementary services hereabove.

6. TARIFF CONSIDERATIONS

The issue of tariff levels and structures for the ISDN is fundamental for its rapid take-up.

In the longer term, following an inevitable period of high investment costs, the level of investment per basic access should be comparable with that of the current telephone network, with an investment structure related to the type of transmission and digital switching which may be different from that of today.

Several studies on ISDN tariffs have still to be completed. The telecommunications administrations are invited to study within the framework of CEPT the following proposals:

- In accordance with current trends, tariffs for all services, including telephony, should be less dependant on distance than at present (always bearing in mind the problems of transit costs through other countries).
- In the transitional phase from the analogue network to the ISDN corresponding to the period 1988 to 1993, the telecommunications administrations are requested to study within CEPT the relationship between, on the one hand, the tariff threshold applicable to ISDN services and ISDN basic access and, on the other, tariffs applicable to telephony.
- Tariffs for teleservices which use the same bearer capabilities should be independent of the teleservice. On the contrary, all value added by the network should be charged independently of the utilization of the bearer capabilities.
- An agreement should be obtained on the ratio between the monthly rental for the primary rate access (2 048 Kbit/s) and that for the basic access (144 Kbit/s).

A ratio of the order of 10 might be discussed.

7. INTERWORKING BETWEEN NATIONAL ISDN TRIALS

Those administrations implementing national trials of ISDN before the full implementation of the present recommendations should endeavour, where provided, to interconnect these services in order to increase early experience of ISDN in Europe.

8. LEVEL OF PENETRATION

Forecasts of demand in new fields, such as the services supported by ISDN, do not provide a particularly relevant basis for market planning.

Nevertheless, it is realistic to set objectives attainable over the next eight years, i.e. up to the end of 1993, for a level of penetration of ISDN which permits the market for services and terminals to reach a mature phase.

The objective should be for an adequate geographic coverage and rate of penetration at national level for each country.

The administrations should plan to provide by 1993 ISDN accesses for a number equivalent to 5 % of 1983 subscriber main lines. This figure depends, among other things, on the capability of the industry to offer cost effective ISDN solutions for the infrastructure and the terminal equipments.

The territorial coverage should be sufficient to permit 80 % of customers to have the option of the ISDN access.

COUNCIL RECOMMENDATION

of 25 June 1987

on the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community

(87/371/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas Council Regulation 84/549/EEC ⁽³⁾ calls for the introduction of services on the basis of a common harmonized approach in the field of telecommunications;

Whereas the resources offered by modern telecommunications networks should be utilized to the full for the economic development of the Community;

Whereas mobile radio services are the only means of contacting users on the move and the most efficient means for those users to be connected to the public telecommunications networks;

Whereas the land-based mobile communications systems currently in use in the Community are largely incompatible and do not allow users on the move in vehicles, boats, trains or on foot throughout the Community, including inland or coastal waters to reap the benefits of European-wide services and European-wide markets;

Whereas the change-over to the second generation cellular digital mobile communications system will provide a unique opportunity to establish truly pan-European mobile communications;

Whereas the European Conference of Postal and Telecommunications administrations (CEPT) has set up a special Working Group, referred to as GSM (Groupe Spécial Mobile), for planning all system aspects of a second-generation cellular mobile radio infrastructure;

Whereas such a future system, offering both voice and data services, is to be based on digital technique, thereby facilitating compatibility with the general digital environment that will involve with the coordinated introduction of the Integrated Services Digital Network (ISDN) in accordance with recommendation 86/659/EEC ⁽⁴⁾;

Whereas a coordinated policy for the introduction of a pan-European cellular digital mobile radio service will

make possible the establishment of a European market in mobile and portable terminals which will be capable of creating, by virtue of its size, the necessary development conditions to enable undertakings established in Community countries to maintain and improve their presence on world markets;

Whereas it is necessary to work out rapidly all agreements necessary to allow unrestricted access to mobile communications and free circulation of mobile terminals throughout the Community for the European user;

Whereas the rapid implementation of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment ⁽⁵⁾ will make an important contribution towards this goal;

Whereas consideration should be given to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽⁶⁾ and the Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications ⁽⁷⁾, and to any other proposal that the Commission may make;

Whereas it is appropriate to make use of the potential of the Community's existing financial instruments in order to promote the development of Community's infrastructure;

Whereas special attention should be paid to the urgent requirement of certain users for pan-European land-based communications;

Whereas the Commission will in the future submit other proposals in the field of mobile communications, including radio-paging systems;

Whereas the implementation of such a policy will lead to closer cooperation, at Community level, between the telecommunications industry, on the one hand, and the telecommunications administrations and the recognized private operating agencies offering public mobile telecommunications services, hereinafter referred to as 'telecommunications administrations' on the other;

⁽¹⁾ OJ No C 69, 17. 3. 1987, p. 5.

⁽²⁾ OJ No C 125, 11. 5. 1987, p. 159.

⁽³⁾ OJ No L 298, 16. 11. 1984, p. 49.

⁽⁴⁾ OJ No L 382, 31. 12. 1986, p. 36.

⁽⁵⁾ OJ No L 217, 5. 8. 1986, p. 21.

⁽⁶⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽⁷⁾ OJ No L 36, 7. 2. 1987, p. 31.

Whereas a favourable opinion has been delivered by the Senior Officials Group on Telecommunications (SOG-T), according to which the detailed recommendations drawn by the Analysis and Forecasting Group (GAP) provide a strategic basis for the development of public mobile communications in the Community enabling European users on the move to communicate efficiently and economically;

Whereas favourable opinions on these recommendations have been delivered by the telecommunications administrations, by the European Conference of Postal and Telecommunications Administrations (CEPT) and by telecommunications equipment manufacturers in the Member States;

Whereas the envisaged measures will allow the economic benefit and rapidly increasing market potential of public mobile communications to be fully realized in the Community;

Whereas the Treaty has not provided the necessary powers, other than those of Article 235,

HEREBY RECOMMENDS:

1. that the telecommunications administrations implement the detailed recommendations concerning the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community as described in the Annex;
2. that, in so doing, they give special consideration to:
 - (a) the choice of the transmission system and network interfaces;
 - (b) the time schedule set out in the Annex;
 - (c) the start of service at the latest from 1991 onwards, with geographical coverage and penetration objectives compatible with commercial strategies;
3. that the telecommunications administrations continue the cooperation within the European Conference of Postal and Telecommunications Administrations

(CEPT), particularly concerning the objectives and time schedule set out in the Annex for the completion of the specifications of the pan-European cellular digital mobile communications system;

4. that the telecommunications administrations plan for a gradual evolution from any existing public mobile radio systems to the pan-European cellular digital mobile communications system so as to ensure a transition which meets the needs of users, telecommunications administrations and undertakings established within Community countries;
5. that Member State Governments and telecommunications administrations rapidly complete the technical arrangements necessary to allow unrestricted access to cellular digital mobile communications;
6. that the Community's financial instruments take this recommendation into account within the framework of their interventions, particularly as regards investments required for the implementation of the pan-European cellular digital mobile communications system and that the Community's technological research and development programmes do likewise as regards the development of the required technological base;
7. that Member State Governments invite the telecommunications administrations to carry out this recommendation;
8. that Member State Governments inform the Commission at the end of each year, from the end of 1987 onwards, of the measures taken and problems encountered in the course of implementing this Recommendation. The progress of work will be examined by the Commission with the Senior Officials Group on Telecommunications (SOG-T) set up by the Council on 4 November 1983.

Done at Luxembourg, 25 June 1987.

For the Council

The President

H. DE CROO

ANNEX

1. General requirements

The future pan-European cellular digital mobile communications system should fulfil the following general requirements:

- be suitable for use in the 890-915 and 935-960 MHz frequency bands to be made available for the pan-European cellular digital mobile communications system;
- permit a traffic flow (measured in E/KM²/MHz) greater than, or equal to, existing networks, bearing in mind the scarcity of the bandwidth resource allowed for these systems;
- provide the user with a voice transmission quality at least equal to that of the existing systems;
- allow for efficient use of hand-held terminals by encouraging competition amongst manufacturers;
- to be sufficiently flexible to facilitate the introduction of new services related to ISDN.

The cost of the system should be considered in terms of the cost of the fixed infrastructure to be met by the telecommunications administrations, taking into account both urban and rural areas, and the cost of the mobile equipment. All these costs should be within affordable limits and in any case must not exceed the cost of existing public mobile telephone systems working in the 900 MHz band. Since the cost of the mobile communication equipment will constitute the main portion of the total cost, it is preferable for the mobile equipment cost (for quantities in excess of 100 000) to be lower than that for mobile equipment used in existing public mobile telephone systems working in the 900 MHz band.

2. Choice of transmission system

The transmission mode for the pan-European mobile system should be digital. The basis for the final choice of the technical option common to all the Member States (radio subsystem multiple access method) within the digital mode was established by the telecommunications administrations in May 1987, on the basis of work carried out by CEPT (European Conference of Postal and Telecommunications Administrations) and particularly its special group for mobile communications, referred to as GSM (Groupe Spécial Mobile).

3. Network architecture

The principles of the network structure and the definition and allocation of functions between the various system components — Mobile Stations (MS), Base Stations (BS), and Mobile Switching Centres (MSC) — should be defined by the middle of 1987. In the course of this work, the appropriate interfaces between the various system components (MS-BS-MSC) should be completely defined for all Open Systems Interconnections Standards (OSI) layers applicable to the relevant services, and for all applications using those interfaces (call processing functions, maintenance, etc.). The system must be able to support geographically co-located cellular digital mobile radio operators.

4. Mobile interfaces to be specified in detail by the end of 1987

- (a) S reference point, with B (N Kbits/s) + D (N' Kbits/s) structure (N and N' to be defined);
- (b) Interface between MS and BS;
- (c) Interface between BS and MSC.

A minimum set of man/machine interface specifications (control procedures) should be established.

5. Mobile services to be specified in detail by the end of 1987 and available for provision in all Member States starting from 1991, with hand-over and national/international roaming

Although, initially, voice telephony capabilities will constitute the most important service required, the mobile system must nevertheless be open to an overall evolution towards ISDN services⁽¹⁾. Therefore, the following mobile services should be specified in detail by the end of 1987 and available in all Member States starting from 1991:

(a) Bearer services

- Non-transparent bearer service for speech;
- Transparent bearer service for data transmission at N Kbits/s switched in the network at 64 Kbits/s (N to be defined).

⁽¹⁾ OJ No C 157, 24. 6. 1986, p. 3.

(b) *Basic services*

- Hand-over;
- National/international roaming.

(c) *Teleservices*

Telephony at 3,1 kHz (corresponding to N Kbits/s on B channel. N is to be defined).

(d) *Supplementary services*

- Calling line identification;
- Advice of call duration;
- Speech encryption.

This list may be added to by CEPT.

6. Signalling

User access signalling (subscriber signalling) should be defined along the principles of the existing CEPT recommendations for ISDN, and should be able to permit supplementary services of ISDN/PSTN.

Network and inter-network signalling process should be defined in the framework of the SS No 7 in such a way that international roaming and hand-over facilities are safeguarded.

7. Tariff considerations

The telecommunications administrations are invited to consider within the CEPT framework the following tariff principles:

- given the scarcity of frequency resources, the service should be charged basically according to the duration of the radio channel use;
- the tariffs should take into account the current trend towards less distance dependence.

By the end of 1987, the basic framework of charging principles should be identified, so that the network implications can be identified and resolved in an appropriate manner.

8. Geographical coverage

The introduction date of the pan-European cellular digital mobile communications system should be 1991 at the latest. Major urban areas should be covered by 1993 at the latest. The main links between these areas should be covered by 1995 at the latest.

Further, the telecommunications administrations should collaborate in studying these respective priorities for coverage, in order to stimulate the maximum pan-European traffic as early as possible. This should take into account the needs of users in vehicles on major European routes, and the needs of air travellers located between city centres and international airports.

COUNCIL DIRECTIVE

of 25 June 1987

on the frequency bands to be reserved for the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community.

(87/372/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas recommendation 84/549/EEC ⁽³⁾ calls for the introduction of services on the basis of a common harmonized approach in the field of telecommunications;

Whereas the resources offered by modern telecommunications networks should be utilized to the full for the economic development of the Community;

Whereas mobile radio services are the only means of contacting users on the move and the most efficient means for those users to be connected to public telecommunications networks;

Whereas mobile communications depend on the allocation and availability of frequency bands in order to transmit and receive between fixed-base stations and mobile stations;

Whereas the frequencies and land-based mobile communications systems currently in use in the Community vary widely and do not allow all users on the move in vehicles, boats, trains, or on foot throughout the Community, including on inland or coastal waters, to reap the benefits of European-wide services and European-wide markets;

Whereas the change-over to the second generation cellular digital mobile communications system will provide a unique opportunity of establishing truly pan-European mobile communications;

Whereas the European Conference of Postal and Telecommunications Administrations (CEPT) has recommended that frequencies 890-915 and 935-690 MHz be allocated to such a system, in accordance with the International Telecommunications Union (ITU) Radio Regula-

tions allocating such frequencies to mobile radio services use as well;

Whereas parts of these frequency bands are being used or are intended for use by certain Member States for interim systems and other radio services;

Whereas the progressive availability of the full range of the frequency bands set out above will be indispensable for the establishment of truly pan-European mobile communications;

Whereas the implementation of Council recommendation 87/371/EEC of 25 June 1987 on the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community ⁽⁴⁾, aiming at starting a pan-European system by 1991 at the latest, will allow the speedy specification of the radio transmission path;

Whereas on the basis of present technological and market trends it would appear to be realistic to envisage the exclusive occupation of the 890-915 and 935-960 MHz frequency bands by the pan-European system within 10 years of 1 January 1991;

Whereas Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment ⁽⁵⁾ will allow the rapid establishment of common conformity specifications for the pan-European cellular digital mobile communications system;

Whereas the report on public mobile communications drawn up by the Analysis and Forecasting Group (GAP) for the Senior Officials Group on Telecommunications (SOG-T) has drawn attention to the necessity for the availability of adequate frequencies as a vital pre-condition for pan-European cellular digital mobile communications;

Whereas favourable opinions on this report have been delivered by the telecommunications administrations, by the European Conference of Postal and Telecommunications Administrations (CEPT) and the telecommunications equipment manufacturers in the Member States,

⁽¹⁾ OJ No C 69, 17. 3. 1987, p. 9.

⁽²⁾ OJ No C 125, 11. 5. 1987, p. 159.

⁽³⁾ OJ No L 298, 16. 11. 1984, p. 49.

⁽⁴⁾ See page 81 of this Official Journal

⁽⁵⁾ OJ No L 217, 5. 8. 1986, p. 21.

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Member States shall ensure that the 905-914 and 950-959 MHz frequency bands or equivalent parts of the bands mentioned in paragraph 2 are reserved exclusively (*) for a public pan-European cellular digital mobile communications service by 1 January 1991.

2. Member States shall ensure that the necessary plans are prepared for the public pan-European cellular digital mobile communications service to be able to occupy the whole of the 890-915 and 935-960 Mhz bands according to commercial demand as quickly as possible.

Article 2

The Commission shall report to the Council on the implementation of the Directive not later than the end of 1996.

Article 3

For the purposes of this Directive, a public pan-European cellular digital land-based mobile communications service shall mean a public cellular radio service provided in each

of the Member States to a common specification, which includes the feature that all voice signals are encoded into binary digits prior to radio transmission, and where users provided with a service in one Member State can also gain access to the service in any other Member State.

Article 4

1. Member States shall bring into force the provisions necessary to comply with this Directive within 18 months of its notification (?). They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.

Article 5

This Directive is addressed to the Member States.

Done at Luxembourg, 25 June 1987.

For the Council

The President

H. DE CROO

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 5 October 1987

introducing a communications network Community programme on trade electronic data interchange systems (TEDIS)

(87/499/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (¹),

Having regard to the opinion of the Economic and Social Committee (²),

Whereas the Community has, in particular, as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities and closer relations between the States belonging to it;

Whereas, when they met in Stuttgart, Athens and Fontainebleau, the Heads of State or of Government emphasized the importance of telecommunications as a vital driving force for economic growth and social development;

Whereas the European Parliament, in evaluating the situation and development of telecommunications, emphasized the key role of the latter in the future political, social and economic development of the Community (debates of the European Parliament on telecommunications 1983, Leonardi report, Albert and Ball report of 1982);

Whereas, on 17 December 1984, the Council approved the main features of a Community policy on telecommu-

nications, including the aim of improving advanced telecommunications services and networks through Community projects;

Whereas the telecommunications sector is of great economic importance as regards both its own industrial activities and its contribution to efficient information interchange throughout the Community;

Whereas there are specific aspects to information technology standards and the work needed to produce them; whereas this is the case in particular as regards:

- the complexity of the technical specifications and the precision needed for data interchange and systems inter-operability,
- the urgent need for standards in order to prevent totally incompatible (trade) electronic data interchange systems being developed,
- the need to ensure that international standards are implemented on a basis that makes them credible for practical use;

Whereas a general programme of information technology and telecommunications standardization is being implemented;

Whereas Council Decision No 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications (³) is intended to establish in those sectors a general framework for drawing up standards or common technical specifications so as to facilitate information exchange throughout the Community by breaking down the barriers created by the incompatibilities that stem from the absence of standards or their lack of precision;

(¹) OJ No C 246, 14. 9. 1987, p. 92.

(²) OJ No C 105, 21. 4. 1987, p. 1.

(³) OJ No L 36, 7. 2. 1987, p. 31.

Whereas, under the CD project and under the CADDIA programme⁽¹⁾, action is to be taken to ensure close cooperation with commercial and industrial interest so as to provide appropriate communications and information exchange interfaces between commercial and industrial systems and those of customs administrations;

Whereas the abovementioned objective can be achieved only through the establishment of close cooperation between commercial and industrial interests in different industries so as to ensure the necessary compatibility of trade electronic data interchange systems;

Whereas the CD project requires that consideration be given to the aspects concerning the security, protection and privacy of data in respect of imports, exports and intra-Community trade supplied to, held by, or in the course of transmission between the Commission, customs administrations and commercial circles;

Whereas the above questions form part of a much wider issue, the protection of information in the context of trade electronic data interchange between information systems, and whereas it is essential to ensure consistency between the measures taken and the CD project and those implemented in the industrial context;

Whereas the Commission's White Paper on completing the internal market underlines the importance of the development of new cross-border services and the part that telecommunications networks based on common standards can play in creating a market free of obstacles at Community level;

Whereas there are guidelines contained in the Green Paper of 30 June 1987 on the development of the common market for telecommunications services and equipment;

Whereas trade electronic data interchange can increasingly help to strengthen the competitiveness of European companies in manufacturing and services;

Whereas there is at present a rapid increase in public and private efforts at both national and international level to bring into service within companies, groups and industries trade electronic data interchange systems that are not compatible with each other;

Whereas the diverse and piecemeal approaches to trade electronic data interchange adopted within a country or more generally a firm, group of firms or industry are likely to lead to the establishment of incompatible systems unable to communicate with each other and to

prevent both users and suppliers of equipment and services from benefiting to the full from the advantages offered by the development of trade electronic data interchange;

Whereas, to ensure that these trade electronic data interchange systems be able to communicate, it is necessary to adopt a programme containing an initial set of activities of common interest needed for the coordinated development of trade electronic data interchange and a further set of activities more closely linked to sectoral projects so as to attempt to solve in a coordinated fashion the common problems encountered during their development;

Whereas initially it is necessary to carry out activities and studies so as to establish and develop the conducive conditions necessary for the coordinated development of trade electronic data interchange;

Whereas, in the light of the results and experience obtained, it will be necessary to define the aims and details of a possible second phase offering support for pilot projects and continuing some of the activities that have been started;

Whereas the Treaty has not provided the necessary powers to this end, other than those of Article 235,

HAS DECIDED AS FOLLOWS:

Article 1

A communications network Community programme on trade electronic data interchange systems (TEDIS) in trade, industry and administration, hereafter referred to as the 'programme', is hereby set up.

Article 2

The programme shall be implemented in accordance with this Decision. It shall cover a period of two years.

Article 3

The aims of the programme are:

1. coordination at Community level of work going on in the various Member States on the development of trade electronic data interchange systems;
2. to alert potential users;
3. to alert European hardware and software manufacturers to the opportunities offered by electronic data interchange;
4. logistic support for European sectoral groups;

⁽¹⁾ OJ No L 33, 8. 2. 1986, p. 28.

5. consideration of the specific requirements of trade electronic data interchange within Member States and between the Member States and the Community in telecommunications and standardization policies; carrying-out of preparatory work for that purpose;
6. help in the setting-up of conformance testing centres for software and hardware used in trade electronic data interchange systems;
7. to seek solutions to legal problems that might inhibit the development of trade electronic data interchange and to see to it that restrictive telecommunications regulations cannot hamper the development of trade electronic data interchange;
8. to study security requirements for trade electronic data interchange systems so as to guarantee confidentiality of messages transmitted;
9. to study specific problems caused by the multiplicity of languages in the Community and, to this end, to examine the possibility, for the purposes of multilingualism, of using the results obtained or expected under the machine translation programmes Systran and Eurotra;
10. to study the advisability of promoting the development of the specialized software needed for trade electronic data interchange;
11. to list existing or potential sectoral projects on trade electronic data interchange and to make a comparative analysis of them;
12. identification of special requirements emerging during the implementation of trade electronic data interchange systems that could be met more easily with Community assistance;
13. to make a particular study of the assistance that could be given to small and medium-sized businesses to help them to take an active part in trade electronic data interchange;
14. to give thought to possible support for pilot projects the gradual implementation of which would be likely to encourage solutions, capable of being generalized, to problems of common interest encountered by most trade electronic data interchange systems.

Article 4

The programme shall be implemented in coordination with the existing or planned policies and activities in the

Community on telecommunications, the information market, standardization and multilingualism, and in particular with the CADDIA programme and the CD project, so as to ensure the necessary interaction with the specific requirements of trade electronic data interchange.

Article 5

Contracts for the programme shall be concluded with enterprises, including small and medium-sized enterprises, research establishments and other bodies established in the Community.

Article 6

1. The Community shall contribute to the programme within the limits of the appropriations entered each year for that purpose in the general budget of the European Communities.

2. The amount estimated necessary to cover the Community's contribution to the carrying-out of the programme is 5,3 million ECU for the duration of the programme.

Article 7

The Commission shall see to it that the programme is carried out satisfactorily and shall take the appropriate implementing measures.

Article 8

The Commission shall submit to the Council by 1 January 1990 at the latest a report on the execution of the work defined in this Decision and if necessary, a proposal for further measures.

Article 9

This Decision shall take effect on 1 January 1988.

Done at Luxembourg, 5 October 1987.

For the Council

The President

N. WILHJELM

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 5 April 1989

amending Decision 87/499/EEC introducing a communications network Community programme on trade electronic data interchange systems (Tedis)

(89/241/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and social Committee⁽³⁾,

Whereas by Decision 87/499/EEC⁽⁴⁾ the Council set up a communications network Community programme on trade electronic data interchange systems (Tedis) in trade, industry and administration; whereas this programme includes activities and studies aimed at avoiding incompatibility between different electronic trade data interchange systems by lack of common standards;

Whereas certain non-member countries, in particular the member states of the European Free Trade Association, take an active part in drawing up European and international standards in this area; whereas these countries have expressed the desire to be associated with the Tedis programme;

Whereas it is in the Community's interest to avoid fresh barriers to trade with these countries in the sector in question and to contribute to the coordinated development of trade electronic data interchange systems in Europe;

Whereas agreements to this effect should therefore be concluded with the non-member countries concerned;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

HAS DECIDED AS FOLLOWS:

Article 1

Decision 87/499/EEC is hereby amended as follows:

- (1) In Article 5, the phrase 'established in the Community' is replaced by the phrase 'established in the Community or a non-member country with which the Community has concluded an agreement associating the country in question with the programme.'
- (2) The following Article shall be inserted:

Article 5a

In accordance with Article 228 of the Treaty, the Community may conclude agreements with non-member countries, and in particular with the members of the European Free Trade Association, with a view to associating them fully or partially with the programme.

The Commission shall be authorized to negotiate these agreements.'

Article 2

This Decision shall take effect on the day of its publication in the *Official Journal of the European Communities*.

Done at Luxembourg, 5 April 1989.

For the Council

The President

M. CHAVES GONZALEZ

⁽¹⁾ OJ No C 273, 22. 10. 1988, p. 3.

⁽²⁾ OJ No C 69, 20. 3. 1989.

⁽³⁾ OJ No C 56, 6. 3. 1989, p. 51.

⁽⁴⁾ OJ No L 285, 8. 10. 1987, p. 35.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 14 December 1987

on a Community programme in the field of telecommunications technologies — research and development (R&D) in advanced communications technologies in Europe (RACE programme)

(88/28/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130Q (2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the Community has as its task, by establishing a common market and progressively approximating the economic policies of Member States, *inter alia*, to promote throughout the Community a harmonious development of economic activities and closer relations between the States belonging to it;

Whereas the Heads of State and of Government, meeting in Stuttgart, Athens, Fontainebleau and Brussels, emphasized the importance of telecommunications as a major source for economic growth and social development;

Whereas the European Parliament, in its assessment of the situation and development of telecommunications, stressed the key role of telecommunications for the future political, social and economic development of the Community;

Whereas on 17 December 1984 the Council agreed on the main elements of a Community telecommunications policy in the field of advanced telecommunications services and networks involving actions at Community level;

Whereas, with the emergence of new services and the progressive convergence of telecommunications, data processing and wider public services, the trend is towards a Europe-wide integrated broadband network (Integrated Broadband Communications (IBC)) capable of supporting a wide range of customers and service providers;

Whereas developments in telecommunications will benefit the international competitiveness of the European economies in general and of the telecommunications industries in particular;

Whereas the option selected for advanced telecommunications technologies must be such that it does not increase regional disparities in the Community; whereas the development of common specifications for equipment and services is necessary but not sufficient to prevent further divergences in the regional development;

Whereas the development of IBC offers a wide range of opportunities for small and medium sized companies in the manufacture of equipment and in the provision of specialized services within the Community;

Whereas, in response to the requirement of using fully the economic and market potential of telecommunications, the Commission has submitted a programme of action which has been recognized by the Council as a base for further work;

⁽¹⁾ OJ No C 304, 28. 11. 1986, p. 2.

⁽²⁾ OJ No C 281, 19. 10. 1987, p. 113. Decision of 18 November 1987 (not yet published in the Official Journal).

⁽³⁾ OJ No C 68, 16. 3. 1987, p. 22.

Whereas cooperation in R&D and the development of standards can make a major contribution, notably by facilitating the evolution towards future IBC in terms of transnational connections and also at regional and local levels ;

Whereas the 'Single European Act' provides a new political and legal base for the development of a scientific and technological strategy with particular importance being given to the goal of promoting industrial competitiveness ;

Whereas the Research Council on 4 June 1985 recognized the importance of the rapid establishment of a definition phase for the RACE programme, in order to prepare a general European framework for the development of advanced systems of communications for the future and to promote technological and industrial cooperation ;

Whereas the Council adopted by Decision 85/372/EEC (1) the RACE definition phase of 18 months on which to base the Decision for the main programme by the end of 1986 ;

Whereas, by Decision 87/516/Euratom/EEC (2), the Council adopted a framework programme of Community activities in the field of research and technological development (1987 to 1991) providing for research to be undertaken leading towards a large market and an information and communications society, including telecommunications ;

Whereas the constitution or consolidation of a specifically European industrial potential in the technologies concerned is an urgent necessity ; whereas its beneficiaries must be network operators, research establishments, undertakings, including small and medium-sized undertakings and other bodies established in the Community which are best suited to attain these objectives ;

Whereas the RACE definition phase has produced the requisite conclusions ;

Whereas the RACE Management Committee has carried out an assessment and called for the necessary decisions to be taken in time to ensure the follow-up of the work ;

Whereas it is in the Community's interest to consolidate the scientific and financial basis of European research by means of the involvement to a greater extent of participants from European third countries in certain Community programmes and particularly in programmes involving cooperation in research and development of telecommunications technology ;

Whereas consistency with ESPRIT is essential since both programmes benefit from each other ;

Whereas it is essential to ensure consistency with Eureka, other European transnational cooperation and national actions ;

Whereas during the RACE main phase numerous decisions may have to be taken which are extremely relevant to consumers, whether private individuals or businesses, such as those concerning the desired level of confidentiality and privacy of data transfer ;

Whereas one fundamental concern which has emerged from the RACE definition phase is the need for attention to be paid to consumer-oriented aspects of future telecommunications services ; whereas quality requirements and costs are associated problems in respect of which ongoing decisions will have to be made during the RACE main phase ; whereas, therefore, the European Parliament should be kept informed of developments ;

Whereas the implementation of concerted actions in the COST framework is an essential element to complement industrially-oriented R&D projects ;

Whereas the Scientific and Technical Research Committee (CREST) has expressed its opinion ;

Whereas, on the basis of results achieved, the programme may be extended for a second period of five years, following a proposal from the Commission,

HAS ADOPTED THIS DECISION :

Article 1

1. A Community programme in the field of telecommunications technologies (RACE) is adopted for an initial period of five years commencing 1 June 1987.
2. The programme is designed, in concertation with public and private actions in the field of telecommunications technologies, undertaken at national and international level, to promote the competitiveness of the Community's telecommunications industry, operators and service providers in order to make available to the final users, at minimum cost and with minimum delay, the services which will sustain the competitiveness of the European economy over the coming decades and contribute to maintaining and creating employment in the Community.

Article 2

The programme summary and objectives, as set out in more detail in Annex II, shall consist of three parts :

(1) OJ No L 210, 7. 8. 1985, p. 24.

(2) OJ No L 302, 24. 10. 1987, p. 1.

Part I: IBC development and implementation strategies

Shall comprise work required for the development of functional specifications, systems and operations research towards the definition of proposals for Open Systems-conformity⁽¹⁾ standards, concepts and conventions and analytical work serving the objective of establishing inter-operability for IBC⁽²⁾ equipment and services. This work is to be carried out by appropriate organizations, groups and other bodies including, where required, contract work;

Part II: IBC technologies

Shall comprise R&D cooperation in IBC technologies at the precompetitive stage;

Part III: Prenormative functional integration

Shall comprise prenormative and precompetitive R&D relating to cooperation in the realization of an 'open verification environment' designed to assess functions, operational concepts and experimental equipment with respect to functional specifications and standardization proposals arising from the work in Part I.

Article 3

1. Projects relating to the programme shall be executed, where required, by means of shared-cost contracts. Contractors shall be expected to bear a substantial proportion of the costs, which should normally be at least 50 % of the total expenditure.

2. The proposals for projects shall, as a rule, be submitted in reply to an open invitation to tender and involve the participation of at least two independent industrial partners not all established in the same Member State. The invitation to tender shall be published in the *Official Journal of the European Communities*.

3. In exceptional cases concerning projects indispensable for implementing key requirements of the workplan :

— where a proposal would involve

- (i) unreasonable burdens on the participants, particularly small and medium-sized undertakings and research establishments,
- (ii) only one independent industrial partner,
- (iii) more than one independent industrial partner established in the same Member State, or

— where an open tendering procedure would be unjustified on grounds of cost or efficiency, or

⁽¹⁾ Open Systems-conformity stands for an international standardization effort to make equipment and services from different suppliers, operators and service providers inter-operable.

⁽²⁾ IBC — Integrated Broadband Communication, which stands for advanced telecommunications services relying on high performance infrastructure.

— where the amount of the Community's contribution to the cost does not exceed 1 million ECU,

it may be decided, in accordance with the procedures laid down in Article 8, to depart from the general provisions set out in paragraphs (1) and (2) of this Article.

4. The contracts shall be concluded with network operators, research establishments, undertakings, including small and medium-sized undertakings, and other bodies established in the Community.

Article 4

Where framework agreements for scientific and technical cooperation between non-member European countries and the European Communities have been concluded, organizations and undertakings established in these countries may, in accordance with the procedures laid down in Articles 3 and 8, become partners to a project undertaken within the programme.

Article 5

1. The funds estimated as necessary for the Community contribution to the implementation of the programme amount to 550 million ECU over five years, including expenditure on a staff whose costs shall not exceed 4,5 % of the Community's contribution.

2. The internal and indicative allocation of these funds is set out in Annex I.

Article 6

1. The Commission shall ensure that the programme is properly performed and establish the appropriate implementation measures.

2. The Commission shall ensure that procedures are set up to allow for appropriate cooperation with COST activities related to the areas of research covered by the programme, by ensuring regular exchanges of information between the Committee referred to in Article 7 and the relevant COST Management Committees.

3. The Commission shall establish for each year and update as required a draft workplan defining the detailed objectives, the type of projects and actions to be undertaken and the corresponding financial plans. The Commission shall keep the European Parliament informed on progress of the annual workplans.

4. The procedure laid down in Article 8 shall apply to :

— the establishment and updating of the annual workplan referred to in paragraph 3 of this Article,

— any departure from the general conditions laid down in Article 3 (1) and (2),

— the evaluation of work undertaken in respect of each part of the programme by appropriate organizations, groups and other bodies,

- the assessment of proposed projects for the implementation of Parts I and III and the Community financial contribution for a project when this contribution is in excess of 2,5 million ECU,
 - the assessment of proposed projects for the implementation of Part II and the Community financial contribution for a project when this contribution is in excess of 5 million ECU,
 - the participation in any project by European organizations and enterprises not established in the Community.
5. The Commission may consult the Committee referred to in Article 7, and shall consult it at the request of the representatives of at least four Member States on any matter falling within the scope of this decision.

Article 7

The Commission shall be assisted in the performance of its tasks by a Management Committee, hereinafter referred to as 'the Committee'. The Committee, consisting of two representatives of each Member State, shall be set up by the Commission on the basis of nominations by the Member States.

Members of the Committee may be assisted by experts or advisors depending on the nature of the issue under consideration.

The Committee shall be chaired by a Commission representative.

The proceedings of the Committee shall be confidential. The Committee shall adopt its own rules of procedure. The secretarial services shall be provided by the Commission.

Article 8

1. Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee, either on his own initiative or at the request of one of its members.
2. Under this procedure, the representative of the Commission, who acts as Chairman, shall submit to the Committee the draft of the measures to be adopted. The Committee shall deliver an opinion within a time limit which shall normally be one month and shall in no case exceed two months. The opinion shall be delivered by the majority specified in Article 148 (2) of the Treaty for decisions which the Council is required to adopt on a proposal from the Commission, the votes of the representatives of the Member States being weighted as indicated in that Article. The Chairman shall not vote.
3. The Commission shall adopt the intended measures when they are in accordance with the Committee's opinion.

Where the proposed measures are not in accordance with the Committee's opinion, or if no opinion is delivered, the Commission shall forthwith submit to the Council a proposal. The Council shall act by qualified majority.

If the Council has not acted within a period of two months from the date on which the matter was referred to it, the proposed measures shall:

- be adopted by the Commission for matters falling under the third, fourth and fifth indents of Article 6 (4),
- be adopted by the Commission, save where the Council has decided against the said measures by simple majority for matters falling under the first, second and sixth indents of Article 6 (4).

Article 9

1. The programme shall be reviewed after 30 months on the basis of an evaluation of the results achieved in relation to the precise objectives set out in Annex II to this Decision. The Commission shall inform the Council and European Parliament of the results of this review.

2. After the completion of the first five-year period of the programme, the Commission shall, after consulting the Committee, send to the Member States and the European Parliament a report on the performance and results of the programme.

Article 10

With regard to the coordination activities provided for in Article 1 (2), the Member States and the Commission shall exchange all appropriate information to which they have access and which they are free to disclose concerning activities in the areas covered by this Decision, whether or not planned or carried out under their authority.

Information shall be exchanged according to a procedure to be defined by the Commission after consulting the Committee and shall be treated as confidential at the suppliers' request.

Article 11

This Decision shall apply from 1 June 1987.

Article 12

This Decision is addressed to the Member States.

Done at Brussels, 14 December 1987.

For the Council
The President
U. ELLEMANN-JENSEN

ANNEX I

INDICATIVE INTERNAL ALLOCATION OF FUNDS

	<i>(Million ECU)</i>
PART I: IBC DEVELOPMENT AND IMPLEMENTATION STRATEGIES	60
I.1. IBC strategies	14
I.2. IBC realization (Systems analysis and functional specification)	28
I.3. IBC usage	10
I.4. Common operational environment	8
 PART II: IBC TECHNOLOGIES	 332
II.1. Techniques for IBC systems functions	94
II.2. IBC programming infrastructure	49
II.3. Usability engineering	12
II.4. Technologies enabling network evolution	177
 PART III: PRENORMATIVE FUNCTIONAL INTEGRATION	 113
III.1. Verification tools	63
III.2. Development of IBC application pilot schemes	50
Personnel costs	25
Administrative costs	20
Total	550

ANNEX II

RACE PROGRAMME SUMMARY AND OBJECTIVES (1)

The goal of RACE is to make a major contribution to the objective of the :

'Introduction of Integrated Broadband Communication (IBC) taking into account the evolving Integrated Services Digital Network (ISDN) and national introduction strategies, progressing to Community-wide services by 1995'.

The general objectives of RACE are, in this light :

- (a) to promote the Community's telecommunications industry so as to ensure that it maintains a strong position at European and world levels in a context of rapid technological change ;
- (b) to enable the European network operators to confront under the best possible conditions the technological and service challenges with which they will be faced ;
- (c) to enable a critical minimum number of the Member States of the Community to introduce commercially viable IBC services by 1996 ;
- (d) to offer opportunities to service providers to improve cost-performance and introduce new or enhanced information services which will both earn revenue in their own right and give indispensable support to other productive sectors of the Community ;
- (e) to make available to the final users, at a cost and on a timescale at least as favourable as in other major western countries, the services which will sustain the competitiveness of the European economy over the next decades and contribute to maintaining and creating employment in the Community ;
- (f) to accompany the formation of a Community internal market for all IBC related telecommunications equipment and services based on agreed European or international standards as an indispensable basis for sustained strength on the world markets ;
- (g) to contribute to regional development within the Community with the support of the development of common functional specifications for equipment and services permitting the less-developed regions to benefit fully from the efforts of Member States piloting the telecommunications developments in the Community.

In order to achieve the objectives described, the RACE programme would be structured into three main parts with each project containing verifiable objectives to be met and reported on.

PART I: IBC DEVELOPMENT AND IMPLEMENTATION STRATEGIES

relating to the development of functional specifications, the systems and operations research towards the definition of proposals for IBC standards, concepts and conventions conforming to an open systems approach, and the analytical work serving the objective of establishing interoperability for IBC equipment and services.

PART II: IBC TECHNOLOGIES

covering the technological cooperation in precompetitive R&D addressing key requirements of new technology for the low-cost realization of IBC equipments and services.

PART III: PRENORMATIVE FUNCTIONAL INTEGRATION

relating to prenormative cooperation in the realization of an 'open verification environment' designed to assess functions, operational concepts and experimental equipment and applications with respect to functional specifications and standardization proposals arising from the work in Part I.

The corresponding work areas, tasks and approaches are specified in detail in the RACE workplan which is under preparation and will be submitted separately.

This work is to be carried out by industry, academics and telecommunication operators. The latter are expected to finance independently the work falling within their domain.

The following sections provide a description of the scope and nature of the work to be undertaken.

(1) The full RACE workplan is a detailed technical document which evolves with technological progress and Introduction of Integrated Broadband Communication (IBC) taking into account the evolving ISDN improved perception of the demand characteristics. Each year it is to be submitted for approval by the Management Committee.

PART I: IBC DEVELOPMENT AND IMPLEMENTATION STRATEGIES

Objectives

The main objectives of the work under Part I are to achieve, throughout the introduction and further enhancement of IBC:

- a common understanding of the evolution towards introduction of IBC and its implications including market research and promotion of the IBC concept and services in Europe and internationally,
- a common definition and understanding of the IBC system and subsystems, between all main actors concerned,
- guidelines for the functional specifications of the IBC system and the development of integrated services,
- a framework in which to identify the technology requirements and to assess the implications of technological advances and the evolution of service demands for the priorities in RD&E (Research, Development and Engineering),
- a tool for the evaluation of cost-effectiveness of various technological solutions, implementation schemes and evolutionary routes starting from the given situation,
- mechanisms for analysing and assessing, at an early stage, the requirements for standardization proposals and functional specifications in order to facilitate and accelerate the emergence of international standards.

Scope

To meet these objectives, Part I would comprise two major areas of activity:

- maintenance and further development of the European Reference Model for Integrated Broadband Communication, defined in its initial form during the RACE definition phase,
- systems analysis and engineering work to transform the concepts derived in the Reference Model into systems and subsystems and functional specifications.

I.1. IBC strategies

IBC is a broad field of activities which requires the dedicated work of many independent participants. They all need to be able to situate their respective work in the context of evolving objectives, conditions and rapid technological change and demand.

I.2. IBC realization

The Reference Model work of point I.1 represents a major concertation exercise to produce consensus views on the evolution towards IBC and its broad functional specifications for IBC systems, subsystems and services, and to provide a two-way link between the Reference Model and other RACE activities. The required systems analysis will be carried out under this point.

I.3. IBC usage

The economic impact of IBC will depend heavily on the nature of the applications supported by IBC networks, the modes of presentation to the users, the facilities available to users and other important parameters related to the ergonomics of telecommunications usage. This work area will concern these elements to the extent that they are related to work under I.1 and I.2.

I.4. Common operational environment

The convergence and transition to IBC represents a major problem in managing the complexity of the technical issues. This does require a specific effort which is the objective of the work under this heading.

PART II: IBC TECHNOLOGIES

Objective

The objective of this part is to carry out cooperative R&D on the key technologies required for low-cost-realizations of IBC equipment and services. In particular, success for the IBC depends critically on the cost of the local loop optical components being within affordable limits of domestic subscribers. This presents RACE with a key objective of providing the technology which in association with standardization will reduce the costs in mass production by a factor of 100 over today's typical costs of comparable components. Part II will be system-driven and specifically related to the functional specifications derived by Part I.

Scope

The scope of the work will include the research, test and experimentation needed to explore the techno-economic characteristics of the new technologies relevant to IBC.

II.1. Techniques for IBC system functions*Objective*

The use of advanced technology for cost-efficient implementation of IBC. The work will focus on functions which, due to their generalized use, form a key cost factor.

II.2. IBC programming infrastructure*Objective*

Based on advances in software technology in general, as they result from fundamental work done elsewhere, the objective here is to realize major advance in telecommunication software infrastructure so as to master the complexity of systems integration and the associated requirements of network reliability and efficiency.

II.3. Usability engineering*Objective*

The objective is to advance the technological aspects of man-machine interface and human factors so as to facilitate IBC user acceptance linked to ergonomics and cognitive facilities of IBC equipment.

II.4. Technologies enabling network evolution*Objective*

The objective of the R&D is to exploit key enabling technologies to realize advanced evolutionary subsystems, systems and networks.

PART III: PRENORMATIVE FUNCTIONAL INTEGRATION*Objective*

The work is aimed at the validation of standardization concepts and prenormative work as deriving from work done in other parts of RACE. The parts of the IBC system or subsystems will be tested by means of simulation of research-experimentation with particular reference to the needs of technological work in preparation of standardization proposals.

Prenormative functional integration serves several important functions. It will :

- permit the verification of concepts, standardization options, reliability, security, as well as other key functional characteristics by simulation and testing at the research stage,
- contribute to the reduction of risks for development and implementation by permitting the evaluation of the functional features by operators, industry and, where applicable, service providers and users,
- provide a mechanism for demonstrating interoperability features and compliance to standards and specifications.

Scope⁽¹⁾

The scope of the work is to :

- test new technology, and devices from projects in Part II RACE, Esprit, relevant national programmes, international projects as an integral part of an IBC system to evaluate its functionalities and techno-economic performance characteristics,
- explore relevant performance parameters and confirm the feasibility of meeting the relevant requirements of the functional entities and applications as defined within Part I activities.

⁽¹⁾ The work envisaged within this part of the RACE programme is not expected to have the nature of demonstration projects or field trials. Such trials or prototype installations will be required before operational implementation of a harmonized set of IBC services can be undertaken but are beyond the scope and scale of effort under consideration for the RACE programme.

III.1. Verification tools*Objective*

Work here is intended to develop verification tools related to make up operational IBC components or subsystems in order to verify design concepts, functional groups or protocols. The goal is to contribute to refinement of functional specification and/or verify standard proposals.

III.2. Development of IBC application pilot schemes*Objective*

Early introduction of IBC services will require the diminution of the uncertainties and risks associated with new services. A key element to this is the early development of experimental situations where service providers, network operators and users are placed in conditions where IBC experimental products can be tested by users and service providers. The objective of the work in this area is to contribute to the development of such experimental situations and the exploitation of the results so as to speed up Community-wide understanding of the characteristics of IBC commercial exploitation.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DIRECTIVE

of 16 May 1988

on competition in the markets in telecommunications terminal equipment

(88/301/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 90 (3) thereof,

Whereas :

1. In all the Member States, telecommunications are, either wholly or partly, a State monopoly generally granted in the form of special or exclusive rights to one or more bodies responsible for providing and operating the network infrastructure and related services. Those rights, however, often go beyond the provision of network utilization services and extend to the supply of user terminal equipment for connection to the network. The last decades have seen considerable technical developments in networks, and the pace of development has been especially striking in the area of terminal equipment.
2. Several Member States have, in response to technical and economic developments, reviewed their grant of special or exclusive rights in the telecommunications sector. The proliferation of types of terminal equipment and the possibility of the multiple use of terminals means that users must be allowed a free choice between the various types of equipment available if they are to benefit fully from the technological advances made in the sector.
3. Article 30 of the Treaty prohibits quantitative restrictions on imports from other Member States and all measures having equivalent effect. The grant of special or exclusive rights to import and market goods to one organization can, and often does, lead to restrictions on imports from other Member States.

4. Article 37 of the Treaty states that 'Member States shall progressively adjust any State monopolies of a commercial character so as to ensure that when the transitional period has ended no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.' Paragraph 2 of Article 37 prohibits Member States from introducing any new measure contrary to the principles laid down in Article 37 (1).

5. The special or exclusive rights relating to terminal equipment enjoyed by national telecommunications monopolies are exercised in such a way as, in practice, to disadvantage equipment from other Member States, notably by preventing users from freely choosing the equipment that best suits their needs in terms of price and quality, regardless of its origin. The exercise of these rights is therefore not compatible with Article 37 in all the Member States except Spain and Portugal, where the national monopolies are to be adjusted progressively before the end of the transitional period provided for by the Act of Accession.
6. The provision of installation and maintenance services is a key factor in the purchasing or rental of terminal equipment. The retention of exclusive rights in this field would be tantamount to retention of exclusive marketing rights. Such rights must therefore also be abolished if the abolition of exclusive importing and marketing rights is to have any practical effect.

7. Article 59 of the Treaty provides that 'restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.' Maintenance of terminals is a service within the meaning of Article 60 of the Treaty. As the transitional period has ended, the service in question, which cannot from a commercial point of view be dissociated from the marketing of the terminals, must be provided freely and in particular when provided by qualified operators.
8. Article 90 (1) of the Treaty provides that 'in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 7 and Articles 85 to 94.'
9. The market in terminal equipment is still as a rule governed by a system which allows competition in the common market to be distorted; this situation continues to produce infringements of the competition rules laid down by the Treaty and to affect adversely the development of trade to such an extent as would be contrary to the interests of the Community. Stronger competition in the terminal equipment market requires the introduction of transparent technical specifications and type-approval procedures which meet the essential requirements mentioned in Council Directive 86/361/EEC⁽¹⁾ and allow the free movement of terminal equipment. In turn, such transparency necessarily entails the publication of technical specifications and type-approval procedures. To ensure that the latter are applied transparently, objectively and without discrimination, the drawing-up and application of such rules should be entrusted to bodies independent of competitors in the market in question. It is essential that the specifications and type-approval procedures are published simultaneously and in an orderly fashion. Simultaneous publication will also ensure that behaviour contrary to the Treaty is avoided. Such simultaneous, orderly publication can be achieved only by means of a legal instrument that is binding on all the Member States. The most appropriate instrument to this end is a directive.
10. The Treaty entrusts the Commission with very clear tasks and gives it specific powers with regard to the monitoring of relations between the Member States and their public undertakings and enterprises to which they have delegated special or exclusive rights, in particular as regards the elimination of quantitative restrictions and measures having equivalent effect, discrimination between nationals of Member States, and competition. The only instrument, therefore, by which the Commission can efficiently carry out the tasks and powers assigned to it, is a Directive based on Article 90 (3).
11. Telecommunications bodies or enterprises are undertakings within the meaning of Article 90 (1) because they carry on an organized business activity involving the production of goods or services. They are either public undertakings or private enterprises to which the Member States have granted special or exclusive rights for the importation, marketing, connection, bringing into service of telecommunications terminal equipment and/or maintenance of such equipment. The grant and maintenance of special and exclusive rights for terminal equipment constitute measures within the meaning of that Article. The conditions for applying the exception of Article 90 (2) are not fulfilled. Even if the provision of a telecommunications network for the use of the general public is a service of general economic interest entrusted by the State to the telecommunications bodies, the abolition of their special or exclusive rights to import and market terminal equipment would not obstruct, in law or in fact, the performance of that service. This is all the more true given that Member States are entitled to subject terminal equipment to type-approval procedures to ensure that they conform to the essential requirements.
12. Article 86 of the Treaty prohibits as incompatible with the common market any conduct by one or more undertakings that involves an abuse of a dominant position within the common market or a substantial part of it.
13. The telecommunications bodies hold individually or jointly a monopoly on their national telecommunications network. The national networks are markets. Therefore, the bodies each individually or jointly hold a dominant position in a substantial part of the market in question within the meaning of Article 86.
- The effect of the special or exclusive rights granted to such bodies by the State to import and market terminal equipment is to:
- restrict users to renting such equipment, when it would often be cheaper for them, at least in the long term, to purchase this equipment. This effectively makes contracts for the use of networks subject to acceptance by the user of additional services which have no connection with the subject of the contracts.

(1) OJ No L 217, 5. 8. 1986, p. 21.

- limit outlets and impede technical progress since the range of equipment offered by the telecommunications bodies is necessarily limited and will not be the best available to meet the requirements of a significant proportion of users.

Such conduct is expressly prohibited by Article 86 (d) and (b), and is likely significantly to affect trade between Member States.

At all events, such special or exclusive rights in regard to the terminal equipment market give rise to a situation which is contrary to the objective of Article 3 (f) of the Treaty, which provides for the institution of a system ensuring that competition in the common market is not distorted, and requires *a fortiori* that competition must not be eliminated. Member States have an obligation under Article 5 of the Treaty to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty, including Article 3 (f).

The exclusive rights to import and market terminal equipment must therefore be regarded as incompatible with Article 86 in conjunction with Article 3, and the grant or maintenance of such rights by a Member State is prohibited under Article 90 (1).

14. To enable users to have access to the terminal equipment of their choice, it is necessary to know and make transparent the characteristics of the termination points of the network to which the terminal equipment is to be connected. Member States must therefore ensure that the characteristics are published and that users have access to termination points.
15. To be able to market their products, manufacturers of terminal equipment must know what technical specifications they must satisfy. Member States should therefore formalize and publish the specifications and type-approval rules, which they must notify to the Commission in draft form, in accordance with Council Directive 83/189/EEC⁽¹⁾. The specifications may be extended to products imported from other Member States only insofar as they are necessary to ensure conformity with the essential requirements specified in Article 2 (17) of Directive 86/361/EEC that can legitimately be required under Community law. Member States must, in any event, comply with Articles 30 and 36 of the Treaty, under which an importing Member State must allow terminal equipment legally manufactured and marketed in another Member State to be imported on to its territory, and may only subject it to such type-approval and possibly refuse approval for reasons concerning conformity with the abovementioned essential requirements.
16. The immediate publication of these specifications and procedures cannot be considered in view of their

complexity. On the other hand, effective competition is not possible without such publication, since potential competitors of the bodies or enterprises with special or exclusive rights are unaware of the precise specifications with which their terminal equipment must comply and of the terms of the type-approval procedures and hence their cost and duration. A deadline should therefore be set for the publication of specifications and the type-approval procedures. A period of two-and-a-half years will also enable the telecommunications bodies with special or exclusive rights to adjust to the new market conditions and will enable economic operators, especially small and medium-sized enterprises, to adapt to the new competitive environment.

17. Monitoring of type-approval specifications and rules cannot be entrusted to a competitor in the terminal equipment market in view of the obvious conflict of interest. Member States should therefore ensure that the responsibility for drawing up type-approval specifications and rules is assigned to a body independent of the operator of the network and of any other competitor in the market for terminals.
18. The holders of special or exclusive rights in the terminal equipment in question have been able to impose on their customers long-term contracts preventing the introduction of free competition from having a practical effect within a reasonable period. Users must therefore be given the right to obtain a revision of the duration of their contracts.

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive:

- 'terminal equipment' means equipment directly or indirectly connected to the termination of a public telecommunications network to send, process or receive information. A connection is indirect if equipment is placed between the terminal and the termination of the network. In either case (direct or indirect), the connection may be made by wire, optical fibre or electromagnetically.

Terminal equipment also means receive-only satellite stations not reconnected to the public network of a Member State.

- 'undertaking' means a public or private body, to which a Member State grants special or exclusive rights for the importation, marketing, connection, bringing into service of telecommunications terminal equipment and/or maintenance of such equipment.

⁽¹⁾ OJ No L 109, 28. 3. 1983, p. 8.

Article 2

Member States which have granted special or exclusive rights within the meaning of Article 1 to undertakings shall ensure that those rights are withdrawn.

They shall, not later than three months following the notification of this Directive, inform the Commission of the measures taken or draft legislation introduced to that end.

Article 3

Member States shall ensure that economic operators have the right to import, mark, connect, bring into service and maintain terminal equipment. However, Member States may:

- in the absence of technical specifications, refuse to allow terminal equipment to be connected and brought into service where such equipment does not, according to a reasoned opinion of the body referred to in Article 6, satisfy the essential requirements laid down in Article 2 (17) of Directive 86/361/EEC,
- require economic operators to possess the technical qualifications needed to connect, bring into service and maintain terminal equipment on the basis of objective, non-discriminatory and publicly available criteria.

Article 4

Member States shall ensure that users have access to new public network termination points and that the physical characteristics of these points are published not later than 31 December 1988.

Access to public network termination points existing at 31 December 1988 shall be given within a reasonable period to any user who so requests.

Article 5

1. Member States shall, not later than the date mentioned in Article 2, communicate to the Commission a list of all technical specifications and type-approval procedures which are used for terminal equipment, and shall provide the publication references.

Where they have not as yet been published in a Member State, the latter shall ensure that they are published not later than the dates referred to in Article 8.

2. Member States shall ensure that all other specifications and type-approval procedures for terminal equipment are formalized and published. Member States shall communicate the technical specifications and type-approval procedures in draft form to the Commission in accordance with Directive 83/189/EEC and according to the timetable set out in Article 8.

Article 6

Member States shall ensure that, from 1 July 1989, responsibility for drawing up the specifications referred to

in Article 5, monitoring their application and granting type-approval is entrusted to a body independent of public or private undertakings offering goods and/or services in the telecommunications sector.

Article 7

Member States shall take the necessary steps to ensure that undertakings within the meaning of Article 1 make it possible for their customers to terminate, with maximum notice of one year, leasing or maintenance contracts which concern terminal equipment subject to exclusive or special rights at the time of the conclusion of the contracts.

For terminal equipment requiring type-approval, Member States shall ensure that this possibility of termination is afforded by the undertakings in question no later than the dates provided for in Article 8. For terminal equipment not requiring type-approval, Member States shall introduce this possibility no later than the date provided for in Article 2.

Article 8

Member States shall inform the Commission of the draft technical specifications and type-approval procedures referred to in Article 5 (2):

- not later than 31 December 1988 in respect of equipment in category A of the list in Annex I,
- not later than 30 September 1989 in respect of equipment in category B of the list in Annex I,
- not later than 30 June 1990 in respect of other terminal equipment in category C of the list in Annex I.

Member States shall bring these specifications and type-approval procedures into force after expiry of the procedure provided for by Directive 83/189/EEC.

Article 9

Member States shall provide the Commission at the end of each year with a report allowing it to monitor compliance with the provisions of Articles 2, 3, 4, 6 and 7.

An outline of the report is attached as Annex II.

Article 10

The provisions of this Directive shall be without prejudice to the provisions of the instruments of accession of Spain and Portugal, and in particular Articles 48 and 208 of the Act of Accession.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 16 May 1988

For the Commission

Peter SUTHERLAND

Member of the Commission

ANNEX I

List of terminal equipment referred to in Article 8

	<i>Category</i>
Additional telephone set; private automatic branch exchanges (PABXs):	A
Modems:	A
Telex terminals:	B
Data-transmission terminals:	B
Mobile telephones:	B
Receive-only satellite stations not reconnected to the public network of a Member State:	B
First telephone set:	C
Other terminal equipment:	C

ANNEX II

Outline of the report provided for in Article 9

Implementation of Article 2

1. Terminal equipment for which legislation is being or has been modified.

By category of terminal equipment:

- date of adoption of the measure or,
- date of introduction of the bill or,
- date of entry into force of the measure.

2. Terminal equipment still subject to special or exclusive rights:

- type of terminal equipment and rights concerned.

Implementation of Article 3

- terminal equipment, the connection and/or commissioning of which has been restricted,
- technical qualifications required, giving reference of their publication.

Implementation of Article 4

- references of publications in which the physical characteristics are specified,
- number of existing network termination points,
- number of network termination points now accessible.

Implementation of Article 6

- independent body or bodies appointed.

Implementation of Article 7

- measures put into force, and
- number of terminated contracts.

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 30 June 1988

on the development of the common market for telecommunications services and equipment up to 1992

(88/C 257/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Single European Act,

Having regard to the green paper on the development of the common market for telecommunications services and equipment published on 30 June 1987 and the communication on the implementation of the green paper up to 1992 dated 9 February 1988,

Having regard to the opinions delivered by the Economic and Social Committee ⁽¹⁾,

Having regard to the draft from the Commission,

Whereas the strengthening of European telecommunications has become one of the major conditions for achieving the internal market for goods and services in 1992;

Whereas, as set out in the green paper, the current wave of technical innovation resulting from the convergence of telecommunications and computer technology has led to reviews in all Member States, and at world level, of the future organization of the telecommunications sector and its necessary regulatory adjustment;

Whereas the administrations or private operating agencies recognized in the Community and providing public telecommunications services are hereinafter referred to as the 'telecommunications administrations';

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;

Whereas the substantial progress made with the Community's 1984 action programme for implementing a common telecommunications policy has laid a solid foundation for the implementation of a common approach in telecommunications;

Whereas the social, regional, industrial and trade aspects must be kept carefully in mind during the progressive implementation of such an approach;

Whereas the Community must adopt measures with the aim of progressively establishing the internal market, over a period expiring on 31 December 1992; whereas, to this end, the communication of 9 February 1988 defined an action plan for the progressive achievement of a competition-oriented Community-wide telecommunications market and the strengthening of European competitiveness;

Whereas the overriding objective must be to develop the conditions for the market to provide European users with a greater variety of telecommunications services, of better quality and at lower cost, affording Europe the

⁽¹⁾ OJ No C 356, 31. 12. 1987, p. 46 and OJ No C 175, 4. 7. 1988, p. 36.

full internal and external benefits of a strong telecommunications sector and the development in the Community of a strong telecommunications infrastructure, industry and efficient services,

CONSIDERS THE FOLLOWING POINTS AS MAJOR POLICY GOALS IN THE TELECOMMUNICATIONS POLICY:

1. creating or ensuring Community-wide network integrity as one of the essential elements for a common market in telecommunications services and equipment, working on the principle of full interconnectivity between all public networks concerned in the Community;
2. 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;
3. promoting the creation of Europe-wide services according to market requirements and appropriate social needs, to enable European users to benefit from a wider range of better and cheaper telecommunication services, so that Europe can reap the internal and external benefits of a strong telecommunications sector.

In addition to appropriate measures in the area of standardization, this approach should include definition of common tariff principles and the encouragement of cooperation between network operators and others, as far as compatible with Community competition rules; one of the aims in this should include definition of efficient pricing principles throughout the Community while ensuring general service for all;

4. developing further an open, Community-wide market for terminal equipment; for this purpose, reaching agreement quickly on full mutual recognition of type-approval for terminal equipment, on the basis of the rapid development of common European conformity specifications;
5. developing a common market on which telecommunications administrations and other suppliers can compete on an equal footing; to this end, the following are particularly appropriate:

— clear separation of regulatory and operational duties, with due regard for the situation in each individual Member State;

— application of the relevant rules of the Treaty, notably competition rules, to telecommunications administrations and private providers;

— the creation of a transparent fiscal environment;

— achievement of full opening of the markets for telecommunications supplies and works as part of the completion of the internal market;

6. continuing Community measures regarding common standards in the telecommunications sector. The establishment of the European Telecommunications Standards Institute (ETSI) is warmly welcomed in this context. However, further efforts are needed to ensure conformity with the general principles of Community standardization policy, taking into account the achievements of European cooperation in the field of telecommunications and the special characteristics of the telecommunications sector;
7. stimulating European co-operation at all levels, as far as compatible with Community competition rules, and particularly in the field of research and development, in order to secure a strong European presence on the telecommunications markets and to ensure the full participation of all Member States;
8. creating a social environment for the future development of telecommunications, in line with the Community's overall aim of improving the economic and social situation by extending common policies.

Sustaining the dialogue between the social partners and undertaking in-depth analysis is particularly important in this context, to secure the conditions for developing social consensus concerning the transformation of working conditions and lifestyles resulting from the new telecommunications technologies.

In addition, given the changing requirements, steps must be taken to see that workers have the right skills, to protect personal data and to provide for the individual's access, through the communications media, to an environment significantly richer in information than before;

9. integrating the less-favoured areas of the Community fully into the emerging Community-wide market making full use of existing funds. This is one of the aims of the STAR programme, which is designed to provide these areas with high technology telecommunication networks and equipment as well as developing the endogenous potential, especially in the field of services linked to this sector, thus making the best use of the growth potential of telecommunications.

This should include examination, in particular taking into account the experience of the STAR programme, and within the context of overall Community priorities, of the case for further extension of funds available for this purpose, with a view to narrowing the gap in economic development which still separates the less-favoured areas from the more prosperous areas of the Community;

10. working out a common position on satellite communications, so that this new information medium can develop in a favourable environment, taking account of the general rules of operation and exploitation of the network environment, as well as the competition rules of the Treaty and existing international commitments of Member States;
11. fully taking into account the external aspects of Community measures on telecommunication, and working out, as appropriate, common positions on international telecommunication problems.

There should be prior Community co-ordination, according to procedures agreed, for the purpose of defining not only key negotiating positions of concern to the Community in the international organizations dealing with telecommunications, in particular the various conferences of the International Telecommunication Union, but also a common position on those aspects of the Uruguay Round which cover telecommunications,

NOTES WITH SATISFACTION:

that substantial progress has been made with the Community's 1984 action programme approved at the Council's meeting of 17 December 1984 for implementing a common telecommunications policy, and applying Community law with the aim of creating a Community-wide market, particularly in the following areas:

- establishment of standards, and steps towards the mutual recognition of type-approval for terminal equipment;

- development of advanced telecommunications technologies, with the launching of the RACE programme;

- access to modern telecommunications for the less-favoured areas of the Community, with the launching of the STAR programme;

- coordination of technical plans and strategies for the introduction of new services, in particular the Integrated Services Digital Network (ISDN), and pan-European digital public mobile communications;

GIVES ITS GENERAL SUPPORT:

to the objectives of the action programme set out in the communication of 9 February 1988, which relates to the opening of the common telecommunications market to competition up to 1992, having regard also to Articles 8A and 8C of the Treaty, introduced by the Single European Act, and to the strengthening of European competitiveness, while safeguarding the public service goals of telecommunications administrations.

In this context and in the spirit of the conclusions of the Council of 17 December 1984, under which it was established, importance is accorded to the role played by the Senior Officials Group on Telecommunications (SOG-T);

INVITES THE COMMISSION:

to propose, where required, the measures necessary for pursuing the achievement of these goals, to be taken in priority areas on the basis of the appropriate Community procedures, in particular for the creation of the common market for telecommunications services and equipment and taking appropriate account also of the external dimension of these measures;

INTENDS:

to meet henceforth periodically on telecommunications issues, in order to pursue, together with the European Parliament, the Commission and the Economic and Social Committee, the rapid completion of the internal market for telecommunications services and equipment up to 1992, according to the goals set out and bearing in mind Article 8A of the Treaty and any adjustments and derogations which may be agreed upon on the basis of Article 8C of the Treaty.

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 27 April 1989

on standardization in the field of information technology and telecommunications

(89/C 117/01)

THE COUNCIL HEREBY INVITES:

— the Member States:

to nominate without delay the national standardization bodies which will participate in the procedures for the adoption of ETSI (European Telecommunication Standard Institute) standards in so far as they have not yet done so;

— ETSI and Cen-Cenelec: (European Committee for Standardization — European Committee for Electrotechnical Standardization):

- (a) to quickly conclude a cooperation agreement within the ITSTC (Information Technology Steering Committee) framework;
- (b) to consult with a view to forming a single European standardization in which each of the present standardization bodies would preserve its individual identity,

— the administrations, the public network operators, the industry, research institutes and users who are members of ETSI:

- (a) to make available to ETSI the experts required to carry out its programme of work;
- (b) to ensure that any pre-standardization and standardization work is carried out at a common level from the earliest possible stage in the work,

— the Commission:

- (a) to contribute to the coherent development of ETSI and lend it its support, in particular in the programme of work related to the Community telecommunications policy;
- (b) to report to it as and when necessary on the operation and progress made by ETSI ⁽¹⁾.

⁽¹⁾ The proceedings of CEN-Cenelec are the subject of Commission reports in accordance with Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications (OJ No L 36, 7. 2. 1987, p. 31).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION
of 27 April 1989
on high-definition television
(89/337/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas high-definition television (HDTV) is of strategic importance for the European consumer electronics industry and for the European television and film industries;

Whereas a single world standard for the origination and exchange of HDTV programmes and films is urgently required;

Whereas European industry has developed, within the Eureka framework, a suitable proposal for such a single world production standard;

Whereas prototype equipment built to this standard was successfully demonstrated at the International Broadcasting Convention in September 1988 at Brighton;

Whereas 1992 may be set as a target date for the launch of commercial equipment on the market and the beginning of operational HDTV services;

Whereas the success of the launch of commercial HDTV will depend not only on the availability of appropriate hardware but also on the European film and television production industry achieving the necessary capability and experience;

Whereas a substantial promotion campaign needs to be launched immediately to prepare professional users and the general television viewing public for such a launch;

Whereas relevant decision-makers and other concerned parties should also be kept fully aware of developments relating to European HDTV;

Whereas there is an urgent requirement to prepare a strategy and action plan for the launch of Europe-wide HDTV services;

Whereas it is of great importance that all Member States participate in these activities;

Whereas these initiatives should lead to closer cooperation at Community level between industry (the consumer and professional electronics industry and the film and television production industry) and service providers (terrestrial broadcasters, satellite television stations, cable operators and cinema distributors);

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

HAS DECIDED AS FOLLOWS:

Article 1

The following objectives are hereby adopted as the basis of a comprehensive strategy for the introduction of high-definition television (HDTV) services in Europe:

⁽¹⁾ OJ No C 37, 14. 2. 1989, p. 5.

⁽²⁾ OJ No C 120, 16. 4. 1989.

⁽³⁾ Opinion delivered on 26 April 1989 (not yet published in the Official Journal).

Objective 1

To make every effort to ensure that the European industry develops in time all the technology, components and equipment required for the launching of HDTV services.

Objective 2

To promote the adoption of the European proposal based on the 1 250 lines, 50 complete frames per second progressive scanning parameters, as the single world standard for the origination and exchange of HDTV programme material.

Objective 3

To promote the widest use of the European HDTV system throughout the world.

Objective 4

To promote the introduction, as soon as possible — and in accordance with a suitable timetable from 1992 — of HDTV services in Europe.

Objective 5

To make every effort to ensure that the European film and television production industry achieves the capability, experience and dimension required to occupy a competitive position on the HDTV world market and to allow the Member States to make their own cultural contribution.

Article 2

In order to attain the objectives referred to in Article 1, an action plan for the introduction of HDTV shall be prepared in close coordination at Community level between the Commission and the Member States, where appropriate

through national mechanisms, in consultation, in particular, with:

- terrestrial broadcasters,
- satellite television broadcasters and distributors,
- cable operators,
- professional and consumer electronics equipment manufacturers,
- the television and film production industry,
- audiovisual and higher education technological institutes,
- consumer organizations,

throughout the Community, and throughout Europe as a whole, in close coordination on a complementary basis with the Eureka HDTV project participants and coordinators.

Article 3

On the basis of the results of the consultations referred to in Article 2 and on a proposal from the Commission, the Council shall examine an action plan for the introduction of HDTV services. This action plan should also include mechanisms allowing European third countries to participate.

Done at Luxembourg, 27 April 1989.

For the Council

The President

J. BARRIONUEVO PEÑA

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 3 May 1989

on the approximation of the laws of the Member States relating to electromagnetic compatibility

(89/336/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas it is necessary to adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

Whereas Member States are responsible for providing adequate protection for radiocommunications and the devices, apparatus or systems whose performance may be degraded by electromagnetic disturbance produced by electrical and electronic apparatus against the degradation caused by such disturbances;

Whereas Member States are also responsible for ensuring that electric energy distribution networks are protected from electromagnetic disturbance which can affect them and, consequently, equipment fed by them;

Whereas Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the recognition of type-approval for telecommunications terminal equipment ⁽⁴⁾ covers in particular the signals emitted by such equipment when it is operating normally and the protection of public telecommunications networks from harm; whereas it is

therefore still necessary to provide adequate protection for these networks, including the equipment connected to them, against temporary disturbances caused by signals of an accidental nature that may be emitted by this equipment;

Whereas in some Member States, mandatory provisions define in particular the permissible electromagnetic disturbance levels that this equipment is liable to cause and its degree of immunity to such signals; whereas these mandatory provisions do not necessarily lead to different protection levels from one Member State to another but do, by their disparity, hinder trade within the Community;

Whereas the national provisions ensuring such protection must be harmonized in order to guarantee the free movement of electrical and electronic apparatus without lowering existing and justified levels of protection in the Member States;

Whereas Community legislation as it stands at present provides that, notwithstanding one of the fundamental rules of the Community, namely the free movement of goods, barriers to intra-Community trade resulting from disparities in national laws on the marketing of products have to be accepted in so far as those provisions may be recognized as necessary to satisfy essential requirements; whereas the harmonization of laws in the case in point must therefore be confined to those provisions needed to comply with the protection requirements relating to electromagnetic compatibility; whereas these requirements must replace the corresponding national provisions;

Whereas this Directive therefore defines only protection requirements relating to electromagnetic compatibility; whereas, to facilitate proof of conformity with these requirements, it is important to have harmonized standards at European level concerning electromagnetic compatibility, so that products complying with them may

⁽¹⁾ OJ No C 322, 2. 12. 1987, p. 4.

⁽²⁾ OJ No C 262, 10. 10. 1988, p. 82 and OJ No C 69, 20. 3. 1989, p. 72.

⁽³⁾ OJ No C 134, 24. 5. 1988, p. 2.

⁽⁴⁾ OJ No L 217, 5. 8. 1986, p. 21.

be assumed to comply with the protection requirements ; whereas these standards harmonized at European level are drawn up by private bodies and must remain non-binding texts ; whereas for that purpose the European Committee for Electrotechnical Standardization (CENELEC) is recognized as the competent body in the field of this Directive for the adoption of harmonized standards in accordance with the general guidelines for cooperation between the Commission and the European Committee for Standardization (CEN) and CENELEC signed on 13 November 1984 ; whereas, for the purposes of this Directive, a harmonized standard is a technical specification (European standard or harmonization document) adopted by CENELEC upon a remit from the Commission in accordance with the provisions of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽¹⁾, as last amended by Directive 88/182/EEC ⁽²⁾, and pursuant to the abovementioned general guidelines ;

Whereas, pending the adoption of harmonized standards for the purposes of this Directive, the free movement of goods should be facilitated by accepting, as a transitional measure, on a Community level, apparatus complying with the national standards adopted, in accordance with the Community inspection procedure ensuring that such national standards meet the protection objectives of this Directive ;

Whereas the EC declaration of conformity concerning the apparatus constitutes a presumption of its conformity with this Directive ; whereas this declaration must take the simplest possible form ;

Whereas, for apparatus covered by Directive 86/361/EEC, in order to obtain efficient protection as regards electromagnetic compatibility, compliance with the provisions of this Directive should nevertheless be certified by marks or certificates of conformity issued by bodies notified by the Member States ; whereas, to facilitate the mutual recognition of marks and certificates issued by these bodies, the criteria to be taken into consideration for appointing them should be harmonized ;

Whereas it is nevertheless possible that equipment might disturb radiocommunications and telecommunications networks ; whereas provision should therefore be made for a procedure to reduce this hazard ;

Whereas this Directive applies to the appliances and equipment covered by Directives 76/889/EEC ⁽³⁾ and

76/890/EEC ⁽⁴⁾ which relate to the approximation of the laws of the Member States relating to radio interference caused by electrical household appliances, portable tools and similar equipment and to the suppression of radio interference with regard to fluorescent lighting luminaires fitted with starters ; whereas those Directive should therefore be repealed,

HAS ADOPTED THIS DIRECTIVE :

Article 1

For the purposes of this Directive :

1. 'apparatus' means all electrical and electronic appliances together with equipment and installations containing electrical and/or electronic components.
2. 'electromagnetic disturbance' means any electromagnetic phenomenon which may degrade the performance of a device, unit of equipment or system. An electromagnetic disturbance may be electromagnetic noise, an unwanted signal or a change in the propagation medium itself.
3. 'immunity' means the ability of a device, unit of equipment or system to perform without degradation of quality in the presence of an electromagnetic disturbance.
4. 'electromagnetic compatibility' means the ability of a device, unit of equipment or system to function satisfactorily in its electromagnetic environment without introducing intolerable electromagnetic disturbances to anything in that environment.
5. 'competent body' means any body which meets the criteria listed in Annex II and is recognized as such.
6. 'EC type-examination certificate' is a document in which a notified body referred to in Article 10 ⁽⁶⁾ certifies that the type of equipment examined complies with the provisions of this Directive which concern it.

Article 2

1. This Directive applies to apparatus liable to cause electromagnetic disturbance or the performance of which is liable to be affected by such disturbance.

It defines the protection requirements and inspection procedures relating thereto.

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ OJ No L 81, 26. 3. 1988, p. 75.

⁽³⁾ OJ No L 336, 4. 12. 1976, p. 1.

⁽⁴⁾ OJ No L 336, 4. 12. 1976, p. 22.

2. In so far as protection requirements specified in this Directive are harmonized, in the case of certain apparatus, by specific Directives, this Directive shall not apply or shall cease to apply with regard to such apparatus or protection requirements upon the entry into force of those specific Directives.

3. Radio equipment used by radio amateurs within the meaning of Article 1, definition 53, of the radio regulations in the International Telecommunications Convention, shall be excluded from the scope of this Directive, unless the apparatus is available commercially.

Article 3

Member States shall take all appropriate measures to ensure that apparatus as referred to in Article 2 may be placed on the market or taken into service only if it complies with the requirements laid down by this Directive when it is properly installed and maintained and when it is used for the purposes for which it is intended.

Article 4

The apparatus referred to in Article 2 shall be so constructed that :

- (a) the electromagnetic disturbance it generates does not exceed a level allowing radio and telecommunications equipment and other apparatus to operate as intended ;
- (b) the apparatus has an adequate level of intrinsic immunity of electromagnetic disturbance to enable it to operate as intended.

The principal protection requirements are set out in Annex III.

Article 5

Member States shall not impede for reasons relating to electromagnetic compatibility the placing on the market and the taking into service on their territory of apparatus covered by this Directive which satisfies the requirements thereof.

Article 6

1. The requirements of this Directive shall not prevent the application in any Member State of the following special measures :

- (a) measures with regard to the taking into service and use of the apparatus taken for a specific site in order to overcome an existing or predicted electromagnetic compatibility problem ;
- (b) measures with regard to the installation of the apparatus taken in order to protect the public telecommunications networks or receiving or transmitting stations used for safety purposes.

2. Without prejudice to Directive 83/189/EEC, Member States shall inform the Commission and the other Member States of the special measures taken pursuant to paragraph 1.

3. Special measures that have been recognized as justified shall be contained in an appropriate notice made by the Commission in the *Official Journal of the European Communities*.

Article 7

1. Member States shall presume compliance with the protection requirements referred to in Article 4 in the case of apparatus which is in conformity ;

- (a) with the relevant national standards transposing the harmonized standards, the reference numbers of which have been published in the *Official Journal of the European Communities*. Member States shall publish the reference numbers of such national standards ;
- (b) or with the relevant national standards referred to in paragraph 2 in so far as, in the areas covered by such standards, no harmonized standards exist.

2. Member States shall communicate to the Commission the texts of their national standards, as referred to in paragraph 1 (b), which they regard as complying with the protection requirements referred to in Article 4. The Commission shall forward such texts forthwith to the other Member States. In accordance with the procedure provided for in Article 8 (2), it shall notify the Member States of those national standards in respect of which there is a presumption of conformity with the protection requirements referred to in Article 4.

Member States shall publish the reference numbers of those standards. The Commission shall also publish them in the *Official Journal of the European Communities*.

3. Member States shall accept that where the manufacturer has not applied, or has applied only in part, the standards referred to in paragraph 1, or where no such standards exist, apparatus shall be regarded as satisfying the protection requirements has been certified by the means of attestation provided for in Article 10 (2).

Article 8

1. Where a Member State or the Commission considers that the harmonized standards referred to in Article 7 (1) (a) do not entirely satisfy the requirements referred to in Article 4, the Member State concerned or the Commission shall bring the matter before the Standing Committee set up by Directive 83/189/EEC, hereinafter referred to as 'the Committee', giving the reasons therefor. The Committee shall deliver an opinion without delay.

Upon receipt of the Committee's opinion, the Commission shall inform the Member States as soon as possible whether or not it is necessary to withdraw in whole or in part those standards from the publications referred to in Article 7 (1) (a).

2. After receipt of the communication referred to in Article 7 (2), the Commission shall consult the Committee. Upon receipt of the latter's opinion, the Commission shall inform the Member States as soon as possible whether or not the national standard in question shall enjoy the presumption of conformity and, if so, that the references thereof shall be published nationally.

If the Commission or a Member State considers that a national standard no longer satisfies the necessary conditions for presumption of compliance with the protection requirements referred to in Article 4, the Commission shall consult the Committee, which shall give its opinion without delay. Upon receipt of the latter's opinion, the Commission shall inform the Member States as soon as possible whether or not the standard in question shall continue to enjoy a presumption of conformity and, if not, that it must be withdrawn in whole or in part from the publications referred to in Article 7 (2).

Article 9

1. Where a Member State ascertains that apparatus accompanied by one of the means of attestation provided for in Article 10 does not comply with the protection requirements referred to in Article 4, it shall take all appropriate measures to withdraw the apparatus from the market, prohibit its placing on the market or restrict its free movement.

The Member State concerned shall immediately inform the Commission of any such measure, indicating the reasons for its decision and, in particular, whether non-compliance is due to:

- (a) failure to satisfy the protection requirements referred to in Article 4, where the apparatus does not meet the standards referred to in Article 7 (1);
- (b) incorrect application of the standards referred to in Article 7 (1);
- (c) shortcomings in the standards referred to in Article 7 (1) themselves.

2. The Commission shall consult the parties concerned as soon as possible. If the Commission finds, after such consultations, that the action is justified, it shall forthwith so inform the Member State that took the action and the other Member States.

Where the decision referred to in paragraph 1 is attributed to shortcomings in the standards, the Commission, after consulting the parties, shall bring the matter before the Committee within two months if the Member State which has taken the measures intends to uphold them, and shall initiate the procedures referred to in Article 8.

3. Where apparatus which does not comply is accompanied by one of the means of attestation referred to in Article 10, the competent Member State shall take

appropriate action against the author of the attestation and shall inform the Commission and the other Member States thereof.

4. The Commission shall ensure that the Member States are kept informed of the progress and outcome of this procedure.

Article 10

1. In the case of apparatus for which the manufacturer has applied the standards referred to in Article 7 (1), the conformity of apparatus with this Directive shall be certified by an EC declaration of conformity issued by the manufacturer or his authorized representative established within the Community. The declaration shall be held at the disposal of the competent authority for ten years following the placing of the apparatus on the market.

The manufacturer or his authorized representative established within the Community shall also affix the EC conformity mark to the apparatus or else to the packaging, instructions for use or guarantee certificate.

Where neither the manufacturer nor his authorized representative is established within the Community, the above obligation to keep the EC declaration of conformity available shall be the responsibility of the person who places the apparatus on the Community market.

The provisions governing the EC declaration and the EC mark are set out in Annex I.

2. In the case of apparatus for which the manufacturer has not applied, or has applied only in part, the standards referred to in Article 7 (1) or failing such standards, the manufacturer or his authorized representative established within the Community shall hold at the disposal of the relevant competent authorities, as soon as the apparatus is placed on the market, a technical construction file. This file shall describe the apparatus, set out the procedures used to ensure conformity of the apparatus with the protection requirements referred to in Article 4 and include a technical report or certificate, one or other obtained from a competent body.

The file shall be held at the disposal of the competent authorities for ten years following the placing of the apparatus on the market.

Where neither the manufacturer nor his authorized representative is established within the Community, this obligation to keep a technical file available shall be the responsibility of the person who places the apparatus on the Community market.

The conformity of apparatus with that described in the technical file shall be certified in accordance with the procedure laid down in paragraph 1.

Member States shall presume, subject to the provisions of this paragraph, that such apparatus meets the protection requirements referred to in Article 4.

3. Where the standards referred to in Article 7 (1) are not yet in existence, and without prejudice to the provisions of paragraph 2 of this Article, the apparatus concerned may, on a transitional basis until 31 December 1992 at the latest, continue to be governed by the national arrangements in force on the date of adoption of this Directive, subject to the compatibility of such arrangements with the provisions of the Treaty.

4. Conformity of apparatus covered by Article 2 (2) of Directive 86/361/EEC with the provisions of this Directive shall be certified in accordance with the procedure laid down in paragraph 1 once the manufacturer or his authorized representative established within the Community has obtained an EC type-examination certificate concerning this apparatus issued by one of the notified bodies referred to in paragraph 6 of this Article.

5. The conformity of apparatus designed for the transmission of radiocommunications, as defined in the International Telecommunication Union Convention, with the provisions of this Directive shall be certified in accordance with the procedure laid down in paragraph 1 once the manufacturer or his authorized representative established within the Community has obtained an EC type-examination certificate concerning this apparatus issued by one of the notified bodies referred to in paragraph 6 below.

This provision shall not apply to the above apparatus where it is designed and intended exclusively for radio amateurs within the meaning of Article 2 (3).

6. Each Member State shall notify the Commission and the other Member States of the competent authorities referred to in this Article and of the bodies responsible for issuing the EC type-examination certificates referred to in paragraphs 4 and 5. The Commission shall publish a list of those authorities and bodies, for information purposes, in the *Official Journal of the European Communities* and shall ensure that the list is updated.

Such notification shall state whether those bodies are competent for all apparatus covered by this Directive or whether their responsibility is limited to certain specific areas.

Member States shall apply the criteria listed in Annex II for the assessment of the bodies to be notified.

Bodies which comply with the assessment criteria fixed by the relevant harmonized standards shall be presumed to comply with the aforementioned criteria.

A Member State which has notified a body must withdraw approval if it finds that the body no longer meets the criteria listed in Annex II. It shall forthwith inform the Commission and the other Member States thereof.

Article 11

Directive 76/889/EEC and Directive 76/890/EEC shall be repealed as from 1 January 1992.

Article 12

1. By 1 July 1991, Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall inform the Commission thereof.

They shall apply these provisions as from 1 January 1992.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 3 May 1989.

For the Council
The President
 P. SOLBES

*ANNEX I***1. EC declaration of conformity**

The EC declaration of conformity must contain the following:

- description of the apparatus to which it refers,
- reference to the specifications under which conformity is declared, and, where appropriate, to the national measures implemented to ensure the conformity of the apparatus with the provisions of the Directive,
- identification of the signatory empowered to bind the manufacturer or his authorized representative,
- where appropriate, reference to the EC type-examination certificate issued by a notified body.

2. EC conformity mark

- The EC conformity mark shall consist of the letters CE as set out below and the figures of the year in which the mark was affixed.



- This mark should, where appropriate, be accompanied by the distinctive letters used by the notified body issuing the EC type-examination certificate.
- Where apparatus is the subject of other Directives providing for the EC conformity mark, the affixing of the EC mark shall also indicate conformity with the relevant requirements of those other Directives.

*ANNEX II***Criteria for the assessment of the bodies to be notified**

The bodies designated by the Member States must fulfil the following minimum conditions :

1. availability of personnel and of the necessary means and equipment ;
2. technical competence and professional integrity of personnel ;
3. independence, in carrying out the tests, preparing the reports, issuing the certificates and performing the verification function provided for in this Directive, of staff and technical personnel in relation to all circles, groups or persons directly or indirectly concerned with the product in question ;
4. maintenance of professional secrecy by personnel ;
5. possession of civil liability insurance unless such liability is covered by the State under national law.

Fulfilment of the conditions under points 1 and 2 shall be verified at intervals by the competent authorities of the Member States.

*ANNEX III***Illustrative list of the principal protection requirements**

The maximum electromagnetic disturbance generated by the apparatus shall be such as not to hinder the use of in particular the following apparatus :

- (a) domestic radio and television receivers
- (b) industrial manufacturing equipment
- (c) mobile radio equipment
- (d) mobile radio and commercial radiotelephone equipment
- (e) medical and scientific apparatus
- (f) information technology equipment
- (g) domestic appliances and household electronic equipment
- (h) aeronautical and marine radio apparatus
- (i) educational electronic equipment
- (j) telecommunications networks and apparatus
- (k) radio and television broadcast transmitters
- (l) lights and fluorescent lamps.

Apparatus, and especially the apparatus referred to in (a) to (l), should be constructed in such a way that it has an adequate level of electromagnetic immunity in the usual electromagnetic compatibility environment where the apparatus is intended to work so as to allow its unhindered operation taking into account the levels of disturbance generated by apparatus complying with the standards laid down in Article 7.

The information required to enable use in accordance with the intended purpose of the apparatus must be contained in the instructions accompanying the apparatus.

COUNCIL RESOLUTION

of 18 July 1989

on the strengthening of the coordination for the introduction of the Integrated Services Digital Network (ISDN) in the European Community up to 1992

(89/C 196/04)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the proposal from the Commission,

Whereas recommendation 86/659/EEC⁽¹⁾ provided administrations and the recognized private operating agencies offering telecommunications services (hereinafter referred to as 'telecommunication administrations') with a focal point for ISDN implementation planning; whereas reported plans demonstrate a recognition of the value of compliance with the said recommendation's programme;

Whereas the telecommunications administrations have indicated their intention to strengthen the abovementioned programme by the recent signing of a Memorandum of Understanding for the realization of a Europe-wide ISDN system as from 1992;

Whereas the Green Paper of 30 June 1987⁽²⁾ and the communication of 9 February 1988 on the implementation of the Green Paper⁽³⁾ have defined policy and advanced a schedule of measures towards the completion of the common market in telecommunications;

Whereas resolution 88/C 257/01⁽⁴⁾ set the political basis for the development of the common market for telecommunications services and equipment up to 1992;

Whereas the communication from the Commission of 31 October 1988⁽⁵⁾ included the first annual progress report concerning the implementation of recommendation 86/659/EEC;

Whereas ISDN has gained substantial credibility in the Community with users, industry and telecommunications administrations;

Whereas ISDN is beginning to fulfil its promise of developing into a new basis for the Community's telematics market of the early nineties;

Whereas, despite these positive achievements, the major objectives of recommendation 86/659/EEC have been achieved only in part;

Whereas substantial problems remain concerning standardization and the further coordination of the introduction of ISDN; whereas they must be resolved;

Whereas, in particular, the Memorandum of Understanding on pan-European Mobile Communications is already in existence, and should be taken into account in the coming ISDN implementation with a view to ensuring the necessary integration;

Whereas the Commission has proposed a number of measures in order to remedy the current deficiencies;

Whereas these proposals have been discussed in the Senior Officials Group on Telecommunications (SOGT) and at the informal meeting of Telecommunications Ministers in Athens on 5 November 1988,

(1) Council recommendation 86/659/EEC of 22 December 1986 on the coordinated introduction of the Integrated Services Digital Network (ISDN) in the European Community (OJ No L 382, 31. 12. 1986, p. 36).

(2) Towards a dynamic European Economy — Green Paper on the development of the common market for telecommunications services and equipment (communication from the Commission, COM(87) 290 of 30 June 1987).

(3) Towards a competitive Community-wide telecommunications market in 1992 — implementing the Green Paper on the development of the common market for telecommunications services and equipment (communication from the Commission, COM(88) 48 of 9 February 1988).

(4) Council resolution 88/C 257/01 of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 (OJ No C 257, 4. 10. 1988, p. 1).

(5) Communication from the Commission concerning the implementation of recommendation 86/659/EEC — first annual progress report from the Commission to the European Parliament (COM(88) 589 of 31 October 1988).

RECOGNIZES THE EXISTENCE OF A UNIQUE OPPORTUNITY TO CREATE THE CONDITIONS FOR:

1. the availability of a sufficient set of truly Europe-wide compatible ISDN services by 1992, building on the initial phase of introduction of ISDN;
2. the end-to-end compatibility of those services and the availability of low cost terminals, which can be connected to, and operated with, the ISDN implementation in any Member State without any modification (terminal portability);
3. the optimization of the competitiveness of the European terminal equipment industry, including PABXs (private automatic branch exchanges) and the full integration of the less-favoured regions of the Community in the emerging ISDN, by appropriate measures, in accordance with the Star programme,

CONSIDERS THE FOLLOWING MEASURES AS NECESSARY:

4. acceleration of the establishment of common specifications, based on European standards taking due account of world-wide standardization, for equipment and interfaces at the European level, by concentration and good use of available resources within the framework of the European standardization system and, in particular, of the European Telecommunications Standards Institute (ETSI);
5. seeking of a commitment from manufacturers to contribute, within the framework of European standardization and as rapidly as possible, to the development of European standards and common specifications for terminals and PABXs; such standards and specifications should make it possible to guarantee end-to-end compatibility and terminal portability;
6. subject to the procedures of the framework directive once adopted, examination of the applicability of the relevant aspects of open network provision (ONP) to ISDN;
7. further discussion at European level regarding user privacy protection requirements and requirements concerning the security of communications in the context of features of new services, in accordance with the resolution of the European Parliament of 12 December 1986 on recommendation 86/659/EEC,

INVITES THE TELECOMMUNICATIONS ADMINISTRATIONS:

8. to implement the Memorandum of Understanding agreed between the telecommunications administrations ⁽¹⁾ on the provision of at least a minimum set of pan-European ISDN services and features and on the introduction of a common ISDN signalling system; telecommunications administrations should take account of Community competition rules, progress on standards and the objective of the creation of an open Community-wide market for telecommunications services for all market participants, particularly for value-added services; information on the implementation of this Memorandum should be communicated to the Commission in time ⁽²⁾,

INVITES THE COMMISSION AND THE TELECOMMUNICATIONS ADMINISTRATIONS:

9. to undertake all necessary efforts to strengthen the further coordination for the introduction of ISDN in the European Community;
10. to intensify the consultations between the telecommunications administrations of all Member States on the implementation of the coming period of ISDN specification work and implementation, with the objective of the opening of a set of pan-European commercial services available before 31 December 1992,

INVITES THE MEMBER STATES:

11. to promote the provision of the experts necessary for drawing up European standards as the basis for the common specifications for the ISDN, in particular in the framework of the ETSI and promote the creation of the necessary conditions, in particular with regard to training,

⁽¹⁾ Opened for signature at the meeting of the European Conference of Postal and Telecommunications Administrations (CEPT) telecommunications commission in London on 6 April 1989.

⁽²⁾ Without prejudice to notification as provided for by Regulation No 17 implementing Articles 85 and 86 of the Treaty (OJ No 13, 21. 2. 1962, p. 204/62), as last amended by the Act of Accession of Spain and Portugal.

INVITES THE COMMISSION:

12. to invite the Directors-General of the Telecommunications Administrations to take part in meetings with the Commission, when appropriate, in order to discuss questions and problems which may arise concerning the coordination of the introduction of ISDN, in particular aspects of pan-European services;
 13. to issue mandates to ETSI in addition to the adopted work programme as necessary and appropriate for the acceleration of the production of European standards as the basis for common ISDN specifications, in accordance with existing Community procedures;
 14. to consider, subject to the procedures of the framework directive once adopted, the applicability of the relevant aspects of the ONP to ISDN;
 15. to evaluate the feasibility of joint research and development deemed necessary for the implementation of common terminals for a single or for several ISDN services in the appropriate frameworks;
 16. to examine the possibilities for stepping up future support for the implementation of ISDN in the less-favoured regions of the Community, taking into account, in particular, the results of the evaluation of the Star programme.
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COUNCIL DECISION

of 7 December 1989

on the common action to be taken by the Member States with respect to the adoption of a single world-wide high-definition television production standard by the Plenary Assembly of the International Radio Consultative Committee (CCIR) in 1990

(89/630/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 116 thereof,

Having regard to the proposal from the Commission,

Whereas high-definition television (HDTV) is of strategic importance for the European consumer electronics industry, its supporting industrial base, and for the European television and film industries;

Whereas a single world-wide high-definition television standard for programme production and for the international exchange of programmes is urgently required for the development and commercialization of equipment and programme material;

Whereas European industry has developed, within the Eureka framework, the relevant parameters for such a single world-wide production standard and prototype equipment built to this standard has been successfully demonstrated at the September 1988 Brighton International Broadcasting Convention;

Whereas the European Council, at its December 1988 meeting in Rhodes, attached great importance to the promotion of the European HDTV system in the context of the Community's emerging audio-visual policy;

Whereas Decision 89/337/EEC⁽¹⁾ sets as a Community objective the promotion of a single world standard for the production of HDTV programmes;

Whereas the recommendation setting the basic parameter values for a single world-wide HDTV production standard will be prepared in particular at meetings of Study Group 11, in preparation for the Session in 1990 of the Plenary Assembly of the International Radio Consultative Committee (CCIR) which will attempt to adopt such a recommendation;

Whereas the Community has the status of observer within the International Telecommunications Union (ITU) and

participates in the activities of the CCIR; whereas it is nevertheless not in a position to participate in the adoption of the recommendation on HDTV by the CCIR;

Whereas HDTV is of economic importance and whereas with regard to HDTV production standard proposals being to be considered, the action of the Member States within the CCIR must be coordinated,

HAS DECIDED AS FOLLOWS:

Sole Article

1. The common action to be taken by the Member States with respect to the adoption of a single world-wide high-definition television production standard by the Plenary Assembly of the International Radio Consultative Committee in 1990 shall be based on the proposal arising from the Eureka 95 project.
2. The common action shall be carried out, after consultation between representatives of the Member States and the Commission, at the meeting to be held to prepare the recommendation concerning a single world-wide high-definition television production standard to be adopted by the Plenary Assembly of the International Radio Consultative Committee.
3. If the consultations referred to in paragraph 2 do not lead to agreement, the points of disagreement shall if necessary be brought before Council bodies.

Done at Brussels, 7 December 1989.

For the Council

The President

P. QUILES

⁽¹⁾ OJ No L 142, 25. 5. 1989, p. 1.

COUNCIL RESOLUTION

of 22 January 1990

concerning trans-European networks

(90/C 27/05)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Considering the conclusions adopted in the field of trans-European networks by the European Council meeting in Strasbourg on 8 and 9 December 1989;

Considering that the process of the completion of an area without frontiers provided for in Article 8a of the Treaty has reached a stage of irreversibility;

Considering that citizens, businesses and administrations must be able to use communication infrastructures which enable them to encourage free movement within the Community;

Considering that the development of trade and the movement of persons and the requirements of economic and social cohesion may necessitate the improvement and extension of communication networks, including the creation of networks where none exist yet;

Considering that, in so far as infrastructures are currently planned and developed principally at national level, it is necessary to solve the problems of compatibility and inter-operability which may affect their efficiency, *inter alia*, by the development, where appropriate, of standards;

Considering that, in a certain number of sectors, infrastructure networks are provided by competing private sector operators, and that the Commission should take account of this in its proposals;

Considering that particular infrastructure projects need to be evaluated against firm criteria, including their economic viability, respect for the natural environment, the special attention which needs to be paid to the situation of the peripheral regions in the context of economic and social cohesion and the possible effects on free circulation;

Considering that Community projects which have already been adopted or are being implemented should not be impaired,

HEREBY ADOPTS THIS RESOLUTION:

1. The Council considers that special priority should be given, paying particular attention to situations arising at the Community's limits in the context of economic and social cohesion, to the development and inter-connection of trans-European networks, notably in the areas of air traffic control, energy distribution, transport infrastructure and in particular the most efficient surface communications links, and telecommunications, in particular the linking of the main Community conurbations by broad-band telecommunications networks, and the implementation of existing Community training programmes.

2. The Council invites the Commission to submit to it, before the end of 1990, a work programme and proposals for appropriate measures, taking into account the possibility of extending such action to the whole of the Community and without prejudice to the distribution of work among the various formations of the Council. The Commission will submit an initial progress report during the first half of 1990.

The Council notes that the Commission intends to organize its future work programme around the following points:

- verification as to whether Community intervention is justified or whether projects should rather be carried out by other public or private bodies,
- the establishment of a timetable for completion,
- the identification of any obstacles and shortcomings,
- the evaluation of financing problems,
- the provision, if needed, of a consultation procedure to precede the establishment of projects.

3. The Commission will convene, whenever necessary, a working party comprising the persons responsible designated by each Member State to coordinate the work on the realization of trans-European networks.

The Council considers that the preparation of this programme entails broad consultation with a view to drawing up the report which the Commission is to submit before the end of the first half of 1990.

COUNCIL RESOLUTION

of 28 June 1990

on the strengthening of the Europe-wide cooperation on radio frequencies, in particular with regard to services with a pan-European dimension

(90/C 166/02)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the proposal by the Commission,

Whereas the Council Resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 (*) has called for the promotion of the creation of Europe-wide services according to market requirements and appropriate social needs;

Whereas certain categories of radio-communication services are increasingly becoming an essential component of these services, and are particularly vital for citizens on the move in the Community;

Whereas such services require increasingly intensive use of the radio frequency spectrum and the limitation of the spectrum reserved for these services constitutes an acute problem;

Whereas the radio frequency spectrum is a scarce resource and there are other important demands on its use, such as use for government, defence and broadcasting purposes, including television as mentioned in Section 111 of Chapter 1 of the Radio Regulations annexed to the Convention of the International Telecommunications Union (ITU);

Whereas radio frequency usage in Europe is currently in accordance with the radio regulations of the ITU and there must be flexibility in taking account of national situations; whereas, however, there is an indispensable requirement for coordination at the European level, in particular in the field of the new public mobile communications systems and that of satellite applications;

Whereas agreement on common frequency bands for radio communications systems with pan-European characteristics is an essential basis for technical standardization in the field of radio equipment and the abovementioned resolution and the Council resolution of

27 April 1989 on standardization in the field of information technology and telecommunications (?) have recognized the importance of measures regarding common standards in the telecommunications sector;

Whereas common frequency bands are required in order to permit the use of equipment in different countries, to minimize coordination problems at frontiers and to facilitate the large production runs for equipment necessary to make European industry competitive on the world market;

Whereas the systems of frequency allocation in the Member States have developed historically and due account must be taken of international arrangements and mechanisms which have been established in the field of frequency planning;

Whereas this concerns in particular the international regulations and procedures established in this field by the ITU;

Whereas at the European level a coordinated approach to frequency allocation for Europe-wide systems is being developed within the framework of the European Conference of Postal and Telecommunications Administrations (CEPT);

Whereas given the growing complexity of market, technology and standards the determination of frequency band and spectrum allocation for services of Europe-wide dimension requires the opinions of all interested parties;

Whereas such Europe-wide consultation is indispensable to allow establishment of standards, development of equipment by European industry, and timely service introduction by the telecommunications organizations and other providers, particularly in the field of mobile and satellite communications;

Whereas coordination of radio frequencies must respect the principle of the separation of regulatory and operational duties;

(*) OJ No C 257, 4. 11. 1988, p. 1.

(?) OJ No C 117, 11. 5. 1989, p. 1.

Whereas the allocation of frequencies must therefore remain with the authorities charged with the management of the frequency spectrum, according to this principle;

Whereas the planning and allocation of the frequency spectrum for service providers should be subject to objective, transparent and non-discriminatory conditions and ensure equality of treatment opportunities taking account of the requirements of existing services, of different categories of users and of the protection of the essential interests of the security of Member States;

Whereas the most efficient use of the frequency spectrum which is a scarce natural resource, requires the timely opinions from service providers, industry, users and standards bodies in researching the frequencies best suited for future applications, in order to take full account of long-term market and industrial applications and the requirements of other users of the radio spectrum;

Whereas, therefore, the current mechanisms set up by CEPT should be equipped with the necessary resources to undertake a long-term analysis of frequency requirements, taking account of market demand, standards requirements and development of products and the requirements of other users of the radio spectrum;

Whereas such a framework should be able, taking account of the opinions of frequency experts from national authorities responsible for frequency management, telecommunications organizations, and other service providers, industry and users to identify, in particular, those frequencies best suited for services with pan-European characteristics and to forward recommendations to the regulatory authorities, or to the Community where appropriate;

Whereas such a framework would need close cooperation and interaction with the European Telecommunications Standards Institute (ETSI), in order to ensure the vital link between frequency planning and standards;

Whereas the CEPT has commenced and in some instances completed work in this area; whereas ETSI, for its part, has also started work in this area;

Whereas such a framework should also support long-term frequency planning at the European level and making recommendations for global shifts in frequency use, taking account of the fact that significant time may be needed to phase out or relocate existing uses, given the substantial investment in existing radiocommunications systems;

Whereas in such a framework Member States will be obliged to comply with Community law, in particular with the competition rules;

Whereas an appropriate involvement of the Commission of the European Communities in such a framework should be sought;

Whereas such a framework should facilitate the working-out of common positions at the international level concerning frequencies, in particular with regard to the ITU and its conferences on radio frequencies, in line with the resolution of 30 June 1988;

Whereas such a framework should draw on the experience of the existing coordination mechanisms of the CEPT, must be Europe-wide and be open to the opinions of any member of the categories set out above,

CONSIDERS THE FOLLOWING POINTS AS MAJOR POLICY GOALS IN THIS AREA:

1. strengthening European cooperation in the field of radio frequency coordination with the objective of providing for a sufficient frequency spectrum for new services, according to the needs of the European market and taking account of the requirements of existing services and of different categories of users;
2. working in particular towards the timely allocation of sufficient frequency resources to mobile and satellite applications while taking due account of the demands on the spectrum of other users;
3. promoting the most efficient use of the frequency spectrum by taking timely account of service and user requirements against the background of industrial development and the development of standards;
4. developing common European positions in relation to the use of the frequency spectrum concerning international frequency harmonization, in particular with regard to the ITU and its relevant administrative radio conferences, using mechanisms set up by CEPT;
5. in order to facilitate the achievement of these objectives, encouraging the further development of the framework of cooperation between frequency experts from national authorities responsible for frequency management, telecommunication organizations and other service providers, industry and users, developing the existing coordination mechanisms set up by the CEPT. Such a framework should:
 - be open to the opinions of any member of the categories mentioned above,

- provide a forum for common studies towards identifying the frequency spectrum most suited for services and applications, taking due account of market requirements, the development of products, and the needs of other users of the radio frequency spectrum,
- on this basis, work out in particular suitable frequencies for services with pan-European characteristics and forward, on request, appropriate recommendations to the regulatory authorities or to the Community, as appropriate,
- cooperate and interact closely, with ETSI and with the other standardization bodies concerned, in order to take full account of the close link between standards development and allocation of frequency spectrum,
- undertake research into long-term requirements for the frequency spectrum, in order to promote long-term planning of frequency use according to market needs and also take into account the needs of different categories of users, and forward corresponding recommendations to the regulatory authorities and to the Community where appropriate,
- undertake research in preparation of common positions at the ITU conferences on radio frequencies where required in order to facilitate the working-out of common positions,

- have available the resources to carry out analyses of long-term market and technology implications of frequency recommendations at the European level, and of an appropriate organizational structure,

NOTES WITH SATISFACTION:

6. the current reform of radio frequency planning and coordination mechanisms undertaken by the CEPT, and in particular the decision to create a European Radiocommunications Office, allowing for the opinions of all interested parties to be taken into account and having an appropriate organization and an appropriate Statute;

INVITES THE COMMISSION AND THE MEMBER STATES AND THE CEPT:

7. to support the further development of the new framework set up by the CEPT, including the setting up of the European Radiocommunications Office on the basis of an appropriate statute, making available all the resources necessary to ensure the efficiency of its operation and the rapidity of its response to demands, in the light of the obligations of the Member States under the Community law in particular competition rules and the general policy goals defined in point 5.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 28 June 1990

on the establishment of the internal market for telecommunications services through the implementation of open network provision

(90/387/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 8 a 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 provisions of the Treaty;

Whereas the Commission submitted a Green Paper on the development of the common market for telecommunications services and equipment, dated 30 June 1987, and a communication on the implementation of that Green Paper up to 1992, dated 9 February 1988;

Whereas the Council adopted on 30 June 1988 a resolution on the development of the common market for telecommunications services and equipment up to 1992 ⁽⁴⁾;

Whereas the full establishment of a Community-wide market in telecommunications services will be promoted by the rapid

introduction of harmonized principles and conditions for open network provision;

Whereas, since situations differ and technical and administrative constraints exist in the Member States, this objective should be realized in stages;

Whereas the conditions of open network provision must be consistent with certain principles and must not restrict access to networks and services except for reasons of general public interest, hereinafter referred to as 'essential requirements';

Whereas the definition and application 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;

Whereas the conditions of open network provision must not allow for any additional restrictions on the use of the public telecommunications network and/or public telecommunications services except those restrictions which may be derived from the exercise of special or exclusive rights granted by Member States and which are compatible with Community law;

Whereas tariff principles should be clearly laid down to ensure fair and transparent conditions for all users;

Whereas this entire Directive must be read in the light of Annex III which lays down a work programme for the first three years;

Whereas the establishment of harmonized conditions of open network provision must be a progressive process and must be prepared with the assistance of a committee composed of

⁽¹⁾ OJ No C 39, 16. 2. 1989, p. 8.

⁽²⁾ OJ No C 158, 26. 6. 1989, p. 300, OJ No C 149, 18. 6. 1990.

⁽³⁾ OJ No C 159, 26. 6. 1989, p. 37.

⁽⁴⁾ OJ No C 257, 4. 10. 1988, p. 1.

representatives of the Member States, which consults the representatives of the telecommunications organizations, the users, the consumers, the manufacturers and the service providers; whereas this process must also be open to all parties concerned and therefore sufficient time must be given for public comment;

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;

Whereas work to be undertaken in this area must take full account, *inter alia*, of the framework resulting from the provisions of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽¹⁾, as last amended by Directive 88/182/EEC ⁽²⁾, Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment ⁽³⁾ and Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications ⁽⁴⁾;

Whereas the formal adoption on 12 February 1988 of the statutes of the European Telecommunications Standards Institute (ETSI) and of the associated internal rules has created a new mechanism for producing European telecommunications standards;

Whereas the Council in its resolution of 27 April 1989 on standardization in the field of information technology and telecommunications ⁽⁵⁾ supported the work of ETSI and invited the Commission to contribute to the coherent development of ETSI and lend it its support;

Whereas the Community-wide definition and implementation of 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;

Whereas Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment ⁽⁶⁾ requires Member States to ensure that users who so request are given access to network termination points within a reasonable time period;

Whereas one of the principal aims of the establishment of an internal market in telecommunications services must be the creation of conditions to promote the development of Europe-wide services;

Whereas, in its abovementioned resolution of 30 June 1988, the Council considered the taking fully into account of the external aspects of Community measures on telecommunications to be a major policy goal;

Whereas the Community attaches very great importance to the continued growth of cross-border telecommunications services, to the contribution that telecommunications services provided by companies, firms or natural persons established in a Member State may make 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 specific Directives are drawn up, to ensure that these objectives are taken into account with a view to reaching a situation where the progressive realization of the internal market for telecommunications services will, where appropriate, be accompanied by reciprocal market opening in other countries;

Whereas this result should be achieved preferably through multilateral negotiations in the framework of GATT, it being understood that bilateral discussions between the Community and third countries may also contribute to this process;

Whereas this Directive should not address the problems of mass media, meaning problems linked to broadcasting and distribution of television programmes via telecommunications means, in particular cable television networks, which need special consideration;

Whereas neither should this Directive address the question of communication via satellite for which, according to the abovementioned Council resolution of 30 June 1988, a common position should be worked out;

Whereas the Council, on the basis of a report which the Commission is to submit to the European Parliament and the Council, and in accordance with Article 100b of the Treaty, will review, during 1992, any remaining conditions for access to telecommunications services which have not been harmonized, the effects of these conditions on the workings of the internal market for telecommunications services, and the extent to which this market needs to be further opened up,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive concerns the harmonization of conditions for open and efficient access to and use of public telecommunications networks and, where applicable, public telecommunications services.
2. The conditions referred to in paragraph 1 are designed to facilitate the provision of services using public telecommunications networks and/or public telecommunications services, within and between Member States, and in particular the provision of services by companies, firms or natural persons established in a Member State other than that of the company, firm or natural person for whom the services are intended.

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ OJ No L 81, 26. 3. 1988, p. 75.

⁽³⁾ OJ No L 217, 5. 8. 1986, p. 21.

⁽⁴⁾ OJ No L 36, 7. 2. 1987, p. 31.

⁽⁵⁾ OJ No C 117, 11. 5. 1989, p. 1.

⁽⁶⁾ OJ No L 131, 27. 5. 1988, p. 73.

Article 2

For the purposes of this Directive:

1. 'telecommunications organizations' means public or private bodies, to which a Member State grants special or exclusive rights for the provision of a public telecommunications network and, where applicable, public telecommunications services.

For the requirements of this Directive, Member States shall notify the Commission of the bodies to which they have granted special or exclusive rights;

2. 'special or exclusive rights' means the rights granted by a Member State or a public authority to one or more public or private bodies through any legal, regulatory or administrative instrument reserving them the right to provide a service or undertake an activity;
3. 'public telecommunications network' means the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;
4. — 'telecommunications services' means services whose provision consists wholly or partly in the transmission and routing of signals on a telecommunications network by means of telecommunications processes, with the exception of radio broadcasting and television;
- 'public telecommunications services' means telecommunications services whose supply Member States have specifically entrusted *inter alia* to one or more telecommunications organizations;

5. 'network termination point' means all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to and efficient communication through that public network;
6. 'essential requirements' means the non-economic reasons in the general interest which may cause a Member State to restrict access to the public telecommunications network or public telecommunications services. These reasons are security of network operations, maintenance of network integrity and, in justified cases, interoperability of services and data protection.

Data protection may include protection of personal data, the confidentiality of information transmitted or stored as well as the protection of privacy;

7. 'voice telephony' means the commercial provision for the public or direct transport of real-time speech via the

public switched network or networks such that any user can use equipment connected to a network termination point to communicate with another user of equipment connected to another termination point;

8. 'telex service' means the commercial provision for the public of direct transport of telex messages in accordance with the relevant 'Comité consultatif international télégraphique et téléphonique' (CCITT) recommendation via the public switched network or networks, whereby any user can use equipment connected to a network termination point to communicate with another user using another termination point;
9. 'packet- and circuit-switched data services' means the commercial provision for the public of direct transport of data via the public switched network or networks such that any equipment connected to a network termination point can communicate with equipment connected to another termination point;
10. 'open network provision conditions' means the conditions, harmonized according to the provisions of this Directive, which concern the open and efficient access to public telecommunications networks and, where applicable, public telecommunications services and the efficient use of those networks and services.

Without prejudice to their application on a case-by-case basis, the open network provision conditions may include harmonized conditions with regard to:

- technical interfaces, including the definition and implementation of network termination points, where required,
 - usage conditions, including access to frequencies where required,
 - tariff principles;
11. 'technical specifications', 'standards' and 'terminal equipment' are given the same meaning for those terms as in Article 2 of Directive 86/361/EEC.

Article 3

1. Open network provision conditions must comply with a number of basic principles set out hereafter, namely that:

- they must be based on objective criteria,
- they must be transparent and published in an appropriate manner,
- they must guarantee equality of access and must be non-discriminatory, in accordance with Community law.

2. Open network provision conditions must not restrict access to public telecommunications networks or public telecommunications services, except for reasons based on essential requirements, within the framework of Community law, namely:

- security of network operations,
- maintenance of network integrity,
- interoperability of services, in justified cases,
- protection of data, as appropriate.

In addition, the conditions generally applicable to the connection of terminal equipment to the network shall apply.

3. Open network provision conditions may not allow for any additional restrictions on the use of the public telecommunications networks and/or public telecommunications services except the restrictions which may be derived from the exercise of special or exclusive rights granted by Member States and which are compatible with Community law.

4. The Council, acting in accordance with Article 100a of the Treaty, may, if necessary, modify the points set out in paragraphs 1 and 2.

5. Without prejudice to the specific Directives provided for in Article 6 and in so far as the application of the essential requirements referred to in paragraph 2 of this Article may cause a Member State to limit access to one of its public telecommunications networks or services, the rules for uniform application of the essential requirements, in particular concerning the interoperability of services and the protection of data, shall be determined, where appropriate, by the Commission, in accordance with the procedure laid down in Article 10.

Article 4

1. Open network provision conditions shall be defined in stages under the procedure set out hereafter.

2. Open network provision conditions shall concern the areas selected in accordance with the list in Annex I.

The Council, acting in accordance with Article 100a of the Treaty, may, if necessary, modify this list.

3. Using the list referred to in paragraph 2, the Commission shall draw up a work programme each year, under the procedure laid down in Article 9.

4. For the work programme referred to in paragraph 3, the Commission shall:

- (a) initiate detailed analysis, in consultation with the committee referred to in Article 9, and draw up reports on the results of this analysis;
- (b) invite, by publication of a notice to that effect in the *Official Journal of the European Communities*, public

comment by all parties concerned on the reports on the detailed analysis provided for in subparagraph (a). The period for submitting such comment shall be not less than three months from the date of publication of the said notice;

(c) request, where appropriate, the European Telecommunications Standards Institute (ETSI) to draw up European standards, taking account of international standardization as a basis for setting up, where required, within specified time limits, harmonized technical interfaces and/or service features. In so doing, ETSI shall coordinate, in particular, with the Joint European Standards Institution CEN/Cenelec;

(d) draw up proposals for open network provision conditions in accordance with Article 3 and with the open network provision reference framework described in Annex II.

5. For 1990, 1991 and 1992 a work programme shall be drawn up in order to implement the guidelines in Annex III.

Article 5

1. Reference to European standards drawn up as a basis for harmonized technical interfaces and/or service features for open network provision according to Article 4 (4) (c) shall be published in the *Official Journal of the European Communities* as suitable for open network provision.

2. The standards mentioned under paragraph 1 shall carry with them the presumption:

- (a) that a service provider who complies with those standards fulfils the relevant essential requirements, and
- (b) that a telecommunications organization which complies with those standards fulfils the requirement of open and efficient access.

3. If the implementation of European standards within the meaning of Article 5 (2) appears inadequate to ensure the interoperability of transfrontier services in one or more Member States, reference to European standards may be made compulsory under the procedure laid down in Article 10, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users. The procedure provided for in this paragraph may in no way affect the implementation of Articles 85 and 86 of the Treaty.

4. Where a Member State or the Commission considers that the harmonized standards mentioned under paragraph 1 do not correspond to the objective of open and efficient access, in particular the basic principles and the essential requirements referred to in Article 3, the Commission or the Member State concerned shall bring the matter before the committee referred to in Article 9, giving the reasons therefore. The committee shall deliver an opinion without delay.

5. In the light of the committee's opinion and after consultation of the standing committee set up by Directive 83/189/EEC, the Commission shall inform the Member States whether or not it is necessary to withdraw references to those standards from the *Official Journal of the European Communities*.

Article 6

Following the completion of the procedures set out in Articles 4 and 5, and acting in accordance with Article 100a of the Treaty, the Council shall adopt specific Directives establishing open network provision conditions including a time schedule for implementing them.

Article 7

The Council, acting in accordance with Article 100a of the Treaty, taking Article 8c of the Treaty into consideration, shall, where required, adopt measures for harmonizing declaration and/or licensing procedures for the provision of services via public telecommunications networks, with a view to establishing conditions in which there would be mutual recognition of declaration and/or licensing procedures.

Article 8

During 1992 the Council, on the basis of a report which the Commission shall submit to the European Parliament and the Council, shall review progress on harmonization and any restrictions on access to telecommunications networks and services still remaining, the effects of those restrictions on the operation of the internal telecommunications market, and measures which could be taken to remove those restrictions, in conformity with Community law, taking account of technological development and in accordance with the procedure provided for 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.

The committee shall, in particular, consult the representatives of the telecommunications organizations, the users, the consumers, the manufacturers and the service providers. It shall lay down its rules of procedure.

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.

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.

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. Notwithstanding the provisions of Article 9, the following procedure shall apply in respect of the matters covered by Article 3 (5) and Article 5 (3).

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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 11

1. Member States shall bring into force the laws, regulations and administrative provisions necessary in order to comply with this Directive before 1 January 1991 at the latest. They shall forthwith inform the Commission thereof.

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

Article 12

This Directive is addressed to the Member States.

Done at Luxembourg, 28 June 1990.

For the Council

The President

M. GEOGHEGAN-QUINN

ANNEX I

Areas for which open network provision conditions may be drawn up in accordance with Article 4

Areas shall be selected from the following list in accordance with the procedures laid down in Article 4:

1. leased lines;
2. packet- and circuit-switched data services;
3. Integrated Services Digital Network (ISDN);
4. voice telephony service;
5. telex service;
6. mobile services, as applicable;

subject to further study,

7. new types of access to the network, such as access, under certain conditions, to the circuits connecting subscriber premises to the public network exchange ('data over voice') and access to the network's new intelligent functions, according to progress on definition and technological development;
8. access to the broadband network, according to progress on definition and technological development.

ANNEX II

Reference framework for drawing up proposals on open network provision conditions in accordance with Article 4 (4) (d)

Proposals on open network provision conditions as defined in Article 2 (10) should be drawn up in accordance with the following reference framework:

1. *Common principles*

In drawing up the conditions described in this Annex, due account will be taken of the relevant rules of the Treaty.

Open network provision conditions shall be drawn up in such a way as to facilitate the service providers' and users' freedom of action without unduly limiting the telecommunications organizations' responsibility for the functioning of the network and the best possible condition of communications channels.

Member States may, in accordance with Community law, take any measure enabling the telecommunications organizations to develop the new opportunities deriving from open network provision.

2. *Harmonized technical interfaces and/or service features*

In drawing up open network provision conditions the following scheme should be taken into account for the definition of technical interfaces at appropriate open network termination points:

- for existing services and networks, existing interfaces should be adopted;
- for entirely new services or the improvement of existing services, existing interfaces should also be adopted, as far as feasible. When existing interfaces are not suitable, enhancements and/or new interfaces will have to be specified;
- for networks that are still to be introduced, but for which the standardization programme has already commenced, open network provision requirements falling within the terms of Article 3 should be taken into account when specifying new interfaces.

Open network provision proposals must, wherever possible, be in line with the ongoing work in the European Conference of Postal and Telecommunications Administrations (CEPT), CCITT, ETSI and CEN-Cenelec.

Work undertaken in this area shall take full account of the framework resulting from the provisions of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾, as last amended by Directive 88/182/EEC⁽²⁾, Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment⁽³⁾ and Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications⁽⁴⁾.

Additional features will be identified where required. They 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 open network provision offering.

Work shall include the drawing up of proposals for time schedules for the introduction of interfaces and service features, taking account of the state of development of telecommunications networks and services in the Community.

3. *Harmonized supply and usage conditions*

Supply and usage conditions shall identify conditions of access and of provision of services, as far as required.

They may include as applicable:

- (a) supply conditions such as:
 - maximum provision time (delivery period),
 - quality of service, in particular the quality of transmission,
 - maintenance,
 - network malfunction reporting facilities;

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ OJ No L 81, 26. 3. 1988, p. 75.

⁽³⁾ OJ No L 217, 5. 8. 1986, p. 21.

⁽⁴⁾ OJ No L 36, 7. 2. 1987, p. 31.

(b) usage conditions such as:

- conditions for resale of capacity,
- conditions for shared 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 communications, where required.

Harmonized tariff principles

Tariff principles must be consistent with the principles set out in Article 3 (1).

These principles imply, in particular, that:

- tariffs must be based on objective criteria and especially in the case of services and areas subject to special or exclusive rights must in principle be cost-oriented, on the understanding that the fixing of the actual tariff level will continue to be the province of national legislation and is not the subject of open network provision conditions. When these tariffs are determined, one of the aims should be the definition of efficient tariff principles throughout the Community while ensuring a general service for all,
- tariffs must be transparent and must be properly published,
- in order to leave users a choice between the individual service elements and where technology so permits, tariffs must be sufficiently unbundled in accordance with the competition rules of the Treaty. In particular, additional features introduced to provide certain specific extra services must, as a general rule, be charged independently of the inclusive features and transportation as such,
- tariffs must be non-discriminatory and guarantee equality of treatment.

Any charge for access to network resources or services must comply with the principles set out above and with the competition rules of the Treaty and must also take into account the principle of fair sharing in the global cost of the resources used and the need for a reasonable level of return on investment.

There may be different tariffs, in particular to take account of excess traffic during peak periods and lack of traffic during off-periods, provided that the tariff differentials are commercially justifiable and do not conflict with the above principles.

ANNEX III

Guidelines for implementation of the framework Directive up to 31 December 1992

In an initial phase, and without prejudice to the procedures laid down in Article 4 (2) and (3), work to be undertaken in 1990, 1991 and 1992 concerning Articles 4, 5 and 6 will implement the following priorities:

1. adoption of specific Directives pursuant to Article 6 covering leased lines and the voice telephony service;
2. implementation by 1 January 1991 of harmonized technical interfaces and/or service features for packet-switched data services and ISDN (Integrated Services Digital Network); reference to such interfaces and features may be made compulsory before that date in accordance with the procedure set out in Article 5 (3);
3. adoption by the Council by 1 July 1991, acting on a proposal from the Commission, of a recommendation on the supply of technical interfaces, conditions of usage and tariff principles applying to provision of packet-switched data services complying with open network principles; this recommendation would in particular call on Member States to ensure that at least one such service was provided on their territory;
4. adoption by the Council by 1 January 1992, acting on a proposal from the Commission, of a similar recommendation on ISDN;
5. examination in 1992, with a view to its adoption, on a proposal from the Commission, of a specific Directive on packet-switched data services. That proposal should take into account the initial results of the implementation of the recommendation referred to in point 3;
6. subsequent examination of a proposal for a Directive on ISDN. That proposal should also take into account the initial results of the implementation of the recommendation referred to in point 4.

COMMISSION

COMMISSION DIRECTIVE

of 28 June 1990

on competition in the markets for telecommunications services

(90/388/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 90 (3) thereof,

Whereas:

- (1) The improvement of telecommunications in the Community is an essential condition for the harmonious development of economic activities and a competitive market in the Community, from the point of view of both service providers and users. The Commission has therefore adopted a programme, set out in its Green Paper on the development of the common market for telecommunications services and equipment and in its communication on the implementation of the Green Paper by 1992, for progressively introducing competition into the telecommunications market. The programme does not concern mobile telephony and paging services, and mass communication services such as radio for television. The Council, in its resolution of 30 June 1988 ⁽¹⁾, expressed broad support for the objectives of this programme, and in particular the progressive creation of an open Community market for telecommunications services. The last decades have seen considerable technological advances in the telecommunications sector. These allow an increasingly varied range of services to be provided, notably data transmission services, and also make it technically and economically possible for competition to take place between different service providers.
- (2) In all the Member States the provision and operation of telecommunications networks and the provision of related services are generally vested in one or more telecommunications organizations holding exclusive or special rights. Such rights are characterized by the discretionary powers which the State exercises in various degrees with regard to access to the market for telecommunications services.
- (3) The organizations entrusted with the provision and operation of the telecommunications network are undertakings within the meaning of Article 90 (1) of the Treaty because they carry on an organized business activity, namely the provision of telecommunications services. They are either public undertakings or private enterprises to which the State has granted exclusive or special rights.
- (4) Several Member States, while ensuring the performance of public service tasks, have already revised the system of exclusive or special rights that used to exist in the telecommunications sector in their country. In all cases, the system of exclusive or special rights has been maintained in respect of the provision and operation of the network. In some Member States, it has been maintained for all telecommunications services, while in others such rights cover only certain services. All Member States have either themselves imposed or allowed their telecommunications administrations to impose restrictions on the free provision of telecommunications services.
- (5) The granting of special or exclusive rights to one or more undertakings to operate the network derives from the discretionary power of the State. The granting by a Member State of such rights inevitably restricts the provision of such services by other undertakings to or from other Member States.
- (6) In practice, restrictions on the provision of telecommunications services within the meaning of Article 59 to or from other Member States consist mainly in the prohibition on connecting leased lines by means of concentrators, multiplexers and other equipment to the switched telephone network, in imposing access charges for the connection that are out of proportion to the service provided, in prohibiting the routing of signals to or from third parties by means of leased lines or applying volume sensitive tariffs without economic justification or refusing to give service providers access to the

⁽¹⁾ OJ No C 257, 4. 10. 1988, p. 1.

network. The effect of the usage restrictions and the excessive charges in relation to net cost is to hinder the provision to or from other Member States of such telecommunications services as:

- services designed to improve telecommunications functions, e.g. conversion of the protocol, code, format or speed,
 - information services providing access to data bases,
 - remote data-processing services,
 - message storing and forwarding services, e.g. electronic mail,
 - transaction services, e.g. financial transactions, electronic commercial data transfer, teleshopping and telereservations,
 - teleaction services, e.g. telemetry and remote monitoring.
- (7) Articles 55, 56 and 66 of the Treaty allow exceptions on non-economic grounds to the freedom to provide services. The restrictions permitted are those connected, even occasionally, with the exercise of official authority, and those connected with public policy, public security or public health. Since these are exceptions, they must be interpreted restrictively. None of the telecommunications services is connected with the exercise of official authority involving the right to use undue powers compared with the ordinary law, privileges of public power or a power of coercion over the public. The supply of telecommunication services cannot in itself threaten public policy and cannot affect public health.
- (8) The Court of Justice caselaw also recognizes restrictions on the freedom to provide services if they fulfil essential requirements in the general interest and are applied without discrimination and in proportion to the objective. Consumer protection does not make it necessary to restrict freedom to provide telecommunications services since this objective can also be attained through free competition. Nor can the protection of intellectual property be invoked in this connection. The only essential requirements derogating from Article 59 which could justify restrictions on the use of the public network are the maintenance of the integrity of the network, security of network operations and in justified cases, interoperability and data protection. The restrictions imposed, however, must be adapted to the objectives pursued by these legitimate requirements. Member States will have to make such restrictions known to the

public and notify them to the Commission to enable it to assess their proportionality.

- (9) In this context, the security of network operations means ensuring the availability of the public network in case of emergency. The technical integrity of the public network means ensuring its normal operation and the interconnection of public networks in the Community on the basis of common technical specifications. The concept of interoperability of services means complying with such technical specifications introduced to increase the provision of services and the choice available to users. Data protection means measures taken to warrant the confidentiality of communications and the protection of personal data.
- (10) Apart from the essential requirements which can be included as conditions in the licensing or declaration procedures, Member States can include conditions regarding public-service requirements which constitute objective, non-discriminatory and transparent trade regulations regarding the conditions of permanence, availability and quality of the service.
- (11) When a Member State has entrusted a telecommunications organization with the task of providing packet or circuit switched data services for the public in general and when this service may be obstructed because of competition by private providers, the Commission can allow the Member State to impose additional conditions for the provision of such a service, with respect also to geographical coverage. In assessing these measures, the Commission in the context of the achievement of the fundamental objectives of the Treaty referred to in Article 2 thereof, including that of strengthening the Community's economic and social cohesion as referred to in Article 130a, will also take into account the situation of those Member States in which the network for the provision of the packet or circuit switched services is not yet sufficiently developed and which could justify the deferment for these Member States until 1 January 1996 of the date for prohibition on the simple resale of leased line capacity.
- (12) Article 59 of the Treaty requires the abolition of any other restriction on the freedom of nationals of Member States who are established in a Community country to provide services to persons in other Member States. The maintenance or introduction of any exclusive or special right which does not correspond to the abovementioned criteria is therefore a breach of Article 90 in conjunction with Article 59.
- (13) Article 86 of the Treaty prohibits as incompatible with the common market any conduct by one or more undertakings that involves an abuse of a dominant position within the common market or a substantial

part of it. Telecommunications organizations are also undertakings for the purposes of this Article because they carry out economic activities, in particular the service they provide by making telecommunications networks and services available to users. This provision of the network constitutes a separate services market as it is not interchangeable with other services. On each national market the competitive environment in which the network and the telecommunications services are provided is homogeneous enough for the Commission to be able to evaluate the power held by the organizations providing the services on these territories. The territories of the Member States constitute distinct geographical markets. This is essentially due to the existing difference between the rules governing conditions of access and technical operation, relating to the provision of the network and of such services. Furthermore, each Member State market forms a substantial part of the common market.

- (14) In each national market the telecommunications organizations hold individually or collectively a dominant position for the creation and the exploitation of the network because they are the only ones with networks in each Member State covering the whole territory of those States and because their governments granted them the exclusive right to provide this network either alone or in conjunction with other organizations.
- (15) Where a State grants special or exclusive rights to provide telecommunications services to organizations which already have a dominant position in creating and operating the network, the effect of such rights is to strengthen the dominant position by extending it to services.
- (16) Moreover, the special or exclusive rights granted to telecommunications organizations by the State to provide certain telecommunications services mean such organizations:
- (a) prevent or restrict access to the market for these telecommunications services by their competitors, thus limiting consumer choice, which is liable to restrict technological progress to the detriment of consumers;
 - (b) compel network users to use the services subject to exclusive rights, and thus make the conclusion of network utilization contracts dependent on acceptance of supplementary services having no connection with the subject of such contracts.

Each of these types of conduct represents a specific abuse of a dominant position which is likely to have an

appreciable effect on trade between Member States, as all the services in question could in principle be supplied by providers from other Member States. The structure of competition within the common market is substantially changed by them. At all events, the special or exclusive rights for these services give rise to a situation which is contrary to the objective in Article 3 (f) of the Treaty, which provides for the institution of a system ensuring that competition in the common market is not distorted, and requires *a fortiori* that competition must not be eliminated. Member States have an obligation under Article 5 of the Treaty to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty, including that of Article 3 (f).

- (17) The exclusive rights to telecommunications services granted to public undertakings or undertakings to which Member States have granted special or exclusive rights for the provision of the network are incompatible with Article 90 (1) in conjunction with Article 86.
- (18) Article 90 (2) of the Treaty allows derogation from the application of Articles 59 and 86 of the Treaty where such application would obstruct the performance, in law or in fact, of the particular task assigned to the telecommunications organizations. This task consists in the provision and exploitation of a universal network, i.e. one having general geographical coverage, and being provided to any service provider or user upon request within a reasonable period of time. The financial resources for the development of the network still derive mainly from the operation of the telephone service. Consequently, the opening-up of voice telephony to competition could threaten the financial stability of the telecommunications organizations. The voice telephony service, whether provided from the present telephone network or forming part of the ISDN service, is currently also the most important means of notifying and calling up emergency services in charge of public safety.
- (19) The provision of leased lines forms an essential part of the telecommunications organizations' tasks. There is at present, in almost all Member States, a substantial difference between charges for use of the data transmission service on the switched network and for use of leased lines. Balancing those tariffs without delay could jeopardize this task. Equilibrium in such charges must be achieved gradually between now and 31 December 1992. In the meantime it must be possible to require private operators not to offer to the public a service consisting merely of the resale of leased line capacity, i.e. including only such processing, switching of data, storing, or protocol conversion as is necessary for transmission in real time. The Member States may therefore establish a declaration system through which private operators would undertake not to engage in simple resale.

- However, no other requirement may be imposed on such operators to ensure compliance with this measure.
- (20) These restrictions do not affect the development of trade to such an extent as would be contrary to the interests of the Community. Under these circumstances, these restrictions are compatible with Article 90 (2) of the Treaty. This may also be the case as regards the measures adopted by Member States to ensure that the activities of private service providers do not obstruct the public switched-data service.
- (21) The rules of the Treaty, including those on competition, apply to telex services; however, the use of this service is gradually declining throughout the Community owing to the emergence of competing means of telecommunication such as telefax. The abolition of current restrictions on the use of the switched telephone network and leased lines will allow telex messages to be retransmitted. In view of this particular trend, an individual approach is necessary. Consequently, this Directive should not apply to telex services.
- (22) The Commission will in any event reconsider in the course of 1992 the remaining special or exclusive rights on the provision of services taking account of technological development and the evolution towards a digital infrastructure.
- (23) Member States may draw up fair procedures for ensuring compliance with the essential requirements without prejudice to the harmonization of the latter at Community level within the framework of the Council Directives on open network provision (ONP). As regards data-switching, Member States must be able, as part of such procedures, to require compliance with trade regulations from the standpoint of conditions of permanence, availability and quality of the service, and to include measures to safeguard the task of general economic interest which they have entrusted to a telecommunications organization. The procedures must be based on specific objective criteria and be applied without discrimination. The criteria should in particular be justified and proportional to the general interest objective, and be duly motivated and published. The Commission must be able to examine them in depth in the light of the rules on free competition and freedom to provide services. In any event, Member States that have not notified the Commission of their planned licensing criteria and procedures within a given time may no longer impose any restrictions on the freedom to provide data transmission services to the public.
- (24) Member States should be given more time to draw up general rules on the conditions governing the provision of packet- or circuit-switched data services for the public.
- (25) Telecommunications services should not be subject to any restriction, either as regards free access by users to the services, or as regards the processing of data which may be carried out before messages are transmitted through the network or after messages have been received, except where this is warranted by an essential requirement in proportion to the objective pursued.
- (26) The digitization of the network and the technological improvement of the terminal equipment connected to it have brought about an increase in the number of functions previously carried out within the network and which can now be carried out by users themselves with increasingly sophisticated terminal equipment. It is necessary to ensure that suppliers of telecommunication services, and notably suppliers of telephone and packet or circuit-switched data transmission services enable operators to use these functions.
- (27) Pending the establishing of Community standards with a view to an open network provision (ONP), the technical interfaces currently in use in the Member States should be made publicly available so that firms wishing to enter the markets for the services in question can take the necessary steps to adapt their services to the technical characteristics of the networks. If the Member States have not yet established such technical interfaces, they should do so as quickly as possible. All such draft measures should be communicated to the Commission in accordance with Council Directive 83/189/EEC ⁽¹⁾, as last amended by Directive 88/182/EEC ⁽²⁾.
- (28) Under national legislation, telecommunications organizations are generally given the function of regulating telecommunications services, particularly as regards licensing, control of type-approval and mandatory interface specifications, frequency allocation and monitoring of conditions of use. In some cases, the legislation lays down only general principles governing the operation of the licensed services and leaves it to the telecommunications organizations to determine the specific operating conditions.
- (29) This dual regulatory and commercial function of the telecommunications organizations has a direct impact

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ OJ No L 81, 26. 3. 1988, p. 75.

on firms offering telecommunications services in competition with the organizations in question. By this bundling of activities, the organizations determine or, at the very least, substantially influence the supply of services offered by their competitors. The delegation to an undertaking which has a dominant position for the provision and exploitation of the network, of the power to regulate access to the market for telecommunication services constitutes a strengthening of that dominant position. Because of the conflict of interests, this is likely to restrict competitors' access to the markets in telecommunications services and to limit users' freedom of choice. Such arrangements may also limit the outlets for equipment for handling telecommunications messages and, consequently, technological progress in that field. This combination of activities therefore constitutes an abuse of the dominant position of telecommunications organizations within the meaning of Article 86. If it is the result of a State measure, the measure is also incompatible with Article 90 (1) in conjunction with Article 86.

(30) To enable the Commission to carry out effectively the monitoring task assigned to it by Article 90 (3), it must have available certain essential information. That information must in particular give the Commission a clear view of the measures of Member States, so that it can ensure that access to the network and the various related services are provided by each telecommunications organization to all its customers on non-discriminatory tariff and other terms. Such information should cover:

- measures taken to withdraw exclusive rights pursuant to this Directive,
- the conditions on which licences to provide telecommunications services are granted.

The Commission must have such information to enable it to check, in particular, that all the users of the network and services, including telecommunications organizations where they are providers of services, are treated equally and fairly.

(31) The holders of special or exclusive rights to provide telecommunications services that will in future be open to competition have been able in the past to impose long-term contracts on their customers. Such contracts would in practice limit the ability of any new competitors to offer their services to such customers

and of such customers to benefit from such services. Users must therefore be given the right to terminate their contracts within a reasonable length of time.

(32) Each Member State at present regulates the supply of telecommunications services according to its own concepts. Even the definition of certain services differs from one Member State to another. Such differences cause distortions of competition likely to make the provision of cross-frontier telecommunications services more difficult for economic operators. This is why the Council, in its resolution of 30 June 1988, considered that one of the objectives of a telecommunications policy was the creation of an open Community market for telecommunications services, in particular through the rapid definition, in the form of Council Directives, of technical conditions, conditions of use and principles governing charges for an open network provision (ONP). The Commission has presented a proposal to this end to the Council. Harmonization of the conditions of access is not however the most appropriate means of removing the barriers to trade resulting from infringements of the Treaty. The Commission has a duty to ensure that the provisions of the Treaty are applied effectively and comprehensively.

(33) Article 90 (3) assigns clearly-defined duties and powers to the Commission to monitor relations between Member States and their public undertakings and undertakings to which they have granted special or exclusive rights, particularly as regards the removal of obstacles to freedom to provide services, discrimination between nationals of the Member States and competition. A comprehensive approach is necessary in order to end the infringements that persist in certain Member States and to give clear guidelines to those Member States that are reviewing their legislation so as to avoid further infringements. A Directive within the meaning of Article 90 (3) of the Treaty is therefore the most appropriate means of achieving that end,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. For the purposes of this Directive:

- 'telecommunication organizations' means public or private bodies, and the subsidiaries they control, to which a Member State grants special or exclusive rights for the provision of a public telecommunications network and, when applicable, telecommunications services,
- 'special or exclusive rights' means the rights granted by a Member State or a public authority to one or more public

or private bodies through any legal, regulatory or administrative instrument reserving them the right to provide a service or undertake an activity,

- 'public telecommunications network' means the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means,
- 'telecommunications services' means services whose provision consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio-broadcasting and television,
- 'network termination point' means all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to and efficient communication through that public network,
- 'essential requirements' means the non-economic reasons in the general interest which may cause a Member State to restrict access to the public telecommunications network or public telecommunications services. These reasons are security of network operations, maintenance of network integrity, and, in justified cases, interoperability of services and data protection.

Data protection may include protection of personal data, the confidentiality of information transmitted or stored as well as the protection of privacy,

- 'voice telephony' means the commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point,
- 'telex service' means the commercial provision for the public of direct transmission of telex messages in accordance with the relevant Comité consultatif international télégraphique et téléphonique (CCITT) recommendation between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point,
- 'packet- and circuit-switched data services' means the commercial provision for the public of direct transport of data between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point,
- 'simple resale of capacity' means the commercial provision on leased lines for the public of data

transmission as a separate service, including only such switching, processing, data storage or protocol conversion as is necessary for transmission in real time to and from the public switched network.

2. This Directive shall not apply to telex, mobile radiotelephony, paging and satellite services.

Article 2

Without prejudice to Article 1 (2), Member States shall withdraw all special or exclusive rights for the supply of telecommunications services other than voice telephony and shall take the measures necessary to ensure that any operator is entitled to supply such telecommunications services.

Member States which make the supply of such services subject to a licensing or declaration procedure aimed at compliance with the essential requirements shall ensure that the conditions for the grant of licences are objective, non-discriminatory and transparent, that reasons are given for any refusal, and that there is a procedure for appealing against any such refusal.

Without prejudice to Article 3, Member States shall inform the Commission no later than 31 December 1990 of the measures taken to comply with this Article and shall inform it of any existing regulations or of plans to introduce new licensing procedures or to change existing procedures.

Article 3

As regards packet- or circuit-switched data services, Member States may, until 31 December 1992, under the authorization procedures referred to in Article 2, prohibit economic operators from offering leased line capacity for simple resale to the public.

Member States shall, no later than 30 June 1992, notify to the Commission at the planning stage any licensing or declaration procedure for the provision of packet- or circuit-switched data services for the public which are aimed at compliance with:

- essential requirements, or
- trade regulations relating to conditions of permanence, availability and quality of the service, or
- measures to safeguard the task of general economic interest which they have entrusted to a telecommunications organization for the provision of switched data services, if the performance of that task is likely to be obstructed by the activities of private service providers.

The whole of these conditions shall form a set of public-service specifications and shall be objective, non-discriminatory and transparent.

Member States shall ensure, no later than 31 December 1992, that such licensing or declaration procedures for the provision of such services are published.

Before they are implemented, the Commission shall verify the compatibility of these projects with the Treaty.

Article 4

Member States which maintain special or exclusive rights for the provision and operation of public telecommunications networks shall take the necessary measures to make the conditions governing access to the networks objective and non-discriminatory and publish them.

In particular, they shall ensure that operators who so request can obtain leased lines within a reasonable period, that there are no restrictions on their use other than those justified in accordance with Article 2.

Member States shall inform the Commission no later than 31 December 1990 of the steps they have taken to comply with this Article.

Each time the charges for leased lines are increased, Member States shall provide information to the Commission on the factors justifying such increases.

Article 5

Without prejudice to the relevant international agreements, Member States shall ensure that the characteristics of the technical interfaces necessary for the use of public networks are published by 31 December 1990 at the latest.

Member States shall communicate to the Commission, in accordance with Directive 83/189/EEC, any draft measure drawn up for this purpose.

Article 6

Member States shall, as regards the provision of telecommunications services, and existing restrictions on the processing of signals before their transmission via the public network or after their reception, unless the necessity of these restrictions for compliance with public policy or essential requirements is demonstrated.

Without prejudice to harmonized Community rules adopted by the Council on the provision of an open network, Member States shall ensure as regards services providers including the telecommunications organizations that there is no discrimination either in the conditions of use or in the charges payable.

Member States shall inform the Commission of the measures taken or draft measures introduced in order to comply with this Article by 31 December 1990 at the latest.

Article 7

Member States shall ensure that from 1 July 1991 the grant of operating licences, the control of type approval and mandatory specifications, the allocation of frequencies and surveillance of usage conditions are carried out by a body independent of the telecommunications organizations.

They shall inform the Commission of the measures taken or draft measures introduced to that end no later than 31 December 1990.

Article 8

Member States shall ensure that as soon as the relevant special or exclusive rights have been withdrawn, telecommunications organizations make it possible for customers bound to them by a contract with more than one year to run for the supply of telecommunications services which was subject to such a right at the time it was concluded to terminate the contract at six months' notice.

Article 9

Member States shall communicate to the Commission the necessary information to allow it to draw up, for a period of three years, at the end of each year, an overall report on the application of this Directive. The Commission shall transmit this report to the Member States, the Council, the European Parliament and the Economic and Social Committee.

Article 10

In 1992, the Commission will carry out an overall assessment of the situation in the telecommunications sector in relation to the aims of this Directive.

In 1994, the Commission shall assess the effects of the measures referred to in Article 3 in order to see whether any amendments need to be made to the provisions of that Article, particularly in the light of technological evolution and the development of trade within the Community.

Article 11

This Directive is addressed to the Member States.

Done at Brussels, 28 June 1990.

For the Commission
Leon BRITTAN
Vice-President

COMMISSION DECISION
of 30 July 1990
setting up a Joint Committee on Telecommunications Services

(90/450/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Whereas the Heads of State or of Government stated in their declaration of 21 October 1972 that the first aim of economic expansion should be to enable disparities in living conditions to be reduced and that this aim should express itself in better quality of life and higher standard of living;

Whereas, in this connection, they considered it indispensable that both employers and employees should be increasingly involved in the economic and social decisions of the Community;

Whereas, amongst the priority actions contained in the Community's 'social action programme', the Commission has recommended that dialogue and cooperation between employers and employees be promoted at Community level;

Whereas the Council in its resolution of 21 January 1974 concerning a social action programme⁽¹⁾ named increased involvement of social partners in the economic and social decisions of the Community as one of the priority measures to be taken;

Whereas the European Parliament in its resolution of 13 June 1972⁽²⁾ stated that the participation of employers and employees in the formulation of a Community social policy should be achieved during the first stage of economic and monetary union;

Whereas the Economic and Social Committee in its opinion of 24 November 1971 expressed a similar view;

Whereas the Council stressed in its conclusions of 22 June 1984 concerning a Community medium-term social action programme⁽³⁾, that the European social dialogue must be strengthened and its procedures adapted in order to involve the social partners more effectively in the economic and social decisions of the Community;

Whereas the situation in the various Member States clearly demonstrates the need for the two sides of the telecommunications services to participate actively in the

improvement of living and working conditions; whereas a joint committee attached to the Commission is the most appropriate means of ensuring such participation by creating at Community level a representative forum for the socio-economic interests involved;

Whereas the 1987 green paper on the 'Development of the common market for telecommunications services and equipment' and the subsequent Council resolution and Economic and Social Committee comments on that green paper all acknowledge the importance of sustaining dialogue between the social partners to facilitate a smooth and successful introduction of new technologies,

HAS DECIDED AS FOLLOWS:

Article 1

A Joint Committee on Telecommunications Services hereinafter referred to as 'the Committee' is hereby established.

Article 2

The Committee shall assist the Commission in the formulation and implementation of Community policy aimed at:

- improving the economic and competitive positions of the Community's telecommunications sector,
- improving and harmonizing living and working conditions in the telecommunications sector within the context of the relevant articles of the Treaty.

Article 3

1. In order to attain the objectives laid down in Article 2, the Committee shall:

- (a) issue opinions and submit reports to the Commission, either at the latter's request or on its own initiative; and
- (b) in respect of matters falling within the competence of the employers' and employees' associations listed in Article 4 (3):
 - promote dialogue and cooperation between these associations,
 - arrange for studies to be carried out,
 - participate in discussions and seminars.

⁽¹⁾ OJ No C 13, 12. 2. 1974, p. 1.

⁽²⁾ OJ No C 70, 1. 7. 1972, p. 11.

⁽³⁾ OJ No C 175, 4. 7. 1984, p. 1.

2. The Committee shall ensure that all interested parties are informed of its activities.

3. Upon requesting an opinion or report from the Committee under the terms of paragraph 1 (a), the Commission may fix a time limit within which the opinion or report shall be given.

Article 4

1. The Committee shall consist of 50 members.

2. Seats shall be allocated as follows :

- (a) 25 to the representatives of the employers' organizations ;
- (b) 25 to the representatives of the employees' organizations.

3. The members of the Committee shall be appointed by the Commission as follows :

(a) 44 on proposals from the following associations of employers and employees :

- Postal, Telegraph and Telephone International (IPTT) and Fédération Européenne du Personnel des Services Publics : 22 members,
- competent authorities of Member States for the Telecommunications sector : 22 members.

(b) Six, directly by the Commission, after consulting the bodies mentioned in (a) from the representative associations of employers and employees. If appropriate these might be from bodies other than those mentioned in (a).

Article 5

1. An alternate shall be appointed for each member of the Committee under the same conditions as laid down in Article 4 (3).

2. Without prejudice to the provisions of Article 9, an alternate shall not attend meetings of the Committee or a working group provided for in Article 9, or participate in its work, unless the member for whom he is the alternate is prevented from doing so.

Article 6

1. Committee members and their alternates shall hold office for a term of four years ; appointments shall be renewable.

2. Members and their alternates whose term of office has expired shall remain in office until they have been replaced or their term of office has been renewed.

3. A member's or an alternate's term of office shall cease before the expiry of the period of four years upon his resignation or death or if the association which nominated him requests his replacement. His successor shall be appointed for the remainder of the term of office in the manner prescribed in Article 4 (3).

4. There shall be no payment for duties performed.

Article 7

1. The Committee shall, by a two-thirds majority of members present, elect from among its members a chairman and vice-chairman who shall hold office, for a term of two years. The chairman and vice-chairman shall be chosen alternately from amongst the two groups of associations listed in Article 4 (3).

2. (a) A chairman or vice-chairman whose term of office has expired shall remain in office until he has been replaced.

(b) Should the chairman or vice-chairman cease to hold office before expiry of his term, he shall be replaced for the remainder of the term by a person appointed in the manner prescribed in paragraph 1 upon a proposal from the group to which his association belongs.

Article 8

The Committee shall create a Bureau consisting of the chairman and vice-chairman and two representatives of the employers' and the employees' group to plan and coordinate its work. The Bureau may invite the rapporteurs of any working parties provided for in Article 9 to participate in these meetings.

Article 9

The Committee may :

(a) set up *ad hoc* or permanent working parties to facilitate its work. It may authorize a member to delegate another representative of his association, who shall be named, to take his place in a working party ; such delegate shall enjoy the same rights at meetings of the working party as the member he replaces ;

(b) ask the Commission to appoint experts to assist it in specific tasks.

The employers' or the employees' group may ask for the attendance at Committee meetings, as an expert, of any person who is specially qualified in any particular subject on the agenda. The expert shall be present only for the discussion of the particular subject for which his attendance is required.

Article 10

The Committee shall be convened by its Secretariat at the request of the Commission, the Bureau or a third of its members. In the latter case it shall meet within a period of 30 days.

Article 11

1. No opinion of the Committee shall be valid unless two-thirds of the members or their alternates are present.

2. The Committee shall submit its opinions or reports to the Commission. If an opinion or report is not unanimous, the Committee shall submit to the Commission the dissenting views delivered.

Article 12

1. The Commission shall provide a secretariat for the Committee, the Bureau and the working parties.
2. The Commission shall ensure the attendance at all meetings of the Committee, the Bureau and working parties of representatives of appropriate seniority from the relevant departments.
3. If appropriate a representative of the Secretariats of each of the associations listed in Article 4 (3) (a) may attend the meetings of the Committee as observer.
4. After hearing the Committee's views the Commission may ask other organizations than those mentioned in Article 4 (3) to participate as observers in the Committee's work.

Article 13

If the Commission has informed the Committee that an opinion requested relates to a matter of a confidential nature, members of the Committee shall be bound,

without prejudice to the provisions of Article 214 of the EEC Treaty, not to disclose any information acquired at the meetings of the Committee, the working parties or the Bureau.

Article 14

After hearing the Committee's views, the Commission may review this Decision in the light of experience.

This Decision shall take effect on 1 August 1990.

Done at Brussels, 30 July 1990.

For the Commission

Vasso PAPANDEOU

Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 17 September 1990

on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

(90/531/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing in the European Economic Community and in particular the last sentence of Article 57 (2), Article 66, Article 100a and Article 113 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the measures aimed at progressively establishing the internal market, during the period up to 31 December 1992, need to be taken; whereas the internal market consists of an area without internal frontiers in which free movement of goods, persons, services and capital is guaranteed;

Whereas the European Council has drawn conclusions concerning the need to bring about a single internal market;

Whereas restrictions on the free movement of goods and on the freedom to provide services in respect of supply

contracts awarded in the water, energy, transport and telecommunications sectors are prohibited by the terms of Articles 30 and 59 of the Treaty;

Whereas Article 97 of the Euratom Treaty prohibits any restrictions based on nationality as regards companies under the jurisdiction of a Member State where they desire to participate in the construction of nuclear installations of a scientific or industrial nature in the Community;

Whereas these objectives also require the coordination of the procurement procedures applied by the entities operating in these sectors;

Whereas the White Paper on the completion of the internal market contains an action programme and a timetable for opening up public procurement markets in sectors which are currently excluded from Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts ⁽⁴⁾, as last amended by Council Directive 89/440/EEC ⁽⁵⁾, and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts ⁽⁶⁾, as last amended by Directive 88/295/EEC ⁽⁷⁾;

⁽¹⁾ OJ No C 264, 16. 10. 1989, p. 22.

⁽²⁾ OJ No C 158, 26. 6. 1989, p. 258 and
OJ No C 175, 16. 7. 1990, p. 78.

⁽³⁾ OJ No C 139, 5. 6. 1989, pp. 23 and 31.

⁽⁴⁾ OJ No L 185, 16. 8. 1971, p. 5.

⁽⁵⁾ OJ No L 210, 21. 7. 1989, p. 1.

⁽⁶⁾ OJ No L 13, 15. 1. 1977, p. 1.

⁽⁷⁾ OJ No L 127, 20. 5. 1988, p. 1.

Whereas among such excluded sectors are those concerning the provision of water, energy and transport services and, as far as Directive 77/62/EEC is concerned, the telecommunications sector;

Whereas the main reason for their exclusion was that entities providing such services are in some cases governed by public law, in others by private law;

Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors requires that the entities to be covered must be identified on a different basis than by reference to their legal status;

Whereas, in the four sectors concerned, the procurement problems to be solved are of a similar nature, so permitting them to be addressed in one instrument;

Whereas, among the main reasons why entities operating in these sectors do not purchase on the basis of Community-wide competition is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the national authorities, concerning the supply to, provision or operation of, networks for providing the service concerned, the exploitation of a given geographical area for a particular purpose, the provision or operation of public telecommunications networks or the provision of public telecommunications services;

Whereas the other main reason for the absence of Community-wide competition in these areas results from various ways in which national authorities can influence the behaviour of these entities, including participations in their capital and representation in the entities' administrative, managerial or supervisory bodies;

Whereas this Directive should not extend to activities of those entities which either fall outside the sectors of water, energy and transport services or outside the telecommunications sector, or which fall within those sectors but nevertheless are directly exposed to competitive forces in markets to which entry is unrestricted;

Whereas it is appropriate that these entities apply common procurement procedures in respect of their activities relating to water; whereas certain entities have been covered up to now by the Directives 71/305/EEC and 77/62/EEC in respect of their activities in the field of hydraulic engineering projects, irrigation, land drainage or the disposal and treatment of sewage;

Whereas, however, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area it will be used;

Whereas, when specific conditions are fulfilled, exploitation of a geographical area with the aim of exploring for or extracting oil, gas, coal or other solid fuels may be made subject to alternative arrangements which will enable the same objective of opening up contracts to be achieved; whereas the Commission must ensure that these conditions are complied with by the Member States who implement these alternative arrangements;

Whereas the Commission has announced that it will propose measures to remove obstacles to cross-frontier exchanges of electricity by 1992; whereas procurement rules of the type proposed for supplies of goods would not make it possible to overcome existing obstacles to the purchases of energy and fuels in the energy sector; whereas, as a result, it is not appropriate to include such purchases in the scope of this Directive, although it should be borne in mind that this exemption will be re-examined by the Council on the basis of a Commission report and Commission proposals;

Whereas Regulations (EEC) No 3975/87⁽¹⁾ and (EEC) No 3976/87⁽²⁾, Directive 87/601/EEC⁽³⁾ and Decision 87/602/EEC⁽⁴⁾ are designed to introduce more competition between the entities offering air transport services to the public and it is therefore not appropriate for the time being to include such entities in the scope of this Directive although the situation ought to be reviewed at a later stage in the light of progress made as regards competition;

Whereas, in view of the competitive position of Community shipping, it would be inappropriate for the greater part of the contracts in this sector to be subject to detailed procedures; whereas the situation of shippers operating sea-going ferries should be kept under review; whereas certain inshore and river ferry services operated by public authorities should no longer be excluded from the scope of Directives 71/305/EEC and 77/62/EEC;

Whereas it is appropriate to facilitate compliance with provisions relating to activities not covered by this Directive;

Whereas this Directive should not apply to procurement contracts which are declared secret or may affect basic State security interests or are concluded according to other rules set up by existing international agreements or international organizations;

⁽¹⁾ OJ No L 374, 31. 12. 1987, p. 1.

⁽²⁾ OJ No L 374, 31. 12. 1987, p. 9.

⁽³⁾ OJ No L 374, 31. 12. 1987, p. 12.

⁽⁴⁾ OJ No L 374, 31. 12. 1987, p. 19.

Whereas the Community's or the Member States' existing international obligations must not be affected by the rules of this Directive;

Whereas products, works or services must be described by reference to European specifications; whereas, in order to ensure that a product, work or service fulfils the use for which it is intended by the contracting entity, such reference may be complemented by specifications which do not change the nature of the technical solution or solutions set out in the European specification;

Whereas the principles of equivalence and of mutual recognition of national standards, technical specifications and manufacturing methods are applicable in the field of application of this Directive;

Whereas, when the contracting entities define by common accord with tenderers the deadlines for receiving tenders, they shall comply with the principle of non-discrimination, and whereas, if there is no such agreement, it is necessary to lay down suitable provisions;

Whereas it could prove useful to provide for greater transparency as to the requirements regarding the protection and conditions of employment applicable in the Member State in which the works are to be carried out;

Whereas it is appropriate that national provisions for regional development requirements to be taken into consideration in the award of public works contracts should be made to conform to the objectives of the Community and be in keeping with the principles of the Treaty;

Whereas contracting entities must not be able to reject abnormally low tenders before having requested in writing explanations as to the constituent elements of the tender;

Whereas, within certain limits, preference should be given to an offer of Community origin where there are equivalent offers of third country origin;

Whereas this Directive should not prejudice the position of the Community in any current or future international negotiations;

Whereas, based on the results of such international negotiations, this Directive should be extendable to offers of third country origin, pursuant to a Council Decision;

Whereas the rules to be applied by the entities concerned should establish a framework for sound commercial practice and should leave a maximum of flexibility;

Whereas, as a counterpart for such flexibility and in the interest of mutual confidence, a minimum level of transparency must be ensured and appropriate methods adopted for monitoring the application of this Directive;

Whereas it is necessary to adapt Directives 71/305/EEC and 77/62/EEC to establish well-defined fields of application; whereas the scope of Directive 71/305/EEC should not be reduced, except as regards contracts in the water and telecommunications sectors; whereas the scope of Directive 77/62/EEC should not be reduced, except as regards certain contracts in the water sector; whereas the scope of Directives 71/305/EEC and 77/62/EEC should not, however, be extended to contracts awarded by carriers by land, air, sea, inshore or inland waterway which, although carrying out economic activities of an industrial or commercial nature, belong to the State administration; whereas, nevertheless, certain contracts awarded by carriers by land, air, sea, inshore or inland waterway which belong to the State administration and are carried out only for reasons of public service should be covered by those Directives;

Whereas this Directive should be re-examined in the light of experience;

Whereas the opening up of contracts, on 1 January 1993, in the sectors covered by this Directive might have an adverse effect upon the economy of the Kingdom of Spain; whereas the economies of the Hellenic Republic and the Portuguese Republic will have to sustain even greater efforts; whereas it is appropriate that these Member States be granted adequate additional periods to implement this Directive,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

For the purposes of this Directive:

1. 'public authorities' shall mean the State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law.

A body is considered to be governed by public law where it:

- is established for the specific purpose of meeting needs in the general interest, not being of a commercial or industrial nature, and
 - has legal personality, and
 - is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law;
2. 'public undertaking' shall mean any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:
- hold the major of the undertaking's subscribed capital, or
 - control the majority of the votes attaching to shares issued by the undertaking, or
 - can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;
3. 'supply and works contracts' shall mean contracts for pecuniary interest concluded in writing between one of the contracting entities referred to in Article 2 and a supplier or contractor and which have as their object:
- (a) in the case of supply contracts, the purchase, lease, rental or hire-purchase, with or without options to buy, of products or of software services. These contracts may in addition cover siting and installation operations.
- Software services shall be covered by this definition where they are procured by a contracting entity exercising an activity defined in Article 2 (2) (d) and are for use in the operation of a public telecommunications network or are intended to be used in a public telecommunications service as such;
- (b) in the case of works contracts, either the execution, or both the execution and design or the realization, by whatever means, of building or civil engineering activities referred to in Annex XI. These contracts may, in addition, cover supplies and services necessary for their execution.
- Contracts which include the provision of services other than those referred to in (a) and (b) shall be regarded as supply contracts if the total value of supplies, including siting and installation operations necessary for the execution of the contract and of software services within the meaning of subparagraph (a), is greater than the value of the other services covered by the contract;
4. 'framework agreement' shall mean an agreement between one of the contracting entities defined in Article 2 and one or more suppliers or contractors, the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period;
5. 'tenderer' shall mean a supplier or contractor who submits a tender and 'candidate' shall mean a person who has sought an invitation to take part in a restricted or negotiated procedure;
6. 'open, restricted and negotiated procedures' shall mean the award procedures applied by contracting entities whereby:
- (a) in the case of open procedures, all interested suppliers or contractors may submit tenders;
 - (b) in the case of the restricted procedures, only candidates invited by the contracting entity may submit tenders;
 - (c) in the case of negotiated procedures, the contracting entity consults suppliers or contractors of its choice and negotiates the terms of the contract with one or more of them;
7. 'technical specifications' shall mean the technical requirements contained in particular in the tender documents, defining the characteristics of a set of works, material, product or supply, and enabling a piece of work, a material, a product or a supply to be objectively described in a manner such that it fulfils the use for which it is intended by the contracting entity. These technical prescriptions may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, or supply as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In the case of works contracts, they may also include rules for the design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and

all other technical conditions which the contracting entity is in a position to prescribe under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;

8. 'standard' shall mean a technical specification approved by a recognized standardizing body for repeated and continuous application, compliance with which is in principle not compulsory;
9. 'European standard' shall mean a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (CENELEC) as a 'European Standard (EN)' or 'Harmonization Document (HD)', according to the common rules of those organizations, or by the European Telecommunications Standards Institute (ETSI) according to its own rules as a 'European Telecommunications Standard (ETS)';
10. 'common technical specification' shall mean a technical specification drawn up in accordance with a procedure recognized by the Member States which a view to uniform application in all Member States and published in the *Official Journal of the European Communities*;
11. 'European technical approval' shall mean a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use, as provided for in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products⁽¹⁾. European technical approval shall be issued by an approval body designated for this purpose by the Member State;
12. 'European specification' shall mean a common technical specification, a European technical approval or a national standard implementing a European standard;
13. 'public telecommunications network' shall mean the public telecommunications infrastructure which enables to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means.

'Network termination point' shall mean all physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;

14. 'public telecommunications services' shall mean telecommunications services the provision of which the Member States have specifically assigned notably to one or more telecommunications entities.

'Telecommunications services' shall mean services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio-broadcasting and television.

Article 2

1. This Directive shall apply to contracting entities which:

- (a) are public authorities or public undertakings and exercise one of the activities referred to in paragraph 2;
- (b) or, when they are not public authorities or public undertakings, have as one of their activities any of those referred to in paragraph 2 or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.

2. Relevant activities for the purposes of this Directive shall be:

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:
- (i) drinking water, or
- (ii) electricity, or
- (iii) gas or heat,
- or the supply of drinking water, electricity, gas or heat to such networks;
- (b) the exploitation of a geographical area for the purpose of:
- (i) exploring for or extracting oil, gas, coal or other solid fuels, or
- (ii) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;
- (c) the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service;

- (d) the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.

⁽¹⁾ OJ No L 40, 11. 2. 1989, p. 12.

3. For the purpose of applying paragraph 1 (b), special or exclusive rights shall mean rights deriving from authorizations granted by a competent authority of the Member State concerned, by law, regulation or administrative action, having as their result the reservation for one or more entities of the exploitation of an activity defined in paragraph 2.

A contracting entity shall be considered to enjoy special or exclusive rights in particular where:

- (a) for the purpose of constructing the networks or facilities referred to in paragraph 2, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway;
- (b) in the case of paragraph 2 (a), the entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned.

4. The provision of bus transport services to the public shall not be considered to be a relevant activity within the meaning of paragraph 2 (c) where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions as the contracting entities.

5. The supply of drinking water, electricity, gas or heat to networks which provide a service to the public by a contracting entity other than public authority shall not be considered as a relevant activity within the meaning of paragraph 2 (a) where:

- (a) in the case of drinking water or electricity:
 - the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraph 2, and
 - supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;
- (b) in the case of gas or heat:
 - the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in paragraph 2, and
 - supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

6. The contracting entities listed in Annexes I to X shall fulfil the criteria set out above. In order to ensure that the

lists are as exhaustive as possible, Member States shall notify the Commission of amendments to their lists. The Commission shall revise Annexes I to X in accordance with the procedure in Article 32.

Article 3

1. Member States may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for, or extracting, oil, gas, coal or other solid fuels shall not be considered to be an activity defined in Article 2 (2) (b) (i) and that entities shall not be considered as operating under special or exclusive rights within the meaning of Article 2 (3) (b) by virtue of carrying on one or more of these activities, provided that all the following conditions are satisfied with respect to the relevant national provisions concerning such activities:

- (a) at the time when authorization to exploit such a geographical area is requested, other entities shall be free to seek authorization for that purpose under the same conditions as the contracting entities;
- (b) the technical and financial capacity of entities to engage in particular activities shall be established prior to any evaluation of the merits of competing applications for authorization;
- (c) authorization to engage in those activities shall be granted on the basis of objective criteria concerning the way in which it is intended to carry out the exploitation for extraction, which shall be established and published prior to the requests and applied in a non-discriminatory manner;
- (d) all conditions and requirements concerning the carrying out or termination of the activity, including provisions on operating obligations, royalties, and participation in the capital or revenue of the entities, shall be established and made available prior to the requests for authorization being made and then applied in a non-discriminatory manner; every change concerning these conditions and requirements shall be applied to all the entities concerned, or else amendments must be made in a non-discriminatory manner; however, operating obligations need not be established until immediately before the authorization is granted; and
- (e) contracting entities shall not be required by any law, regulation, administrative requirement, agreement or understanding to provide information on a contracting entity's intended or actual sources of procurement, except at the request of national authorities and exclusively with a view to the objectives mentioned in Article 36 of the Treaty.

2. Member States which apply the provisions of paragraph 1 shall ensure, through the conditions of the authorization or other appropriate measures, that any entity:

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies and works contracts, in particular as regards the information that the entity makes available to undertakings concerning its procurement intentions;
- (b) communicates to the Commission, under conditions to be defined by the latter in accordance with Article 32, information relating to the award of contracts.

3. As regards individual concessions or authorizations granted before the date on which Member States apply this Directive in accordance with Article 37, paragraphs 1 (a), (b) and (c) shall not apply, provided that at that date other entities are free to seek authorization for the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, on a non-discriminatory basis and in the light of objective criteria. Paragraph 1 (d) shall not apply as regards conditions or requirements established, applied or amended before the date referred to above.

4. A Member State which wishes to apply paragraph 1 shall inform the Commission accordingly. In doing so, it shall inform the Commission of any law, regulation or administrative provision, agreement or understanding relating to compliance with the conditions referred to in paragraphs 1 and 2.

The Commission shall take a decision in accordance with the procedure laid down in Article 32 (4) to (7). It shall publish its decision, giving its reasons, in the *Official Journal of the European Communities*.

It shall forward to the Council each year a report on the implementation of this Article and review its application in the framework of the report provided for in Article 36.

Article 4

1. When awarding supply or works contracts, the contracting entities shall apply procedures which are adapted to the provisions of this Directive.

2. Contracting entities shall ensure that there is no discrimination between different suppliers or contractors.

3. In the context of provision of technical specifications to interested suppliers and contractors, of qualification and selection of suppliers or contractors and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

4. The provisions of this Directive shall not limit the right of suppliers or contractors to require a contracting entity, in conformity with national law, to respect the confidential nature of information which they make available.

Article 5

1. Contracting entities may regard a framework agreement as a contract within the meaning of Article 1 (3) and award it in accordance with this Directive.

2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of Article 15 (2) (i) when awarding contracts based on that agreement.

3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of Article 15 (2) (i).

4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

Article 6

1. This Directive shall not apply to contracts which the contracting entities award for purposes other than the pursuit of their activities as described in Article 2 (2) or for the pursuit of such activities in a non-member country, in conditions not involving the physical use of a network or geographical area within the Community.

2. However, this Directive shall apply to contracts awarded on behalf of the entities which exercise an activity referred to in Article 2 (2) (a) (i) and which:

- (a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than 20 % of the total volume of water made available by these projects or irrigation or drainage installations; or

- (b) are connected with the disposal or treatment of sewage.

3. The contracting entities shall notify the Commission at its request of any activities they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of activities which it considers to be covered by this exclusion, for information in the *Official Journal of the European Communities*. In so doing, the

Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 7

1. The provisions of this Directive shall not apply to contracts awarded for purposes of re-sale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

2. The contracting entities shall notify the Commission at its request of all the categories of products they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of activities which it considers to be covered by this exclusion, for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 8

1. This Directive shall not apply to contracts which contracting entities exercising an activity described in Article 2 (2) (d) award for purchases intended exclusively to enable them to provide one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.

2. The contracting entities shall notify the Commission at its request of any services they regard as covered by the exclusion referred to in paragraph 1. The Commission may periodically publish the list of services which it considers to be covered by this exclusion, for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 9

1. This Directive shall not apply to:

- (a) contracts which the contracting entities listed in Annex I award for the purchase of water;
- (b) contracts which the contracting entities specified in Annexes II, III, IV and V award for the supply of energy or of fuels for the production of energy.

2. The Council shall re-examine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals.

Article 10

This Directive shall not apply to contracts when they are declared to be secret by the Member State, when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic security interests of that State so requires.

Article 11

This Directive shall not apply to contracts governed by different procedural rules and awarded:

1. pursuant to an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering supplies or works intended for the joint implementation or exploitation of a project by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Council Decision 71/306/EEC⁽¹⁾, as last amended by Decision 77/63/EEC⁽²⁾, or, in the case of agreements governing contracts awarded by entities exercising an activity defined in Article 2 (2) (d), the Advisory Committee on Telecommunications Procurement referred to in Article 31;
2. to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;
3. pursuant to the particular procedure of an international organization.

Article 12

1. This Directive shall apply to contracts whose estimated value, net of VAT, is not less than:

- (a) ECU 400 000 in the case of supply contracts awarded by entities exercising an activity defined in Article 2 (2) (a), (b) and (c);
- (b) ECU 600 000 in the case of supply contracts awarded by entities exercising an activity defined in Article 2 (2) (d);
- (c) ECU 5 million in the case of works contracts.

2. In the case of supply contracts for lease, rental or hire-purchase, the basis for calculating the contract value shall be:

⁽¹⁾ OJ No L 185, 16. 8. 1971, p. 15.

⁽²⁾ OJ No L 13, 15. 1. 1977, p. 15

(a) in the case of fixed-term-contracts, where their term is 12 months or less, the estimated total value for the contract's duration, or, where their term exceeds 12 months, the contract's total value including the estimated residual value;

(b) in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the anticipated total instalments to be paid in the first four years.

3. Where a proposed supply contract expressly specifies option clauses, the basis for calculating the contract value shall be the highest possible total purchase, lease, rental or hire-purchase permissible, inclusive of the option clauses.

4. In the case of a procurement of supplies over a given period by means of a series of contracts to be awarded to one or more suppliers or of contracts which are to be renewed, the contract value shall be calculated on the basis of:

(a) the total value of contracts which had similar characteristics awarded over the previous fiscal year or 12 months, adjusted where possible for anticipated changes in quantity or value over the subsequent 12 months;

(b) or the aggregate value of contracts to be awarded during the 12 months following the first award or during the whole term of the contract, where this is longer than 12 months.

5. The basis for calculating the value of a framework agreement shall be the estimated maximum value of all the contracts envisaged for the period in question.

6. The basis for calculating the value of a works contract for the purposes of paragraph 1 shall be the total value of the work. 'Work' shall mean the building and engineering activities taken as a whole that are intended to fulfil an economic function by themselves.

In particular, where a supply or work is the subject of several lots, the value of each lot shall be taken into account when assessing the value referred to in paragraph 1. Where the aggregate value of the lots equals or exceeds the value laid down in paragraph 1, that paragraph shall apply to all the lots. However, in the case of works contracts, contracting entities may derogate from paragraph 1 in respect of lots whose estimated value net of VAT is less than ECU 1 million, provided that the aggregate value of those lots does not exceed 20 % of the overall value of the lots.

7. For the purposes of paragraph 1, contracting entities shall include in the estimated value of a works contract the value of any supplies or services necessary for the execution of the contract which they make available to the contractor.

8. The value of supplies which are not necessary for the execution of a particular works contract may not be added to that of the contract with the result of avoiding application of this Directive to the procurement of those supplies.

9. Contracting entities may not circumvent this Directive by splitting contracts or using special methods of calculating the value of contracts.

TITLE II

Technical specifications and standards

Article 13

1. Contracting entities shall include the technical specifications in the general documents or the contract documents relating to each contract.

2. The technical specifications shall be defined by reference to European specifications where these exist.

3. In the absence of European specifications, the technical specifications should as far as possible be defined by reference to other standards having currency within the Community.

4. Contracting entities shall define such further requirements as are necessary to complement European specifications or other standards. In doing so, they shall prefer specifications that indicate performance requirements rather than design or description characteristics unless the contracting entity has objective reasons for considering that such specifications are inadequate for the purposes of the contract.

5. Technical specifications which mention goods of a specific make or source or of a particular process, and which have the effect of favouring or eliminating certain undertakings, shall not be used unless such specifications are indispensable for the subject of the contract. In particular, the indication of trade marks, patents, types, or specific origin or production shall be prohibited; however, such an indication accompanied by the words 'or equivalent' shall be authorized where the subject of the contract cannot otherwise be described by specifications

which are sufficiently precise and fully intelligible to all concerned.

6. Contracting entities may derogate from paragraph 2 if:

- (a) it is technically impossible to establish satisfactorily that a product conforms to the European specifications;
- (b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment⁽¹⁾, or of Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications⁽²⁾;
- (c) in the context of adapting existing practice to take account of European specifications, use of these specifications would oblige the contracting entity to acquire supplies incompatible with equipment already in use or would entail disproportionate cost or disproportionate technical difficulty. Contracting entities which have recourse to this derogation shall do so only as part of a clearly defined and recorded strategy with a view to a change-over to European specifications;
- (d) the relevant European specification is inappropriate for the particular application or does not take account of technical developments which have come about since its adoption. Contracting entities which have recourse to this derogation shall inform the appropriate standardizing organization, or any other body empowered to review the European specification, of the reasons why they consider the European specification to be inappropriate and shall request its revision;
- (e) the project is of a genuinely innovative nature for which use of European specifications would not be appropriate.

7. Notices published pursuant to Article 16 (1) (a) shall indicate any recourse to the derogations referred to in paragraph 6.

8. This Article shall be without prejudice to compulsory technical rules insofar as these are compatible with Community law.

Article 14

1. Contracting entities shall make available on demand to suppliers or contractors interested in obtaining a contract

the technical specifications regularly referred to in their supply or works contracts or the technical specifications which they intend to apply to contracts covered by periodic information notices within the meaning of Article 17.

2. Where such technical specifications are based on documents available to interested suppliers or contractors, a reference to those documents shall be sufficient.

TITLE III

Procedures for the award of contracts

Article 15

1. Contracting entities may choose any of the procedures described in Article 1 (6), provided, subject to paragraph 2, a call for competition has been made in accordance with Article 16.

2. Contracting entities may use a procedure without prior call for competition in the following cases:

- (a) in the absence of tenders or suitable tenders in response to a procedure with a prior call for competition, provided that the original contract conditions have not been substantially changed;
- (b) where a contract is purely for the purpose of research, experiment, study or development and not for the purpose of ensuring profit or of recovering research and development costs;
- (c) when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be executed only by a particular supplier or contractor;
- (d) insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open and restricted procedures cannot be adhered to;
- (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;

⁽¹⁾ OJ No L 217, 5. 8. 1986, p. 21.

⁽²⁾ OJ No L 36, 7. 2. 1987, p. 31.

(f) for additional works not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition that the award is made to the contractor executing the original contract:

- when such additional works cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities,
- or when such additional works, although separable from the execution of the original contract, are strictly necessary to its later stages;

(g) in the case of works contracts, for new works consisting of the repetition of similar works entrusted to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition. As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Article 12;

(h) for supplies quoted and purchased on a commodity market;

(i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 5 (2) is fulfilled;

(j) for bargain purchases, where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a very short space of time at a price considerably lower than normal market prices;

for purchases of goods under particularly advantageous conditions either from a supplier definitively winding up his business activities or from the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations.

Article 16

1. A call for competition may be made:

- (a) by means of a notice drawn up in accordance with Annex XII A, B or C; or
- (b) by means of a periodic indicative notice drawn up in accordance with Annex XIV; or
- (c) by means of a notice on the existence of a qualification system drawn up in accordance with Annex XIII.

2. When a call for competition is made by means of a periodic indicative notice:

- (a) the notice must refer specifically to the supplies or works which will be the subject of the contract to be awarded;
- (b) the notice must indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested undertakings to express their interest in writing;
- (c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

3. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

4. The notices referred to in this Article shall be published in the *Official Journal of the European Communities*.

Article 17

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice:

- (a) in the case of supply contracts, the total of the contracts for each product area of which the estimated value, taking into account the provisions of Article 12, is equal to or greater than ECU 750 000, and which they intend to award over the following 12 months;
- (b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than the threshold laid down in Article 12 (1).

2. The notice shall be drawn up in accordance with Annex XIV and published in the *Official Journal of the European Communities*.

3. Where the notice is used as a means of calling for competition in accordance with Article 16 (1) (b), it must have been published not more than 12 months prior to the date on which the invitation referred to in Article 16 (2) (c) is sent. Moreover, the contracting entity shall meet the deadlines laid down in Article 20 (2).

4. Contracting entities may, in particular, publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided it is clearly stated that such notices are additional notices.

Article 18

1. Contracting entities which have awarded a contract shall communicate to the Commission, within two months of the award of the contract and under conditions to be laid down by the Commission in accordance with the procedure laid down in Article 32, the results of the awarding procedure by means of a notice drawn up in accordance with Annex XV.

2. Information provided under Section I of Annex XV shall be published in the *Official Journal of the European Communities*. In this connection the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information in connection with points 6 and 9 of Annex XV.

3. Information provided under Section II of Annex XV must not be published except, in aggregated form, for statistical purposes.

Article 19

1. The contracting entities must be able to supply proof of the date of dispatch of the notices referred to in Articles 15 to 18.

2. The notices shall be published in full in their original language in the *Official Journal of the European Communities* and in the TED data bank. A summary of the important elements of each notice shall be published in the other official languages of the Community, the original text alone being authentic.

3. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In exceptional cases it shall endeavour to publish the notice referred to in Article 16 (1) (a) within five days in response to a request by the contracting entity and provided the notice has been sent to the Office by electronic mail, telex or telefax. Each edition of the *Official Journal of the European Communities* which contains one or more notices shall reproduce the model notice or notices on which the published notice or notices are based.

4. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities.

5. Contracts in respect of which a notice is published in the *Official Journal of the European Communities* pursuant to Article 16 (1) shall not be published in any other way before that notice has been dispatched to the

Office for Official Publications of the European Communities. Such publication shall not contain information other than that published in the *Official Journal of the European Communities*.

Article 20

1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice. This time limit may be shortened to 36 days where contracting entities have published a notice in accordance with Article 17 (1).

2. In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

- (a) the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 16 (1) (a) or in response to an invitation from a contracting entity in accordance with Article 16 (2) (c), shall, as a general rule, be at least five weeks from the date of dispatch of the notice and shall in any case not be less than the time limit for publication laid down in Article 19 (3) plus 10 days;
- (b) the time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;
- (c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least three weeks and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 22 (3).

Article 21

In the contract documents, the contracting entity may ask the tenderer to indicate in his tender any share of the contract he may intend to subcontract to third parties.

This indication shall be without prejudice to the question of the principal contractor's responsibility.

Article 22

1. Provided they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers or contractors by the contracting entities as a general rule within six days of receipt of the application.

2. Provided it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting entities not later than six days before the final date fixed for receipt of tenders.

3. Where tenders require the examination of voluminous documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account in fixing the appropriate time limits.

4. Contracting entities shall invite the selected candidates simultaneously and in writing. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:

- (a) the address from which any additional documents can be requested, the final date for such requests and the amount and methods of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to any tender notice published;
- (d) an indication of any document to be annexed;
- (e) the criteria for the award of the contract if these are not given in the notice;
- (f) any other special condition for participation in the contract.

Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telefax, telephone or any electronic means, they must be confirmed by letter dispatched before the expiry of the time limit referred to in Article 20 (1) or of the time limit set by contracting entities pursuant to Article 20 (2).

Article 23

1. The contracting entity may state in the contract documents, or be obliged by a Member State so to do, the authority or authorities from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the works are to be executed and which shall be applicable to the works carried out on site during the performance of the contract.

2. A contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work is to be carried out. This shall be without prejudice to the application of the provisions of Article 27 (5) concerning the examination of abnormally low tenders.

TITLE IV

Qualification, selection and award

Article 24

1. Contracting entities which so wish may establish and operate a system of qualification of suppliers or contractors.

2. The system, which may involve different qualification stages, shall operate on the basis of objective rules and criteria to be established by the contracting entity. The contracting entity shall use European standards as a reference where they are appropriate. The rules and criteria may be updated as required.

3. The rules and criteria for qualification shall be made available on request to interested suppliers or contractors. The updating of these criteria and rules shall be communicated to the interested suppliers and contractors. Where a contracting entity considers that the qualification or certification system of certain third entities or bodies meet its requirements, it shall communicate to interested suppliers and contractors the names of such third entities or bodies.

4. Contracting entities shall inform applicants of their decision as to qualification within a reasonable period. If the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying a longer period and of the date by which its application will be accepted or refused.

5. In reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities may not:

- impose conditions of an administrative, technical or financial nature on some suppliers or contractors that are not imposed on others,
- require tests or proof that duplicate objective evidence already available.

6. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal. The reasons must be based on the criteria for qualification referred to in paragraph 2.

7. A written record of qualified suppliers or contractors shall be kept, and it may be divided into categories according to the type of contract for which the qualification is valid.

8. Contracting entities may bring the qualification of a supplier or contractor to an end only for reasons based on the criteria referred to in paragraph 2. The intention to bring qualification to an end must be notified in writing to the supplier or contractor beforehand, together with the reason or reasons justifying the proposed action.

9. The qualification system shall be the subject of a notice drawn up in accordance with Annex XIII and published in the *Official Journal of the European Communities*, indicating the purpose of the qualification system and the availability of the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

Article 25

1. Contracting entities which select candidates to tender in restricted procedures or to participate in negotiated procedures shall do so according to objective criteria and rules which they lay down and which they shall make available to interested suppliers or contractors.

2. The criteria used may include the criteria for exclusion specified in Article 23 of Directive 71/305/EEC and in Article 20 of Directive 77/62/EEC.

3. The criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the contract award procedure and the resources required to complete it. The number of candidates selected must, however, take account of the need to ensure adequate competition.

Article 26

Groupings of suppliers or contractors shall be permitted to tender or negotiate. The conversion of such groupings into a specific legal form shall not be required in order to submit a tender or to negotiate, but the grouping selected may be required so to convert itself once it has been awarded the contract where such conversion is necessary for the proper performance of the contract.

Article 27

1. The criteria on which the contracting entities shall base the award of contracts shall be:

- (a) the most economically advantageous tender, involving various criteria depending on the contract in question, such as: delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supplies and price; or
- (b) the lowest price only.

2. In the case referred to in paragraph 1 (a), contracting entities shall state in the contract documents or in the tender notice all the criteria they intend to apply to the award, where possible in descending order of importance.

3. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting entities. Contracting entities shall state in the contract documents the minimum specifications to be respected by the variants and any specific requirements for their presentation. Where variants are not permitted, they shall so indicate in the contract documents.

4. Contracting entities may not reject the presentation of a variant on the sole ground that it was drawn up on the basis of technical specifications defined with reference to European specifications or to national technical specifications recognized as complying with the essential requirements within the meaning of Directive 89/106/EEC.

5. If, for a given contract, tenders appear abnormally low in relation to the services, the contracting entity shall, before it may reject those tenders, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received. It may set a reasonable period within which to reply.

The contracting entity may take into consideration explanations which are justified on objective grounds relating to the economy of the construction or production method, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the contract, or the originality of the product or the work proposed by the tenderer.

Contracting entities may reject tenders which are abnormally low owing to the receipt of State aid only if they have consulted the tenderer and if the tenderer has not been able to show that the aid in question has been notified

to the Commission pursuant to Article 93 (3) of the Treaty or has received the Commission's approval. Contracting entities which reject a tender under these circumstances shall inform the Commission thereof.

Article 28

1. Article 27 (1) shall not apply where a Member State bases the award of contracts on other criteria within the framework of rules in force at the time of adoption of this Directive whose aim is to give preference to certain tenderers provided the rules invoked are compatible with the Treaty.

2. Without prejudice to paragraph 1, this Directive shall not prevent, until 31 December 1992, the application of national provisions in force on the award of supply or works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in disadvantaged regions or those suffering from industrial decline, provided that the provisions concerned are compatible with the Treaty and with the Community's international obligations.

Article 29

1. This Article shall apply to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

2. Any tender made for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 802/68 of 27 June 1968 on the common definition of the concept of the origin of goods⁽¹⁾, as last amended by Regulation (EEC) No 3860/87⁽²⁾, exceeds 50 % of the total value of the products constituting the tender. For the purposes of this Article, software used in the equipment of telecommunication networks shall be considered as products.

3. Subject to paragraph 4, where two or more tenders are equivalent in the light of the award criteria defined in Article 27, preference shall be given to the tenders which may not be rejected pursuant to paragraph 2. The prices of tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

(1) OJ No L 148, 28. 6. 1968, p. 1.

(2) OJ No L 363, 23. 12. 1987, p. 30.

4. However, a tender shall not be preferred to another pursuant to paragraph 3 where its acceptance would oblige the contracting entity to acquire material having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance or disproportionate costs.

5. For the purposes, in this Article, of determining the proportion referred to in paragraph 2 of products originating in third countries, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account.

6. The Commission shall submit an annual report to the Council (for the first time in the second half of 1991) on progress made in multilateral or bilateral negotiations regarding access for Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved, and on the implementation in practice of all the agreements which have been concluded.

The Council, acting by a qualified majority on a proposal from the Commission, may amend the provisions of this Article in the light of such developments.

TITLE V

Final provisions

Article 30

1. The value in national currencies of the thresholds specified in Article 12 shall in principle be revised every two years with effect from the date provided for in Directive 77/62/EEC as far as the thresholds for supply and software service contracts are concerned and from the date provided for in Directive 71/305/EEC as far as the threshold for works contracts are concerned. The calculation of such value shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of October preceding the revision with effect from 1 January. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

2. The method of calculation laid down in paragraph 1 shall be examined pursuant to the provisions of Directive 77/62/EEC.

Article 31

1. The Commission shall be assisted, as regards procurement by the contracting entities exercising an activity defined in Article 2 (2) (d), by a Committee of

an advisory nature which shall be the Advisory Committee on Telecommunications Procurement. The Committee shall be composed of representatives of the Member States and chaired by a representative of the Commission.

2. The Commission shall consult this Committee on:

- (a) amendments to Annex X;
- (b) revision of the currency values of the thresholds;
- (c) the rules concerning contracts awarded under international agreements;
- (d) the review of the application of this Directive;
- (e) the procedures described in Article 32 (2) relating to notices and statistical accounts.

Article 32

1. Annexes I to X shall be revised in accordance with the procedure laid down in paragraphs 3 to 7 with a view to ensuring that they fulfil the criteria of Article 2.

2. The conditions for the presentation, dispatch, reception, translation, keeping and distribution of the notices referred to in Articles 16, 17 and 18 and of the statistical reports provided for in Article 34 shall be established, for the purposes of simplification, in accordance with the procedure laid down in paragraphs 3 to 7.

3. The revised Annexes and the conditions referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Communities*.

4. The Commission shall be assisted by the Advisory Committee for Public Contracts and, in the case of the revision of Annex X, by the Advisory Committee on Telecommunications Procurement provided for in Article 31 of this Directive.

5. The Commission representative shall submit to the Committee a draft of the decisions 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.

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

7. 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 33

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of contractors or suppliers and award of contracts;
- (b) recourse to derogations from the use of European specifications in accordance with Article 13 (6);
- (c) use of procedures without prior call for competition in accordance with Article 15 (2);
- (d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if it so requests.

Article 34

1. The Member States shall ensure that each year, in accordance with the arrangements to be laid down under the procedure provided for in Article 32 (3) to (7), the Commission receives a statistical report concerning the total value, broken down by Member State and each category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds defined in Article 12 which would, if they were not below those thresholds, be covered by this Directive.

2. Arrangements shall be fixed in accordance with the procedure referred to in Article 32 to ensure that:

- (a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardized;
- (b) the confidential nature of the information provided is respected.

Article 35

1. Article 2 (2) of Directive 77/62/EEC is hereby replaced by the following:

2. This Directive shall not apply to:

- (a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (*) or fulfilling the conditions in Article 6 (2) of the said Directive;

- (b) supplies which are declared secret or when their delivery must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires.

(*) OJ No L 297, 29. 10. 1990, p. 1.'

2. Article 3 (4) and (5) of Directive 71/305/EEC is hereby replaced by the following:

'4. This Directive shall not apply to contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in water, energy, transport and telecommunications sectors (*) or fulfilling the conditions in Article 6 (2) of the said Directive.

(*) OJ No L 297, 29. 10. 1990, p. 1.'

Article 36

Not later than four years after the application of this Directive, the Commission, acting in close cooperation with the Advisory Committee for Public Contracts, shall review the manner in which this Directive has operated and its field of application and, if necessary, make further proposals to adapt it, in the light of developments concerning in particular progress in market opening and the level of competition. In the case of entities exercising an activity defined in Article 2 (2) (d), the Commission shall act in close cooperation with the Advisory Committee on Telecommunications Procurement.

Article 37

1. Member States shall adopt the measures necessary to comply with this Directive by 1 July 1992. They shall forthwith inform the Commission thereof.

2. Member States may stipulate that the measures referred to in paragraph 1 shall apply only from 1 January 1993.

Nevertheless, in the case of the Kingdom of Spain, 1 January 1993 shall be replaced by 1 January 1996. As regards the Hellenic Republic and the Portuguese Republic, 1 January 1993 shall be replaced by 1 January 1998.

3. Council recommendation 84/550/EEC of 12 November 1984 concerning the first phase of opening up access to public telecommunications contracts (1) shall cease to have effect as from the date on which this Directive is applied by the Member States.

Article 38

Member States shall communicate to the Commission the text of the main provisions of national law, whether laws, regulations or administrative provisions, which they adopt in the field governed by this Directive.

Article 39

This Directive is addressed to the Member States.

Done at Brussels, 17 September 1990.

For the Council

The President

P. ROMITA

(1) OJ No L 298, 16. 11. 1984, p. 51.

ANNEX X

OPERATION OF TELECOMMUNICATIONS NETWORKS OR PROVISION OF TELECOMMUNICATIONS SERVICES

BELGIUM

Régie des télégraphes et des téléphones/Regie van Telegrafie en Telefonie.

DENMARK

Kjøbenhavns Telefon Aktieselskab.

Jydsk Telefon.

Fyns Telefon.

Statens Teletjeneste.

Tele Sønderjylland.

GERMANY

Deutsche Bundespost — Telekom.

Mannesmann — Mobilfunk GmbH.

GREECE

OTE/Hellenic Telecommunications Organization.

SPAIN

Compañía Telefónica Nacional de España.

FRANCE

Direction générale des télécommunications.

Transpac.

Telecom service mobile.

Société française de radiotéléphone.

IRELAND

Telecom Éireann.

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 télécommunications.

NETHERLANDS

Koninklijke PTT Nederland NV and subsidiaries (¹).

(¹) Except PTT Post BV.

PORTUGAL

Telefones de Lisboa e Porto, SA.

Companhia Portuguesa Rádio Marconi.

Correios e Telecomunicações de Portugal.

UNITED KINGDOM

British Telecommunications plc.

Mercury Communications Ltd.

City of Kingston upon Hull.

Racal Vodafone.

Telecoms Securicor Cellular Radio Ltd (Cellnet).

ANNEX XII

A. OPEN PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. (a) Place of delivery, or site.
(b) Nature and quantity of the goods to be supplied;
or
the nature and extent of the services to be provided and general nature of the work.
(c) Indication of whether the suppliers can tender for some and/or all of the goods required.
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.
(d) Authorization to submit variants.
(e) For works contracts:
information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Derogation from the use of European specifications, in accordance with Article 13 (6).
5. Time limits for delivery or completion.
6. (a) Name and address of the service from which the contract documents and additional documents may be requested.
(b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.
7. (a) The final date for receipt of tenders.
(b) The address to which they must be sent.
(c) The language or languages in which they must be drawn up.
8. (a) Where appropriate, the persons authorized to be present at the opening of tenders.
(b) The date, hour and place of such opening.
9. Where appropriate, any deposits and guarantees required.
10. Main terms concerning financing and payment and/or references to the provisions in which are contained.
11. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.
12. Minimum economic and technical conditions required of the supplier or contractor to whom the contract is awarded.
13. Period during which the tenderer is bound to keep open his tender.
14. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.

15. Other information.
16. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.
17. Date of dispatch of the notice by the contacting entities.
18. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. RESTRICTED PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. a) Place of delivery, or site.
(b) Nature and quantity of the goods to be supplied.
or
the nature and extent of the services to be provided and general nature of the work.
(c) Indication of whether the suppliers can tender for some and/or all of the goods required.
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.
(d) Authorization to submit variants.
(e) For works contracts:
information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Derogation from the use of European specifications, in accordance with Article 13 (6).
5. Time limits for delivery or completion.
6. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.
7. (a) The final date for receipt of requests to participate.
(b) The address to which they must be sent.
(c) The language or languages in which they must be drawn up.
8. The final date for dispatch of invitations to tender.
9. Where appropriate, any deposits and guarantees required.
10. Main terms concerning financing and payment and/or references to the texts in which these are contained.
11. Information concerning the supplier's or contractor's position and minimum economic and technical conditions required of him.
12. The criteria for the award of the contract where they are not mentioned in the invitation to tender.
13. Other information.
14. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.
15. Date of dispatch of the notice by the contracting entities.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

C. NEGOTIATED PROCEDURES

1. The name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. (a) Place of delivery, or site.
(b) Nature and quantity of the goods to be supplied;
or
the nature and extent of the services to be provided and general nature of the work.
(c) Indication of whether the suppliers can tender for some and/or all of the goods required.
If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.
(d) For works contracts:
information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Derogation from the use of European specifications, in accordance with Article 13 (6).
5. Time limit for delivery or completion.
6. Where appropriate, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.
7. (a) The final date for receipt of tenders.
(b) The address to which they must be sent.
(c) The language or languages in which they must be drawn up.
8. Where appropriate, any deposits and guarantees required.
9. Main terms concerning financing and payment and/or references to the texts in which these are contained.
10. Information concerning the supplier's or contractor's position and minimum economic and technical conditions required of him.
11. Where appropriate, the names and addresses of suppliers or contractors already selected by the contracting entity.
12. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*.
13. Other information.
14. Where appropriate, the reference to publication of the periodic information notice in the Official Journal to which the contract refers.
15. Date of dispatch of the notice by the contracting entities.
16. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XIII

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Purpose of the qualification system.
3. Address where the rules concerning the qualification system can be obtained (if different from the address mentioned under 1.).
4. Where applicable, duration of the qualification system.

ANNEX XIV

PERIODIC INFORMATION NOTICE

A. *For supply contracts:*

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.
2. Nature and quantity or value of the services or products to be supplied.
3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).
(b) Type of award procedure to be used.
4. Other information (for example, indicate if a call for competition will be published later).
5. Date of dispatch of the notice by the contracting entities.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. *For works contracts*

1. The name, address, telegraphic address, telephone, telex and telecopier number of the contracting entity.
2. (a) The site.
(b) The nature and extent of the services to be provided, the main characteristics of the work or of the lots by reference to the work.
(c) An estimate of the cost of the service to be provided.
3. (a) Type of award procedure to be used.
(b) The date scheduled for initiating the award procedures in respect of the contract or contracts.
(c) The date scheduled for the start of the work.
(d) Planned time table for completion of the work.
4. Terms of financing of the work and of price revision.
5. Other information (for example, indicate if a call for competition will be published later).
6. Date of dispatch of the notice by the contracting entities.
7. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XV

NOTICE ON CONTRACTS AWARDED

I. INFORMATION FOR PUBLICATION IN THE *OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES*

1. Name and address of the contracting entity.
2. Nature of the contract (supply or works; where appropriate, state if it is a framework agreement).
3. At least a summary indication of the nature of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).
(b) Reference of publication of the notice in the *Official Journal of the European Communities*.
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 15 (2).
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases under Article 15 (2) (j).
9. Name and address of successful supplier(s) or contractor(s).
10. State, where appropriate, whether the contract has been, or may be, sub-contracted.
11. Optional information:
 - value and share of the contract which may be sub-contracted to third parties,
 - award criteria,
 - price paid (or range of prices).

II. INFORMATION NOT INTENDED FOR PUBLICATION

12. Number of contracts awarded (where an award has been split between more than one supplier).
13. Value of each contract awarded.
14. Country of origin of the product or service (EEC origin or non-Community origin; if the latter, broken down by third country).
15. Was recourse made to the exceptions to the use of European specifications provided for under Article 13 (6). If so, which?
16. Which award criteria was used (most economically advantageous; lowest price; criteria permitted under Article 28)?
17. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 27 (3)?
18. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 27 (5)?
19. Date of transmission of the notice by the contracting entities.

STATEMENT

concerning Article 15 of Directive 90/531/EEC

The Council and the Commission state that in open and restricted procedures all negotiation with candidates or tenderers on fundamental aspects of contracts, variations in which are likely to distort competition, and in particular on prices, shall be ruled out; however, discussions with candidates or tenderers may be held but only for the purpose of clarifying or supplementing the content of their tenders or the requirements of the contracting entities and provided this does not involve discrimination.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 9 October 1990

on the coordinated introduction of Pan-European land-based public radio paging in the Community

(90/543/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, by Recommendation 84/549/EEC ⁽⁴⁾, the Council calls for the introduction of services on the basis of a common harmonized approach in the field of telecommunications;

Whereas the resources offered by modern telecommunications networks should be utilized to the full for the economic development of the Community;

Whereas paging services are a particularly efficient communications method for alerting and/or sending messages to people on the move;

Whereas the land-based public paging systems currently in use in the Community do not in general allow people on the move throughout the Community to reap the

benefits of European-wide paging services and European-wide markets;

Whereas the European Telecommunication Standards Institute (ETSI) has instructed the technical Committee (PS) to specify all system aspects of a more advanced public radio paging system code named European Radio Messaging System (ERMES);

Whereas the introduction of ERMES being specified by ETSI will provide a unique opportunity of establishing a truly pan-European paging service;

Whereas a coordinated policy for the introduction of a pan-European land-based public radio paging service will make it possible to establish a European market in mobile terminals (paging receivers) which will be capable of creating, by virtue of its size, service features and costs, the necessary development conditions to enable undertakings to maintain and improve their presence in world markets;

Whereas it is essential to ensure extensive use of frequency agile type receivers;

Whereas it is necessary to allow unrestricted access to radio paging services and free circulation of paging receivers throughout the Community;

Whereas in this context Community law and in particular the competition rules should be respected;

Whereas the implementation of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment ⁽⁵⁾ will make an important contribution towards this goal;

⁽¹⁾ OJ No C 43, 23. 2. 1990, p. 6.

⁽²⁾ OJ No C 15, 22. 1. 1990, p. 87.

⁽³⁾ OJ No C 298, 27. 11. 1989, p. 27.

⁽⁴⁾ OJ No L 298, 16. 11. 1984, p. 49.

⁽⁵⁾ OJ No L 217, 5. 8. 1986, p. 21.

Whereas consideration should be given to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾ and to Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications⁽²⁾;

Whereas it is appropriate to make use of the potential of the Community's financial instruments in order to promote the development of the telecommunications infrastructure in the Community;

Whereas consideration should be given to Council Recommendation 87/371/EEC of 25 June 1987 on the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community⁽³⁾ which points out that special attention should be paid to the urgent requirement of certain users for pan-European land-based communications and that the Commission will in the future submit other proposals in the field of mobile communications, including radio paging systems;

Whereas the public telecommunications administrations, the recognized private operating agencies and other authorized agencies offering public mobile telecommunications services are hereinafter referred to as 'telecommunications administrations';

Whereas a favourable opinion has been delivered by the Senior Officials Group on Telecommunications (SOG-T), on the basis of the detailed report drawn up by the Analysis and Forecasting Group (GAP) which provides a strategic basis for the development of public mobile communications in the Community with a view to enabling European users on the move to communicate efficiently and economically;

Whereas favourable opinions on this report have been delivered by the telecommunications administrations, by the European Conference of Postal and Telecommunications Administrations (CEPT) and by telecommunications equipment manufacturers in the Member States;

Whereas the envisaged measures will allow the economic benefit and rapidly increasing market potential of public radio paging to be fully realized in the Community;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

HEREBY RECOMMENDS :

1. that the telecommunications administrations implement with due respect for Community law the detailed recommendations as described in the Annex concerning the coordinated introduction of pan-European land-based public radio paging in the Community. For the purposes of this Recommendation, 'pan-European land-based public radio paging service' shall mean a public radio paging service based on a terrestrial infrastructure in the Member States in accordance with a common specification which allows persons wishing to do so to send and/or to receive alert and/or numeric or alphanumeric messages anywhere within the coverage of the service in the Community;
2. that the telecommunications administrations continue the cooperation within the CEPT and, with the collaboration of manufacturers and users, within ETSI, particularly concerning the objectives and time schedule set out in the Annex for the completion of the specifications and service implementation of the pan-European land-based public radio paging system;
3. that the telecommunications administrations plan for a gradual evolution from existing radio paging systems to the pan-European land-based public radio paging system so as to ensure a transition which meets the needs of users, telecommunications administrations and manufacturers;
4. that Member State Governments and telecommunications administrations complete the technical arrangements for the implementation of the means of call routing and processing, so that tone and/or numeric or alphanumeric messages can be sent from anywhere in the Community to a radio paging receiver anywhere in the geographical coverage of the Ermes service by 31 December 1992 at the latest;
5. that the Commission take appropriate initiatives, within the framework of application of existing Directives, to encourage the completion of the specifications and the implementation of the pan-European land-based public radio paging system, within the time schedule set out in the Annex;
6. that the Community's financial instruments take this Recommendation into account within the framework of their interventions, particularly as regards capital investments required for the implementation of the infrastructure for the pan-European land-based public radio paging system;
7. that the telecommunications administrations prepare and sign by July 1990 at the latest a memorandum of understanding on the implementation of pan-European land-based public radio paging;

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ OJ No L 36, 7. 2. 1987, p. 31.

⁽³⁾ OJ No L 196, 17. 7. 1987, p. 81.

8. that Member State Governments inform the Commission at the end of each year, from the end of 1990 onwards, of the measures taken and problems encountered in the course of implementing this Recommendation. The progress of work will be examined by the Commission and the Senior Officials Group on Telecommunications (SOG-T); that the European Parliament be regularly informed.

Done at Luxembourg, 9 October 1990.

For the Council

The President

P. ROMITA

ANNEX

ANALYSIS OF THE REQUIREMENTS FOR THE COORDINATED INTRODUCTION OF PAN-EUROPEAN LAND-BASED PUBLIC PAGING IN THE COMMUNITY**1. GENERAL REQUIREMENTS**

The future pan-European public radio paging system should fulfil the following general requirements :

- be suitable for operation over the whole frequency band range 169,4 MHz to 169,8 MHz with 25 KHz radio channels ;
- permit an increase in the number of paging users which can be supported per paging area per unit of spectrum and for the same grade of service compared to systems based on CCIR Radio Paging Code No 1 (Pocsag), assuming the same mix of tone, numeric and alphanumeric pagers ;
- permit easy access via PSTN, PSS, Videotex terminals, telex and other forms of direct access such as via ISDN ;
- permit simultaneous operation of two or more independent systems in the same geographic area and permit several independent systems in areas where several national boundaries meet.

Access facilities should be provided for a calling party to initiate a paging request from service areas anywhere in the Community in the most cost effective and easy manner.

2. CHOICE OF RADIO SUBSYSTEM

Considerable experience in designing, manufacturing and operating public radio paging systems already exists in Europe. Much of this experience derives from the successful development and exploitation of the European Pocsag paging code (now CCIR Radio Paging Code No 1) by manufacturers and telecommunications administrations. This accumulated experience and knowledge should speed the task of selecting a suitable radio subsystem for the pan-European paging system. On the basis of the work underway within ETSI, the system specification should be decided by June 1990. The radio subsystem specification covers the modulation method, channel coding, the radio system structure and the pager's radio identity code structure (RIC).

3. THE PAGING RECEIVER SPECIFICATION

The specification of the paging receiver will cover the radio-performance, services and facilities and physical characteristics. The receiver specification should be finalized by June 1990. However, the optimization and commencement of production of prototype paging receivers should begin if possible as soon as the decision is taken on the radio subsystem in September 1989. This will provide a lead time for the testing and production of equipment before the start of service in December 1992 at the latest. This early start to development should be ensured by the close cooperation of manufacturing industry in the system specification in particular with ETSI.

4. SYSTEM IMPLEMENTATION

Telecommunication administrations should be responsible for the implementation of the radio paging system in their countries. The largest proportion of traffic on each national system will be national traffic, but implementation should support full roaming. Furthermore, the system specification should allow flexibility to enable economic implementation both in areas of low traffic density and areas of very high traffic density. To enable the service to commence by 31 December 1992 at the latest, the system specification should be completed by June 1990.

The system specification should include system access, call routing and processing, numbering scheme, and specification of paging network controller.

5. SERVICES AND FACILITIES SPECIFIED AND SUPPORTED BY THE PAN-EUROPEAN RADIO PAGING SYSTEM

The services and facilities specification should be completely specified by December 1989, and should fall into two categories : minimum and additional.

Minimum services and facilities

Minimum services and facilities are those which should be available on each national system and hence the pan-European system as a whole.

Additional services and facilities

The additional services are those which should be provided in open competition allowing for the national conditions for implementing such services. The non-provision of an additional service or facility should not affect in any way the functioning of the pan-European service at a basic level. The provision of an additional service or facility on one national system should not increase the cost of the minimum service on that system, or require an increase in functionality or an increase in cost on any other national system.

6. TARIFF CONSIDERATIONS

The principles of charging for the European service should be established taking full account of the competition rules of the Treaty for the European service, of cross charging between national operators for the handling of roaming traffic and of network technicalities. Administrations should endeavour to ensure that the user cost of the future radio paging service is not higher than that of current services of the same type.

7. GEOGRAPHICAL SERVICE COVERAGE

Administrations should study priorities for service coverage in order to stimulate the maximum pan-European traffic demand at the earliest possible stage compatible with commercial strategies.

The pan-European public radio paging system should be introduced by 31 December 1992 at the latest. The objective is geographical coverage by the service offered in each Member State, which should progressively extend as follows :

- 31 December 1992 : start of service,
- January 1994 : at least 25 % of population,
- January 1995 : at least 50 % of population,
- January 1997 : at least 80 % of population.

8. SPECIAL REQUIREMENT

Consideration should be given to providing within the Ermes system the ability to have displayed, on the radio paging receiver, characters in all official Community languages, wherever possible.

COUNCIL DIRECTIVE

of 9 October 1990

on the frequency bands designated for the coordinated introduction of pan-European land-based public radio paging in the Community

(90/544/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, by Recommendation 84/549/EEC ⁽⁴⁾, the Council calls for the introduction of services on the basis of a common harmonized approach in the field of telecommunications;

Whereas the resources offered by modern telecommunications networks should be utilized to the full for the economic development of the Community;

Whereas radio paging services depend on the allocation and availability of appropriate frequencies in order to transmit and receive between fixed-base stations and radio paging receivers respectively;

Whereas the frequencies and land-based public radio paging systems currently in use in the Community vary widely and do not allow all users on the move to reap the benefits of European-wide services and European-wide markets;

Whereas the introduction of the more advanced radio paging system codenamed European Radio Messaging System (Ermes) being specified by the European Telecommunications Standards Institute (ETSI) will provide a unique opportunity of establishing a truly pan-European radio paging service;

Whereas the European Conference of Postal and Telecommunications Administrations (CEPT) has identified the unpaired frequency band 169,4-169,8 MHz as the most suitable band for public radio paging; whereas that choice is in accordance with the provisions of the International Telecommunications Union (ITU) Radio Regulations;

Whereas CEPT Recommendation T/R 25-07 on the coordination of frequencies for the European Radio Messaging

System has designated the European channels for theERMES system;

Whereas parts of the frequency band are being used or are intended for use by certain Member States for other radio services;

Whereas the progressive availability of the requisite part of the frequency band set out above will be indispensable for the establishment of a truly pan-European radio paging service;

Whereas some flexibility will be needed in order to take account of different frequency requirements in different Member States; whereas it will be necessary to ensure that such flexibility does not slow down the expansion of a pan-European system;

Whereas coordination procedures will have to be established between neighbouring countries as required;

Whereas the implementation of Council Recommendation 90/543/EEC of 9 October 1990 on the coordinated introduction of pan-European land-based public radio paging in the Community ⁽⁵⁾ will ensure the start of a pan-European system by 31 December 1992 at the latest;

Whereas on the basis of present technological and market trends, it appears realistic to envisage the designation of the 169,4 — 169,8 MHz frequency band as the band from which frequencies are selected in accordance with commercial requirements for the implementation and expansion of a pan-European radio paging system;

Whereas Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment ⁽⁶⁾ will allow the rapid establishment of common conformity specifications for the pan-European land-based public radio paging system;

Whereas the report on public mobile communication drawn up by the Analysis and Forecasting Group (GAP) for the Senior Officials Group for Telecommunications (SOG-T) strongly recommends that telecommunications administrations reach an agreement to use the same radio frequencies for radio paging;

Whereas favourable opinions on this report have been delivered by the telecommunications administrations, by CEPT and by telecommunications equipment manufacturers in the Member States;

⁽¹⁾ OJ No C 43, 23. 2. 1990, p. 6.

⁽²⁾ OJ No C 15, 22. 1. 1990, p. 84 and OJ NO C 231, 17. 9. 1990, p. 86.

⁽³⁾ OJ No C 298, 27. 11. 1989, p. 27.

⁽⁴⁾ OJ No L 298, 16. 11. 1984, p. 49.

⁽⁵⁾ See page 23 of this Official Journal.

⁽⁶⁾ OJ No L 217, 5. 8. 1986, p. 21.

Whereas radio paging is a particularly spectrum-efficient communications method for alerting and/or sending messages to users on the move,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive, 'pan-European land-based public radio paging service shall mean a public radio paging service based on a terrestrial infrastructure in the Member States in accordance with a common specification which allows persons wishing to do so to send and/or to receive alert and/or numeric or alphanumeric messages anywhere within the coverage of the service in the Community.

Article 2

1. Member States shall, in accordance with CEPT Recommendation T/R 25-07 designate in the 169,4 to 169,8 MHz waveband four channels which shall have priority and be protected, and preferably be:

- 169,6 MHz,
- 169,65 MHz,
- 169,7 MHz,
- 169,75 MHz,

for the pan-European land-based public radio paging service by 31 December 1992 at the latest.

2. Member States shall ensure that plans are prepared as quickly as possible to enable the pan-European public radio paging service to occupy the whole of the band 169,4 to 169,8 MHz according to commercial demand.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 18 October 1991. They shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

Article 4

The Commission shall report to the Council on the implementation of this Directive not later than the end of 1996.

Article 5

This Directive is addressed to the Member States.

Done at Luxembourg, 9 October 1990.

For the Council

The President

P. ROMITA

COUNCIL RESOLUTION

of 14 December 1990

on the final stage of the coordinated introduction of pan-European land-based public digital mobile cellular communications in the Community (GSM)

(90/C 329/09)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Notes with satisfaction that substantial progress has been made on the basis of recommendation 87/371/EEC (*) and Directive 87/372/EEC (†) with the implementation of the pan-European digital mobile cellular GSM system;

It notes, however, that a number of issues will have to be tackled in order to make truly trans-European mobile services a reality and to develop the potential of the GSM system fully. Many of these issues are currently being addressed in the context of the work of the European Conference for Postal Administration and Telecommunications (CEPT), the European Telecommunications Standards Institute (ETSI) and in the context of the implementation of the GSM Memorandum of Understanding;

It also notes that Community action is required in a number of critical areas.

These areas are in particular:

- establishment of an interim scheme for the mutual recognition of approval of GSM terminals.

An examination should in particular be made of the possibilities and criteria for implementing the principles set out in the future Council Directive concerning the approximation of the laws of the Member States on telecommunications terminals equipment including the mutual recognition of conformity on a provisional basis for GSM terminals only as a special case, before the formal procedures provided for in this Directive concerning terminals in general are fully operational.

Given the central role of the European Telecommunications Standard on mobile stations of the pan-European digital cellular telecommunications system (NET 10) in this context, the Council urges the ETSI to commit itself to completing its discussions by a specific date,

- implementation of mutual recognition of licences for the operation of GSM terminals in all Member States.

The Council notes the work in the CEPT on this issue and urges the CEPT to complete it rapidly. The Council also calls upon the Member States to guarantee the free circulation and use of mobile stations throughout the Community, referring to the procedures being worked out within the CEPT,

- examination of the possibilities of rapid extension of the technological potential and progressive development of the use of higher frequency bands for new personal communications network systems, e.g. DCS 1800, in order to create new mass markets for mobile telecommunication, taking the World Administrative Radiocommunications Conference (WARC 92) into account,

- in the context of general relations between the Community and the countries of Central and Eastern Europe and their development, promotion of the use of the GSM system in those countries which aim — within the reconstruction of their economies — at rapidly building up their mobile systems,

- encouraging the setting up of appropriate tariff and accounting arrangements, concerning in particular the inter-operator agreements which are needed to support international operation and use of mobile terminals, in accordance with Community law,

- ensuring required measures concerning data protection in particular in the context of digital mobile telecommunications. It notes in this connection that it has received proposals from the Commission, which are currently being studied.

The Council supports the development in Europe of conditions which will encourage a vigorous mobile communications market throughout the Community, by

(*) OJ No L 196, 17. 7. 1987, p. 81.

(†) OJ No L 196, 17. 7. 1987, p. 85.

extending the benefits of mobile communications to peripheral areas of the Community using fully as necessary any relevant instrument for promoting such a development, such as the STAR programme.

The Council is pleased to note that the Commission intends to address the overall future development of mobile communications in a Green Paper to be published before the end of 1991.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 29 April 1991

on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity

(91/263/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Directive 86/361/EEC ⁽⁴⁾ introduced the initial stage of the mutual recognition of type approval for telecommunications terminal equipment and in particular in its Article 9 envisaged a further stage for full mutual recognition of type approval for terminal equipment;

Whereas Decision 87/95/EEC ⁽⁵⁾ sets out the measures to be implemented for the promotion of standardization in

Europe and the preparation and implementation of standards in the field of information technology and telecommunications;

Whereas the Commission has issued a Green Paper on the development of the common market for telecommunications services and equipment proposing to accelerate the introduction of the full mutual recognition of type approval as the measure vital for the development of a competitive Community-wide terminal market;

Whereas the Council, in its resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 ⁽⁶⁾, considers as a major goal in the telecommunications policy the full mutual recognition of type approval for terminal equipment on the basis of the rapid development of common European conformity specifications;

Whereas the terminal equipment sector is a vital part of the telecommunications industry, which is one of the industrial mainstays of the economy in the Community;

Whereas harmonizing conditions for the placing on the market of telecommunications terminal equipment will create the conditions for an open and unified market;

⁽¹⁾ OJ No C 211, 17. 8. 1989, p. 12.

⁽²⁾ OJ No C 113, 7. 5. 1990; and OJ No C 19, 28. 1. 1991, p. 88.

⁽³⁾ OJ No C 329, 30. 12. 1989, p. 1

⁽⁴⁾ OJ No L 217, 5. 8. 1986, p. 21.

⁽⁵⁾ OJ No L 36, 7. 2. 1987, p. 31.

⁽⁶⁾ OJ No C 257, 4. 10. 1988, p. 1.

Whereas real, comparable access to third country markets for European manufacturers should preferably be achieved through multilateral negotiations within GATT, although bilateral talks between the Community and third countries may also contribute to this process;

Whereas the Council resolution of 7 May 1985 provides for a new approach to technical harmonization and standards ⁽¹⁾;

Whereas the scope of the Directive must be based on a general definition of the term 'terminal equipment' so as to allow the technical development of products;

Whereas Community law in its present form provides — notwithstanding one of the fundamental rules of the Community, namely the free movement of goods — that obstacles to movement within the Community, resulting from disparities in national legislation relating to the marketing of products, must be accepted in so far as such requirements can be recognized as being necessary to satisfy imperative requirements; whereas, therefore, the harmonization of laws in this case must be limited only to those requirements necessary to satisfy the essential requirements relating to terminal equipment; whereas these requirements must replace the relevant national requirements because they are essential;

Whereas the essential requirements must be satisfied in order to safeguard the general interest; whereas these requirements must be applied with discernment to take account of the state of the art at the time of manufacture and economic requirements;

Whereas Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits ⁽²⁾ and Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽³⁾, as amended by Directive 88/182/EEC ⁽⁴⁾, are applicable, *inter alia*, to the fields of telecommunications and information technology;

Whereas Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of Member States

relating to electromagnetic compatibility ⁽⁵⁾ is applicable, *inter alia*, to the fields of telecommunications and information technology; whereas it is, however, appropriate to delete the provisions of Directive 89/336/EEC in so far as they refer to the definition of telecommunications terminal equipment and to the conformity assessment procedures to be applied for such equipment;

Whereas in respect of the essential requirements and in order to help manufacturers to prove conformity to those requirements, it is desirable to have standards harmonized at European level to safeguard the general interest in the design and manufacture of terminal equipment and in order to allow checks of conformity to those requirements; whereas these standards harmonized at European level are drawn up by private-law bodies and must retain their non-binding status; whereas for this purpose the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (Cenelec) and the European Telecommunications Standards Institute (ETSI), are the bodies recognized as competent to adopt harmonized standards; whereas, within the meaning of this Directive, a harmonized standard is a technical specification (European standard or harmonization document) adopted by one of these bodies, on the basis of a remit from the Commission in accordance with the provision of Directive 83/189/EEC, and in accordance with the general guidelines referred to above;

Whereas in respect of the essential requirements related to interworking with public telecommunications networks, and in cases where it is justified, through such networks, it is in general not possible to comply with such requirements other than by the application of unique technical solutions; whereas such solutions shall therefore be mandatory;

Whereas the proposals for common technical regulations are, as a general rule, drawn up on the basis of harmonized standards, and, in order to ensure an appropriate technical coordination on a broad European basis, of additional consultations, in particular with the Telecommunications Regulations Application Committee (TRAC) set up by members of the European Conference of Postal and Telecommunications Administrations (CEPT) in a memorandum of understanding signed in 1991;

Whereas it is essential to ensure that notified bodies are of a high standard throughout the Community and meet minimum criteria of competence, impartiality and financial and other independence from clients;

Whereas it is appropriate to set up a committee bringing together parties directly concerned with the implementation

⁽¹⁾ OJ No C 136, 4. 6. 1985, p. 1.

⁽²⁾ OJ No L 77, 26. 3. 1973, p. 29.

⁽³⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽⁴⁾ OJ No L 81, 26. 3. 1988, p. 75.

⁽⁵⁾ OJ No L 139, 23. 5. 1989, p. 19.

of this Directive, in particular the national bodies designated for certifying conformity, to assist the Commission in executing the tasks entrusted to it by this Directive; whereas representatives from the telecommunication organizations, users, consumers, manufacturers, service providers and the trade unions should have the right to be consulted;

Whereas the Member States' responsibility for safety, health and the other aspects covered by the essential requirements on their territory must be recognized in a safeguard clause providing for adequate Community protection procedures;

Whereas the addressees of any decision taken under this Directive must be informed of the reasons for such a decision and the means of appeal open to them;

Whereas measures must be adopted with the aim of progressively establishing the internal market over a period expiring on 31 December 1992; whereas the internal market comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

Scope, placing on the market and free circulation

Article 1

1. This Directive shall apply to terminal equipment.
2. For the purpose of this Directive:
 - 'public telecommunications network' means the public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means,
 - 'terminal equipment' means equipment intended to be connected to the public telecommunications network, i.e.:
 - (a) to be connected directly to the termination of a public telecommunications network;
 - or
 - (b) to interwork with a public telecommunications network being connected directly or indirectly to the termination of a public telecommunications network

in order to send, process or receive information.

The system of connection may be wire, radio, optical or other electromagnetic system,

- 'technical specification' means a specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marking and labelling,
- 'standard' means a technical specification adopted by a recognized standards body for repeated or continuous application, compliance with which is not compulsory.

3. The intended purpose of the equipment, shall be declared by the manufacturer or supplier of the equipment. However, terminal equipment within the meaning of paragraph 2 which makes use of a system of communication employing the radio frequency spectrum is presumed to be intended for connection to the public telecommunications network.

Article 2

1. Notwithstanding Article 1, equipment which is capable of being connected to the public telecommunications network, but is not intended for such a purpose, shall be accompanied by a manufacturer's or supplier's declaration, the model of which is to be found in Annex VIII and by the operating manual. At the time of placing the equipment on the market for the first time, a copy of such documentation shall be transmitted to the notified body referred to in Article 10 (1) in the Member State where this first placing on the market takes place. In addition, such equipment shall be subject to the provisions of Article 11 (4).

2. The manufacturer or supplier shall be prepared to justify once, at the request of any notified body referred to in Article 10 (1), the intended purpose of such equipment on the basis of its relevant technical characteristics, its functions and indications of the market segment it is intended for.

Article 3

1. Member States shall take all appropriate measures to ensure that terminal equipment may be placed on the market and put into service only if it complies with the requirements laid down in this Directive when it is properly installed and maintained and used for its intended purpose.

2. Member States shall also take all appropriate measures to ensure that equipment referred to in Article 2 may be placed and allowed to remain on the market only if it complies with the requirements laid down by this Directive for this equipment and may not be connected to the public telecommunications network within the meaning of Article 1 (2).

3. Member States shall also take all appropriate measures to ensure that terminal equipment or equipment referred to in Article 2 is disconnected from the public telecommunications network if it is not used for its intended purpose. Member States may moreover take all appropriate measures, according to their national laws, to prevent connection to the public telecommunications network of terminal equipment that is not used in conformity with its intended purpose.

Article 4

Terminal equipment shall satisfy the following essential requirements:

- (a) user safety, in so far as this requirement is not covered by Directive 73/23/EEC;
- (b) safety of employees of public telecommunications networks operators, in so far as this requirement is not covered by Directive 73/23/EEC;
- (c) electromagnetic compatibility requirements in so far as they are specific to terminal equipment;
- (d) protection of the public telecommunications network from harm;
- (e) effective use of the radio frequency spectrum, where appropriate;
- (f) interworking of terminal equipment with public telecommunications network equipment for the purpose of establishing, modifying, charging for, holding and clearing real or virtual connection;
- (g) interworking of terminal equipment via the public telecommunications network, in justified cases.

The cases where terminal equipment supports:

- (i) reserved service according to Community law;

or

- (ii) a service which the Council has decided that there should be Community-wide availability,

are considered as justified cases and the requirements concerning this interworking are determined in accordance with the procedure provided for in Article 14.

In addition, after consultation of representatives of the bodies referred to in Article 13 (3) and taking due account of the result of these consultations, the Commission may propose that this essential requirement is recognized as being justified for other terminal equipment in accordance with the procedure provided for in Article 14.

Article 5

Member States shall not impede the placing on the market and the free circulation and use on their territory of terminal equipment which complies with the provisions of this Directive.

Article 6

1. Member States shall presume compliance with the essential requirements referred to in Article 4 (a) and (b) in respect of terminal equipment which is in conformity with the national standards implementing the relevant harmonized standards, the references of which have been published in the *Official Journal of the European Communities*. Member States shall publish the references of such national standards.

2. The Commission shall, in accordance with the procedure laid down in Article 14, adopt:

- as a first step, the measure identifying the type of terminal equipment for which a common technical regulation is required, as well as the associated scope statement for that regulation, with a view to its transmission to the relevant standardization bodies.
- as a second step, once they have been prepared by the relevant standardization bodies, the corresponding harmonized standards, or parts thereof, implementing the essential requirements referred to in Article 4 (c) to (g) which shall be transformed into common technical regulations, compliance with which shall be mandatory and the reference of which shall be published in the *Official Journal of the European Communities*.

Article 7

Where a Member State or the Commission considers that the harmonized standards referred to in Article 6 exceed or

do not entirely meet the essential requirements referred to in Article 4, the Commission or the Member State concerned shall bring the matter before the Committee referred to in Article 13, hereinafter referred to as 'the Committee', giving the reasons therefor. The Committee shall deliver an opinion as soon as possible.

In the light of the Committee's opinion and after consultation of the standing Committee set up by Directive 83/189/EEC, the Commission shall inform the Member States whether or not it is necessary to withdraw reference to those standards and any related technical regulations from the *Official Journal of the European Communities* and shall take the necessary steps to correct the shortcomings noted in the standards.

Article 8

1. Where a Member State finds that terminal equipment bearing the markings under the provision laid down in Chapter III does not comply with the relevant essential requirements when properly used in accordance with the purpose intended by the manufacturer, it shall take all appropriate measures to withdraw such products from the market or to prohibit or restrict their being placed on the market.

The Member State concerned shall immediately inform the Commission of any such measure indicating the reasons for its decision, and in particular whether non-compliance is due to:

- (a) incorrect application of the harmonized standards or common technical regulations referred to in Article 6;
- (b) shortcomings in the harmonized standards or common technical regulations referred to in Article 6 themselves.

2. The Commission shall enter into consultation with the parties concerned as soon as possible. Where, after such consultation, the Commission finds that any measure as referred to in paragraph 1 is justified it shall immediately so inform the Member State that took the action and the other Member States. Where the decision referred to in paragraph 1 is attributed to shortcomings in the harmonized standards or common technical regulations, the Commission, after consulting the parties concerned, shall bring the matter before the Committee within two months if the Member State which has taken the measure intends to maintain them, and shall initiate the procedure referred to in Article 7.

3. Where terminal equipment which does not comply with the relevant essential requirements bears the CE mark the competent Member State shall take appropriate action

against whomsoever has affixed the mark and shall inform the Commission and the other Member States thereof.

4. The Commission shall keep the Member State informed of the progress and outcome of this procedure

CHAPTER II

Conformity assessment

Article 9

1. According to the choice of the manufacturer or his authorized representative established within the Community, terminal equipment shall be subject to either the EC type-examination, as described in Annex I, or to the EC declaration of conformity, as described in Annex IV.

2. An EC type-examination as described in Annex I shall be accompanied by a declaration issued according to the EC declaration of conformity to type procedure as described in Annex II or Annex III.

3. The records and correspondence relating to the procedure referred to in this Article shall be in an official language of the Member State where the said procedure will be carried out, or in a language acceptable to the notified body involved

4. Article 10 (4) of Directive 89/336/EEC is hereby deleted.

Article 10

1. Member States shall notify to the Commission the bodies established in the Community and their identifying symbols, which they have designated for carrying out the certification, product checks, and associated surveillance tasks pertaining to the procedures referred to in Article 9. Member States shall apply the minimum criteria, set out in Annex V, for the designation of such bodies. Bodies that satisfy the criteria fixed by the relevant harmonized standards shall be presumed to satisfy the criteria set out in Annex V.

2. Member States shall inform the Commission of test laboratories established in the Community which they have designated for carrying out tests pertaining to the procedures referred to in Article 9. Notified bodies shall apply the criteria fixed by the appropriate parts of the

relevant harmonized standards for the designation of such laboratories.

3. The Commission shall publish the list of notified bodies and the list of test laboratories together with the tasks for which they have been designated in the *Official Journal of the European Communities* and shall ensure that this list is kept up to date.

4. A Member State has designated a notified body or a test laboratory under paragraph 1 or 2 shall annul the designation if the notified body or the test laboratory no longer meets the relevant criteria for designation. It shall immediately inform the other Member States and the Commission accordingly and withdraw the notification. Where a Member State or the Commission considers that a notified body or a test laboratory designated by a Member State does not meet the relevant criteria the matter shall be brought before the Committee referred to in Article 13, which shall give its opinion within three months; in the light of the Committee's opinion the Commission shall inform the Member State concerned of any changes needed if that notified body or test laboratory is to retain its recognized status.

5. In order to facilitate the determination of conformity of terminal equipment with technical regulations and standards, the notified bodies shall recognize documentation issued by third country relevant bodies, when agreements between the Community and the third country concerned have been concluded on the basis of a mutually satisfactory understanding.

6. The notified bodies referred to in Article 10 (1), when issuing an EC type-examination certificate as referred to in Annex I, followed by the appropriate document referred to in Annex II or III, or a decision on quality assurance assessment as referred to in Annex IV, issue at the same time an administrative approval for the connection of the concerned terminal equipment to the public telecommunications network.

CHAPTER III

CE mark of conformity and inscriptions

Article 11

1. The marking of terminal equipment complying with this Directive shall consist of the CE mark consisting of the symbol 'CE', followed by the identifying symbol of the notified body responsible and a symbol indicating that the

equipment is intended and is suitable to be connected to the public telecommunications network. The CE mark and these two symbols are shown in Annex VI.

2. The affixing of marks which are likely to be confused with the marks of conformity specified in Annex VI shall be prohibited.

3. Terminal equipment shall be identified by the manufacturer by means of type, batch and/or serial numbers and by the name of the manufacturer and/or supplier responsible for placing it on the market.

4. Equipment manufacturers or suppliers who place on the market equipment as referred to in Article 2 shall affix the symbol specified in Annex VII in such a way that it follows the CE mark and visually forms an integral part of the total marking.

Article 12

Where it is established that the marking referred to in Article 11 (1) has been affixed to terminal equipment which:

- does not conform to an approved type,
- conforms to an approved type which does not meet the essential requirements applicable to it,

or, where the manufacturer has failed to fulfil his obligations under the relevant EC declaration of conformity,

the notified body shall withdraw the EC type-examination certificate referred to in Annex I, the EC quality system approval decision referred to in Annex III or the EC quality system approval decision as referred to in Annex IV, notwithstanding any decisions taken under Article 8.

CHAPTER IV

Committee

Article 13

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. The Committee shall be called the Approvals Committee for Terminal Equipment (ACTE).

2. The representative of the Commission shall submit to the Committee a draft of the measure 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.

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.

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.

3. The Commission will periodically consult the representative of the telecommunications organizations, the consumers, the manufacturers, the service providers and trade unions and will inform the Committee on the outcome of such consultations, with a view to taking due account of the outcome.

Article 14

1. Notwithstanding Article 13 (1) and (2), the following procedure shall apply for matters covered by Articles 4 (g) and 6 (2).

2. The representative of the Commission shall submit to the Committee established in Article 13 a draft of the measures to be taken as referred to in Articles 4 (g) and 6 (2). 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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

4. If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measure to be taken. The Council shall act by qualified majority. If, within three months from the date of referral to it, the Council has not acted, the proposed measure shall be adopted by the Commission.

CHAPTER V

Final and transitional provisions

Article 15

The Commission shall draw up every second year a report on the implementation of this Directive, including progress on drawing up the relevant harmonized standards and on transforming them into technical regulations, as well as any problems that have arisen in the course of implementation. The report will also outline the activities of the Committee, and assess progress in achieving an open competitive market for terminal equipment at Community level consistent with the essential requirements referred to in Article 4.

Article 16

1. Directive 86/361/EEC is hereby repealed, with effect from 6 November 1992. References made to the repealed Directive shall be construed as being made to this Directive.

2. Notwithstanding paragraph 1 and Article 10 (2), Member States may designate as test laboratories such bodies which have been notified under Directive 86/361/EEC, without applying the criteria of Article 10 (2) for a period of 18 months after the effective date of repeal of Directive 86/361/EEC, it being understood that these laboratories will continue to observe the criteria for which they were notified.

3. Notwithstanding paragraph 1, any type approval granted by Member States in accordance with Directive 86/361/EEC may remain valid under the legislation of the Member States within the criteria of validity appropriate to the original approval.

4. Notwithstanding paragraph 1, measures adopted under Directive 86/361/EEC shall be submitted to the Committee under the procedure of Article 14 for possible transposition into common technical regulations.

Article 17

1. Member States shall take the measure necessary to comply with this Directive not later than 6 November 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these measure, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 18

This Directive is addressed to the Member States.

Done at Luxembourg, 29 April 1991.

2. Member States shall inform the Commission of the main provisions of domestic law which they adopt in the field governed by this Directive.

For the Council

The President

R. GOEBBELS

ANNEX I

EC TYPE-EXAMINATION

1. EC type-examination is that part of the procedure whereby a notified body ascertains and attests that a specimen, representative of the production envisaged, meets the provisions of the Directive that apply to it.
2. The application for the EC type-examination shall be lodged by the manufacturer or his authorized representative established within the Community with a notified body of his choice.

The application shall include:

- the name and address of the manufacturer and, if the application is lodged by the authorized representative, his name and address in addition,
- a written declaration that the same application has not been lodged with any other notified body,
- the technical documentation, as described in point 3.

The applicant shall place at the disposal of the notified body a specimen, representative of the production envisaged and hereinafter called 'type' ⁽¹⁾. The notified body may request further specimens if needed for carrying out the test programme.

3. The technical documentation shall enable the conformity of the product with the essential requirements of the Directive to be assessed. It shall, as far as relevant for such assessment, cover the design, manufacture and operation of the product.

For example, the documentation shall contain as far as is relevant for assessment:

- a general type-description sufficient to identify the product preferably by provision of photographs,
- design and manufacturing drawings and lists of components, sub-assemblies, circuits, etc.,
- descriptions and explanations necessary for the understanding of said drawings and lists and the operation of the product,
- a list of the standards referred to in Article 6, applied in full or in part, and descriptions of the solutions adopted to meet the essential requirements of the Directive when the standards referred to in Article 6 have not been applied,
- results of examinations carried out, etc.,
- test reports,
- proposed user information or handbook.

4. The notified body shall:
 - 4.1. examine the technical documentation, verify that the type has been manufactured in conformity with it and identify the elements which have been designed in accordance with the relevant provisions of the standards referred to in Article 6 (1), as well as the components of those standards;
 - 4.2. perform, or have performed, the appropriate examinations and necessary tests to check whether the solutions adopted by the manufacturer meet the essential requirements of the Directive which are specified in Article 4 'a) and (b);

⁽¹⁾ A type may cover several versions of the product provided that the differences between the versions do not affect the level of safety and the other requirements concerning the performance of the product.

- 4.3. perform, or have performed, the appropriate examinations and necessary tests to check that the type meets the relevant common technical regulations specified in Article 6 (2);
- 4.4. agree with the applicant on the location where the examinations and necessary tests are to be carried out.
5. Where the type meets the provisions of the Directive, the notified body shall issue an EC type-examination certificate to the applicant. The certificate shall contain the name and address of the manufacturer, conclusions of the examination, conditions for its validity and the necessary data for identification of the approved type.

A list of the relevant parts of the technical documentation shall be annexed to the certificate and a copy kept by the notified body.
6. The applicant shall inform the notified body that holds the technical documentation concerning the EC type-examination certificate of all modifications to the approved product which must receive additional approval where such changes may affect the conformity with the essential requirements or the prescribed conditions for use of the product. This additional approval is given in the form of an addition to the original EC type-examination certificate.
7. Each notified body shall communicate to the other notified bodies the relevant information concerning the EC type-examination certificates and additions issued and withdrawn.
8. The other notified bodies may request copies of the EC type-examination certificates and/or their additions. The Annexes to the certificate shall be kept at the disposal of the other notified bodies.
9. The manufacturer or his authorized representative shall keep with the technical documentation copies of EC type-examination certificates and their additions for a period ending at least 10 years after the last product has been manufactured.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available shall be the responsibility of the person who places the product on the Community market.

ANNEX II

CONFORMITY TO TYPE

1. Conformity to type is that part of the procedure whereby the manufacturer or his authorized representative established within the Community ensures and declares that the products concerned are in conformity with the type as described in the EC type-examination certificate and satisfy the requirements of the Directive that applies to them. The manufacturer shall affix the marks referred to in Article 11 (1) to each product and draw up a written declaration of conformity to type.
2. The manufacturer shall take all measures necessary to ensure that the manufacturing process assures compliance of the manufactured products with the type as described in the EC type-examination certificate and with the requirements of the Directive that apply to them.
3. The manufacturer or his authorized representative shall keep a copy of the declaration of conformity for a period ending at least 10 years after the last product has been manufactured.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the declaration of conforming to type available shall be the responsibility of the person who places the product on the Community market.

4. A notified body chosen by the manufacturer shall carry out, or have carried out, product checks at random intervals. An adequate sample of the final products, which may be taken on site by the notified body or on its behalf, shall be examined and appropriate tests shall be carried out to check the conformity of products with the relevant requirements of the Directive. In those cases where one or more of the products checked do not conform, the notified body shall take appropriate measures.

ANNEX III

PRODUCTION QUALITY ASSURANCE

1. Production quality assurance is the procedure whereby the manufacturer who satisfies the obligations of point 2 ensures and declares that the products concerned are in conformity with the type as described in the EC type-examination certificate and satisfy the requirements of the Directive that apply to them. The manufacturer shall affix the marks referred to in Article 11 (1) to each product and draw up a written declaration of conformity to type.
2. The manufacturer shall operate an approved quality system for production, final product inspection and testing as specified in point 3 and shall be subject to monitoring as specified in point 4.
3. Quality system
- 3.1. The manufacturer shall lodge an application for assessment of his quality system with a notified body of his choice, for the products concerned.

The application shall include:

- all relevant information for the product category envisaged,
- the documentation concerning the quality system,
- if applicable, the technical documentation of the approved type and a copy of the EC type-examination certificate.

- 3.2. The quality system shall ensure compliance of the products with the type as described in the EC type-examination certificate and with the requirements of the Directive that apply to them.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. The quality system documentation must permit a consistent interpretation of the quality programmes, plans, manuals and records.

It shall contain in particular an adequate description of:

- the quality objectives and the organizational structure, responsibilities and powers of the management with regard to product quality,
- the manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,
- the examinations and tests will be carried out before, during and after manufacture, and the frequency with which they will be carried out,
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.,
- the means to monitor the achievement of the required product quality and the effective operation of the quality system.

- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 3.2. It shall presume conformity with these requirements in respect of quality systems that implement the relevant harmonized standard⁽¹⁾.

The auditing team shall have at least one member with experience of evaluation in the product technology concerned. The evaluation procedure shall include an inspection visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

⁽¹⁾ This harmonized standard will be EN 29002, supplemented, if necessary, to take into account the specific nature of the procedure for which it is implemented.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to uphold it so that it remains adequate and efficient.

The manufacturer or his authorized representative shall keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in point 3.2. or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

4. Surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

- 4.2. The manufacturer shall allow the notified body access for inspection purpose to the locations of manufacture, inspection and testing, and storage and shall provide it with all necessary information, in particular:

- the quality system documentation,
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

- 4.3. The notified body shall carry out audits at reasonable intervals to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.

- 4.4. Additionally, the notified body may pay unexpected visits to the manufacturer. During such visits the notified body may carry out, or cause to be carried out, tests to verify that the quality system is functioning correctly, if necessary. The notified body shall provide the manufacturer with a visit report and, if a test has taken place, with a report.

5. The manufacturer shall, for a period ending at least 10 years after the last product has been manufactured, keep at the disposal of the national authorities:

- the documentation referred to in the second indent of point 3.1.,
- the updating referred to in the second paragraph of point 3.4.,
- the decisions and reports from the notified body which are referred to in the final paragraph of points 3.4., 4.3. and 4.4.

6. Each notified body referred to in Article 10 (1) shall make available to the other notified bodies referred to in that Article the relevant information concerning the quality system approvals issued and withdrawn.

ANNEX IV

FULL QUALITY ASSURANCE

1. Full quality assurance is the procedure whereby the manufacturer who satisfies the obligations of point 2 ensures and declares that the products concerned satisfy the requirements of the Directive that apply to them. The manufacturer shall affix the marks referred to in Article 11 (1) to each product and draw up a written declaration of conformity.
2. The manufacturer shall operate an approved quality system for design, manufacture and final product inspection and testing as specified in point 3 and shall be subject to surveillance as specified in point 4.
3. Quality system

- 3.1. The manufacturer shall lodge an application for assessment of his quality system with a notified body.

The application shall include:

- all relevant information for the products envisaged,
- the quality system's documentation.

- 3.2. The quality system shall ensure compliance of the products with the requirements of the Directive that apply to them.

All the elements, requirements and provisions adopted by the manufacturer shall be documented in a systematic and orderly manner in the form of written policies, procedures and instructions. This quality system documentation shall ensure a common understanding of the quality policies and procedures such as a quality programmes, plans, manuals and records.

It shall contain in particular an adequate description of:

- the quality objectives and the organizational structure, responsibilities and powers of the management with regard to design and product quality,
- the technical specifications, including the harmonized standards and technical regulations as well as relevant test specifications that will be applied and, where the standards referred to in Article 6 (1) will not be applied in full, the means will be used to ensure that the essential requirements of the Directive that apply to the products will be met,
- the design control and design verification techniques, processes and systematic actions that will be used when designing the products pertaining to the product category covered,
- the corresponding manufacturing, quality control and quality assurance techniques, processes and systematic actions that will be used,
- the examinations and tests will be carried out before, during and after manufacture, and the frequency with which they will be carried out, as well as the results of the tests carried out before manufacture where appropriate,
- the means by which it is ensured that the test and examination facilities respect the appropriate requirements for the performance of the necessary test,
- the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.,
- the means to monitor the achievement of the required design and product quality and the effective operation of the quality system.

- 3.3. The notified body shall assess the quality system to determine whether it satisfies the requirements referred to in point 3.2. It shall presume compliance with these requirements in respect of quality systems that implement the relevant harmonized standard (1).

(1) This harmonized standard shall be EN 29001, supplemented, if necessary, to take into account the specific nature of the products for which it is implemented.

The notified body shall assess in particular whether the quality control system ensures conformity of the products with the requirements of the Directive in the light of the relevant documentation supplied in respect of points 3.1. and 3.2. including, where relevant, test results supplied by the manufacturer.

The auditing team shall have at least one member experienced as an assessor in the product technology concerned. The evaluation procedure shall include an assessment visit to the manufacturer's premises.

The decision shall be notified to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

- 3.4. The manufacturer shall undertake to fulfil the obligations arising out of the quality system as approved and to uphold it so that it remains adequate and efficient.

The manufacturer or his authorized representative shall keep the notified body that has approved the quality system informed of any intended updating of the quality system.

The notified body shall evaluate the modifications proposed and decide whether the amended quality system will still satisfy the requirements referred to in point 3.2. or whether a re-assessment is required.

It shall notify its decision to the manufacturer. The notification shall contain the conclusions of the examination and the reasoned assessment decision.

4. EC surveillance under the responsibility of the notified body

- 4.1. The purpose of surveillance is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

- 4.2. The manufacturer shall allow the notified body access for inspection purposes to the locations of design, manufacture, inspection and testing, and storage and shall provide it with all necessary information, in particular:

- the quality system documentation,
- the quality records as foreseen by the design part of the quality system, such as results of analyses, calculations, tests, etc.
- the quality records as foreseen by the manufacturing part of the quality system, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned, etc.

- 4.3. The notified body shall carry out audits at reasonable intervals to make sure that the manufacturer maintains and applies the quality system and shall provide an audit report to the manufacturer.

- 4.4. Additionally, the notified body may pay unexpected visits to the manufacturer. At the time of such visits, the notified body may carry out tests or have them carried out in order to check the proper functioning of the quality system where necessary; it shall provide the manufacturer with a visit report and, if a test has been carried out, with a test report.

5. The manufacturer shall, for a period ending at least 10 years after the last product has been manufactured, keep at the disposal of the national authorities:

- the documentation referred to in the second indent of point 3.1.,
- the updating referred to in the second paragraph of point 3.4.,
- the decisions and reports from the notified body which are referred to in the final paragraph of points 3.4., 4.3. and 4.4.

6. Each notified body referred to in Article 10 (1) shall make available to the other notified bodies referred to in that Article the relevant information concerning quality system approvals including references to the product(s) concerned, issued and withdrawn.

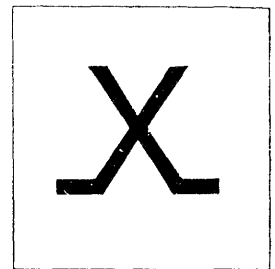
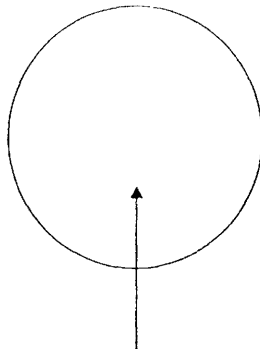
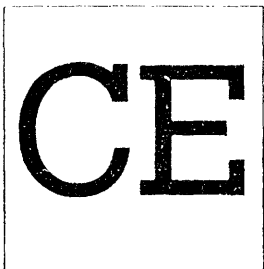
ANNEX V

MINIMUM CRITERIA TO BE TAKEN INTO ACCOUNT BY MEMBER STATES WHEN DESIGNATING NOTIFIED BODIES IN ACCORDANCE WITH ARTICLE 10 (1)

1. The notified body, its director and the staff responsible for carrying out the tasks for which the notified body has been designated shall not be a designer, manufacturer, supplier or installer of terminal equipment, or a network operator or a service provider, nor the authorized representative of any of such parties. They shall not become directly involved in the design, construction, marketing or maintenance of terminal equipment, nor represent the parties engaged in these activities. This does not preclude the possibility of exchanges of technical information between the manufacturer and the notified body.
2. The notified body and its staff must carry out the tasks for which the notified body has been designated with the highest degree of professional integrity and technical competence and must be free from all pressures and inducements, particularly financial, which might influence their judgment or the results of any inspection, especially from persons or groups of persons with an interest in such results.
3. The notified body must have at its disposal the necessary staff and facilities to enable it to perform properly the administrative and technical work associated with the tasks for which it has been designated.
4. The staff responsible for inspections must have:
 - sound technical and professional training,
 - satisfactory knowledge of the requirements of the tests or inspections that are carried out and adequate experience of such tests or inspections,
 - the ability to draw up the certificates, records and reports required to authenticate the performance of the inspections.
5. The impartiality of inspection staff must be guaranteed. Their remuneration must not depend on the number of tests or inspections carried out nor on the results of such inspections.
6. The notified body must take out liability insurance unless its liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible.
7. The staff of the notified body is bound to observe professional secrecy with regard to all information gained in carrying out its tasks (except *vis-à-vis* the competent administrative authorities of the State in which its activities are carried out) under this Directive or any provision of national law giving effect thereto.

ANNEX VI

MARKING FOR TERMINAL EQUIPMENT REFERRED TO IN ARTICLE 11 (3)

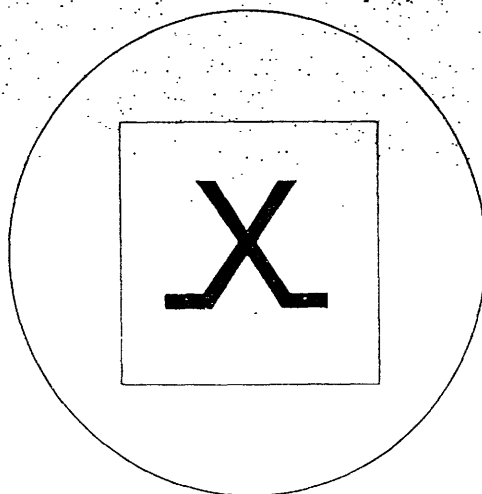


Symbol of the nottited body



ANNEX VII

MARKING FOR EQUIPMENT REFERRED TO IN ARTICLE 11 (4)



ANNEX VIII

MODEL OF A DECLARATION REFERRED TO IN ARTICLE 2 (1)

The manufacturer/supplier ⁽¹⁾

.....

.....

Declares that ⁽²⁾.....

.....

is not intended to be connected to a public telecommunications network.

The connection of such equipment to a public telecommunications network in the Community Member State will be in violation of the national law implementing Directive 91/263/EEC on the approximation of the laws of the Member States concerning telecommunication terminal equipment, including the mutual recognition of their conformity.

DATE, PLACE AND SIGNATURE

(1) Name and address.
(2) Equipment identification.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE

of 3 June 1991

on the frequency band to be designated for the coordinated introduction of digital European cordless telecommunications (DECT) into the Community

(91/287/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission⁽¹⁾,

In cooperation with the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas recommendation 84/549/EEC⁽⁴⁾ calls for the introduction of services on the basis of a common harmonized approach in the field of telecommunications;

Whereas the Council in its resolution of 30 June 1988⁽⁵⁾ on the development of the common market for telecommunications services and equipment calls for the promotion of Europe-wide services according to market requirements;

Whereas the resources offered by modern telecommunications networks should be utilized to the full for the economic development of the Community;

Whereas Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of Member States relating to electromagnetic compatibility⁽⁶⁾ is applicable, and particular attention should be taken to avoid harmful electromagnetic interference;

Whereas current cordless telephone systems in use in the Community, and the frequency bands they operate in, vary widely and may not allow the benefits of Europe-wide services or benefit from the economies of scale associated with a truly European market;

Whereas the European Telecommunications Standard Institute (ETSI) is currently developing the European Telecommunications Standard (ETS) or digital European cordless telecommunications (DECT);

Whereas the development of the European Telecommunications Standard (ETS) must take account of the safety of users, and the need for Europe-wide interoperability and enable users provided with a service based on DECT technology in one Member State to gain access to the service in any other Member State, where appropriate;

Whereas the European implementation of DECT will provide an important opportunity to establish truly European digital cordless telephone facilities;

Whereas ETSI has estimated that DECT will require 20 MHz in high density areas;

⁽¹⁾ OJ No C 187, 27. 7. 1990, p. 5.

⁽²⁾ OJ No C 19, 28. 1. 1991, p. 97 and

OJ No C 106, 22. 4. 1991, p. 78.

⁽³⁾ OJ No C 332, 31. 12. 1990, p. 172.

⁽⁴⁾ OJ No L 298, 16. 11. 1984, p. 49.

⁽⁵⁾ OJ No C 257, 4. 10. 1988, p. 1.

⁽⁶⁾ OJ No L 139, 23. 5. 1989, p. 19.

Whereas the European Conference of Postal and Telecommunications Administrations (CEPT) has recommended the common European frequency band 1880-1900 MHz for DECT, recognizing that, subject to the system, development of DECT additional frequency spectrum may be required;

Whereas this should be taken into account in the preparation for the 1992 World Administrative Radio Conference (WARC);

Whereas after the date of designation of the frequency band for DECT, existing services may continue in the band, providing that they do not interfere with DECT systems that may be established according to commercial demand;

Whereas the implementation of Council recommendation 91/288/EEC of 3 June 1991 on the coordinated introduction of DECT into the Community⁽¹⁾, will ensure the implementation of DECT by 31 December 1992 at the latest;

Whereas Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity⁽²⁾ will allow the rapid establishment of common conformity specifications for DECT;

Whereas the establishment of DECT depends on the allocation and availability of a frequency band in order to transmit and receive between fixed-base stations and mobile stations;

Whereas some flexibility will be needed in order to take account of different frequency requirements in different Member States; it will be necessary to ensure that such flexibility does not slow down the implementation of DECT technology according to commercial demand across the Community;

Whereas the progressive availability of the full range of the frequency band set out above will be indispensable for the establishment of DECT on a Europe-wide basis,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive, the digital European cordless telecommunications (DECT) system shall mean

technology conforming to the European Telecommunications Standard (ETS) for digital cordless telecommunications referred to in recommendation 91/288/EEC, and the telecommunications systems, both public and private, which directly utilize such technology.

Article 2

Member States shall, in accordance with CEPT Recommendation T/R 22-02 of the European Conference of Postal and Telecommunications Administration designate the frequency band 1880-1900 MHz for digital European cordless telecommunications (DECT) by 1 January 1992.

In accordance with the CEPT Recommendation, DECT shall have priority over other services in the same band, and be protected in the designated band.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1991. They shall forthwith inform the Commission thereof.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 4

The Commission shall report to the Council on the implementation of this Directive not later than the end of 1995.

Article 5

This Directive is addressed to the Member States.

Done at Luxembourg, 3 June 1991.

For the Council

The President

A. BODRY

⁽¹⁾ See page 47 of this Official Journal.

⁽²⁾ OJ No L 128, 23. 5. 1991, p. 1.

COUNCIL RECOMMENDATION

of 3 June 1991

on the coordinated introduction of digital European cordless telecommunications (DECT) into the Community

(91/288/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas recommendation 84/549/EEC (4) calls for the introduction of services on the basis of a common harmonized approach in the field of telecommunications;

Whereas the Council in its resolution of 30 June 1988 (5) on the development of the common market for telecommunication services and equipment up to 1992 calls for the promotion of Europe-wide services according to market requirements;

Whereas the resources offered by modern telecommunications networks should be utilized to the full for the economic development of the Community;

Whereas the potential for cordless telecommunications in the Community has been demonstrated by recent developments such as recent agreements on public telepoint services; whereas the European Telecommunications Standard (ETS) for digital European cordless telecommunications (DECT) currently being developed by the European Telecommunications Standards Institute (ETSI) will greatly enhance the possibilities of cordless telecommunications;

Whereas the development of the ETS must take account of the safety of users, and the need for Europe-wide interoperability, enable users provided with a service based on DECT technology in one Member State to gain access to the service in any other Member State, where appropriate;

Whereas the European implementation of DECT technology will provide an important opportunity to establish truly European digital cordless telephone facilities;

Whereas a coordinated policy for the introduction of common standards for cordless telephones will make possible the establishment of a European market in mobile handsets which will be capable of creating, by virtue of their size, service features, and costs, the necessary development conditions to establish a lead in worldwide markets;

Whereas such a future system, offering both voice and data services, is to be based on digital techniques, thereby facilitating compatibility with the general digital environment and the Integrated Services Digital Network (ISDN) in the Community in accordance with recommendation 86/659/EEC (6);

Whereas the future Council Directive on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity will allow the rapid establishment of common conformity specifications for DECT;

Whereas consideration shall be given to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (7), as last amended by Directive 90/230/EEC (8);

Whereas consideration should be given to Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications (9);

Whereas Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of Member States relating to electromagnetic compatibility (10) is applicable, and particular attention should be taken to avoid harmful electromagnetic interference;

Whereas it is advantageous to facilitate access to cordless communications and necessary to allow free circulation of DECT equipment throughout the Community;

(1) OJ No C 24, 1. 2. 1990, p. 20 and OJ No C 9, 15. 1. 1991, p. 3.

(2) OJ No C 19, 28. 1. 1991, p. 96.

(3) OJ No C 332, 31. 12. 1990, p. 172.

(4) OJ No L 298, 16. 11. 1984, p. 49.

(5) OJ No C 257, 4. 10. 1988, p. 1.

(6) OJ No L 382, 31. 12. 1986, p. 36.

(7) OJ No L 109, 26. 4. 1983, p. 8.

(8) OJ No L 128, 18. 5. 1990, p. 15.

(9) OJ No L 36, 7. 2. 1987, p. 31.

(10) OJ No L 139, 23. 5. 1989, p. 19.

Whereas it is appropriate to make full use of the potential of the Community's allocated financial instruments in order to promote the development of the Community's telecommunications infrastructure in the Community;

Whereas consideration should be given to recommendation 87/371/EEC⁽¹⁾ which points out that special attention should be paid to the urgent requirement of certain users for pan-European land-based communications; whereas the Commission could in future submit other proposals in the field of mobile communications;

Whereas the implementation of such a policy will lead to closer cooperation within Europe between the public telecommunications administrations, the recognized public and private operating agencies and other authorized agencies offering public mobile telecommunications service, herein referred to as 'telecommunications organizations';

Whereas favourable opinions on this recommendation has been delivered by the telecommunications organizations by the European Conference of Postal and Telecommunications Administrations (CEPT) and by the telecommunications equipment manufacturers in the Member States;

Whereas these measures will allow the economic benefit and rapidly increasing market potential of cordless telephones to be fully realized in the Community;

Whereas the Treaty does not provide, for this recommendation, powers other than those of Article 235,

HEREBY RECOMMENDS:

1. that Member States and/or the telecommunications organizations, as appropriate, create the conditions for the coordinated introduction into the Community of digital European cordless telecommunications according to the technical requirements described in the Annex. For the purposes of this recommendation, digital European cordless telecommunications shall mean technology conforming to the European Telecommunications Standard for digital cordless telecommunications known as DECT.

2. that the telecommunications organizations continue the cooperation within the CEPT and/or ETSI, for the

completion of the specifications and the introduction and exploitation of DECT technology;

3. that the Commission takes appropriate initiatives, within the application of existing Directives, to encourage the completion of the specifications and the introduction and exploitation of DECT technology;
4. that the Commission prepares a long-term strategy in collaboration and consultation with interested parties, for the evolution of the soon to be introduced pan-European digital cellular and paging systems, and digital cordless systems, taking account of the general development towards a future universal personal communications system, and recent studies and the ETSI work programme;
5. that the Community's allocated financial instruments take this recommendation into account within the framework of their interventions, particularly regarding capital investments required for the implementation of the infrastructure for the DECT system;
6. that efforts are encouraged to develop the appropriate infrastructure to allow the use of DECT equipment also in a public environment and to work towards the coordinated introduction of DECT technology in such an environment, maintaining in particular those features necessary to allow Europe-wide interoperability;
7. that Member States inform the Commission at the end of each year, from the end of 1992 onwards, of the measures taken and the problems encountered in the course of implementing this recommendation; that measures be taken to consult telecommunications organizations, users, consumers, manufacturers, persons providing services, employer organizations and trade unions; that the progress of work be examined by the Commission and Senior Officials Group on Telecommunications (SOG-T) which was set up by the Council on 4 November 1983; and that the European Parliament be regularly informed, at least once a year.

Done at Luxembourg, 3 June 1991.

For the Council

The President

A. BODRY

⁽¹⁾ OJ No L 196, 17. 7. 1987, p. 81.

ANNEX

DETAILED REQUIREMENTS ON THE COORDINATED INTRODUCTION OF DIGITAL EUROPEAN CORDLESS TELECOMMUNICATIONS (DECT) INTO THE COMMUNITY

Table of contents

1. General requirements
2. Choice of transmission system
3. Network architecture
4. System specification and implementation
5. System features
6. Tariff considerations
7. Time scale

1. General requirements

The future DECT systems should be developed in accordance with the ETS being developed by ETSI and should comply with the following general requirements:

- be suitable for operation over the frequency band 1880-1900 MHz to be made available for DECT in the Community in conformity with Directive 91/287/EEC,
- provide a means, using cordless technology, for meeting user requirements in respect of the following applications:
 - a residential application that will interconnect to ISDN/PSTN,
 - a business cordless telecommunications application that combines the features of a PABX with the mobility of cordless telecommunications for both voice and non-voice application,
 - an application that offers public network access to a handset through a public, or privately owned, base station,
 - an application that provides a radio means of extending public and private networks into customer user premises,
- permit simultaneous operation of two or more independent systems in the same geographical area.

2. Choice of transmission system

The detailed specification of the DECT transmission characteristics should be completed by October 1991 and should take account of the relevant international guidelines on limiting exposure to electromagnetic fields, and the Directive 89/336/EEC. The technology must be able to support geographically co-located DECT systems.

3. Network architecture

The standard for the network structure and the definition and allocation of functions between the various system components should be completely specified for all the applicable OSI layers, by October 1991.

4. DECT specification and implementation

The implementation of the system should be able to support full intersystem roaming where required. Roaming in the context of this recommendation is the ability to use handsets based on DECT technology to access the public network in any Member State.

5. System features

The system specification should provide a minimum number of generic capabilities and facilities as follows:

- satisfy the general requirements of section 4 above,
- provision of emergency services,
- provision for dialling and calling security,
- compatibility between residential, business and public access applications.

The provision of an additional service or facility beyond generic capability on any system should not impact the provision of the minimum service on other systems.

6. Tariff considerations

Agreement on such matters as the charging for the Community service and accounting between operators should be identified in a timely manner where required.

7. Time scale

Facilities for applications based on DECT technology should progressively be available from the end of 1992.

COUNCIL DECISION

of 7 June 1991

adopting a specific research and technological development programme in the field of communication technologies (1990 to 1994)

(91/352/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130q (2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, by Decision 90/221/Euratom, EEC ⁽⁴⁾, the Council adopted a third framework programme for Community activities in the field of research and technological development (1990 to 1994), specifying *inter alia* the activities to be pursued in the field of communication technologies; whereas this Decision should be taken in the light of the grounds set out in the preamble to that Decision;

Whereas Article 130k of the Treaty stipulates that the framework programme shall be implemented through specific programmes developed within each activity;

Whereas in addition to the specific programme concerning human resources and mobility, it might be necessary to encourage the training of research workers in the context of this programme;

Whereas, pursuant to Article 4 of and Annex I to Decision 90/221/Euratom, EEC, the amount deemed necessary for the whole framework programme includes an amount of ECU 57 million for the centralized dissemination of knowledge and exploitation of results of the programmes, to be divided up in proportion to the amount envisaged for each specific programme;

Whereas, in the context of this programme, an assessment should be made of economic and social impact as well as of any technological risks;

Whereas Decision 90/221/Euratom, EEC provides that a particular aim of Community research must be to strengthen

the scientific and technological basis of European industry particularly in strategic sectors of advanced technology and to encourage it to become more competitive at the international level; whereas it also provides that Community action is justified where research contributes, *inter alia*, to the strengthening of the economic and social cohesion of the Community and to the promotion of its harmonious development, while being consistent with the pursuit of scientific and technical excellence; whereas this should contribute to the achievement of these objectives;

Whereas small and medium-sized enterprises should be involved to the maximum extent possible in this programme; whereas account should be taken of their special requirements without prejudice to the scientific and technical quality of this programme;

Whereas the constitution or consolidation of a specifically European industrial potential in the technologies concerned is an urgent necessity; whereas its beneficiaries must be network operators, research establishments, undertakings including small and medium-sized undertakings and other bodies established in the Community which are best suited to attain these objectives;

Whereas priorities include integrated broadband communication system functions, intelligence in networks, mobile and personal communication, image and data communications, integrated services technologies, advanced communications experiments, information security technologies and test infrastructures; whereas the work includes R&D on systems engineering, advanced communications technology and validation of standards and common functional specifications;

Whereas basic research must be encouraged as far as is necessary throughout the Community;

Whereas the Scientific and Technical Research Committee (Crest) has been consulted.

HAS ADOPTED THIS DECISION:

Article 1

A specific research and technological development programme for the European Economic Community in the field of communication technologies, as defined in Annex I is hereby adopted for a period beginning on 7 June 1991 and ending on 31 December 1994.

⁽¹⁾ OJ No C 174, 16. 7. 1990, p. 9.

⁽²⁾ OJ No C 19, 28. 1. 1991, p. 139; and OJ No C 158, 17. 6. 1991.

⁽³⁾ OJ No C 41, 18. 2. 1991, p. 12.

⁽⁴⁾ OJ No L 117, 8. 5. 1990, p. 28.

Article 2

1. The funds estimated as necessary for the execution of the programme amount to ECU 484,1 million, including expenditure on staff and administration amounting to ECU 41 million.
2. An indicative breakdown of funds is set out in Annex II.
3. Should the Council take a decision pursuant to Article 1 (4) of Decision 90/221/Euratom, EEC, this Decision shall be adapted accordingly.

Article 3

Detailed rules for the implementation of the programme and the amount of the Community's financial contribution are set out in Annex III.

Article 4

1. In the second year of implementation of the programme, the Commission shall review it and send a report on the results of its review to the European Parliament and the Council; the report shall be accompanied, where necessary, by proposals for amendment of the programme.
2. At the end of the programme, an evaluation of the results achieved shall be conducted for the Commission by a group of independent experts. This group's report, together with its comments, shall be submitted to the European Parliament and the Council.
3. The reports referred to in paragraphs 1 and 2 shall be established having regard to the objectives set out in Annex I to this Decision and in accordance with Article 2 (4) of Decision 90/221/Euratom, EEC.

Article 5

1. The Commission shall be responsible for the implementation of the programme.
2. Contracts concluded by the Commission shall govern the rights and obligations of each party, in particular the arrangements for the dissemination, protection and exploitation of research results, in accordance with the provisions adopted pursuant to the second paragraph of Article 130k of the Treaty.
3. A work programme shall be drawn up in accordance with the objectives defined in Annex I and updated where necessary. It shall set out the detailed objectives and types of projects to be undertaken, and the financial arrangements to be made for them. The Commission shall draw up calls for proposals for projects on the basis of the work programme.

Article 6

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

5. If, on the expiry of a period of three months from referral of the matter to the Council, the latter has not acted, the proposed measures shall be:

- adopted by the Commission, in the case of matters covered by the second, third, fourth, fifth, sixth, seventh and eighth indents of Article 7,
- adopted by the Commission, save where the Council has decided against the said measures by a simple majority, in the case of matters covered by the first indent of Article 7.

Article 7

1. The procedure laid down in Article 6 shall apply to:
 - the preparation and updating of the work programme referred to in Article 5 (3),
 - the assessment of the projects provided for in Annex III and the estimated amount of the Community's contribution to them where that amount exceeds ECU 2 million,
 - the contents of the calls for proposals,
 - any adaptation of the indicative breakdown of the amount set out in Annex II,
 - the measures to be undertaken to evaluate the programme,
 - arrangements for the dissemination, protection and exploitation of the results of research carried out under the programme,
 - departures from the general rules set out in Annex III.
 - the participation in any project by non-Community organizations and enterprises referred to in Article 8 (1) and (2).

2. Where, pursuant to the second indent of paragraph 1, the amount of the Community contribution is less than or equal to ECU 2 million, the Commission shall inform the Committee of the projects and of the outcome of their assessment.

The Commission shall also inform the Committee of the implementation of the accompanying measures and the concerted action projects referred to in Annex III.

Article 8

1. The Commission is authorized to negotiate, in accordance with Article 130n of the Treaty, international agreements with third countries which are members of COST, particularly the member countries of EFTA and the countries of Central and Eastern Europe, with a view to associating them with the whole programme or a part of it.

2. Where framework agreements for scientific and technical cooperation have been concluded between the Community and European non-member States, bodies and enterprises established in those countries may, in accordance

with the procedure laid down in Article 6 and on the basis of the criterion of mutual benefit, be allowed to become partners in a project undertaken within the programme.

No contracting body based outside the Community and participating as a partner in a project undertaken under the programme may benefit from Community financing for this programme. The body concerned shall contribute to the general administrative costs.

Article 9

This Decision is addressed to the Member States.

Done at Luxembourg, 7 June 1991.

For the Council
The President
R. STEICHEN

ANNEX I

SCIENTIFIC AND TECHNICAL OBJECTIVES AND CONTENT OF THE PROGRAMME

The guidelines, scientific and technical objectives and underlying purposes of the third framework programme form an integral part of this specific programme.

Paragraph I.1.B of Annex II to the said framework programme forms an integral part of this specific programme.

On this basis and in the light of the above, there follows an analytical description of the contents of this specific programme.

This specific programme focuses on eight priority areas (including the provision of verification techniques and facilities) in which European collaboration between two or more telecommunications sector organizations is in the common interest. The priority areas are:

AREA 1: IBC (integrated broadband communications) R&D

AREA 2: Intelligence in networks/Flexible communications resource management

AREA 3: Mobile and personal communications

AREA 4: Image and data communications

AREA 5: Integrated services technologies

AREA 6: Information security technologies

AREA 7: Advanced communications experiments

AREA 8: Test infrastructures and interworking (horizontal R&D area supporting the other priority areas).

Work carried out on each of these areas will be of three types; the work will cover: development of implementation strategies for IBC systems, services and applications; advanced communication technologies, and validation of standards and common functional specifications for IBC. It will involve the use of experimental equipment and services to address generic applications.

AREA 1: IBC (integrated broadband communications) R&D

Integrated broadband communications technology forms the backbone for advanced services and largely determines their costs. Key technologies, systems, services and applications are being addressed under this IBC R&D heading using a systems approach. This area builds on and extends the work of the RACE I programme and in so doing focuses on the following subjects:

IBC systems design, architecture and operation

This work, based on a set of 'open' standards allowing universal access to integrated services, will enable integrated broadband communications to accommodate emerging new services. In order for the various organizations concerned to define their requirements clearly, reference models and common functional specifications will be systematically developed. Special emphasis will be given to examining the combination and interaction of different technical options, evaluating the demand for basic and enhanced services and addressing the impact of regulations.

IBC transition strategies

The transition leading to IBC services from current services requires the improvement of interoperability between public and private networks with regard to new services. This work is essential for user acceptance of these new services and the optimum use of communications resources.

Research under this heading will include further development of common functional specifications and reference configurations, with close attention to recent developments. Particular attention will be given to the increased role of optical communications (taking into account the growing interest in 'fibre-to-the-home'), the emergence of synchronous/asynchronous transport switching techniques, the integration of mobile communication sub-systems (especially in rural areas) and the development of intelligence in the networks. Work will also be carried out on the definition of new value-added services adapted to evolving needs and their consequences on the management of local area networks. Specific tasks to be addressed will cover image communication and its integration in services; and the interworking between private networks, local and metropolitan area networks.

Common operational environment

This work aims at supporting standardization efforts, particularly those of the European Telecommunications Standards Institute (ETSI). It will include the dissemination of results, the seeking of outside information, and liaison with similar activities conducted in other fora. Common analytical tools will be developed and used for the transition and implementation scenarios for the IBC network.

Techniques for basic IBC system functions

This work will cover switching systems, integrated optical systems and networks, IBC customer systems and IBC software infrastructures.

Switching systems: The technology base of asynchronous transfer mode (ATM) will be broadened and interworking techniques between ATM networks and pre-existing networks will be developed. The work will enable ATM switching technology to support connectionless services and the interconnection of local area networks (LANs) and metropolitan area networks (MANs). This development of ATM does not exclude basic research on new switching technologies or designs.

Integrated optical systems and networks: The work will provide the basis for low-cost broadband access networks and contribute to the introduction and evolution of integrated optical networks and photonic switching.

IBC terminals: In the study on access of business IBC subscribers, data processing requirements will be examined; for domestic access, communication protocols will be of most interest.

IBC software infrastructure: The research will support the cost-effective development of reliable telecommunications software and its full life-cycle support. Parameters such as software quality assurance and artificial intelligence will be taken into account. The research will also cover investigations of knowledge-based systems for life-cycle support.

Integration of IBC demonstrators

Interoperability characteristics and integration possibilities of 'technology demonstrators' will be verified for residential or business use and, where applicable, in both urban and rural areas. The research will validate the application feasibility of new technology, support standardization and provide the basis for the evaluation of the performance level of systems and services. It will cover the integration of access, transport and switching functions as well as control, management and signalling functions. Demonstrators of IBC terminals, as well as terminals developed elsewhere, will be connected in order to illustrate the large variety of terminals and services that can be supported.

Verification tools

Work in this area will involve the development of the necessary tools to verify functional specifications and compatibility of equipment. The tools will consist, in addition to the necessary facilities for physical verification, of the procedures and descriptions used to carry out such verification.

AREA 2: INTELLIGENCE IN NETWORKS/FLEXIBLE COMMUNICATIONS RESOURCE MANAGEMENT

This research will be related to the use of new techniques of information transfer, optical communications, and possibly artificial intelligence, for enhancing flexibility, both in the provision of new network services and network management.

The objective of this work will be to enable second generation systems to be developed and to contribute to standardization and definition of interconnection protocols.

This research will be related to the development and demonstration of techniques needed for the introduction of programmable networks and will cover the aspects of provision of new services, operations support systems (OSS) and telecommunications management networks (TMN).

AREA 3: MOBILE AND PERSONAL COMMUNICATIONS

Research in this area will contribute to the development of third generation integrated mobile communication systems. The aim will be to provide universal personal communications using audio, data and image. For cost-efficient implementation third generation systems will require a common radio-interface. They will exploit the microwave frequency ranges of 2 GHz, but certain mobile broadband services will require exploitation of the 60 GHz range. This work will focus on defining the functional specifications for IBC and radio networks (e.g. interconnection standards and mobility management). Interest will also be shown in the miniaturization of

terminals. The terminals should be cost-effective for business and domestic use, with particular emphasis on low power consumption and efficient use of frequencies. Close attention will be given to the needs of different kinds of users and especially the requirements of pan-European access, necessitating truly compatible services and protocols.

AREA 4: IMAGE AND DATA COMMUNICATIONS

The research will involve the development of the technologies needed for the introduction and exploitation of advanced, low-cost and flexible image and data communication services, for both business and domestic needs. It will build on the foundations established by RACE, addressing in particular the impact of new transfer modes (such as ATM) on high-resolution visual services and fast packet data transmission at megabit rates. The work will concentrate on digital HDTV and will include coding and presentation techniques for still, moving and three-dimensional images. It will cover the interworking between an IBC system and the other networks with which it will co-exist.

AREA 5: INTEGRATED SERVICES TECHNOLOGIES

The development of demand in the field of services requires that the communications systems must be able to develop dynamically responding to end-user wishes. This field of study is defined below.

The objective of this research is to contribute to the definition of common functional specifications for new communication services and multimedia-systems. Notably, work will have to be done on specifications for use and more generally on services design and on their links with networks.

IBC/Modular standardization

This work will contribute to the harmonization of architectures and specifications for the flexible integration of telematic services under user control. Due account will be taken of the trans-national scale of communication needs and the heterogeneous technical environment.

Service engineering will focus on modular standardization in the areas of architectures, service-user components, service-provider components and service-creator components. It will also cover service harmonization and usage modelling.

It will address the functional architecture of an integrated-services environment and the specification of the components and primitives for end-user applications. Research into usability will focus on the human-service interface and include the design of generic metaphors for integrated services access. The work on service-provider components will cover specifications for service management: the work on service-creator components will develop definitions of specifications of common tools for service creation. The harmonization efforts will be directed in particular towards a definition of specifications for usability and the definition of quality of service parameters. Specifications for mobile communication and for security requirements will also be studied. Usage modelling will enable problems linked to such use to be studied and in particular the factors concerning the acceptance of a service by users.

Integrated service technologies

This research will build on system engineering activities, and the results will contribute to the specification and harmonization work. It will address techniques for architecture realization, user components technologies, metaphors and user interface technologies, and service management systems.

Service technology verification

The research will involve the development of prototype facilities for flexible integration of services responding to the requirements of operators, service providers and users.

AREA 6: INFORMATION SECURITY TECHNOLOGIES

The accuracy, security and overall 'trustworthiness' of electronically-communicated information are evidently of great importance to private individual, commercial undertakings and industry and public administrations. Work in this area will ensure that considerations of quality, security and reliability of service are included in their development and implementation strategies for advanced communications. It will provide validated specifications, guidelines and technology for practical and effective information security at a pan-European level consistent with actions which are carried out in the other specific programmes. The priority in this area is to develop technologies for information security, consistent with actions related to information systems security undertaken by the Commission under various programmes for which it is responsible.

Service quality, security and reliability

The research will cover risk management, coherent security solutions and the creation of a favourable environment for secure information management.

Risk management: A common strategy will be developed to allow the rational management of risks. It will provide the scientific basis for legal measures to reduce risks.

Coherent security solutions: Coordinated strategies will be developed to guarantee the interworking of separate security mechanisms/procedures. They will allow shared scenarios for transition to be developed, especially in public security infrastructures. The work will provide the basis for collaboration between organizations on the security of information exchanged between them.

Creation of a favourable environment: Options for the diffusion of information security techniques and related measures will be identified. The actual diffusion of solutions amongst end users is outside the scope of this programme.

Information security technologies

Technologies for security mechanisms and technologies for the integration of secure systems will be investigated, especially for distributed systems. They will be addressed under the following major headings:

Systems technologies for information security: addressing usability, auditability, applications software, hardware and operating systems.

Network technologies for information security: covering both transmission and switching.

Tools for the administration of information security: involving the development of software tools incorporating methods for the administration of information security. The research will address the analysis of risks, the formulation and implementation of information security policies, and the on-going administration of routines and quality-assurance of security systems.

Information security verification

The architectures, specifications and the technologies developed under this specific programme will be verified by building a series of demonstrators. This is essential in order to obtain genuine information security since the security of any system can only be as good as its weakest link and the systems studied in this context are complex. The work will fall under the following major headings:

Integration of information security technologies: addressing the use of a mix of several technologies for achieving optimal information security (ranging from electronics to suppress unwanted radiation of signals to protocol designs). These technologies cover many functions and form the constituent elements of the overall systems.

Verification of common tools for information security: covering three classes of tools; risk analysis tools, assurance criteria tools and tools for assessment of security.

Establishment of common infrastructure for information security: covering four areas: certification services for security products; accreditation services for secure systems; gateways for secure international traffic; and third-party security services. In all areas, the work will involve pilot schemes. These will be adapted to the needs of different branches of the economy, including public administrations, and directly supported by those who have developed the technologies within the R&D projects, in this programme or outside.

AREA 7: ADVANCED COMMUNICATION EXPERIMENTS

This pre-competitive and pre-standardization work is designed to prepare the ground for, and minimize the risks of investments in, advanced communications. It will identify generic service functions which are reusable and will permit the matching of different user needs while maintaining universal access and interoperability. The research will make it easier for user organizations to take up new technologies more rapidly and exploit the opportunities they present. By contributing to the creation of demand for advanced communications, work in this area is also in the interest of telecommunications operators and equipment manufacturers. The work focuses on the following subjects:

Study of generic functions

The research will focus on the identification of 'trigger' applications of advanced communications and of the generic applications which will be the basis for a spectrum of future universal services. It will cover the development of a usage reference model, development of consensus-based operational and functional specifications for services, consolidation of network and technology aspects and the identification of criteria and guidelines for the successful introduction and use of advanced communications. The work on the usage reference model will build on the

pre-existing concepts, but with a new focus on entry strategies, generic applications and the relation between applications (the user/demand viewpoint) and services (the provider/supplier viewpoint). Consensus-based operational specifications, with user participation and common functional specifications for services will be developed where they are 'market enabling'. The identification of criteria and guidelines for the successful introduction and use of advanced communications will build on application experiments, relating to applications with a strong socio-economic impact. Some generic applications have already been identified: examples are distributed case handling, inter-personal communications and remote delivery of expertise.

Technology and techniques for advanced communications experiments

The technology and techniques necessary for experimentation with advanced applications will be addressed under this heading. Three themes have been identified: development and identification of technologies to support the development of the service infrastructures; development of techniques to support the elicitation of user requirements and responses to be made to satisfy these requirements. The work will include the identification of server modules required for applications such as translation/interpretation, integrity, multimedia conferences, multimedia databases and distribution. The modelling of user requirements will cover service and product elements, network capabilities (transport, switching and management) and terminal facilities, implemented in hardware or software. The development of techniques enabling the exploitation of responses to such requirements will concern in particular support for the demand reference process. Large-scale field experiments will be complemented by simulation techniques. Presentation techniques, including animation and graphics, will be used to complement detailed technical reporting.

Application experiments

The technical and economic future of subsequent feasibility applications of broadband communications will be verified by experiments. The experiences will enable one to identify, describe, model and define generic applications of advanced communications that cross business sectors and functions for all regions of the Community. Network operators and users will be able to draw on the results of these experiments to put together marketing and exploitation plans. A certain amount of equipment (including service and product elements) will be developed for generic applications, allowing sector-specific application experiments to be undertaken.

The work will take account of the future needs of users, confirm the existence of these generic applications and clarify their characteristics in field experimentation. The resulting knowledge will form a basis for the relevant telecommunications sector organizations in planning the standardization, implementation and operation of future communications networks.

AREA 8: TEST INFRASTRUCTURE AND INTERWORKING

The successful introduction of IBC services in Europe needs to be preceded by experimentation and trials. A test infrastructure is therefore necessary, connecting those involved. It is needed to validate standards and functional specifications. Under conditions to be agreed on by the partners the provision and operation of the test infrastructure is expected to be ensured by the operators and national test-beds, in collaboration and cooperation between them when necessary for interconnection and interworking. These national test-beds working in cooperation would provide the basis for the communications experiments. Correspondingly this area supports work required to establish interworking.

ANNEX II

INDICATIVE BREAKDOWN OF THE AMOUNT DEEMED NECESSARY

(in million ecus)

Area	Breakdown
1. IBC (integrated broadband communications) R&D	111
2. Intelligence in networks Flexible communications resource management	43
3. Mobile and personal communications	53
4. Image and data communications	68,11
5. Integrated services technologies	39
6. Information security technologies	29
7. Advanced communications experiments	121
8. Test infrastructures and interworking (horizontal R&D area supporting the other priority areas)	20
	Total 484,11 ⁽¹⁾ ⁽²⁾

(1) Including expenditure on staff which amounts to ECU 19,36 million and administrative expenditure amounting to ECU 21,64 million.

(2) An amount of ECU 4,89 million, not included in the ECU 484,11 million, will be earmarked as the contribution from this specific programme to the centralized scheme for the dissemination and exploitation of results.

The breakdown between different headings does not exclude the possibility that projects could come under several headings.

ANNEX III

RULES FOR IMPLEMENTING THE PROGRAMME

1. The Commission will implement the programme on the basis of the objectives and the scientific and technical content described in Annex I.
2. The rules for implementing this programme, referred to in Article 3, comprise research and technological development projects, accompanying measures and concerted action projects. Selection of projects must take account of the criteria listed in Annex III to Decision 90/221/Euratom, EEC and of the objectives defined in Annex I to this Decision.

— Research projects

The projects will be the subject of shared-cost research and technological development contracts, with Community financial participation not normally exceeding 50%. Universities and other research centres participating in shared-cost projects will have the option of requesting, for each project, either 50% funding of total expenditure or 100% funding of the additional marginal costs.

Shared-cost research projects must, as a general rule, be carried out by participants established within the Community. Projects in which, for example, universities, research organizations and industrial firms, including small and medium-sized enterprises, may take part must provide, as a general rule, for the participation of at least two partners, independent of each other and established in different Member States. Contracts relating to shared-cost research projects must as a general rule be concluded following a selection procedure based on calls for proposals published in the *Official Journal of the European Communities*.

— Accompanying measures

The accompanying measures referred to in Article 7 of this Decision will consist of:

- the organization of seminars, workshops and scientific conferences,
- internal coordination through the creation of integrating groups,
- advanced technology training programmes, with emphasis being placed on multidisciplinary,
- promotion of the exploitation of results,
- independent scientific and strategic evaluation of the operation of the projects and the programme.

— Concerted action projects

Concerted action projects consist of action by the Community to coordinate the individual research activities carried out in the Member States. They may benefit from funding of up to 100% of coordination expenditure.

3. The knowledge acquired in the course of the projects will be disseminated both within the specific programme and by means of a centralized activity, pursuant to the Decision referred to in the third subparagraph of Article 4 of Decision 90/221/Euratom, EEC.

COUNCIL DECISION

of 7 June 1991

adopting a specific programme of research and technological development in the field of telematic systems in areas of general interest (1990 to 1994)

(91/353/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 130a (2) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, by Decision 90/221/Euratom, EEC ⁽⁴⁾, the Council adopted a third framework programme for Community activities in the field of research and technological development (1990 to 1994), specifying *inter alia* the activities to be pursued for developing the scientific knowledge and technical know-how needed by the Community, in particular to carry out its role in the field of telematic systems in areas of general interest; whereas this Decision should be taken in the light of the grounds set out in the preamble to that Decision;

Whereas Article 130k of the Treaty stipulates that the framework programme shall be implemented through specific programmes developed within each activity;

Whereas basic research must be encouraged as far as is necessary throughout the Community in each strategic sector of research in the framework programme;

Whereas in addition to the specific programme concerning human resources and mobility, it might be necessary to encourage the training of research workers in the context of this programme;

Whereas, in the context of this programme, an assessment should be made of economic and social impact as well as of any technological risks;

Whereas, pursuant to Article 4 of and Annex I to Directive 90/221/Euratom, EEC, the amount deemed necessary for the whole framework programme includes an

amount of ECU 57 million for the centralized dissemination and exploitation of results, to be divided up in proportion to the amount envisaged for each specific programme;

Whereas Decision 90/221/Euratom, EEC provides that a particular aim of Community research must be to strengthen the scientific and technological basis of European industry, particularly in strategic sectors of advanced technology, and to encourage it to become more competitive at the international level; whereas it also provides that Community action is justified where research contributes, *inter alia*, to the strengthening of the economic and social cohesion of the Community and to the promotion of its overall harmonious development, while being consistent with the pursuit of scientific and technical excellence; whereas the programme of research in the field of telematic systems should contribute to the achievement of these objectives;

Whereas small and medium-sized enterprises should be involved to the maximum extent possible in this programme; whereas account should be taken of their special requirements without prejudice to the scientific and technical quality of the programme;

Whereas research/development in the field of telematic systems in areas of general interest will contribute to the successful completion of the internal market and at the same time improve the performance of large public services facing, throughout the Community, the new technological, social and economic challenges which are implied by European integration;

Whereas it is important, when projects are selected, to ensure that data are protected and confidentiality maintained;

Whereas the Scientific and Technical Research Committee (Crest) has been consulted.

HAS ADOPTED THIS DECISION:

Article 1

A specific research and technological development programme for the European Economic Community in the field of telematic systems in areas of general interest, as defined in Annex I, is hereby adopted for a period beginning on 7 June 1991 and ending on 31 December 1994.

⁽¹⁾ OJ No C 174, 16. 7. 1990, p. 19.

⁽²⁾ OJ No C 324, 24. 12. 1990, p. 271; and OJ No C 158, 17. 6. 1991.

⁽³⁾ OJ No C 41, 18. 2. 1991, p. 6.

⁽⁴⁾ OJ No L 117, 8. 5. 1990, p. 28.

Article 2

1. The funds estimated as necessary for the execution of the programme amount to ECU 376,2 million, including expenditure on staff and administration amounting to ECU 41 million.
2. An indicative allocation of funds is set out in Annex II.
3. Should the Council take a decision in implementation of Article 1 (4) of Decision 90/221/Euratom, EEC, this Decision shall be adapted accordingly.

Article 3

Detailed rules for the implementation of the programme and the amount of the Community's financial contribution are set out in Annex III.

Article 4

1. In the second year of implementation of the programme, the Commission shall review it and send a report on the results of its review to the European Parliament and the Council; the report shall be accompanied, where necessary, by proposals for amendment of the programme.
2. At the end of the programme, an evaluation of the results achieved shall be conducted for the Commission by a group of independent experts. This group's report, together with any comments by the Commission, shall be submitted to the European Parliament and the Council.
3. The reports referred to in paragraphs 1 and 2 shall be established having regard to the objectives set out in Annex I to this Decision and in accordance with Article 2 (4) of Decision 90/221/Euratom, EEC.

Article 5

1. The Commission shall be responsible for the implementation of the programme.
2. Contracts concluded by the Commission shall govern the rights and obligations of each party, in particular the arrangements for the dissemination, protection and exploitation of research results, in accordance with the provisions adopted pursuant to the second paragraph of Article 130k of the Treaty.
3. A work programme shall be drawn up in accordance with the aims set out in Annex I and updated where necessary. It shall set out the detailed objectives and types of projects to be undertaken, and the financial arrangements to be made for them. The Commission shall make calls for proposals for projects on the basis of the work programme.

Article 6

1. The Commission shall be assisted by a committee composed of representatives of the Member States and chaired by the representative of the Commission.

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 within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority provided for in Article 148 (2) of the EEC Treaty as regards adoption of decisions which the Council is required to adopt on a proposal from the Commission. When the committee votes, the votes of the representatives of the Member States shall be weighted as laid down in the abovementioned Article. The chairman shall not vote.

3. The Commission shall adopt the proposed measures when they are in accordance with the committee's opinion.

4. When the proposed measures are not in accordance with the committee's opinion, or where no opinion is delivered, the Commission shall submit to the Council without delay a proposal concerning the measures to be taken. The Council shall act by a qualified majority.

5. If, on the expiry of a period of three months from referral of the matter to the Council, the latter has not acted, the proposed measures shall be adopted by the Commission.

Article 7

1. The procedure laid down in Article 6 shall apply to:
 - the preparation and updating of the work programme referred to in Article 5 (3),
 - the contents of the calls for proposals,
 - the assessment of the projects provided for in Annex III and the estimated amount of the Community's contribution to them where this amount exceeds 1 % of the amount deemed necessary for each field referred to in Annex II.
 - departures from the general rules set out in Annex III,
 - the participation in any project by non-Community organizations and enterprises referred to in Article 8 (1) and (2).
 - any adaptation of the indicative allocation of the amount set out in Annex II,
 - the measures to be undertaken to evaluate the programme.
 - arrangements for the dissemination, protection and exploitation of the results of research carried out under the programme.
2. Where, pursuant to the third indent of paragraph one, the amount of the Community contribution is less than or equal to 1 % of the amount deemed necessary for the projects, the Commission shall inform the committee of the projects and of the outcome of their assessment.

The Commission shall also inform the committee of the implementation of the accompanying measures and the concerted actions referred to in Annex III.

Article 8

1. The Commission is authorized to negotiate, in accordance with Article 130n of the Treaty, international agreements with third countries which are members of COST, particularly the member countries of EFTA and the countries of Central and Eastern Europe, with a view to associating them with the whole programme or a part of it.

2. Where framework agreements for scientific and technical cooperation have been concluded between the Community and European non-member States, bodies and enterprises established in those countries may, in accordance with the procedure laid down in Article 6 and on the basis of the criterion of mutual benefit, be allowed to become partners in a project undertaken within the programme.

No contracting body based outside the Community and participating as a partner in a project undertaken under the programme may benefit from Community financing for this programme. The body concerned shall contribute to the general administrative costs.

Article 9

This Decision is addressed to the Member States.

Done at Luxembourg, 7 June 1991.

For the Council
The President
R. STEICHEN

ANNEX I

OBJECTIVES AND SCIENTIFIC AND TECHNICAL CONTENT

The guidelines, scientific and technical objectives and underlying purposes of the third framework programme form an integral part of this specific programme.

Paragraph 1.1.C of Annex II to the framework programme forms an integral part of this specific programme.

On this basis and in the light of the above, there follows an analytical description of the contents of this specific programme.

Introduction

In pursuit of the objectives outlined in the technical Annex to the framework programme, special account will be taken of the needs for management and transmission of electronic information as a consequence of completion of the single European market. These needs will be identified in collaboration with users: public authorities, businesses in manufacturing or service industries, academic institutions and individuals.

The activities will be pre-competitive and pre-normative and will concentrate on providing opportunities for interoperability between national systems, for defining standards, architectures and functional specifications. The activities will address such issues as user acceptance, security and privacy.

Pilot projects and demonstrators will be included when it can be shown there is a need to verify technology, to demonstrate interoperation standards and where there is broad interest to all Member States.

Close coordination will take place between these activities and those within lines 1.A and 1.B of the third framework programme as well as those outside the framework programme such as Eureka projects.

AREA 1: SUPPORT FOR THE ESTABLISHMENT OF TRANSEUROPEAN NETWORKS BETWEEN ADMINISTRATIONS

The objective of this area is to define common requirements for electronic information exchange and to examine the need for interoperability between electronic information networks within Member States; to carry out studies and pre-normative research for the definition and subsequent establishment of the trans-European telematic services networks essential to national administrations for the completion of the single market, for the provision of the services necessary to the free movement of persons, goods, services and capital and for increasing economic and social cohesion in the Community.

The priority subareas are those most closely linked to the completion of the internal market. In the first instance, work may concern such areas as customs, social services, emergency services and statistics. Several examples are given below.

With the elimination of frontiers within the Community as a result of the completion of the internal market, it will no longer be possible to monitor goods in transit at national frontier posts. Monitoring of goods in transit will require information to be exchanged between the customs of the country in which the goods enter or leave Community territory and the country of destination or origin of the goods. Consideration should therefore be given to whether, and how far, this will create a new need which new IT and telecommunication tools can help to satisfy.

Free movement of goods within the Community requires means of controlling their movements. Furthermore, the problems due to the incompatibility of existing national systems and to relations with non-Community countries, legal constraints and differing procedures and methods must be surmounted. Freedom of movement for persons cannot be achieved without a sustained, two-way flow of information between the various administrative establishments with responsibility for social services. Telecommunications interconnection between these administrations should help to provide social services for people. The setting-up of trans-European telematic services could help to do this, by ensuring rapid and secure information exchange, guaranteeing the compatibility of operational procedures while respecting citizens' rights, and promoting international coordination.

The interconnection and interoperability of existing statistical tools will allow the implementation of a European system of statistical information.

Identification of needs and implementation strategies

Selected areas closely linked to the completion of the single market will be examined in an exploratory action. This will comprise an assessment of the exchange of electronic information brought about by the completion of the single European market, an assessment of the needs of the users of this information to accommodate these changes and an assessment of the role of research and development in meeting these needs. The results of this work will enable the relevant administrations of the Member States and the Commission, with the help of hardware and software producers, telecommunications operators, and possibly service providers, to seek a consensus on the functional and technical specifications of the services required and strategies for setting up the transeuropean networks to provide these services.

The comparison of these descriptions with needs should enable the work remaining to be done to be identified by mutual agreement; this may involve some or all of the following tasks: description of the information desired, precise description of the types of messages required (free text, statistical tables or highly structured administrative messages), their format, the functional specifications and standards to be used, adapted or developed, as appropriate, and the protocols to be developed or converted.

Preference will be given to systems which are designed to intercommunicate using key elements, particularly those which have been standardized at European or world level. The standards relating to database access, storage and access protocols, languages, etc., will be identified and adapted where necessary. Arrangements must be made to ensure secure services.

Development of the technologies relating to telematic services and validation of common functional specifications

In order to take account of the complexity of these networks of services, the number of parties involved, the variety of information, real-time or batch processing, and capacity requirements, the architectures and the management of these trans-European networks will have to be thoroughly studied and researched in order to achieve the performance and reliability required to satisfy the specific needs of each administration. These studies and research will have to be carried out jointly by users of specialized networks, manufacturers of information and communications equipment, telecommunications operators and possibly service providers.

The work will concentrate initially on interoperability, common standards, architectures and functional specifications, user acceptability, data integrity and confidentiality. As a result of this work, a common reference model should be developed for the implementation or the adaptation of the telematic systems which are proposed. The results of the exploratory activities in a few subareas will be taken into account as work in this area is subsequently broadened.

This work will complement that conducted in the specific programmes on IT and communications.

To obtain the interoperability of computerized service networks, used by the administrations and end-users, it is important to verify common functional specifications. Special attention will be paid to the quality, reliability, security and ease of use of these services. To this end, a limited number of pilot projects will be carried out where there is a need to verify functional specifications and technology, where there is a general interest to all Member States and where this is in keeping with rules on personal data protection.

Where appropriate these experimental development activities will be carried out in cooperation with the work carried out under the Insis, Caddia and Tedis programmes and certain parts of the Esprit and RACE programmes.

AREA 2: TRANSPORT SERVICES

The activities aim to contribute to the development, in the field of transport, of integrated trans-European services using advanced IT and communications to improve the performance (safety and efficiency) of passenger and goods transport services, and at the same time reduce the impact of transport on the environment. (See under 'road transport'.)

Account will have to be taken of the peculiarities and specific needs of the various parties involved, notably private and business users and administrations. Safety and ease of access for all users will be given special attention.

Road transport (Drive)

The objective is to contribute to development of a framework in which advanced IT and communications can be harnessed to improve the efficiency and safety of passenger and goods transport and reduce their impact on the environment. The work will build on the exploratory research in Drive under the second framework programme. There will be close liaison with relevant Eureka projects.

Work in this area should cover the interface between road and rail transport as well as that between road and sea transport.

The work will concentrate on the needs of users, those concerned with safety, provision and maintenance of infrastructure and provision of transport services.

The activities will be divided into three interactive parts: the definition of functional specifications in the context of a strategy for the use of technology and telematic systems for communication and traffic control, the development of new technologies and experimental systems, and validation work.

Strategies for the use of technologies, telematic services and systems and contribution to the definition of common functional specifications

The results of the work carried out so far under the Drive and relevant Eureka projects have enabled the needs specific to road transport and the technologies and systems available for communications and traffic control to be identified and evaluated. On the basis of these results, a strategy for using these technologies and systems will be sought in cooperation with transport users, business, providers of transport-related services and the administrations concerned.

Systems engineering work will continue on an integrated transport environment, addressing development and implementation strategies. It will help to draw up the functional specifications in terms of equipment, services and operating procedures, and to make recommendations to standard setting authorities such as CEN/Cenelec and ETSI for traffic control, transport management, driver support, road safety.

Technologies and experimental development of systems

The work will take account of the technologies emerging within information and communications, the results of research carried out under Drive and in other activities both in the Community and Member States.

Technologies and experimental systems for managing transport and controlling road traffic will be developed and evaluated for both passenger and goods transport.

Safety and communications systems will concentrate on helping drivers on long journeys. The research will focus on on-board safety systems and equipment able to detect warnings and incidents and communicate with the new fixed infrastructure equipment.

Research and technological development work specific to goods transport, including dangerous goods transport, will also be undertaken. It will cover the software, hardware and telematic systems needed to improve goods traffic management. This work will concern real-time monitoring of the various forms related to transactions, the goods themselves and vehicles; management systems for all kinds of vehicle fleets will also be developed.

In the field of public transport, work on monitoring and control will continue, to evaluate the cost-effectiveness of opportunities for on-line monitoring, scheduling and control for users and providers of services and to establish the necessary functional specifications.

The technological solutions will have to ensure that the telecommunications equipment to be introduced is suited, in terms of size, cost and performance, to the intended specific uses and the needs identified.

Special attention will be given to existing and emerging systems namely those related with satellites and digital cellular communication networks. Of particular importance is the potential of new systems to provide incident detection and provide usable information to network managers and road users through effective road-vehicle communications.

Validation and pilot projects

In order for the new systems and devices to be accepted by both the general public and the relevant authorities, they must be of proven performance and reliability and their potential impact on the environment must be assessed. This will require full-scale pilot experimentation to establish whether technologies serve market needs, contribute significant gains in efficiency (with existing and new infrastructure) safety and environmental benefits are cost effective and provide satisfactory system security and interoperability. These will be oriented towards the integration of multiple subsystems, functions and services which requires strong pre-standardization efforts. The sector actors should be closely associated with the work.

These experiments will cover areas including integrated urban traffic control; monitoring of air pollution; integrated motorway traffic control; vehicle roadside communications; driver information; transport demand management; public transport; freight transport and trip planning.

The need for rigorous evaluation should be a prime requirement in selection and design of pilot projects which may mean that pilot projects are established on an incremental basis. Projects should also evaluate technologies and systems of wide applicability.

AREA 3: HEALTH CARE (AIM)

The objective of this area is that of stimulating the development of harmonized applications of information and communication technologies in health care and the development of an European health-care information infrastructure taking into account the needs of users and technological opportunities.

The activities will depend on the needs of users and on the requirements of transnational exchange of electronic information. They will concentrate on interoperability of national systems, the establishment of standards, user acceptability, data integrity and confidentiality. The selection of activities will depend on strategic options within both the European health-care sector and European telematics sector.

Work in this area will be carried out along three main lines, making use of the exploratory work of the AIM programme (advanced informatics in medicine) and in close cooperation with other Community programmes.

Strategies for the use of technologies, telematic systems and services and contribution to the definition of common functional specifications

The nature of research and technological development activities will depend to a large extent on user needs and the general constraints associated with the transnational nature of the information infrastructure required. This transnational aspect requires compliance with three principles: integration (notably the emergence of standards); modularity, to facilitate adaptation to different types of needs, and data security. The research and technological development activities will depend on the assessment of technological needs in the light of the main factors affecting the development of health care. They will also depend on the strategic options for European telematic services in the sector. Essential problems such as confidentiality and data protection will be given high priority.

Development of telematic technology applied to medicine

Activities are expected to fall into one or more of the following domains:

- alphanumeric data and text coding standards,
- images and biosignals with coding standards,
- integrated medical instrumentation and devices,
- knowledge based and decision support systems,
- medical use of multi-media workstations,
- health-care communication systems,
- telemedical systems and archiving systems,
- modularity and integration of medical and health information systems,
- regulatory tools and incentives (medical, legal, ethical, economic and social),
- technologies and services for the handicapped and elderly,
- inter-hospital telematics for increased security in distance care and improved management of staff and specialized equipment.

Validation and integration

Pilot applications will be set up to demonstrate and evaluate the innovative nature of using IT and communications in this area. Tests of the applicability of the research and development results and the interoperability of telemedicine services will be conducted.

AREA 4: FLEXIBLE AND DISTANCE LEARNING (Delta)

On the basis of the exploratory work of the Delta programme and in close cooperation with other Community activities such as Comett and Eurotecnet, the work in this area will be carried out in three interdependent parts: drawing-up of implementation strategies, development of technologies and systems, and validation and integration of services.

Strategies for the use of technologies, telematic systems and services and contribution to the definition of common functional specifications

In the light of the interests of the various categories of users and taking account of the technological potentials, the various possible options to satisfy these needs will be identified. The measures needed to overcome the difficulties of implementing educational technologies will be determined.

Systems engineering work will be carried out: it will consist of identifying user needs and then reaching a consensus on specifications and functional standards which satisfy the needs of the various categories of users, producers of educational materials and providers of flexible and distance learning services.

The work will centre on the development of production methods for multimedia educational materials which are portable and transferable between various systems with the prospect of transnational use, including remote assistance and help procedures for the various categories of users.

Development of systems and technologies

The work will relate to the technologies required to obtain a telematic service for local and distance learning which is flexible, effective, modular and interoperable.

It will be necessary to integrate and adapt the information and communications technologies, hardware configurations and protocols for educational and training applications and ensure compatibility and portability of the various systems developed for the potential users, whether they be students, authors, tutors, producers or simply people requesting information on education services.

Experiments on the validation and integration of services

The performance of the various possible services and technical configurations must be evaluated. Experiments in the real environment will allow testing of the value added by interconnecting the various systems using new technologies for education, information and user assistance. The experiments will establish the comparative advantages and the performance, in relation to their cost, of these various configurations of flexible distance learning systems for different categories of users.

AREA 5: LIBRARIES

The objective is to facilitate user access, by optimum use and development of equipment and telematic systems, to the wealth of knowledge held in libraries while reducing the handicaps caused by the present disparate infrastructures in the Community.

To this end, the work will have to help develop modern library services all over the Community by promoting faster, but orderly and cost-effective penetration of new technologies into libraries.

Initial Community activity in this area must be selective, concentrating on urgent problems which can catalyse change in a concrete and practical way. Applied research and development will therefore be used to support the development of appropriate tools, methods and resources which will be able to stimulate modernization of the operational infrastructure and services provided, and facilitate cooperation and resource sharing at national and European levels.

This activity will consist of setting up computerized bibliographies where these are lacking, and helping to improve computerized bibliographies or collective catalogues. Support will also be given to retrospective conversion of catalogues of important collections at international level, by developing the necessary tools and methods.

Projects will be set up to facilitate the international interconnection of the systems managing these basic data for particular functions (shared cataloguing, inter-library loans, etc.) and thus help to prepare and apply a range of international or European standards.

The provision of new library services using IT and communications in small units will be stimulated. Initial support will be given to the creation of a range of innovative experimental services for library users, taking account of the different levels of development of library services in the Member States.

Finally, projects will be set up to encourage the development of a European market in telematic products and services specific to libraries. Interaction between libraries and IT industries will be stimulated by improving the definition of libraries' needs which new IT and communications can satisfy. Limited initial support will be given to experimental demonstrations of products (such as software) and services.

AREA 6: LINGUISTIC RESEARCH AND ENGINEERING

The aim of this area is to develop a basic linguistic technology which can be incorporated into a large number of computer applications where natural language is an essential ingredient, with a view to accommodating or overcoming limitations and inefficiencies within the Community brought about by different natural languages. This requires the creation of linguistic resources (grammars, dictionaries, terminology collections and corpora of text) for the nine official Community languages, and the definition of standards for these data. A number of pilot applications and demonstration projects will be undertaken to show how the technology will be used and demonstrate the technical and economic feasibility of the solutions adopted.

The area is divided into three parts: research, development of resources and pilot applications. It is based on the results and experience drawn from Eurotra and certain specific projects conducted under Esprit and national research programmes.

The research work will concentrate on the development of a common computer-based linguistic model for text representation in different languages and on the pursuit of automated techniques for reducing the number of possible interpretations of a given text. The development of advanced computational technologies will encourage the application, for linguistics, of progress made in the field of advanced expert systems, database technologies, speech processing and computer architectures. It is also intended to create methods, tools and linguistic resources, especially portable software tools, grammars, dictionaries, domain specific terminological collections, as well as large, high/quality corpora and the stimulation of standards work. Pilot applications and demonstration projects will help to test the progress of research work and to demonstrate the technical and economic feasibility of tools, methods and resources in an operational environment.

AREA 7: TELEMATICS SYSTEMS FOR RURAL AREAS

Half the European population still lives outside major cities and towns, and rural areas need comparable telematic service infrastructures to those in urban centres if they are to develop more balanced economic activities with a greater diversity of employment. The introduction of such services in rural areas will be a gradual process, the investments required will be large, and the infrastructures installed will have a lifetime of some decades. It is therefore essential that the right choices are made on technologies and system configurations. There is a need for pre-normative actions to harmonize the Community markets for equipment and services adapted to the needs of rural areas; for development and stimulation of specialised services and for the impacts of telematics in rural areas to be consistently assessed.

Community action in this area will contribute to completion of the single market, to strengthening the socio-economic cohesion of Europe, to improvements in the quality of life in rural areas, to industrial innovation (in particular for small and medium-sized enterprises) and to rural development. The actions will be part of a wider programme of actions strengthening rural development in the Community.

The goal is to create the conditions for geographically dispersed small businesses to provide more diverse employment opportunities and a more balanced economic activity in rural areas; to establish a basis for provision of improved services to dispersed and isolated populations, to raise the level of awareness of the potential of information and communication technologies in rural areas; to encourage manufacturers and service providers to make equipment and services easier to use by rural communities, and to ensure that applications of information and communication technologies in rural areas do not contribute to a further centralization of business and administrative activities and a loss of the cultural and economic diversity of rural areas in Europe.

The specific objectives are to develop a better understanding of the common needs and opportunities for telematic services and of the impacts of such services on rural life; to establish a common understanding of network configuration requirements and options and a common understanding of service requirements for telematic services, and to prepare the way for the harmonized planning and introduction of telematic service infrastructures in rural areas.

In order to achieve these objectives, the actions will involve consensus development with industry and rural development agencies; identification of needs and opportunities for telematics services and assessment of their impacts; specification of service and technology requirements; development of telematic systems, some pilot applications and research on infrastructure planning and implementation strategies.

ANNEX II

INDICATIVE BREAKDOWN OF THE AMOUNT DEEMED NECESSARY

(in million ecus)

Area	Breakdown
1. Administrations	41,3
2. Transport	124,4
3. Health care (including the handicapped and elderly)	97
4. Flexible and distance learning	54,5
5. Libraries	22,5
6. Linguistics	22,5
7. Rural areas	14
	Total 376,2 ⁽¹⁾ ⁽²⁾

⁽¹⁾ Including expenditure on staff which comes to ECU 30 million and administrative expenditure totalling ECU 11 million.

⁽²⁾ An amount of ECU 3,8 million, not included in the ECU 376,2 million will be earmarked as the contribution from the specific programme in the field of telematic systems in areas of general interest to the centralized scheme for the dissemination and exploitation of results.

The breakdown between different headings does not exclude the possibility that projects could come under several headings.

ANNEX III

RULES FOR IMPLEMENTING THE PROGRAMME

1. The Commission will implement the programme on the basis of the scientific and technical content described in Annex I.
2. The rules for implementing the programme, referred to in Article 3, comprise research and technological development projects, accompanying measures and concerted actions:

— Research projects

The projects will be the subject of shared-cost research and technological development contracts. Selection of projects must take account of the criteria listed in Annex III to Decision 90/221/Euratom, EEC and of the objectives set out in Annex I to this programme.

For shared-cost projects Community financial participation will not normally be more than 50%. Universities and other research centres participating in shared-cost projects will have the option of requesting, for each project, either 50% funding of total expenditure or 100% funding of the additional marginal costs.

Shared-cost research projects must, as a general rule, be carried out by participants established within the Community. Projects in which, for example, universities, research organizations and industrial firms, including small and medium-sized enterprises, may take part must provide, as a general rule, for the participation of at least two partners, independent of each other and established in different Member States. Contracts relating to shared-cost research projects must as a general rule be concluded following a selection procedure based on calls for proposals published in the *Official Journal of the European Communities*.

The Commission will publish a vade-mecum setting out all the rules applying to the selection of projects, in order to guarantee full transparency.

— Accompanying measures

the accompanying measures referred to in Article 7 will consist of:

- the organization of seminars, workshops and scientific conferences,
- internal coordination through the creation of integrating groups,
- advanced technology training programmes, with emphasis being placed on multidisciplinary,
- promotion of the exploitation of results.
- independent scientific and strategic evaluation of the operation of the projects and the programme.

— Concerted actions

Concerted actions consist of action by the Community to coordinate the individual research activities carried out in the Member States. They may benefit from funding of up to 100% of coordinating expenditure.

3. The knowledge acquired in the course of the projects will be disseminated both within the specific programme and by means of a centralized activity, pursuant to the Decision referred to in the third subparagraph of Article 4 of Decision 90/221/Euratom, EEC.

COUNCIL DECISION

of 22 July 1991

establishing the second phase of the Tedis programme (Trade electronic data interchange systems)

(91/385/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas one of the Community's tasks is, by establishing a common market and gradually reducing the differences between the economic policies of the Member States, to promote the harmonious development of economic activities throughout the Community and closer relations between its constituent States;

Whereas the Commission White Paper on the completion of the internal market stresses the importance of the future development of new transfrontier services and the contribution made by telecommunications networks based on common standards towards the creation of a market free of barriers at Community level;

Whereas the exchange of computerized data (EDI) can contribute increasingly towards the competitiveness of European undertakings in the production and services sectors;

Whereas there is rapid growth at present in public and private initiatives for putting into service within a company or group of companies or sector of activity, at national and international level, electronic data interchange systems which are not compatible;

Whereas, as regards electronic data interchange, the diversity and fragmentation of initiatives taken at national level or more generally by a company, group of companies or sector of activity may lead to the creation of incompatible and non-communicating systems and to preventing suppliers of equipment and services, and users, from deriving

maximum benefit from the advantages created by the growth in electronic data interchange;

Whereas, in line with the Council Resolution of 22 January 1990 on trans-European networks ⁽⁴⁾ and the conclusions of the Strasbourg and Dublin European Councils, the smooth running of the internal market depends on undertakings and authorities involved in it being able to exchange data as part of their activities by making use of compatible systems which enable genuine pan-European data interchange networks to be developed;

Whereas Tedis needs in particular to be dovetailed with the specific programme of research and technological development in communications technology (1990 to 1994) the specific programme of research and technological development in the field of telematics systems of general interest (1990 to 1994) and the specific programme for information technology (1990 to 1994) which are part of the Community's third framework research programme;

Whereas the work already initiated in the field of electronic data interchange (EDI) during the first phase of the Tedis programme (1988 to 1989) established by Decision 87/499/EEC ⁽⁵⁾ makes it possible to envisage the establishment of such pan-European networks, provided that this work is continued and expanded by instituting a second phase to the programme;

Whereas a programme lasting three years is called for;

Whereas an amount of ECU 25 million is estimated as necessary to implement this multi-annual programme; whereas, for the period 1991 to 1992, in the framework of the current financial perspective, the funds estimated as necessary are ECU 10 million;

Whereas the amounts to be committed for the financing of the programme for the period after the budget year 1992 will have to fall within the Community financial framework in force;

⁽¹⁾ OJ No C 311, 12. 12. 1990, p. 6.

⁽²⁾ OJ No C 106, 22. 4. 1991, p. 167.

⁽³⁾ OJ No C 102, 18. 4. 1991, p. 13.

⁽⁴⁾ OJ No C 27, 6. 2. 1990, p. 8.

⁽⁵⁾ OJ No L 285, 8. 10. 1987, p. 35.

Whereas, by Decision 89/241/EEC⁽¹⁾, the Council amended the initial Decision on the Tedis programme to allow non-member countries, in particular Member States of the European Free Trade Association (EFTA), to be associated with the Tedis programme and, in accordance with Article 228 of the Treaty, authorized the Commission to negotiate agreements with the EFTA Member States;

Whereas, by Decision 89/689/EEC⁽²⁾, 89/690/EEC⁽³⁾, 89/691/EEC⁽⁴⁾, 89/692/EEC⁽⁵⁾, 89/693/EEC⁽⁶⁾ and 89/694/EEC⁽⁷⁾, the Council approved the agreements on systems for the electronic transfer of data for commercial use concluded between the European Economic Community and, respectively, Austria, Finland, Iceland, Norway, Sweden and Switzerland;

Whereas the Treaty does not provide, for the adoption of this Decision, powers of action other than those of Article 235,

HAS DECIDED AS FOLLOWS:

Article 1

1. A second phase of the Tedis (Trade electronic data interchange systems) Community programme concerning the exchange of electronic data (EDI) in trade, industry and administration, hereinafter called the 'programme', is hereby set up.

The programme shall last three years.

2. The Community financial resources estimated as necessary for its implementation amount to ECU 25 million, of which ECU 10 million is for the period 1991 to 1992 in the framework of the 1988 to 1992 financial perspective.

For the subsequent period of implementation of the programme, the amount shall fall within the Community financial framework in force.

3. The budget authority shall determine the appropriations available for each financial year, taking into account the principles of sound management referred to in Article 2 of the Financial Regulation applicable to the general budget of the European Communities.

Article 2

The objectives of the programme are to ensure that electronic data interchange systems are established to the best

effect, in view of the socio-economic importance of such systems, and to mobilize the necessary resources to achieve this end at Community level.

Article 3

In order to achieve the objectives defined in Article 2, measures will be taken and continued in the following areas:

- standardization of EDI messages,
- specific EDI needs as regards telecommunications,
- legal aspects of EDI,
- security of EDI messages,
- multi-sector and Europe-wide projects,
- analysis of the impact of EDI on company management,
- information campaigns.

A list of the proposed measures is given in Annex I. These measures shall be implemented under the procedures provided for in Articles 6 and 7.

Article 4

The implementation of the programme shall be coordinated with existing or planned Community policies and activities concerning telecommunications particularly in respect, where necessary, of initiatives under the Open Network Provision Framework Directive (90/387/EEC)⁽¹⁾, the information market (Impact programme), security of information systems and standardization, and in particular with the Caddia programme and the CD project, so as to ensure the necessary interaction with the specific requirements of the exchange of electronic data.

Article 5

Contracts arising from the programme shall be concluded with undertakings, including small and medium-sized enterprises, research establishments, national administrations and other bodies established in the Community, in the member countries of the European Free Trade Association or in a third country with which the Community has concluded an agreement associating that country with the programme.

Article 6

1. The Commission shall be responsible for implementing the programme. 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.

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.

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 1.

⁽¹⁾ OJ No L 97, 11. 4. 1989, p. 46.

⁽²⁾ OJ No L 400, 30. 12. 1989, p. 1.

⁽³⁾ OJ No L 400, 30. 12. 1989, p. 6.

⁽⁴⁾ OJ No L 400, 30. 12. 1989, p. 11.

⁽⁵⁾ OJ No L 400, 30. 12. 1989, p. 16.

⁽⁶⁾ OJ No L 400, 30. 12. 1989, p. 21.

⁽⁷⁾ OJ No L 400, 30. 12. 1989, p. 26.

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 7

1. Notwithstanding the provisions of Article 6, the following procedure shall apply in drawing up the work programme as set out in Annex I, the breakdown of the relevant budgetary expenditure and the assessment of projects and actions provided for in that Annex of a total value of above ECU 200 000, and the estimated amount of the Community's contribution to them.

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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in

accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith.

4. In that event, the Commission shall defer application of the measures which it has decided for a period of three months from the date of communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the foregoing subparagraph.

Article 8

At the end of the Tedis programme, the Commission shall present to the European Parliament, the Council and the Economic and Social Committee a final report containing an assessment by independent experts of the progress made towards each of the objectives set under the programme on the basis of the criteria and indicators as set out in Annex II to this Decision.

Article 9

This Decision shall take effect on 1 July 1991.

Done at Brussels, 22 July 1991.

For the Council

The President

P. DANKERT.

ANNEX I

1. Standardization of EDI messages :

- support the development work of the international Edifact standard and in particular the work of the Edifact Board for Western Europe ; coordinate work regarding elaboration of Edifact messages and provide the necessary technical assistance,
- supply the appropriate means to ensure conformity to Edifact of, on the one hand, EDI messages and, on the other hand, of conversion software,
- adapt, if necessary, the Edifact standard to take account of the new developments in EDI, such as graphical EDI, technical EDI and interactive EDI,
- support 'migration' towards the use of international standards and particularly towards the use of Edifact,
- seek compatibility between the American standard ANSI X12 and the international Edifact standard.

2. Specific EDI needs as regards telecommunications :

- to make proposals for improving technical interconnectivity between EDI users in Europe, ensuring close liaison with existing Community activities in this area and in particular ONP, namely :
 - (a) encouraging the use of standardized communication protocols suitable for EDI in underlying services, especially P-edi, X.400 (1988) or X.500, coordinating where necessary with the ONP plans to harmonize for instance standards for packet switched data services and leased lines ;
 - (b) encouraging the existence of gateways between existing EDI services ;
 - (c) helping to establish a system of registration authorities, to ensure the solution of the problem of identifying the names and addresses of EDI users in a multisectorial and trans-European context,
- to encourage the increased use of integrated services digital networks for EDI,
- to favour the gathering of the EDI interest groups dealing with telecommunications aspects,
- to encourage the practice of 'one-stop shopping/billing' concepts in EDI.

3. Legal aspects of EDI :

- finalize the draft European EDI agreement,
- set up and investigate thoroughly the constraints and needs of a legal nature in specific areas,
- undertake the thorough legal analysis of media and means of storage and of the electronic signatures for EDI messages,
- prepare a discussion document on the adaptation and harmonization of European legislations in order to integrate into the legal regimes the necessary provisions for the use of EDI ; define the proposal of adaptation and harmonization required,
- ensure, from a legal aspect, that functions accomplished by EDI messages are also valid in order to carry out functions of a legal and reglementary nature,
- analyse the impact of EDI messages on the traditional functions of negotiability,
- follow the issues of data protection and confidential data in order to take account of the specific needs which could arise with the development of EDI,
- ensure the coordination between Member States on legal matters in connection with EDI and participate in the international coordination.

4. Security of EDI messages :

- create an informal expert group in this specific area,
- organize each year workshops which will treat different themes related to the security of EDI messages,
- increase the awareness of EDI users and of other appropriate groups to EDI message security,
- facilitate the development of procedures, methods, services and standards related to EDI security,

- examine the user environment ; identify the constraints, quantify the risks and investigate, if possible, an appropriate model to ensure EDI security,
- examine the security requirements related to new forms of EDI and the impact of new technologies,
- evaluate the services and products available to ensure the security of EDI messages, and if necessary examine the question of certification,
- examine from the EDI security viewpoint open multi-service environments.

5. Multi-sector and Europe-wide projects :

- establish and keep up-to-date a permanent inventory of existing or potential EDI projects in Europe,
- ensure the coordination of sectoral projects to meet industry and user needs,
- support of development of an intersectoral forum for EDI measures,
- encourage the launch of intersectoral projects to meet industry and user needs,
- encourage the participation of national administrations and Community institutions in the intersectoral projects,
- support the promotion of EDI systems to ensure wider use of EDI in Europe,
- identify long-term actions liable to progressively stimulate and interface EDI systems in countries of the Mediterranean, in Central and Eastern Europe.

6. Analysis of the impact of EDI on company management :

- identify and analyse changes in the methods of management and organization brought about by the introduction of EDI ; small and medium-sized enterprises (SMEs) should particularly be taken into account,
- examine the economic and social effects of EDI,
- measure up the cost benefit of introducing EDI in private or public sectors,
- elaboration of a general implantation model of EDI in administrations, private and public enterprises,
- study the opportuneness of setting up a mechanism of coordination on a European level with regard to intercompany relations based on EDI.

7. Information campaigns :

- conduct regular surveys on the development of EDI in Europe and of available EDI products and services,
- undertake detailed studies more particularly of certain countries, regions or industrial sectors,
- publish the studies, analyses and other results of actions undertaken within the framework of the programme,
- support the setting up of national and/or regional awareness centres. Ensure the coordination, the provision of material support and contribution to their awareness activities,
- encourage in particular actions designed to make SMEs more aware of EDI.

*ANNEX II***Guidelines for assessing progress made towards the objectives of the Tedis programme**

In order to achieve the objectives defined in Article 2, several measures, referred to in Article 3, will be taken and continued. The progress thereby achieved will then be assessed.

1. *Forstandardization*, this will mean assessing the influence of the Tedis programme on :
 - (a) the development and use of the Edifact standard in Western Europe ;
 - (b) the availability and use of conversion software and its conformity to the international Edifact standard.
 2. *Interconnection of EDI services*: assessment of the Tedis programme's impact on the capacity of data networks to operate together and the availability of Europe-wide EDI services.
 3. *Legal aspects*: examination of how the measures taken under the Tedis programme have helped ensure the legal validity of EDI data interchange in each Member State and how they have encouraged the introduction of 'paperless trading'.
 4. *Security of messages*: examination of how the Tedis programme has helped protect the EDI message itself and the security of EDI messages in an interlinked business environment.
 5. *Multi-sector and Europe-wide projects*: measuring how far support for the launching of multi-sectoral pilot projects has contributed towards the sectoral and geographical integration of EDI projects.
 6. *Management*: assessment of the value of studies and analyses — in particular concerning SMEs — carried out under the Tedis programme to assess the impact of EDI on company management and its economic and social impact.
 7. *Information campaigns*: assessment of the impact of measures — in particular concerning SMEs — taken under the Tedis programme on the use of EDI in Western Europe.
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COUNCIL DECISION

of 29 July 1991

on the introduction of a single European emergency call number

(91/396/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas the telephone is the best means of access to emergency services of all kinds; whereas at present various telephone numbers are used for this purpose in the Member States;

Whereas the effect of such differences is to create problems in contacting the responsible services for citizens facing emergency situations in other Member States;

Whereas the substantial increase in both private and business travel within the Community has created a demand for the introduction of a single European emergency call number;

Whereas the introduction of new technologies in public telephone networks and the coordinated introduction of advanced telecommunications infrastructures present a unique opportunity for the implementation of a single European emergency call number, in parallel to the existing national emergency call numbers, where appropriate;

Whereas the Council, in its resolution of 13 February 1989 on the new developments in Community cooperation on civil protection (4), stressed the desirability of a Community-wide single additional emergency telephone number which will in particular enable citizens in an emergency or disaster to call the relevant national emergency services;

Whereas the European Parliament has repeatedly emphasized the importance of the introduction of such a number, in particular in its resolutions of 12 December 1988 on telecommunications (5);

Whereas the European Conference of Post and Telecommunications (CEPT) recommended in its recommendation T/SF1 of 1976 the use of the number 112 as the single European emergency call number;

Whereas this recommendation has only been followed by a very small number of Member States;

Whereas it will be possible in all Member States to devise a plan to make the number 112 available;

Whereas several Member States could introduce the number 112 by 1992; whereas however, for some Member States this would cause problems since they would need to make unplanned changes or to change plans already made;

Whereas, therefore, flexibility is needed in the time schedule for introducing the emergency call number in these Member States;

Whereas the introduction of the number 112 will be possible by 1996, even in the Member States where difficulties exist;

Whereas, in addition to the technical, financial, operational and commercial implications of introducing the chosen number within public telecommunications networks, Member States will have to make the necessary organizational arrangements best suited to the national organization of the emergency systems, in order to ensure that calls to this number are adequately answered and handled; whereas it would be desirable to devote efforts to easing difficulties of comprehension which may arise from different language capabilities, taking account of the possibilities of the various national systems; whereas the single European emergency call number could therefore be used in parallel with any other existing national arrangements, where appropriate;

Whereas the provision of emergency call numbers is prescribed in all Member States by law, regulation, or administrative action, and divergent developments in this area must be avoided;

Whereas the Treaty does not provide, for the adoption of this Decision, powers other than those of Article 235,

(1) OJ No C 275, 1. 11. 1990, p. 4.

(2) OJ No C 231, 17. 9. 1990, p. 83 and OJ No C 183, 15. 7. 1991.

(3) OJ No C 62, 12. 3. 1990, p. 1.

(4) OJ No C 44, 23. 2. 1989, p. 1.

(5) OJ No C 12, 16. 1. 1989, p. 66.

HAS ADOPTED THIS DECISION :

Article 1

1. Member States shall ensure that the number 112 is introduced in public telephone networks as well as in future integrated services digital networks and public mobile services, as the single European emergency call number.

2. The single European emergency call number shall be introduced in parallel with any other existing national emergency call numbers, where this seems appropriate.

Article 2

The single European emergency call number shall be introduced by 31 December 1992 at the latest, except where Article 3 applies.

Article 3

1. Where particular technical, financial, geographical or organizational difficulties in a Member State make the full introduction of the single European emergency call number by the date provided for in Article 2 impossible

or too costly, the Member State concerned shall inform the Commission of these difficulties.

2. In the case referred to in paragraph 1, the Member State concerned shall communicate to the Commission, with adequate explanations and justification, a new date for the full introduction of the single European emergency call number which, however, must be no later than 31 December 1996.

Article 4

Member States shall take the necessary measures to ensure that calls to the single European emergency call number are appropriately answered and handled, in a manner best suited to the national organization of emergency systems and within the technological possibilities of the networks.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 29 July 1991.

For the Council

The President

H. VAN DEN BROEK

GUIDELINES ON THE APPLICATION OF EEC COMPETITION RULES IN THE TELECOMMUNICATIONS SECTOR

(91/C 233/02)

PREFACE

These guidelines aim at clarifying the application of Community competition rules to the market participants in the telecommunications sector. They must be viewed in the context of the special conditions of the telecommunications sector, and the overall Community telecommunications policy will be taken into account in their application. In particular, account will have to be taken of the actions the Commission will be in a position to propose for the telecommunications industry as a whole, actions deriving from the assessment of the state of play and issues at stake for this industry, as has already been the case for the European electronics and information technology industry in the communication of the Commission of 3 April 1991 ⁽¹⁾.

A major political aim, as emphasized by the Commission, the Council, and the European Parliament, must be the development of efficient Europe-wide networks and services, at the lowest cost and of the highest quality, to provide the European user in the single market of 1992 with a basic infrastructure for efficient operation.

The Commission has made it clear in the past that in this context it is considered that liberalization and harmonization in the sector must go hand in hand.

Given the competition context in the telecommunications sector, the telecommunications operators should be allowed, and encouraged, to establish the necessary cooperation mechanisms, in order to create — or ensure — Community-wide full interconnectivity between public networks, and where required between services to enable European users to benefit from a wider range of better and cheaper telecommunications services.

This can and has to be done in compliance with, and respect of, EEC competition rules in order to avoid the diseconomies which otherwise could result. For the same reasons, operators and other firms that may be in a dominant market position should be made aware of the prohibition of abuse of such positions.

The guidelines should be read in the light of this objective. They set out to clarify, *inter alia*, which forms of cooperation amount to undesirable collusion, and in this sense they list what is *not* acceptable. They should therefore be seen as one aspect of an overall Community policy towards telecommunications, and notably of policies and actions to encourage and stimulate those forms of cooperation which promote the development and availability of advanced communications for Europe.

The full application of competition rules forms a major part of the Community's overall approach to telecommunications. These guidelines should help market participants to shape their strategies and arrangements for Europe-wide networks and services from the outset in a manner which allows them to be fully in line with these rules. In the event of significant changes in the conditions which prevailed when the guidelines were drawn up, the Commission may find it appropriate to adapt the guidelines to the evolution of the situation in the telecommunications sector.

⁽¹⁾ The European electronics and information technology industry: state of play, issues at stake and proposals for action, SEC(91) 565, 3 April 1991.

I. SUMMARY

1. The Commission of the European Communities in its Green Paper on the development of the common market for telecommunications services and equipment (COM(87)290) dated 30 June 1987 proposed a number of Community positions. Amongst these, positions (H) and (I) are as follows:

(H) strict continuous review of operational (commercial) activities of telecommunications administrations according to Articles 85, 86 and 90 of the EEC Treaty. This applies in particular to practices of cross-subsidization of activities in the competitive services sector and of activities in manufacturing;

(J) strict continuous review of all private providers in the newly opened sectors according to Articles 85 and 86, in order to avoid the abuse of dominant positions;'

2. These positions were restated in the Commission's document of 9 February 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). Among the areas where the development of concrete policy actions is now possible, the Commission indicated the following:

'Ensuring fair conditions of competition:

Ensuring an open competitive market makes continuous review of the telecommunications sector necessary.

The Commission intends to issue guidelines regarding the application of competition rules to the telecommunications sector and on the way that the review should be carried out.'

This is the objective of this communication.

The telecommunications sector in many cases requires cooperation agreements, *inter alia*, between telecommunications organizations (TOs) in order to ensure network and services interconnectivity, one-stop shopping and one-stop billing which are necessary to provide for Europe-wide services and to offer optimum service to users. These objectives can be achieved, *inter alia*, by TOs cooperating — for example, in those areas where exclusive or special rights for provision may continue in accordance with Community law, including competition law, as well as in areas where optimum service will require certain features of cooperation. On

the other hand the overriding objective to develop the conditions for the market to provide European users with a greater variety of telecommunications services, of better quality and at lower cost requires the introduction and safeguarding of a strong competitive structure. Competition plays a central role for the Community, especially in view of the completion of the single market for 1992. This role has already been emphasized in the Green Paper.

The single market will represent a new dimension for telecoms operators and users. Competition will give them the opportunity to make full use of technological development and to accelerate it, and encouraging them to restructure and reach the necessary economies of scale to become competitive not only on the Community market, but worldwide.

With this in mind, these guidelines recall the main principles which the Commission, according to its mandate under the Treaty's competition rules, has applied and will apply in the sector without prejudging the outcome of any specific case which will have to be considered on the facts.

The objective is, *inter alia*, to contribute to more certainty of conditions for investment in the sector and the development of Europe-wide services.

The mechanisms for creating certainty for individual cases (apart from complaints and ex-officio investigations) are provided for by the notification and negative clearance procedures provided under Regulation No 17, which give a formal procedure for clearing cooperation agreements in this area whenever a formal clearance is requested. This is set out in further detail in this communication.

II. INTRODUCTION

3. The fundamental technological development worldwide in the telecommunications sector⁽¹⁾ has caused considerable changes in the competition conditions. The traditional monopolistic administrations cannot alone take up the challenge of the technological revolution. New economic forces have appeared on

(¹) Telecommunications embraces any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, radio, optical and other electromagnetic systems (Article 2 of WATTC Regulation of 9 December 1988).

the telecoms scene which are capable of offering users the numerous enhanced services generated by the new technologies. This has given rise to and stimulated a wide deregulation process propagated in the Community with various degrees of intensity.

This move is progressively changing the face of the European market structure. New private suppliers have penetrated the market with more and more transnational value-added services and equipment. The telecommunications administrations, although keeping a central role as public services providers, have acquired a business-like way of thinking. They have started competing dynamically with private operators in services and equipment. Wide restructuring, through mergers and joint ventures, is taking place in order to compete more effectively on the deregulated market through economies of scale and rationalization. All these events have a multiplier effect on technological progress.

4. In the light of this, the central role of competition for the Community appears clear, especially in view of the completion of the single market for 1992. This role has already been emphasized in the Green Paper.

5. In the application of competition rules the Commission endeavours to avoid the adopting of State measures or undertakings erecting or maintaining artificial barriers incompatible with the single market. But it also favours all forms of cooperation which foster innovation and economic progress, as contemplated by competition law. Pursuing effective competition in telecoms is not a matter of political choice. The choice of a free market and a competition-oriented economy was already envisaged in the EEC Treaty, and the competition rules of the Treaty are directly applicable within the Community. The abovementioned fundamental changes make necessary the full application of competition law.

6. There is a need for more certainty as to the application of competition rules. The telecommunication administrations together with keeping their duties of public interest, are now confronted with the application of these rules practically without transition from a long tradition of legal protection. Their scope and actual implications are often not easily perceivable. As the technology is fast-moving and huge investments are

necessary, in order to benefit from the new possibilities on the market-place, all the operators, public or private, have to take quick decisions, taking into account the competition regulatory framework.

7. This need for more certainty regarding the application of competition rules is already met by assessments made in several individual cases. However, assessments of individual cases so far have enabled a response to only some of the numerous competition questions which arise in telecommunications. Future cases will further develop the Commission's practice in this sector.

Purpose of these guidelines

8. These guidelines are intended to advise public telecommunications operators, other telecommunications service and equipment suppliers and users, the legal profession and the interested members of the public about the general legal and economic principles which have been and are being followed by the Commission in the application of competition rules to undertakings in the telecommunications sector, based on experience gained in individual cases in compliance with the rulings of the Court of Justice of the European Communities.

9. The Commission will apply these principles also to future individual cases in a flexible way, and taking the particular context of each case into account. These guidelines do not cover all the general principles governing the application of competition rules, but only those which are of specific relevance to telecommunication issues. The general principles of competition rules not specifically connected with telecommunications but entirely applicable to these can be found, *inter alia*, in the regulatory acts, the Court judgments and the Commission decisions dealing with the individual cases, the Commission's yearly reports on competition policy, press releases and other public information originating from the Commission.

10. These guidelines do not create enforceable rights. Moreover, they do not prejudice the application of EEC competition rules by the Court of Justice of the European Communities and by national authorities (as these rules may be directly applied in each Member State, by the national authorities, administrative or judicial).

11. A change in the economic and legal situation will not automatically bring about a simultaneous amendment to the guidelines. The Commission, however, reserves the possibility to make such an amendment when it considers that these guidelines no longer satisfy their

purpose, because of fundamental and/or repeated changes in legal precedents, methods of applying competition rules, and the regulatory, economic and technical context.

12. These guidelines essentially concern the direct application of competition rules to undertakings, i.e. Articles 85 and 86 of the EEC Treaty. They do not concern those applicable to the Member States, in particular Articles 5 and 90 (1) and (3). Principles ruling the application of Article 90 in telecommunications are expressed in Commission Directives adopted under Article 90 (3) for the implementation of the Green Paper (*).

Relationship between competition rules applicable to undertakings and those applicable to Member States

13. The Court of Justice of the European Communities (*) has ruled that while it is true that Articles 85 and 86 of the Treaty concern the conduct of undertakings and not the laws or regulations of the Member States, by virtue of Article 5 (2) of the EEC Treaty, Member States must not adopt or maintain in force any measure which could deprive those provisions of their effectiveness. The Court has stated that such would be the case, in particular, if a Member State were to require or favour prohibited cartels or reinforce the effects thereof or to encourage abuses by dominant undertakings.

If those measures are adopted or maintained in force *vis-à-vis* public undertakings or undertakings to which a Member State grants special or exclusive rights, Article 90 might also apply.

14. When the conduct of a public undertaking or an undertaking to which a Member State grants special or exclusive rights arises entirely as a result of the exercise of the undertaking's autonomous behaviour, it can only be caught by Articles 85 and 86.

(*) Commission Directive 88/301/EEC of 16 May 1988 on competition in the markets in telecommunications terminal equipment (OJ No L 131, 27. 5. 1988, p. 73).

Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ No L 192, 24. 7. 1990, p. 10).

(*) Judgment of 10. 1. 1985 in Case 229/83, *Leclerc/gasoline* [1985] ECR 17; Judgment of 11. 7. 1985 in Case 299/83, *Leclerc/books* [1985] ECR 2517; Judgment of 30. 4. 1986 in Cases from 209 to 213/84, *Ministère public v. Asjes* [1986] ECR 1425; Judgment of 1. 10. 1987 in Case 311/85, *Vereeniging van Vlaamse Reisbureaus v. Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten* [1987] ECR 3801.

When this behaviour is imposed by a mandatory State measure (regulative or administrative), leaving no discretionary choice to the undertakings concerned, Article 90 may apply to the State involved in association with Articles 85 and 86. In this case Articles 85 and 86 apply to the undertakings' behaviour taking into account the constraints to which the undertakings are submitted by the mandatory State measure.

Ultimately, when the behaviour arises from the free choice of the undertakings involved, but the State has taken a measure which encourages the behaviour or strengthens its effects, Articles 85 and/or 86 apply to the undertakings' behaviour and Article 90 may apply to the State measure. This could be the case, *inter alia*, when the State has approved and/or legally endorsed the result of the undertakings' behaviour (for instance tariffs).

These guidelines and the Article 90 Directives complement each other to a certain extent in that they cover the principles governing the application of the competition rules: Articles 85 and 86 on the one hand, Article 90 on the other.

Application of competition rules and other Community law, including open network provision (ONP) rules

15. Articles 85 and 86 and Regulations implementing those Articles in application of Article 87 of the EEC Treaty constitute law in force and enforceable throughout the Community. Conflicts should not arise with other Community rules because Community law forms a coherent regulatory framework. Other Community rules, and in particular those specifically governing the telecommunications sector, cannot be considered as provisions implementing Articles 85 and 86 in this sector. However it is obvious that Community acts adopted in the telecommunications sector are to be interpreted in a way consistent with competition rules, so to ensure the best possible implementation of all aspects of the Community telecommunications policy.

16. This applies, *inter alia*, to the relationship between competition rules applicable to undertakings and the ONP rules. According to the Council Resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 (*), ONP comprises the 'rapid definition, by Council Directives, of technical conditions, usage

(*) OJ No C 257, 4. 10. 1988, p. 1.

conditions, and tariff principles for open network provision, starting with harmonized conditions for the use of leased lines'. The details of the ONP procedures have been fixed by Directive 90/387/EEC (*) on the establishment of the internal market for telecommunications services through the implementation of open network provision, adopted by Council on 28 June 1990 under Article 100a of the EEC Treaty.

17. ONP has a fundamental role in providing European-wide access to Community-wide interconnected public networks. When ONP harmonization is implemented, a network user will be offered harmonized access conditions throughout the EEC, whichever country they address. Harmonized access will be ensured in compliance with the competition rules as mentioned above, as the ONP rules specifically provide.

ONP rules cannot be considered as competition rules which apply to States and/or to undertakings' behaviour. ONP and competition rules therefore constitute two different but coherent sets of rules. Hence, the competition rules have full application, even when all ONP rules have been adopted.

18. Competition rules are and will be applied in a coherent manner with Community trade rules in force. However, competition rules apply in a non-discriminatory manner to EEC undertakings and to non-EEC ones which have access to the EEC market.

III. COMMON PRINCIPLES OF APPLICATION OF ARTICLES 85 AND 86

Equal application of Articles 85 and 86

19. Articles 85 and 86 apply directly and throughout the Community to all undertakings, whether public or private, on equal terms and to the same extent, apart from the exception provided in Article 90 (2) (*).

(*) OJ No L 192, 24. 7. 1982, p. 1.

(*) Article 90 (2) states: 'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community'.

The Commission and national administrative and judicial authorities are competent to apply these rules under the conditions set out in Council Regulation No 17 (*).

20. Therefore, Articles 85 and 86 apply both to private enterprises and public telecommunications operators embracing telecommunications administrations and recognized private operating agencies, hereinafter called 'telecommunications organizations' (TOs).

TOs are undertakings within the meaning of Articles 85 and 86 to the extent that they exert an economic activity, for the manufacturing and/or sale of telecommunications equipment and/or for the provision of telecommunications services, regardless of other facts such as, for example, whether their nature is economic or not and whether they are legally distinct entities or form part of the State organization (*). Associations of TOs are associations of undertakings within the meaning of Article 85, even though TOs participate as undertakings in organizations in which governmental authorities are also represented.

Articles 85 and 86 apply also to undertakings located outside the EEC when restrictive agreements are implemented or intended to be implemented or abuses are committed by those undertakings within the common market to the extent that trade between Member States is affected (*).

Competition restrictions justified under Article 90 (2) or by essential requirements

21. The exception provided in Article 90 (2) may apply both to State measures and to practices by undertakings. The Services Directive 90/388/EEC, in particular in Article 5, makes provision for a Member State to impose specified restrictions in the licences which it can grant for the provision of certain telecommunications services. These restrictions may be imposed under Article 90 (2) or in order to ensure the compliance with State essential requirements specified in the Directive.

(*) OJ No L 21, 2. 1962, p. 204/62 (Special Edition 1959-62, p. 87).

(*) See Judgment of the Court 16. 6. 1987 in Case 118/85, Commission v. Italy — Transparency of Financial Relations between Member States and Public Undertakings [1987] ECR 2599.

(*) See Judgment of the Court of 27. 9. 1988 in Joined Cases 89, 104, 114, 116, 117, 125, 126, 127, 129/85, Ålström & others v. Commission ('Woodpulp'), [1988] ECR 5193.

22. As far as Article 90 (2) is concerned, the benefit of the exception provided by this provision may still be invoked for a TO's behaviour when it brings about competition restrictions which its Member State did not impose in application of the Services Directive. However, the fact should be taken into account that in this case the State whose function is to protect the public and the general economic interest, did not deem it necessary to impose the said restrictions. This makes particularly hard the burden of proving that the Article 90 (2) exception still applies to an undertakings's behaviour involving these restrictions.

23. The Commission infers from the case law of the Court of Justice⁽¹⁰⁾ that it has exclusive competence, under the control of the Court, to decide that the exception of Article 90 (2) applies. The national authorities including judicial authorities can assess that this exception does not apply, when they find that the competition rules clearly do not obstruct the performance of the task of general economic interest assigned to undertakings. When those authorities cannot make a clear assessment in this sense they should suspend their decision in order to enable the Commission to find that the conditions for the application of that provision are fulfilled.

24. As to measures aiming at the compliance with 'essential requirements' within the meaning of the Services Directive, under Article 1 of the latter⁽¹¹⁾, they can only be taken by Member States and not by undertakings.

The relevant market

25. In order to assess the effects of an agreement on competition for the purposes of Article 85 and whether there is a dominant position on the market for the purposes of Article 86, it is necessary to define the relevant market(s), product or service market(s) and geographic market(s), within the domain of telecommunications. In a context of fast-moving technology the relevant market definition is dynamic and variable.

⁽¹⁰⁾ Case 10/71, Mueller-Hein [1971] ECR 723; Judgment of 11. 4. 1989 in Case 66/86, Ahmed Saeed [1989] ECR 803.

⁽¹¹⁾ '... the non-economic reasons in the general interest which may cause a Member State to restrict access to the public telecommunications network or public telecommunications services.'

(a) The product market

26. A product market comprises the totality of the products which, with respect to their characteristics, are particularly suitable for satisfying constant needs and are only to a limited extent interchangeable with other products in terms of price, usage and consumer preference. An examination limited to the objective characteristics only of the relevant products cannot be sufficient: the competitive conditions and the structure of supply and demand on the market must also be taken into consideration⁽¹²⁾.

The Commission can precisely define these markets only within the framework of individual cases.

27. For the guidelines' purpose it can only be indicated that distinct service markets could exist at least for terrestrial network provision, voice communication, data communication and satellites. With regard to the equipment market, the following areas could all be taken into account for the purposes of market definition: public switches, private switches, transmission systems and more particularly, in the field of terminals, telephone sets, modems, telex terminals, data transmission terminals and mobile telephones. The above indications are without prejudice to the definition of further narrower distinct markets. As to other services — such as value-added ones — as well as terminal and network equipment, it cannot be specified here whether there is a market for each of them or for an aggregate of them, or for both, depending upon the interchangeability existing in different geographic markets. This is mainly determined by the supply and the requirements in those markets.

28. Since the various national public networks compete for the installation of the telecommunication hubs of large users, market definition may accordingly vary. Indeed, large telecommunications users, whether or not they are service providers, locate their premises depending, *inter alia*, upon the features of the telecommunications services supplied by each TO. Therefore, they compare national public networks and other services provided by the TOs in terms of characteristics and prices.

⁽¹²⁾ Case 322/81, Michelin v. Commission, 9 November 1983 [1983] ECR 3529. Ground 37.

29. As to satellite provision, the question is whether or not it is substantially interchangeable with terrestrial network provision:

(a) communication by satellite can be of various kinds: fixed service (point to point communication), multipoint (point to multipoint and multipoint to multipoint), one-way or two-way;

(b) satellites' main characteristics are: coverage of a wide geographic area not limited by national borders, insensitivity of costs to distance, flexibility and ease of networks deployment, in particular in the very small aperture terminals (VSAT) systems;

(c) satellites' uses can be broken down into the following categories: public switched voice and data transmission, business value-added services and broadcasting;

(d) a satellite provision presents a broad interchangeability with the terrestrial transmission link for the basic voice and data transmission on long distance. Conversely, because of its characteristics it is not substantially interchangeable but rather complementary to terrestrial transmission links for several specific voice and data transmission uses. These uses are: services to peripheral or less-developed regions, links between non-contiguous countries, reconfiguration of capacity and provision of routing for traffic restoration. Moreover, satellites are not currently substantially interchangeable for direct broadcasting and multipoint private networks for value-added business services. Therefore, for all those uses satellites should constitute distinct product markets. Within satellites, there may be distinct markets.

30. In mobile communications distinct services seem to exist such as cellular telephone, paging, telepoint, cordless voice and cordless data communication. Technical development permits providing each of these systems with more and more enhanced features. A consequence of this is that the differences between all these systems are progressively blurring and their interchangeability increasing. Therefore, it cannot be excluded that in future for certain uses several of those systems be embraced by a single product market. By the same token, it is likely that, for certain uses, mobile systems will be comprised in a single market with certain services offered on the public switched network.

(b) The geographic market

31. A geographic market is an area:

— where undertakings enter into competition with each other, and

— where the objective conditions of competition applying to the product or service in question are similar for all traders ⁽¹³⁾.

32. Without prejudice to the definition of the geographic market in individual cases, each national territory within the EEC seems still to be a distinct geographic market as regards those relevant services or products, where:

— the customer's needs cannot be satisfied by using a non-domestic service,

— there are different regulatory conditions of access to services, in particular special or exclusive rights which are apt to isolate national territories,

— as to equipment and network, there are no Community-common standards, whether mandatory or voluntary, whose absence could also isolate the national markets. The absence of voluntary Community-wide standards shows different national customers' requirements.

However, it is expected that the geographic market will progressively extend to the EEC territory at the pace of the progressive realization of a single EEC market.

33. It has also to be ascertained whether each national market or a part thereof is a substantial part of the common market. This is the case where the services of the product involved represent a substantial percentage of volume within the EEC. This applies to all services and products involved.

34. As to satellite uplinks, for cross-border communication by satellite the uplink could be provided from any of several countries. In this case, the geographic market is wider than the national territory and may cover the whole EEC.

As to space segment capacity, the extension of the geographic market will depend on the power of the satellite and its ability to compete with other satellites for

⁽¹³⁾ Judgment of 14. 2. 1978 in Case 27/76, *United Brands v Commission* [1978] ECR 207, Ground 44. In the telecommunications sector: Judgment of 5. 10. 1988 in Case 247/86, *Alsatel-Novasam* [1988] ECR 5987.

transmission to a given area, in other words on its range. This can be assessed only case by case.

35. As to services in general as well as terminal and network equipment, the Commission assesses the market power of the undertakings concerned and the result for EEC competition of the undertakings' conduct, taking into account their interrelated activities and interaction between the EEC and world markets. This is even more necessary to the extent that the EEC market is progressively being opened. This could have a considerable effect on the structure of the markets in the EEC, on the overall competitiveness of the undertakings operating in those markets, and in the long run, on their capacity to remain independent operators.

IV. APPLICATION OF ARTICLE 85

36. The Commission recalls that a major policy target of the Council Resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 was that of:

'... stimulating European cooperation at all levels, as far as compatible with Community competition rules, and particularly in the field of research and development, in order to secure a strong European presence on the telecommunications markets and to ensure the full participation of all Member States'.

In many cases Europe-wide services can be achieved by TOs' cooperation — for example, by ensuring interconnectivity and interoperability

(i) in those areas where exclusive or special rights for provision may continue in accordance with Community law and in particular with the Services Directive 90/388/EEC; and

(ii) in areas where optimum service will require certain features of cooperation, such as so-called 'one-stop shopping' arrangements, i.e. the possibility of acquiring Europe-wide services at a single sales point.

The Council is giving guidance, by Directives, Decisions, recommendations and resolutions on those areas where Europe-wide services are most urgently needed: such as by recommendation 86/659/EEC on the coordinated introduction of the integrated services digital network (ISDN) in the European Community⁽¹⁴⁾ and by recom-

⁽¹⁴⁾ OJ No L 382, 31. 12. 1986, p. 36.

mendation 87/371/EEC on the coordinated introduction of public pan-European cellular digital land-based mobile communications in the Community⁽¹⁵⁾.

The Commission welcomes and fully supports the necessity of cooperation particularly in order to promote the development of trans-European services and strengthen the competitiveness of the EEC industry throughout the Community and in the world markets. However, this cooperation can only attain that objective if it complies with Community competition rules. Regulation No 17 provides well-defined clearing procedures for such cooperation agreements. The procedures foreseen by Regulation No 17 are:

(i) the application for negative clearance, by which the Commission certifies that the agreements are not caught by Article 85, because they do not restrict competition and/or do not affect trade between Member States; and

(ii) the notification of agreements caught by Article 85 in order to obtain an exemption under Article 85 (3). Although if a particular agreement is caught by Article 85, an exemption can be granted by the Commission under Article 85 (3), this is only so when the agreement brings about economic benefits — assessed on the basis of the criteria in the said paragraph 3 — which outweigh its restrictions on competition. In any event competition may not be eliminated for a substantial part of the products in question. Notification is not an obligation; but if, for reasons of legal certainty, the parties decide to request an exemption pursuant to Article 4 of Regulation No 17 the agreements may not be exempted until they have been notified to the Commission.

37. Cooperation agreements may be covered by one of the Commission block exemption Regulations or Notices⁽¹⁶⁾. In the first case the agreement is automatically exempted under Article 85 (3). In the latter case, in the Commission's view, the agreement does not appreciably restrict competition and trade between Member States and therefore does not justify a Commission action. In either case, the agreement does not need to be notified; but it may be notified in case of doubt. If the Commission receives a multitude of notifications of similar cooperation agreements in the telecommunications sector, it may consider whether a specific block exemption regulation for such agreements would be appropriate.

⁽¹⁵⁾ OJ No L 196, 17. 7. 1987, p. 81.

⁽¹⁶⁾ Reported in 'Competition Law in the European Communities' Volume I (situation at 31. 12. 1989) published by the Commission.

38. The categories of agreements⁽¹⁷⁾ which seem to be typical in telecommunications and may be caught by Article 85 are listed below. This list provides examples only and is, therefore, not exhaustive. The Commission is thereby indicating possible competition restrictions which could be caught by Article 85 and cases where there may be the possibility of an exemption.

39. These agreements may affect trade between Member States for the following reasons:

(i) services other than services reserved to TOs, equipment and spatial segment facilities are traded throughout the EEC; agreements on these services and equipment are therefore likely to affect trade. Although at present cross-frontier trade is limited, there is potentially no reason to suppose that suppliers of such facilities will in future confine themselves to their national market;

(ii) as to reserved network services, one can consider that they also are traded throughout the Community. These services could be provided by an operator located in one Member State to customers located in other Member States, which decide to move their telecommunications hub into the first one because it is economically or qualitatively advantageous. Moreover, agreements on these matters are likely to affect EEC trade at least to the extent they influence the conditions under which the other services and equipment are supplied throughout the EEC.

40. Finally, to the extent that the TOs hold dominant positions in facilities, services and equipment markets, their behaviour leading to — and including the conclusion of — the agreements in question could also give rise to a violation of Article 86, if agreements have or are likely to have as their effect hindering the maintenance of the degree of competition still existing in the market or the growth of that competition, or causing the TOs to reap trading benefits which they would not have reaped if there had been normal and sufficiently effective competition.

⁽¹⁷⁾ For simplification's sake this term stands also for 'decisions by associations' and 'concerted practices' within the meaning of Article 85.

A. Horizontal agreements concerning the provision of terrestrial facilities and reserved services

41. Agreements concerning terrestrial facilities (public switched network or leased circuits) or services (e.g. voice telephony for the general public) can currently only be concluded between TOs because of this legal regime providing for exclusive or special rights. The fact that the Services Directive recognizes the possibility for a Member State to reserve this provision to certain operators does not exempt those operators from complying with the competition rules in providing these facilities or services. These agreements may restrict competition within a Member State only where such exclusive rights are granted to more than one provider.

42. These agreements may restrict the competition between TOs for retaining or attracting large telecommunications users for their telecommunications centres. Such 'hub competition' is substantially based upon favourable rates and other conditions, as well as the quality of the services. Member States are not allowed to prevent such competition since the Directive allows only the granting of exclusive and special rights by each Member State in its own territory.

43. Finally, these agreements may restrict competition in non-reserved services from third party undertakings, which are supported by the facilities in question, for example if they impose discriminatory or inequitable trading conditions on certain users.

44. (aa) *Price agreements*: all TOs' agreements on prices, discounting or collection charges for international services, are apt to restrict the hub competition to an appreciable extent. Coordination on or prohibition of discounting could cause particularly serious restrictions. In situations of public knowledge such as exists in respect of the tariff level, discounting could remain the only possibility of effective price competition.

45. In several cases the Court of Justice and the Commission have considered price agreements among the most serious infringements of Article 85⁽¹⁸⁾.

⁽¹⁸⁾ PVC, Commission Decision 89/190/EEC, OJ No L 74, 17. 3. 1989, p. 1; Case 123/85, *BNIC v. Clair* [1985] ECR 391; Case 8/72, *Cementhandelaren v. Commission* (1972) ECR 977; *Polypropylene*, Commission Decision 86/398/EEC (OJ No L 230/1, 18. 8. 1986, p. 1) on appeal Case 179/86.

While harmonization of tariff structures may be a major element for the provision of Community-wide services, this goal should be pursued as far as compatible with Community competition rules and should include definition of efficient pricing principles throughout the Community. Price competition is a crucial, if not the principal, element of customer choice and is apt to stimulate technical progress. Without prejudice to any application for individual exemption that may be made, the justification of any price agreement in terms of Article 85 (3) would be the subject of very rigorous examination by the Commission.

46. Conversely, where the agreements concern only the setting up of common tariff structures or principles, the Commission may consider whether this would not constitute one of the economic benefits under Article 85 (3) which outweigh the competition restriction. Indeed, this could provide the necessary transparency on tariff calculations and facilitate users' decisions about traffic flow or the location of headquarters or premises. Such agreements could also contribute to achieving one of the Green Paper's economic objectives — more cost-orientated tariffs.

In this connection, following the intervention of the Commission, the CEPT has decided to abolish recommendation PGT/10 on the general principles for the lease of international telecommunications circuits and the establishment of private international networks. This recommendation recommended, *inter alia*, the imposition of a 30 % surcharge or an access charge where third-party traffic was carried on an international telecommunications leased circuit, or if such a circuit was interconnected to the public telecommunications network. It also recommended the application of uniform tariff coefficients in order to determine the relative price level of international telecommunications leased circuits. Thanks to the CEPT's cooperation with the Commission leading to the abolition of the recommendation, competition between telecoms operators for the supply of international leased circuits is re-established, to the benefit of users, especially suppliers of non-reserved services. The Commission had found that the recommendation amounted to a price agreement between undertakings under Article 85 of the Treaty which substantially restricted competition within the European Community (**).

(**) See Commission press release IP(90) 188 of 6 March 1990.

47. (ab) *Agreements on other conditions for the provision of facilities*

These agreements may limit hub competition between the partners. Moreover, they may limit the access of users to the network, and thus restrict third undertakings' competition as to non-reserved services. This applies especially to the use of leased circuits. The abolished CEPT recommendation PGT/10 on tariffs had also recommended restrictions on conditions of sale which the Commission objected to. These restrictions were mainly:

- making the use of leased circuits between the customer and third parties subject to the condition that the communication concern exclusively the activity for which the circuit has been granted,
- a ban on subleasing,
- authorization of private networks only for customers tied to each other by economic links and which carry out the same activity,
- prior consultation between the TOs for any approval of a private network and of any modification of the use of the network, and for any interconnection of private networks.

For the purpose of an exemption under Article 85 (3), the granting of special conditions for a particular facility in order to promote its development could be taken into account among other elements. This could foster technologies which reduce the costs of services and contribute to increasing competitiveness of European industry structures. Naturally, the other Article 85 (3) requirements should also be met.

48. (ac) *Agreements on the choice of telecommunication routes.*

These may have the following restrictive effects:

- (i) to the extent that they coordinate the TOs' choice of the routes to be set up in international services, they may limit competition between TOs as suppliers to users' communications hubs, in terms of investments and production, with a possible effect on tariffs. It should be determined whether this restriction of their business autonomy is sufficiently appreciable to be caught by Article 85. In any event, an argument for an exemption under Article 85 (3) could be more easily sustained if common routes designation were

necessary to enable interconnections and, therefore, the use of a Europe-wide network;

- (ii) to the extent that they reserve the choice of routes already set up to the TOs, and this choice concerns one determined facility, they could limit the use of other facilities and thus services provision possibly to the detriment of technological progress. By contrast, the choice of routes does not seem restrictive in principle to the extent that it constitutes a technical requirement.

49. (ad) *Agreements on the imposition of technical and quality standards on the services provided on the public network*

Standardization brings substantial economic benefits which can be relevant under Article 85 (3). It facilitates *inter alia* the provision of pan-European telecommunications services. As set out in the framework of the Community's approach to standardization, products and services complying with standards may be used Community-wide. In the context of this approach, European standards institutions have developed in this field (ETSI and CEN-Cenelec). National markets in the EC would be opened up and form a Community market. Service and equipment markets would be enlarged, hence favouring economies of scale. Cheaper products and services are thus available to users. Standardization may also offer an alternative to specifications controlled by undertakings dominant in the network architecture and in non-reserved services. Standardization agreements may, therefore, lessen the risk of abuses by these undertakings which could block the access to the markets for non-reserved services and for equipment. However, certain standardization agreements can have restrictive effects on competition: hindering innovation, freezing a particular stage of technical development, blocking the network access of some users/service providers. This restriction could be appreciable, for example when deciding to what extent intelligence will in future be located in the network or continue to be permitted in customers' equipment. The imposition of specifications other than those provided for by Community law could have restrictive effects on competition. Agreements having these effects are, therefore, caught by Article 85.

The balance between economic benefits and competition restrictions is complex. In principle, an exemption could be granted if an agreement brings more openness and facilitates access to the market, and these benefits outweigh the restrictions caused by it.

50. Standards jointly developed and/or published in accordance with the ONP procedures carry with them the presumption that the cooperating TOs which comply with those standards fulfil the requirement of open and efficient access (see the ONP Directive mentioned in paragraph 16). This presumption can be rebutted, *inter alia*, if the agreement contains restrictions which are not foreseen by Community law and are not indispensable for the standardization sought.

51. One important Article 85 (3) requirement is that users must also be allowed a fair share of the resulting benefit. This is more likely to happen when users are directly involved in the standardization process in order to contribute to deciding what products or services will meet their needs. Also, the involvement of manufacturers or service providers other than TOs seems a positive element for Article 85 (3) purposes. However, this involvement must be open and widely representative in order to avoid competition restrictions to the detriment of excluded manufacturers or service providers. Licensing other manufacturers may be deemed necessary, for the purpose of granting an exemption to these agreements under Article 85 (3).

52. (ae) *Agreements foreseeing special treatment for TOs' terminal equipment or other companies' equipment for the interconnection or interoperation of terminal equipment with reserved services and facilities*

53. (af) *Agreements on the exchange of information*

A general exchange of information could indeed be necessary for the good functioning of international telecommunications services, and for cooperation aimed at ensuring interconnectivity or one-stop shopping and billing. It should not be extended to competition-sensitive information, such as certain tariff information which constitutes business secrets, discounting, customers and commercial strategy, including that concerning new products. The exchange of this information would affect the autonomy of each TO's commercial policy and it is not necessary to attain the said objectives.

B. *Agreements concerning the provision of non-reserved services and terminal equipment*

54. Unlike facilities markets, where only the TOs are the providers, in the services markets the actual or

potential competitors are numerous and include, besides the TOs, international private companies, computer companies, publishers and others. Agreements on services and terminal equipment could therefore be concluded between TOs, between TOs and private companies, and between private companies.

55. The liberalizing process has led mostly to strategic agreements between (i) TOs, and (ii) TOs and other companies. These agreements usually take the form of joint ventures.

56. (ba) *Agreements between TOs*

The scope of these agreements, in general, is the provision by each partner of a value-added service including the management of the service. Those agreements are mostly based on the 'one-stop shopping' principle, i.e. each partner offers to the customer the entire package of services which he needs. These managed services are called managed data network services (MDNS). An MDNS essentially consists of a broad package of services including facilities, value-added services and management. The agreements may also concern such basic services as satellite uplink.

57. These agreements could restrict competition in the MDNS market and also in the markets for a service or a group of services included in the MDNS:

- (i) between the participating TOs themselves; and
- (ii) *vis-à-vis* other actual or potential third-party providers.

58. (i) *Restrictions of competition between TOs*

Cooperation between TOs could limit the number of potential individual MDNS offered by each participating TO.

The agreements may affect competition at least in certain aspects which are contemplated as specific examples of prohibited practices under Article 85 (1) (a) to (c), in the event that:

- they fix or recommend, or at least lead (through the exchange of price information) to coordination of prices charged by each participant to customers,

- they provide for joint specification of MDNS products, quotas, joint delivery, specification of customers' systems; all this would amount to controlling production, markets, technical development and investments,

- they contemplate joint purchase of MDNS hardware and/or software, which would amount to sharing markets or sources of supply.

59. (ii) *Restrictive effects on third party undertakings*

Third parties' market entry could be precluded or hampered if the participating TOs:

- refuse to provide facilities to third party suppliers of services,
- apply usage restrictions only to third parties and not to themselves (e.g. a private provider is precluded from placing multiple customers on a leased line facility to obtain lower unit costs),
- favour their MDNS offerings over those of private suppliers with respect to access, availability, quality and price of leased circuits, maintenance and other services,
- apply especially low rates to their MDNS offerings, cross-subsidizing them with higher rates for monopoly services.

Examples of this could be the restrictions imposed by the TOs on private network operators as to the qualifications of the users, the nature of the messages to be exchanged over the network or the use of international private leased circuits.

60. Finally, as the participating TOs hold, individually or collectively, a dominant position for the creation and the exploitation of the network in each national market, any restrictive behaviour described in paragraph 59 could amount to an abuse of a dominant position under Article 86 (see V below).

61. On the other hand, agreements between TOs may bring economic benefits which could be taken into account for the possible granting of an exemption under Article 85 (3). *Inter alia*, the possible benefits could be as follows:

- a European-wide service and 'one-stop shopping' could favour business in Europe. Large multinational undertakings are provided with a European communication service using only a single point of contact,

- the cooperation could lead to a certain amount of European-wide standardization even before further EEC legislation on this matter is adopted,
- the cooperation could bring a cost reduction and consequently cheaper offerings to the advantage of consumers,
- a general improvement of public infrastructure could arise from a joint service provision.

62. Only by notification of the cases in question, in accordance with the appropriate procedures under Regulation No 17, will the Commission be able, where requested, to ascertain, on the merits, whether these benefits outweigh the competition restrictions. But in any event, restrictions on access for third parties seem likely to be considered as not indispensable and to lead to the elimination of competition for a substantial part of the products and services concerned within the meaning of Article 85 (3), thus excluding the possibility of an exemption. Moreover, if an MDNS agreement strengthens appreciably a dominant position which a participating TO holds in the market for a service included in the MDNS, this is also likely to lead to a rejection of the exemption.

63. The Commission has outlined the conditions for exempting such forms of cooperation in a case concerning a proposed joint venture between 22 TOs for the provision of a Europe-wide MDNS, later abandoned for commercial reasons⁽²⁰⁾. The Commission considered that the MDNS project presented the risks of restriction of competition between the operators themselves and private service suppliers but it accepted that the project also offered economic benefits to telecommunications users such as access to Europe-wide services through a single operator. Such cooperation could also have accelerated European standardization, reduced costs and increased the quality of the services. The Commission had informed the participants that approval of the project would have to be subject to guarantees designed to prevent undue restriction of competition in the telecommunications services markets, such as discrimination against private services suppliers and cross-subsidization. Such guarantees would be essential conditions for the granting of an exemption under the competition rules to cooperation agreements involving TOs. The requirement for an appropriate guarantee of non-discrimination and

non-cross-subsidization will be specified in individual cases according to the examples of discrimination indicated in Section V below concerning the application of Article 86.

64. (bb) *Agreements between TOs and other service providers*

Cooperation between TOs and other operators is increasing in telecommunications services. It frequently takes the form of a joint venture. The Commission recognizes that it may have beneficial effects. However, this cooperation may also adversely affect competition and the opening up of services markets. Beneficial and harmful effects must therefore be carefully weighed.

65. Such agreements may restrict competition for the provision of telecommunications services:

- (i) between the partners; and
- (ii) from third parties.

66. (i) Competition between the partners may be restricted when these are actual or potential competitors for the relevant telecommunications service. This is generally the case, even when only the other partners and not the TOs are already providing the service. Indeed, TOs may have the required financial capacity, technical and commercial skills to enter the market for non-reserved services and could reasonably bear the technical and financial risk of doing it. This is also generally the case as far as private operators are concerned, when they do not yet provide the service in the geographical market covered by the cooperation, but do provide this service elsewhere. They may therefore be potential competitors in this geographic market.

67. (ii) The cooperation may restrict competition from third parties because:

- there is an appreciable risk that the participant TO, i.e. the dominant network provider, will give more favourable network access to its cooperation partners than to other service providers in competition with the partners,
- potential competitors may refrain from entering the market because of this objective risk or, in any event, because of the presence on the market-place of a cooperation involving the monopolist for the network provision. This is especially the case when market entry barriers are high: the market structure allows only few suppliers and the size and the market power of the partners are considerable.

⁽²⁰⁾ Commission press release IP(89) 948 of 14. 12. 1989.

68. On the other hand, the cooperation may bring economic benefits which outweigh its harmful effect and therefore justify the granting of an exemption under Article 85 (3). The economic benefits can consist, *inter alia*, of the rationalization of the production and distribution of telecommunication services, in improvements in existing services or development of new services, or transfer of technology which improves the efficiency and the competitiveness of the European industrial structures.

69. In the absence of such economic benefits a complementarity between partners, i.e. between the provision of a reserved activity and that of a service under competition, is not a benefit as such. Considering it as a benefit would be equal to justifying an involvement through restrictive agreements of TOs in any non-reserved service provision. This would be to hinder a competitive structure in this market.

In certain cases, the cooperation could consolidate or extend the dominant position of the TOs concerned to a non-reserved services market, in violation of Article 86.

70. The imposition or the proposal of cooperation with the service provider as a condition for the provision of the network may be deemed abusive (see paragraph 98 (vi)).

71. (bc) *Agreements between service providers other than TOs*

The Commission will apply the same principles indicated in (ba) and (bb) above also to agreements between private service providers, *inter alia*, agreements providing quotas, price fixing, market and/or customer allocation. In principle, they are unlikely to qualify for an exemption. The Commission will be particularly vigilant in order to avoid cooperation on services leading to a strengthening of dominant positions of the partners or restricting competition from third parties. There is a danger of this occurring for example when an undertaking is dominant with regard to the network architecture and its proprietary standard is adopted to support the service contemplated by the cooperation. This architecture enabling interconnection between computer systems of the partners could attract some partners to the dominant partner. The dominant position for the network architecture will be strengthened and Article 86 may apply.

72. In any exemption of agreements between TOs and other services and/or equipment providers, or between these providers, the Commission will require from the

partners appropriate guarantees of non-cross-subsidization and non-discrimination. The risk of cross-subsidization and discrimination is higher when the TOs or the other partners provide both services and equipment, whether within or outside the Community.

C. *Agreements on research and development (R&D)*

73. As in other high technology based sectors, R&D in telecommunications is essential for keeping pace with technological progress and being competitive on the market-place to the benefit of users. R&D requires more and more important financial, technical and human resources which only few undertakings can generate individually. Cooperation is therefore crucial for attaining the above objectives.

74. The Commission has adopted a Regulation for the block exemption under Article 85 (3) of R&D agreements in all sectors, including telecommunications⁽²¹⁾.

75. Agreements which are not covered by this Regulation (or the other Commission block exemption Regulations) could still obtain an individual exemption from the Commission if Article 85 (3) requirements are met individually. However, not in all cases do the economic benefits of an R&D agreement outweigh its competition restrictions. In telecommunications, one major asset, enabling access to new markets, is the launch of new products or services. Competition is based not only on price, but also on technology. R&D agreements could constitute the means for powerful undertakings with high market shares to avoid or limit competition from more innovative rivals. The risk of excessive restrictions of competition increases when the cooperation is extended from R&D to manufacturing and even more to distribution.

76. The importance which the Commission attaches to R&D and innovation is demonstrated by the fact that it has launched several programmes for this purpose. The joint companies' activities which may result from these programmes are not automatically cleared or exempted as such in all aspects from the application of the competition rules. However, most of those joint activities may be covered by the Commission's block exemption

⁽²¹⁾ Regulation (EEC) No 418/85, OJ No L 53, 22. 2. 1985, p. 5.

Regulations. If not, the joint activities in question may be exempted, where required, in accordance with the appropriate criteria and procedures.

77. In the Commission's experience joint distribution linked to joint R&D which is not covered by the Regulation on R&D does not play the crucial role in the exploitation of the results of R&D. Nevertheless, in individual cases, provided that a competitive environment is maintained, the Commission is prepared to consider full-range cooperation even between large firms. This should lead to improving the structure of European industry and thus enable it to meet strong competition in the world market place.

V. APPLICATION OF ARTICLE 86

78. Article 86 applies when:

- (i) the undertaking concerned holds an individual or a joint dominant position;
- (ii) it commits an abuse of that dominant position; and
- (iii) the abuse may affect trade between Member States.

Dominant position

79. In each national market the TOs hold individually or collectively a dominant position for the creation and the exploitation of the network, since they are protected by exclusive or special rights granted by the State. Moreover, the TOs hold a dominant position for some telecommunications services, in so far as they hold exclusive or special rights with respect to those services⁽²¹⁾.

80. The TOs may also hold dominant positions on the markets for certain equipment or services, even though they no longer hold any exclusive rights on those markets. After the elimination of these rights, they may have kept very important market shares in this sector. When the market share in itself does not suffice to give the TOs a dominant position, it could do it in combination with the other factors such as the monopoly for the network or other related services and a powerful and wide distribution network. As to the equipment, for

example terminal equipment, even if the TOs are not involved in the equipment manufacturing or in the services provision, they may hold a dominant position in the market as distributors.

81. Also, firms other than TOs may hold individual or collective dominant positions in markets where there are no exclusive rights. This may be the case especially for certain non-reserved services because of either the market shares alone of those undertakings, or because of a combination of several factors. Among these factors, in addition to the market shares, two of particular importance are the technological advance and the holding of the information concerning access protocols or interfaces necessary to ensure interoperability of software and hardware. When this information is covered by intellectual property rights this is a further factor of dominance.

82. Finally, the TOs hold, individually or collectively, dominant positions in the demand for some telecommunication equipment, works or software services. Being dominant for the network and other services provisions they may account for a purchaser's share high enough to give them dominance as to the demand, i.e. making suppliers dependent on them. Dependence could exist when the supplier cannot sell to other customers a substantial part of its production or change a production. In certain national markets, for example in large switching equipment, big purchasers such as the TOs face big suppliers. In this situation, it should be weighed up case by case whether the supplier or the customer position will prevail on the other to such an extent as to be considered dominant under Article 86.

With the liberalization of services and the expansion of new forces on the services markets, dominant positions of undertakings other than the TOs may arise for the purchasing of equipment.

Abuse

83. Commission's activity may concern mainly the following broad areas of abuses:

- A. *TOs' abuses*: in particular, they may take advantage of their monopoly or at least dominant position to acquire a foothold or to extend their power in non-reserved neighbouring markets, to the detriment of competitors and customers.
- B. *Abuses by undertaking other than TOs*: these may take advantage of the fundamental information they hold,

⁽²¹⁾ Commission Decision 82/861/EEC in the 'British Telecommunications' case, point 26, OJ No L 360, 21. 12. 1982, p. 36, confirmed in the Judgment of 20. 3. 1985 in Case 41/83, Italian Republic v. Commission [1985] ECR 873, generally known as 'British Telecom'.

whether or not covered by intellectual property rights, with the object and/or effect of restricting competition.

C. *Abuses of a dominant purchasing position*: for the time being this concerns mainly the TOs, especially to the extent that they hold a dominant position for reserved activities in the national market. However, it may also increasingly concern other undertakings which have entered the market.

A. TOs' Abuses

84. The Commission has recognized in the Green Paper the central role of the TOs, which justifies the maintenance of certain monopolies to enable them to perform their public task. This public task consists in the provision and exploitation of a universal network or, where appropriate, universal service, i.e. one having general coverage and available to all users (including service providers and the TOs themselves) upon request on reasonable and non-discriminatory conditions.

This fundamental obligation could justify the benefit of the exception provided in Article 90 (2) under certain circumstances, as laid down in the Services Directive.

85. In most cases, however, the competition rules, far from obstructing the fulfilment of this obligation, contribute to ensuring it. In particular, Article 86 can apply to behaviour of dominant undertakings resulting in a refusal to supply, discrimination, restrictive tying clauses, unfair prices or other inequitable conditions.

If one of these types of behaviour occurs in the provision of one of the monopoly services, the fundamental obligation indicated above is not performed. This could be the case when a TO tries to take advantage of its monopoly for certain services (for instance: network provision) in order to limit the competition they have to face in respect of non-reserved services, which in turn are supported by those monopoly services

It is not necessary for the purpose of the application of Article 86 that competition be restricted as to a service which is supported by the monopoly provision in question. It would suffice that the behaviour results in an appreciable restriction of competition in whatever way. This means that an abuse may occur when the company affected by the behaviour is not a service provider but an end user who could himself be disadvantaged in competition in the course of his own business.

86. The Court of Justice has set out this fundamental principle of competition in telecommunications in one of its judgments⁽¹¹⁾. An abuse within the meaning of Article 86 is committed where, without any objective necessity, an undertaking holding a dominant position on a particular market reserves to itself or to an undertaking belonging to the same group an ancillary activity which might be carried out by another undertaking as part of its activities on a neighbouring but separate market, with the possibility of eliminating all competition from such undertaking.

The Commission believes that this principle applies, not only when a dominant undertaking monopolizes other markets, but also when by anti-competitive means it extends its activity to other markets.

Hampering the provision of non-reserved services could limit production, markets and above all the technical progress which is a key factor of telecommunications. The Commission has already shown these adverse effects of usage restrictions on monopoly provision in its decision in the 'British Telecom' case⁽¹²⁾. In this Decision it was found that the restrictions imposed by British Telecom on telex and telephone networks usage, namely on the transmission of international messages on behalf of third parties:

(i) limited the activity of economic operators to the detriment of technological progress;

(ii) discriminated against these operators, thereby placing them at a competitive disadvantage *vis-à-vis* TOs not bound by these restrictions; and

(iii) made the conclusion of the contracts for the supply of telex circuits subject to acceptance by the other parties of supplementary obligations which had no connection with such contracts. These were considered abuses of a dominant position identified respectively in Article 86 (b), (c) and (d).

This could be done:

(a) as above, by refusing or restricting the usage of the service provided under monopoly so as to limit the provision of non-reserved services by third parties; or

(b) by predatory behaviour, as a result of cross-subsidization

87. The separation of the TOs' regulatory power from their business activity is a crucial matter in the context of the application of Article 86. This separation is

⁽¹¹⁾ Case 311/84, Centre belge d'études de marché Télémarketing (CBEM) SA v. Compagnie luxembourgeoise de télédiffusion SA and Information Publicité Benelux SA, 3 October 1985 [1985] ECR 3261, Grounds 26 and 27.

⁽¹²⁾ See Note ⁽¹¹⁾.

provided in the Article 90 Directives on terminals and on services mentioned in Note 2 above.

(a) Usage restrictions

88. Usage restrictions on provisions of reserved services are likely to correspond to the specific examples of abuses indicated in Article 86. In particular:

- they may limit the provision of telecommunications services in free competition, the investments and the technical progress, to the prejudice of telecommunications consumers (Article 86 (b)),
- to the extent that these usage restrictions are not applied to all users, including the TOs themselves as users, they may result in discrimination against certain users, placing them at a competitive disadvantage (Article 86 (c)),
- they may make the usage of the reserved services subject to the acceptance of obligations which have no connection with this usage (Article 86 (d)).

89. The usage restrictions in question mainly concern public networks (public switched telephone network (PSTN) or public switched data networks (PSDN)) and especially leased circuits. They may also concern other provisions such as satellite uplink, and mobile communication networks. The most frequent types of behaviour are as follows:

(i) *Prohibition imposed by TOs on third parties:*

(a) *to connect private leased circuits by means of concentrator, multiplexer or other equipment to the public switched network; and/or*

(b) *to use private leased circuits for providing services, to the extent that these services are not reserved, but under competition.*

90. To the extent that the user is granted a licence by State regulatory authorities under national law in compliance with EEC law, these prohibitions limit the user's freedom of access to the leased circuits, the provision of which is a public service. Moreover, it discriminates between users, depending upon the usage (Article 86 (c)). This is one of the most serious restrictions and could substantially hinder the development of international telecommunications services (Article 86 (b)).

91. When the usage restriction limits the provision of non-reserved service in competition with that provided by the TO itself the abuse is even more serious and the

principles of the abovementioned 'Télémarketing' judgment (Note 23 *supra*) apply.

92. In individual cases, the Commission will assess whether the service provided on the leased circuit is reserved or not, on the basis of the Community regulatory acts interpreted in the technical and economic context of each case. Even though a service could be considered reserved according to the law, the fact that a TO actually prohibits the usage of the leased circuit only to some users and not to others could constitute a discrimination under Article 86 (c).

93. The Commission has taken action in respect of the Belgian Régie des télégraphes et téléphones after receiving a complaint concerning an alleged abuse of dominant position from a private supplier of value-added telecommunications services relating to the conditions under which telecommunications circuits were being leased. Following discussions with the Commission, the RTT authorized the private supplier concerned to use the leased telecommunications circuits subject to no restrictions other than that they should not be used for the simple transport of data.

Moreover, pending the possible adoption of new rules in Belgium, and without prejudice to any such rules, the RTT undertook that all its existing and potential clients for leased telecommunications circuits to which third parties may have access shall be governed by the same conditions as those which were agreed with the private sector supplier mentioned above ⁽²⁵⁾.

(ii) *Refusal by TOs to provide reserved services (in particular the network and leased circuits) to third parties*

94. Refusal to supply has been considered an abuse by the Commission and the Court of Justice ⁽²⁶⁾. This behaviour would make it impossible or at least appreciably difficult for third parties to provide non-reserved services. This, in turn, would lead to a limitation of services and of technical development (Article 86 (b)) and, if applied only to some users, result in discrimination (Article 86 (c)).

⁽²⁵⁾ Commission Press release IP(90) 67 of 29. 1. 1990

⁽²⁶⁾ Cases 6 and 7/73 Commercial Solvents v. Commission [1974] ECR 223; United Brands v. Commission (Note 13, above).

(iii) *Imposition of extra charges or other special conditions for certain usages of reserved services*

95. An example would be the imposition of access charges to leased circuits when they are connected to the public switched network or other special prices and charges for service provision to third parties. Such access charges may discriminate between users of the same service (leased circuits provision) depending upon the usage and result in imposing unfair trading conditions. This will limit the usage of leased circuits and finally non-reserved service provision. Conversely, it does not constitute an abuse provided that it is shown, in each specific case, that the access charges correspond to costs which are entailed directly for the TOs for the access in question. In this case, access charges can be imposed only on an equal basis to all users, including TOs themselves.

96. Apart from these possible additional costs which should be covered by an extra charge, the interconnection of a leased circuit to the public switched network is already remunerated by the price related to the use of this network. Certainly, a leased circuit can represent a subjective value for a user depending on the profitability of the enhanced service to be provided on that leased circuit. However, this cannot be a criterion on which a dominant undertaking, and above all a public service provider, can base the price of this public service.

97. The Commission appreciates that the substantial difference between leased circuits and the public switched network causes a problem of obtaining the necessary revenues to cover the costs of the switched network. However, the remedy chosen must not be contrary to law, i.e. the EEC Treaty, as discriminatory pricing between customers would be.

(iv) *Discriminatory price or quality of the service provided*

98. This behaviour may relate, *inter alia*, to tariffs or to restrictions or delays in connection to the public switched network or leased circuits provision, in installation, maintenance and repair, in effecting interconnection of systems or in providing information concerning network planning, signalling protocols, technical standards and all other information necessary for an appropriate interconnection and interoperation with the reserved service and which may affect the interworking of competitive services or terminal equipment offerings.

(v) *Tying the provision of the reserved service to the supply by the TOs or others of terminal equipment to be interconnected or interoperated, in particular through imposition, pressure, offer of special prices or other trading conditions for the reserved service linked to the equipment.*

(vi) *Tying the provision of the reserved service to the agreement of the user to enter into cooperation with the reserved service provider himself as to the non-reserved service to be carried on the network*

(vii) *Reserving to itself for the purpose of non-reserved service provision or to other service providers information obtained in the exercise of a reserved service in particular information concerning users of a reserved services providers more favourable conditions for the supply of this information*

This latter information could be important for the provision of services under competition to the extent that it permits the targeting of customers of those services and the definition of business strategy. The behaviour indicated above could result in a discrimination against undertakings to which the use of this information is denied in violation of Article 86 (c). The information in question can only be disclosed with the agreement of the users concerned and in accordance with relevant data protection legislation (see the proposal for a Council Directive concerning the protection of personal data and privacy in the context of public digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks) ⁽²⁷⁾.

(viii) *Imposition of unneeded reserved services by supplying reserved and/or non-reserved services when the former reserved services are reasonably separable from the others*

99. The practices under (v) (vi) (vii) and (viii) result in applying conditions which have no connection with the reserved service, contravening Article 86 (d).

100. Most of these practices were in fact identified in the Services Directive as restrictions on the provision of services within the meaning of Article 59 and Article 86 of the Treaty brought about by State measures. They are therefore covered by the broader concept of 'restrictions'

⁽²⁷⁾ Commission document COM(90) 314 of 13. 9. 1990.

which under Article 6 of the Directive have to be removed by Member States.

101. The Commission believes that the Directives on terminals and on services also clarify some principles of application of Articles 85 and 86 in the sector.

The Services Directive does not apply to important sectors such as mobile communications and satellites; however, competition rules apply fully to these sectors. Moreover, as to the services covered by the Directive it will depend very much on the degree of precision of the licences given by the regulatory body whether the TOs still have a discretionary margin for imposing conditions which should be scrutinized under competition rules. Not all the conditions can be regulated in licences: consequently, there could be room for discretionary action. The application of competition rules to companies will therefore depend very much on a case-by-case examination of the licences. Nothing more than a class licence can be required for terminals.

(b) Cross-subsidization

102. Cross-subsidization means that an undertaking allocates all or part of the costs of its activity in one product or geographic market to its activity in another product or geographic market. Under certain circumstances, cross-subsidization in telecommunications could distort competition, i.e. lead to beating other competitors with offers which are made possible not by efficiency and performance but by artificial means such as subsidies. Avoiding cross-subsidization leading to unfair competition is crucial for the development of service provision and equipment supply.

103. Cross-subsidization does not lead to predatory pricing and does not restrict competition when it is the costs of reserved activities which are subsidized by the revenue generated by other reserved activities since there is no competition possible as to these activities. This form of subsidization is even necessary, as it enables the TOs holders of exclusive rights to perform their obligation to provide a public service universally and on the same conditions to everybody. For instance, telephone provision in unprofitable rural areas is subsidized through revenues from telephone provision in profitable urban areas or long-distance calls. The same could be said of subsidizing the provision of reserved services through revenues generated by activities under competition. The application of the general principle of cost-orientation should be the ultimate goal, in order, *inter alia*, to ensure that prices are not inequitable as between users.

104. Subsidizing activities under competition, whether concerning services or equipment, by allocating their costs to monopoly activities, however, is likely to distort competition in violation of Article 86. It could amount to an abuse by an undertaking holding a dominant position within the Community. Moreover, users of activities under monopoly have to bear unrelated costs for the provision of these activities. Cross-subsidization can also exist between monopoly provision and equipment manufacturing and sale. Cross-subsidization can be carried out through:

- funding the operation of the activities in question with capital remunerated substantially below the market rate;
- providing for those activities premises, equipment, experts and/or services with a remuneration substantially lower than the market price.

105. As to funding through monopoly revenues or making available monopoly material and intellectual means for the starting up of new activities under competition, this constitutes an investment whose costs should be allocated to the new activity. Offering the new product or service should normally include a reasonable remuneration of such investment in the long run. If it does not, the Commission will assess the case on the basis of the remuneration plans of the undertaking concerned and of the economic context.

106. Transparency in the TOs' accounting should enable the Commission to ascertain whether there is cross-subsidization in the cases in which this question arises. The ONP Directive provides in this respect for the definition of harmonized tariff principles which should lessen the number of these cases.

This transparency can be provided by an accounting system which ensures the fully proportionate distribution of all costs between reserved and non-reserved activities. Proper allocation of costs is more easily ensured in cases of structural separation, i.e. creating distinct entities for running each of these two categories of activities.

An appropriate accounting system approach should permit the identification and allocation of all costs between the activities which they support. In this system all products and services should bear proportionally all the relevant costs, including costs of research and development, facilities and overheads. It should enable the production of recorded figures which can be verified by accountants.

107. As indicated above (paragraph 59), in cases of cooperation agreements involving TOs a guarantee of no cross-subsidization is one of the conditions required by the Commission for exemption under Article 85 (3). In order to monitor properly compliance with that guarantee, the Commission now envisages requesting the parties to ensure an appropriate accounting system as described above, the accounts being regularly submitted to the Commission. Where the accounting method is chosen, the Commission will reserve the possibility of submitting the accounts to independent audit, especially if any doubt arises as to the capability of the system to ensure the necessary transparency or to detect any cross-subsidization. If the guarantee cannot be properly monitored, the Commission may withdraw the exemption.

108. In all other cases, the Commission does not envisage requiring such transparency of the TOs. However, if in a specific case there are substantial elements converging in indicating the existence of an abusive cross-subsidization and/or predatory pricing, the Commission could establish a presumption of such cross-subsidization and predatory pricing. An appropriate separate accounting system could be important in order to counter this presumption.

109. Cross-subsidization of a reserved activity by a non-reserved one does not in principle restrict competition. However, the application of the exception provided in Article 90 (2) to this non-reserved activity could not as a rule be justified by the fact that the financial viability of the TO in question rests on the non-reserved activity. Its financial viability and the performance of its task of general economic interest can only be ensured by the State where appropriate by the granting of an exclusive or special right and by imposing restrictions on activities competing with the reserved ones.

110. Also cross-subsidization by a public or private operator outside the EEC may be deemed abusive in terms of Article 86 if that operator holds a dominant position for equipment or non-reserved services within the EEC. The existence of this dominant position, which allows the holder to behave to an appreciable extent independently of its competitors and customers and ultimately of consumers, will be assessed in the light of all elements in the EEC and outside.

B. Abuses by undertakings other than the TOs

111. Further to the liberalization of services, undertakings other than the TOs may increasingly extend their power to acquire dominant positions in non-reserved markets. They may already hold such a position in some services markets which had not been reserved. When they take advantage of their dominant position to restrict competition and to extend their power, Article 86 may also apply to them. The abuses in which they might indulge are broadly similar to most of those previously described in relation to the TOs.

112. Infringements of Article 86 may be committed by the abusive exercise of industrial property rights in relation with standards, which are of crucial importance for telecommunications. Standards may be either the results of international standardization, or *de facto* standards and the property of undertakings.

113. Producers of equipment or suppliers of services are dependent on proprietary standards to ensure the interconnectivity of their computer resources. An undertaking which owns a dominant network architecture may abuse its dominant position by refusing to provide the necessary information for the interconnection of other architecture resources to its architecture products. Other possible abuses — similar to those indicated as to the TOs — are, *inter alia*, delays in providing the information, discrimination in the quality of the information, discriminatory pricing or other trading conditions, and making the information provision subject to the acceptance by the producer, supplier or user of unfair trading conditions.

114. On 1 August 1984, the Commission accepted a unilateral undertaking from IBM to provide other manufacturers with the technical interface information needed to permit competitive products to be used with IBM's then most powerful range of computers, the System/370. The Commission thereupon suspended the proceedings under Article 86 which it had initiated against IBM in December 1980. The IBM Undertaking⁽¹⁹⁾ also contains a commitment relating to SNA formats and protocols.

⁽¹⁹⁾ Reproduced in full in EC Bulletin 10-1984 (point 3.4.1). As to its continued application, see Commission press release No IP(88) 814 of 15 December 1988.

115. The question how to reconcile copyrights on standards with the competition requirements is particularly difficult. In any event, copyright cannot be used unduly to restrict competition.

C. Abuses of dominant purchasing position

116. Article 86 also applies to behaviour of undertakings holding a dominant purchasing position. The examples of abuses indicated in that Article may therefore also concern that behaviour.

117. The Council Directive 90/531/EEC⁽²⁹⁾ based on Articles 57 (2), 66, 100a and 113 of the EEC Treaty on the procurement procedures of entities operating in *inter alia* the telecommunications sector regulates essentially:

- (i) procurement procedures in order to ensure on a reciprocal basis non-discrimination on the basis of nationality; and
- (ii) for products or services for use in reserved markets, not in competitive markets. That Directive, which is addressed to States, does not exclude the application of Article 86 to the purchasing of products within the scope of the Directive. The Commission will decide case by case how to ensure that these different sets of rules are applied in a coherent manner.

118. Furthermore, both in reserved and competitive markets, practices other than those covered by the Directive may be established in violation of Article 86. One example is taking advantage of a dominant purchasing position for imposing excessively favourable prices or other trading conditions, in comparison with other purchasers and suppliers (Article 86 (a)). This could result in discrimination under Article 86 (c). Also obtaining, whether or not through imposition, an exclusive distributorship for the purchased product by the dominant purchaser may constitute an abusive extension of its economic power to other markets (see 'Télémarketing' Court judgment (Note 23 *supra*)).

119. Another abusive practice could be that of making the purchase subject to licensing by the supplier of standards for the product to be purchased or for other products, to the purchaser itself, or to other suppliers (Article 86 (d)).

⁽²⁹⁾ OJ No L 297, 29. 10. 1990, p. 1.

120. Moreover, even in competitive markets, discriminatory procedures on the basis of nationality may exist, because national pressures and traditional links of a non-economic nature do not always disappear quickly after the liberalization of the markets. In this case, a systematic exclusion or considerably unfavourable treatment of a supplier, without economic necessity, could be examined under Article 86, especially (b) (limitation of outlets) and (c) (discrimination). In assessing the case, the Commission will substantially examine whether the same criteria for awarding the contract have been followed by the dominant undertaking for all suppliers. The Commission will normally take into account criteria similar to those indicated in Article 27 (1) of the Directive⁽³⁰⁾. The purchases in question being outside the scope of the Directive, the Commission will not require that transparent purchasing procedures be pursued.

D. Effect on trade between Member States

121. The same principle outlined regarding Article 85 applies here. Moreover, in certain circumstances, such as the case of the elimination of a competitor by an undertaking holding a dominant position, although trade between Member States is not directly affected, for the purposes of Article 86 it is sufficient to show that there will be repercussions on the competitive structure of the common market.

VI. APPLICATION OF ARTICLES 85 AND 86 IN THE FIELD OF SATELLITES

122. The development of this sector is addressed globally by the Commission in the 'Green Paper on a common approach in the field of satellite communications in the European Community' of 20 November 1990 (Doc. COM(90) 490 final). Due to the increasing importance of satellites and the particular uncertainty among undertakings as to the application of competition rules to individual cases in this sector, it is appropriate to address the sector in a distinct section in these guidelines.

⁽³⁰⁾ (See Note 26) Article 27 (1) (a) and (b). The criteria on which the contracting entities shall base the award of the contracts shall be: (a) the most economically advantageous tender involving various criteria such as delivery date, period for completion, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales services and technical assistance, commitments with regard to spare parts, security of supplies and price; or (b) the lowest price only.

123. State regulations on satellites are not covered by the Commission Directives under Article 90 of the EEC Treaty respectively on terminals and services mentioned above except in the Directive on terminals which contemplates receive-only satellite stations not connected to a public network. The Commission's position on the regulatory framework compatible with the Treaty competition rules is stated in the Commission Green Paper on satellites mentioned above.

124. In any event the Treaty competition rules fully apply to the satellites domain, *inter alia*, Articles 85 and 86 to undertakings. Below is indicated how the principles set out above, in particular in Sections IV and V, apply to satellites.

125. Agreements between European TOs in particular within international conventions may play an important role in providing European satellites systems and a harmonious development of satellite services throughout the Community. These benefits are taken into consideration under competition rules, provided that the agreements do not contain restrictions which are not indispensable for the attainment of these objectives.

126. Agreements between TOs concerning the operation of satellite systems in the broadest sense may be caught by Article 85. As to space segment capacity, the TOs are each other's competitors, whether actual or potential. In pooling together totally or partially their supplies of space segment capacity they may restrict competition between themselves. Moreover, they are likely to restrict competition *vis-à-vis* third parties to the extent that their agreements contain provisions with this object or effect: for instance provisions limiting their supplies in quality and/or quantity, or restricting their business autonomy by imposing directly or indirectly a coordination between these third parties and the parties to the agreements. It should be examined whether such agreements could qualify for an exemption under Article 85 (3) provided that they are notified. However, restrictions on third parties' ability to compete are likely to preclude such an exemption. It should also be examined whether such agreements strengthen any individual or collective dominant position of the parties, which also would exclude the granting of an exemption. This could be the case in particular if the agreement provides that the parties are exclusive distributors of the space segment capacity provided by the agreement.

127. Such agreements between TOs could also restrict competition as to the uplink with respect to which TOs are competitors. In certain cases the customer for satellite communication has the choice between providers in several countries, and his choice will be substantially determined by the quality, price and other sales conditions of each provider. This choice will be even ampler since uplink is being progressively liberalized and to the extent that the application of EEC rules to State legislations will open up the uplink markets. Community-wide agreements providing directly or indirectly for coordination as to the parties' uplink provision are therefore caught by Article 85.

128. Agreements between TOs and private operators on space segment capacity may be also caught by Article 85, as that provision applies, *inter alia*, to cooperation, and in particular joint venture agreements. These agreements could be exempted if they bring specific benefits such as technology transfer, improvement of the quality of the service or enabling better marketing, especially for a new capacity, outweighing the restrictions. In any event, imposing on customers the bundled uplink and space segment capacity provision is likely to exclude an exemption since it limits competition in uplink provision to the detriment of the customer's choice, and in the current market situation will almost certainly strengthen the TOs' dominant position in violation of Article 86. An exemption is unlikely to be granted also when the agreement has the effect of reducing substantially the supply in an oligopolistic market, and even more clearly when an effect of the agreement is to prevent the only potential competitor of a dominant provider in a given market from offering its services independently. This could amount to a violation of Article 86. Direct or indirect imposition of any kind of agreement by a TO, for instance by making the uplink subject to the conclusion of an agreement with a third party, would constitute an infringement of Article 86.

VII. RESTRUCTURING IN TELECOMMUNICATIONS

129. Deregulation, the objective of a single market for 1992 and the fundamental changes in the telecommunications technology have caused wide strategic restructuring in Europe and throughout the world as well. They

have mostly taken the form of mergers and joint ventures.

(a) Mergers

130. In assessing telecom mergers in the framework of Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings⁽¹⁾ the Commission will take into account, *inter alia*, the following elements.

131. Restructuring moves are in general beneficial to the European telecommunications industry. They may enable the companies to rationalize and to reach the critical mass necessary to obtain the economies of scale needed to make the important investments in research and development. These are necessary to develop new technologies and to remain competitive in the world market.

However, in certain cases they may also lead to the anti-competitive creation or strengthening of dominant positions.

132. The economic benefits resulting from critical mass must be demonstrated. The concentration operation could result in a mere aggregation of market shares, unaccompanied by restructuring measures or plans. This operation may create or strengthen Community or national dominant positions in a way which impedes competition.

133. When concentration operations have this sole effect, they can hardly be justified by the objective of increasing the competitiveness of Community industry in the world market. This objective, strongly pursued by the Commission, rather requires competition in EEC domestic markets in order that the EEC undertakings acquire the competitive structure and attitude needed to operate in the world market.

134. In assessing concentration cases in telecommunications, the Commission will be particularly vigilant to avoid the strengthening of dominant positions through integration. If dominant service providers are allowed to integrate into the equipment market by way of mergers, access to this market by other equipment suppliers may be seriously hindered. A dominant service provider is likely to give preferential treatment to its own equipment subsidiary.

⁽¹⁾ OJ No L 395, 30. 12. 1989, p. 1; Corrigendum OJ No L 257, 21. 9. 1990, p. 13.

Moreover, the possibility of disclosure by the service provider to its subsidiary of sensitive information obtained from competing equipment manufacturers can put the latter at a competitive disadvantage.

The Commission will examine case by case whether vertical integration has such effects or rather is likely to reinforce the competitive structure in the Community.

135. The Commission has enforced principles on restructuring in a case concerning the GEC and Siemens joint bid for Plessey⁽²⁾.

136. Article 85 (1) applies to the acquisition by an undertaking of a minority shareholding in a competitor where, *inter alia*, the arrangements involve the creation of a structure of cooperation between the investor and the other undertakings, which will influence these undertakings' competitive conduct⁽³⁾.

(b) Joint ventures

137. A joint venture can be of a cooperative or a concentrative nature. It is of a cooperative nature when it has as its object or effect the coordination of the competitive behaviour of undertakings which remain independent. The principles governing cooperative joint ventures are to be set out in Commission guidelines to that effect. Concentrative joint ventures fall under Regulation (EEC) No 4064/89⁽⁴⁾.

138. In some of the latest joint venture cases the Commission granted an exemption under Article 85 (3) on grounds which are particularly relevant to telecommunications. Precisely in a decision concerning telecommunications, the 'Optical Fibres' case⁽⁵⁾, the Commission considered that the joint venture enabled European companies to produce a high technology product, promoted technical progress, and facilitated technology transfer. Therefore, the joint venture permits European companies to withstand competition from non-Community producers, especially in the USA and Japan, in an area of fast-moving technology

⁽²⁾ Commission Decision rejecting Plessey's complaint against the GEC-Siemens bid (Case IV/33,018 GEC-Siemens/Plessey), OJ No C 239, 25. 9. 1990, p. 2.

⁽³⁾ British American Tobacco Company Ltd and RJ Reynolds Industries Inc. v. Commission (Joined Cases 142 and 156/84) of 17. 11. 1987 (1987) ECR 4487.

⁽⁴⁾ OJ No C 203, 14. 8. 1990, p. 10.

⁽⁵⁾ Decision 86/405/EEC, OJ No L 236, 22. 8. 86, p. 30.

characterized by international markets. The Commission confirmed this approach in the 'Canon-Olivetti' case ⁽¹⁶⁾.

VIII. IMPACT OF THE INTERNATIONAL CONVENTIONS ON THE APPLICATION OF EEC COMPETITION RULES TO TELECOMMUNICATIONS

139. International conventions (such as the Convention of International Telecommunication Union (ITU) or Conventions on Satellites) play a fundamental role in ensuring worldwide cooperation for the provision of international services. However, application of such international conventions on telecommunications by EEC Member States must not affect compliance with the EEC law, in particular with competition rules.

140. Article 234 of the EEC Treaty regulates this matter ⁽¹⁷⁾. The relevant obligations provided in the various conventions or related Acts do not pre-date the entry into force of the Treaty. As to the ITU and World Administrative Telegraph and Telephone Conference (WATTC), whenever a revision or a new adoption of the ITU Convention or of the WATTC Regulations occurs, the ITU or WATTC members recover their freedom of action. The Satellites Conventions were adopted much later.

Moreover, as to all conventions, the application of EEC rules does not seem to affect the fulfilment of obligations of Member States *vis-à-vis* third countries. Article 234 does not protect obligations between EEC Member States entered into in international treaties. The purpose of Article 234 is to protect the right of third countries only and it is not intended to crystallize the acquired international treaty rights of Member States to the detriment of the EEC Treaty's objectives or of the Community interest. Finally, even if Article 234 (1) did apply, the Member States concerned would nevertheless be obliged to take all appropriate steps to eliminate incompatibility between their obligations *vis-à-vis*

third countries and the EEC rules. This applies in particular where Member States acting collectively have the statutory possibility to modify the international convention in question as required, e.g. in the case of the Eutelsat Convention.

141. As to the WATTC Regulations, the relevant provisions of the Regulations in force from 9 December 1988 are flexible enough to give the parties the choice whether or not to implement them or how to implement them.

In any event, EEC Member States, by signing the Regulations, have made a joint declaration that they will apply them in accordance with their obligations under the EEC Treaty.

142. As to the International Telegraph and Telephone Consultative Committee (CCITT) recommendations, competition rules apply to them.

143. Members of the CCITT are, pursuant to Article 11 (2) of the International Telecommunications Convention, 'administrations' of the Members of the ITU and recognized private operating agencies ('RPOAs') which so request with the approval of the ITU members which have recognized them. Unlike the members of the ITU or the Administrative Conferences which are States, the members of the CCITT are telecommunications administrations and RPOAs. Telecommunications administrations are defined in Annex 2 to the International Telecommunications Conventions as 'tout service ou département gouvernemental responsable des mesures à prendre pour exécuter les obligations de la Convention Internationale des télécommunications et des règlements' [any government service or département responsible for the measures to be taken to fulfil the obligations laid down in the International Convention on Telecommunications and Regulations]. The CCITT meetings are in fact attended by TOs. Article 11 (2) of the International Telecommunications Convention clearly provides that telecommunications administrations and RPOAs are members of the CCITT by themselves. The fact that, because of the ongoing process of separation of the regulatory functions from the business activity, some national authorities participate in the CCITT is not in contradiction with the nature of undertakings of other members. Moreover, even if the CCITT membership became governmental as a result of the separation of regulatory and operational activities of the telecommunications administrations, Article 9C in asso-

⁽¹⁶⁾ Decision 88/88/EEC, OJ No L 52, 26. 2. 1988, p. 51.

⁽¹⁷⁾ 'The rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand and one or more third countries on the other, shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude ...'

ciation with Article 85 could still apply either against the State measures implementing the CCITT recommendations and the recommendations themselves on the basis of Article 90 (1), or if there is no such national implementing measure, directly against the telecommunications organizations which followed the recommendation (*).

144. In the Commission's view, the CCITT recommendations are adopted, *inter alia*, by undertakings. Such CCITT recommendations, although they are not legally binding, are agreements between undertakings or decisions by an association of undertakings. In any event, according to the case law of the Commission and the European Court of Justice (**) a statutory body entrusted with certain public functions and including some members appointed by the government of a Member State may be an 'association of undertakings' if it represents the trading interests of other members and takes decisions or makes agreements in pursuance of those interests.

The Commission draws attention to the fact that the application of certain provisions in the context of international conventions could result in infringements of the EEC competition rules:

(*) See Commission Decision 87/3/EEC ENI/Montedison, OJ No L 5, 7. 1. 1987, p. 13.

(**) See Pabst & Richarz/BNIA, OJ No L 231, 21. 8. 1976, p. 24, AROW/BNIC, OJ No L 379, 31. 12. 1982, p. 1, and Case 123/83 BNIC v. Clair (1985) ECR 391.

— As to the WATTC Regulations, this is the case for the respective provisions for mutual agreement between TOs on the supply of international telecommunications services (Article 1 (5)), reserving the choice of telecommunications routes to the TOs (Article 3 (3) (3)), recommending practices equivalent to price agreements (Articles 6 (6) (1) (2)), and limiting the possibility of special arrangements to activities meeting needs within and/or between the territories of the Members concerned (Article 9) and only where existing arrangements cannot satisfactorily meet the relevant telecommunications needs (Opinion PL A).

— CCITT recommendations D1 and D2 as they stand at the date of the adoption of these guidelines could amount to a collective horizontal agreement on prices and other supply conditions of international leased lines to the extent that they lead to a coordination of sales policies between TOs and therefore limit competition between them. This was indicated by the Commission in a CCITT meeting on 23 May 1990. The Commission reserves the right to examine the compatibility of other recommendations with Article 85.

— The agreements between TOs concluded in the context of the Conventions on Satellites are likely to limit competition contrary to Article 85 and/or 86 on the grounds set out in paragraphs 126 to 128 above.

COUNCIL RESOLUTION

of 18 November 1991

concerning electronics, information and communication technologies

(91/C 325/02)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the communication from the Commission concerning industrial policy in an open and competitive environment: guidelines for a Community approach,

Having regard to the communication from the Commission concerning the European electronics and information technology industry; state of play, issues at stake and proposals for action,

Whereas the Community's approach to industrial policy centres on the completion of the single market and the application of the competition rules at international level to ensure, on the basis of a balance of rights and obligations, that competitors' markets are as open as the Community market;

Whereas the Community's electronics, information and communication technologies are of paramount importance for the competitiveness of the Community's economy;

Whereas equal access to markets and fair competition on a global scale are, as a matter of urgency, priorities in the areas of electronics, information technology and telecommunications; whereas the Community aims at the positive and timely conclusion of the current GATT negotiations;

Whereas the main responsibility for improving industrial competitiveness lies with the economic actors themselves, with public authorities having, nevertheless, to provide them with a clear and predictable framework for their activities;

Whereas trans-European networks and computerized telecommunications links between administrations and services of general interest should respond to user needs;

Whereas the Community's support for research and development, in particular on areas which are vital for the development of technology and its application by users, is a significant contribution to the future competitive position of this industry; whereas industrial

cooperation is to be encouraged, in order to develop, in Europe, key technologies which are internationally competitive, in particular in a long-term perspective;

Whereas small and medium-sized enterprises are important as innovators and disseminators of such technologies; whereas aspects of economic and social cohesion and regional development have to be taken into account;

Whereas the use of electronics, information and communication technologies within the European economy depends crucially on the availability of people with the relevant skills,

HEREBY ADOPTS THIS RESOLUTION:

I

THE COUNCIL:

1. emphasizes that, in order to support the Community's pledge to free and fair international trade and competition:

— the Community must be in a position to ensure rapid and effective action against unfair competition and practices,

— the efficiency of the Community's trade policy instruments, such as anti-dumping, should be enhanced in order to promote free and fair trade,

— the Community should continue to support the establishment of more effective multilateral rules on non-discriminatory market access for users and suppliers, including compliance measures,

— the Community should maintain its efforts to support the establishment of competition rules, with a view to achieving the elimination of practices restraining competition and the effective application of such rules in each of the Community's main trading partners,

- the GATT rules should be further developed and improved with regard to their effectiveness;
2. takes the view that in the light of the results of the Uruguay Round negotiations additional bilateral initiatives of the Community, without prejudice to existing GATT obligations, may be necessary to create effective market access with equal opportunities;
 3. understands the need for a more systematic gathering of information on marketing, market access and distribution practices throughout the main industrial areas in the world;
 4. underlines the importance of a favourable business environment for improving the competitiveness of electronics, information and communication technology industries, specifically taking into account the role and interests of users and giving special consideration to small and medium-sized enterprises as well as to regional development.

Means for improving the business environment include:

- full and effective implementation of all the relevant measures, in particular those concerning public procurement, aimed at creating the unified market in the Community, including the application of a system of effective competition,
- speeding up the process of European standardization and certification to meet the requirements arising from the creation of the internal market,
- reviewing present-day financing systems in the Community, for example with regard to the provision of risk capital,
- the infrastructure for cooperation between enterprises of all sizes,
- facilitating cooperation, without distortion of competition in the internal market, between individual enterprises, such as microelectronics, in order to be able to compete on world markets,
- strengthening the competitive position of subcontractors so as to permit them to meet the exacting and developing needs of contractors,
- promoting rules and mechanisms comparable to those in the internal market with a view to creating a level playing field for European industry in world markets, in particular in the

areas of public procurement, standardization and certification, distribution, competition policy, strategic alliances and foreign investments;

5. stresses the need for trans-European networks and computerized telecommunication links between administrations and services of general interest, taking account, in so far as action by the Community is concerned, of decisions to be taken in the appropriate Community fora;
6. is convinced of the necessity for industry in the Community to be competitive at a world level, particularly when assessing strategic alliances and capital intensive investment in the framework of the rules of competition;
7. is also convinced that steps should be taken to strengthen the efforts of the Community's R & D activity, taking into account *inter alia* the interest of small and medium-sized enterprises:

- by focusing, in the relevant programmes, on areas which are vital for the development of technology and its application by users,

- by establishing priorities and allocating accordingly the financial means provided by the Community budget in so far as possible,

- by promoting a better synergy between R & D carried out in the Community programmes and Eureka, while maintaining Eureka's present flexible structure,

- by taking measures for the dissemination and exploitation of R & D results to users across the Community;

8. emphasizes the need to enhance efforts relating to the provision of training at all levels in electronics, information and communication technologies above and beyond the current efforts being made by Member States and at Community level.

ii

THE COUNCIL INVITES THE COMMISSION:

1. to report on:

- relevant studies undertaken by the Community and its Member States,

-
- the most recent agreement between the United States and Japan concerning semiconductors, as well as its consequences for European producers and users,
 - the present-day situation of market access in third countries,
 - government practices in the field of electronics, information and telecommunication technologies in the Community and its major trading partners;
2. to establish a centralized point of information, possibly within the Commission services, charged with monitoring marketing, market access and distribution practices throughout the main industrial areas in the world;
3. to monitor, in consultation with the high-level group composed of representatives of Member States and, with respect to trade-related matters, with the committee referred to in Article 113 of the EEC Treaty, the progress in achieving the goals set out in this resolution, and to report, at regular intervals and at least once a year, on the progress achieved.

III

THE COUNCIL INVITES THE MEMBER STATES AND THE COMMISSION:

to take and, where required, propose the measures necessary for reinforcing the abovementioned basic principles and for pursuing the achievement of the goals set out in this resolution. These measures should be initiated concurrently as a matter of urgency.

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 19 December 1991

on the development of the common market for satellite communications services and equipment

(92/C 8/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Green Paper on the development of the common market for telecommunications services and equipment,

Having regard to the Green Paper on a common approach in the field of satellite communications in the European Community,

Having regard to the opinions of the telecommunications and broadcasting sector, telecommunications and space industry, the trade unions and in particular the users and service providers,

Whereas the Green Paper on the development of the common market for telecommunications services and equipment and its subsequent implementation action plan accord priority to the working out of a common European position regarding the future regulation and development of satellite communications in the Community;

Whereas the Council resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment⁽¹⁾ declares as a policy goal in telecommunications the 'working out of a common position on satellite communications, so that this new information medium can develop in a favourable environment, taking account of the general rules of operation and exploitation of the network environment, as well as the competition rules of the Treaty and existing international commitments of the Member States';

Whereas, subsequently, a number of Directives, recommendations, resolutions and Decisions have been adopted to devise and implement a European telecommunications policy, the principles of which should be extended to the fields of satellite communications;

Whereas the Community must adopt measures with the aim of progressively establishing the internal market, over a period expiring on 31 December 1992; whereas, to this end, the present resolution defines an action plan for the progressive achievement of a competition-oriented Community-wide satellite communications market and the strengthening of European competitiveness in this field;

Whereas the social, regional and trade aspects must be kept carefully in mind during the progressive implementation of such a plan of action, particularly by taking into account the need for transitional periods with respect to liberalization policies in certain Member States, where they are justified by the level of development of their terrestrial networks;

Whereas the industrial aspects must be kept carefully in mind, including the need for an internationally competitive European industry in the field of satellite communications;

Whereas the access to space capacity of separate satellite systems should be left to the providers of that capacity,

WITHOUT PREJUDICE TO FUTURE DECISIONS, CONSIDERS THE FOLLOWING POINTS AS MAJOR GOALS IN SATELLITE TELECOMMUNICATIONS POLICY:

1. harmonization and liberalization for appropriate satellite earth stations, including where applicable the abolition of exclusive or special rights in this area, subject in particular to conditions necessary for compliance with essential requirements;

⁽¹⁾ OJ No C 257, 4. 10. 1988, p. 1.

2. harmonization and liberalization as far as required to facilitate the provision and use of Europe-wide satellite telecommunications services subject, where applicable, to conditions necessary for compliance with essential requirements and special or exclusive rights;
3. separation in all Member States of regulatory and operational functions in the field of satellite communications;
4. improved access to the space segment and access to the space capacity of intergovernmental organizations operating satellite systems and effective and accelerated procedures for the establishment of and access to separate satellite systems;

THEREFORE GIVES ITS SUPPORT:

to the general goals of the Commission's Green Paper on a common approach in the field of satellite communications in the European Community;

NOTES WITH INTEREST THE INTENTION OF THE COMMISSION:

1. to propose, where required, the measures necessary to achieve the goals set out under 1, 2 and 3 above, in particular for the creation of a competitive common market for satellite telecommunications services and equipment and taking account of the different situations of national terrestrial networks and also of the existing international commitments of Member States and the necessity of international cooperation in this field as well as of the external dimension of these measures.

These should include measures on the basis of the appropriate Community procedures:

- (a) for the extension of the principles concerning competition in the markets for telecommunications terminal equipment and telecommunications services to aspects of trade and use of the appropriate satellite earth stations before 1 January 1993;
- (b) for the approximation of the laws in the Member States concerning appropriate satellite earth stations including the mutual recognition of their conformity in line with the principles already established for telecommunications terminal equipment, before 1 January 1993;
- (c) for the establishment of a harmonized regulatory framework for the licensing of satellite networks and satellite services, before 1 January 1993;

(d) for strengthened cooperation with CEPT following the principles of the Council resolution of 28 June 1990 ⁽¹⁾ with respect to the frequency aspects of the provision of satellite services in the Community;

(e) to ensure the free circulation and transborder use of mobile and transportable satellite earth stations throughout the Community, before 1 January 1993;

2. to analyse the effects of the abovementioned measures on the European satellite communications industry and to make proposals, as required, with the aim of establishing competitiveness with regard to third countries, in particular in the following areas:

- relations with third countries,
- standards processes,
- research programmes;

3. to report periodically on the progress made with regard to the implementation of the abovementioned measures;

INVITES THE MEMBER STATES to work as quickly as possible towards:

1. the development of effective, non-discriminatory and accelerated procedures for the establishment of separate satellite systems;
2. the improvement and broadening of access to the space segments of intergovernmental organizations operating satellite systems, taking account of the special or exclusive rights for the provision of public telecommunications services and working along the following lines of action:
 - active participation of the Member States within the intergovernmental organizations operating satellite systems to work towards that goal,
 - the development of effective procedures, e.g. along the line of Signatories Affairs Offices, as an initial step,
 - drawing up conditions for fair, non-discriminatory and transparent access to space capacity for earth segment operators.

⁽¹⁾ OJ No C 166, 7. 7. 1990, p. 4.

COUNCIL DIRECTIVE 92/13/EEC

of 25 February 1992

coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (4) lays down rules for procurement procedures to ensure that potential suppliers and contractors have a fair opportunity to secure the award of contracts, but does not contain any specific provisions ensuring its effective application;

Whereas the existing arrangements at both national and Community levels for ensuring its application are not always adequate;

Whereas the absence of effective remedies or the inadequacy of existing remedies could deter Community undertakings from submitting tenders; whereas, therefore, the Member States must remedy this situation;

Whereas Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (5) is limited to contract award procedures

within the scope of Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (6), as last amended by Directive 90/531/EEC, and Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts (7), as last amended by Directive 90/531/EEC;

Whereas the opening-up of procurement in the sectors concerned to Community competition implies that provisions must be adopted to ensure that appropriate review procedures are made available to suppliers or contractors in the event of infringement of the relevant Community law or national rules implementing that law;

Whereas it is necessary to provide for a substantial increase in the guarantees of transparency and non-discrimination and whereas, for it to have tangible effects, effective and rapid remedies must be available;

Whereas account must be taken of the specific nature of certain legal orders by authorizing the Member States to choose between the introduction of different powers for the review bodies which have equivalent effects;

Whereas one of these options includes the power to intervene directly in the contracting entities' procurement procedures such as by suspending them, or by setting aside decisions or discriminatory clauses in documents or publications;

Whereas the other option provides for the power to exert effective indirect pressure on the contracting entities in order to make them correct any infringements or prevent them from committing infringements, and to prevent injury from occurring;

Whereas claims for damages must always be possible;

Whereas, where a claim is made for damages representing the costs of preparing a bid or of participating in an award procedure, the person making the claim is not be required, in order to obtain the reimbursement of his costs, to prove that the contract would have been awarded to him in the absence of such infringement;

(1) OJ No C 216, 31. 8. 1990, p. 8; and OJ No C 179, 10. 7. 1991, p. 18.

(2) OJ No C 106, 22. 4. 1991, p. 32 and OJ No C 39, 17. 2. 1992.

(3) OJ No C 60, 8. 3. 1991, p. 16.

(4) OJ No L 297, 29. 10. 1990, p. 1.

(5) OJ No L 395, 30. 12. 1989, p. 33.

(6) OJ No L 185, 16. 8. 1971, p. 5.

(7) OJ No L 13, 15. 1. 1977, p. 1.

Whereas the contracting entities which comply with the procurement rules may make this known through appropriate means; whereas this requires an examination, by independent persons, of procurement procedures and practices applied by those entities;

Whereas for this purpose an attestation system, allowing for a declaration on the correct application of the procurement rules, to be made in notices published in the *Official Journal of the European Communities*, is appropriate;

Whereas the contracting entities should have the opportunity of having recourse to the attestation system if they so wish; whereas the Member States must offer them the possibility of doing so; whereas they can do so either by setting up the system themselves or by allowing the contracting entities to have recourse to the attestation system established by another Member State; whereas they may confer the task of carrying out the examination under the attestation system to persons, professions or staff of institutions;

Whereas the necessary flexibility in the introduction of such a system is guaranteed by laying down the essential requirements for it in this Directive; whereas operational details should be provided in European Standards to which this Directive refers;

Whereas the Member States may need to determine operational details prior to, or in addition to, the rules contained in European Standards;

Whereas, when undertakings do not seek review, certain infringements may not be corrected unless a specific mechanism is put in place;

Whereas, accordingly, the Commission, when it considers that a clear and manifest infringement has been committed during a contract award procedure, should be able to bring it to the attention of the competent authorities of the Member State and of the contracting entity concerned so that appropriate steps are taken for the rapid correction of that infringement;

Whereas it is necessary to provide for the possibility of conciliation at Community level to enable disputes to be settled amicably;

Whereas the application in practice of this Directive should be reviewed at the same time as that of Directive 90/531/EEC on the basis of information to be supplied by the Member States concerning the functioning of the national review procedures;

Whereas this Directive must be brought into effect at the same time as Directive 90/531/EEC;

Whereas it is appropriate that the Kingdom of Spain, the Hellenic Republic and the Portuguese Republic are granted adequate additional periods to transpose this Directive, taking account of the dates of application of Directive 90/531/EEC in those countries,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Remedies at national level

Article 1

1. The Member States shall take the measures necessary to ensure that decisions taken by contracting entities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in the following Articles and, in particular, Article 2 (8), on the grounds that such decisions have infringed Community law in the field of procurement or national rules implementing that law as regards:

- (a) contract award procedures falling within the scope of Council Directive 90/531/EEC; and
- (b) compliance with Article 3 (2) (a) of that Directive in the case of the contracting entities to which that provision applies.

2. Member States shall ensure that there is no discrimination between undertakings likely to make a claim for injury in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing Community law and other national rules.

3. The Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement. In particular, the Member States may require that the person seeking the review must have previously notified the contracting entity of the alleged infringement and of his intention to seek review.

Article 2

1. The Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for the powers:

either

- (a) to take, at the earliest opportunity and by way of interlocutory procedure, interim measures with the aim of correcting the alleged infringement or preventing further injury to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a contract or the implementation of any decision taken by the contracting entity; and
- (b) to set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the notice of contract, the periodic indicative notice, the notice on the existence of a system of qualification, the invitation to tender, the contract documents or in any other document relating to the contract award procedure in question;

or

- (c) to take, at the earliest opportunity, if possible by way of interlocutory procedures and if necessary by a final procedure on the substance, measures other than those provided for in points (a) and (b) with the aim of correcting any identified infringement and preventing injury to the interests concerned; in particular, making an order for the payment of a particular sum, in cases where the infringement has not been corrected or prevented.

Member States may take this choice either for all contracting entities or for categories of entities defined on the basis of objective criteria, in any event preserving the effectiveness of the measures laid down in order to prevent injury being caused to the interests concerned;

- (d) and, in both the above cases, to award damages to persons injured by the infringement.

Where damages are claimed on the grounds that a decision has been taken unlawfully, Member States may, where their system of internal law so requires and provides bodies having the necessary powers for that purpose, provide that the contested decision must first be set aside or declared illegal.

2. The powers referred to in paragraph 1 may be conferred on separate bodies responsible for different aspects of the review procedure.

3. Review procedures need not in themselves have an automatic suspensive effect on the contract award procedures to which they relate.

4. The Member States may provide that, when considering whether to order interim measures, the body responsible may take into account the probable consequences of the measures for all interests likely to be harmed, as well as the public interest, and may decide not

to grant such measures where their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking these measures.

5. The sum to be paid in accordance with paragraph 1 (c) must be set at a level high enough to dissuade the contracting entity from committing or persisting in an infringement. The payment of that sum may be made to depend upon a final decision that the infringement has in fact taken place.

6. The effects of the exercise of the powers referred to in paragraph 1 on a contract concluded subsequent to its award shall be determined by national law. Furthermore, except where a decision must be set aside prior to the award of damages, a Member State may provide that, after the conclusion of a contract following its award, the powers of the body responsible for the review procedures shall be limited to awarding damages to any person harmed by an infringement.

7. Where a claim is made for damages representing the costs of preparing a bid or of participating in an award procedure, the person making the claim shall be required only to prove an infringement of Community law in the field of procurement or national rules implementing that law and that he would have had a real chance of winning the contract and that, as a consequence of that infringement, that chance was adversely affected.

8. The Member States shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.

9. Whereas bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made to guarantee procedures whereby any allegedly illegal measures taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 177 of the Treaty and independent of both the contracting entity and the review body.

The members of the independent body referred to in the first paragraph shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office, and their removal. At least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary. The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by each Member State, be legally binding.

CHAPTER 2

Attestation

Article 3

The Member States shall give contracting entities the possibility of having recourse to an attestation system in accordance with Articles 4 to 7.

Article 4

Contracting entities may have their contract award procedures and practices which fall within the scope of Directive 90/531/EEC examined periodically with a view to obtaining an attestation that, at that time, those procedures and practices are in conformity with Community law concerning the award of contracts and the national rules implementing the law.

Article 5

1. Attestors shall report to the contracting entity, in writing, on the results of their examination. They shall satisfy themselves, before delivering to the contracting entity the attestation referred to in Article 4, that any irregularities identified in the contracting entity's award procedures and practices have been corrected and measures have been taken to ensure that those irregularities are not repeated.

2. Contracting entities having obtained that attestation may include the following statement in notice published in the *Official Journal of the European Communities* pursuant to Articles 16 to 18 of Directive 90/531/EEC:

'The contracting entity has obtained an attestation in accordance with Council Directive 92/13/EEC that, on, its contract award procedures and practices were in conformity with Community law and the national rules implementing that law.'

Article 6

1. Attestors shall be independent of the contracting entities and must be completely objective in carrying out their duties. They shall offer appropriate guarantees of relevant professional qualifications and experience.

2. Member States may identify any persons, professions or institutions whose staff, called upon the act as attestors, they regard as fulfilling the requirements of paragraph 1. For these purposes, Member States may require

professional qualifications, at least at the level of a higher education diploma within the meaning of Directive 89/48/EEC⁽¹⁾, which they regard as relevant, or provide that particular examinations of professional competence organized or recognized by the State offer such guarantees.

Article 7

The provisions of Articles 4, 5 and 6 shall be considered as essential requirements for the development of European standards on attestation.

CHAPTER 3

Corrective mechanism

Article 8

1. The Commission may invoke the procedures for which this Article provides when, prior to a contract being concluded, it considers that a clear and manifest infringement of Community provisions in the field of procurement has been committed during a contract award procedure falling within the scope of Directive 90/531/EEC or in relation to Article 3 (2) (a) of that Directive in the case of the contracting entities to which that provision applies.

2. The Commission shall notify the Member States and the contracting entity concerned of the reasons which have led it to conclude that a clear and manifest infringement has been committed and request its correction by appropriate means.

3. Within 30 days of receipt of the notification referred to in paragraph 2, the Member States concerned shall communicate to the Commission:

- (a) its confirmation that the infringement has been corrected; or
- (b) a reasoned submission as to why no correction has been made; or
- (c) a notice to the effect that the contract award procedure has been suspended either by the contracting entity on its own initiative or on the basis of the powers specified in Article 2 (1) (a).

4. A reasoned submission in accordance with paragraph 3 (b) may rely among other matters on the fact that the alleged infringement is already the subject of judicial review proceedings or of a review as referred to in Article 2 (9). In such a case, the Member State shall inform the Commission of the result of those proceedings as soon as it becomes known.

⁽¹⁾ OJ No L 19, 24. 1. 1989, p. 16.

5. Where notice has been given that a contract award procedure has been suspended in accordance with paragraph 3 (c), the Member State concerned shall notify the Commission when the suspension is lifted or another contract procedure relating in whole or in part to the same subject matter is begun. That new notification shall confirm that the alleged infringement has been corrected or include an reasoned submission as to why no correction has been made.

CHAPTER 4

Conciliation

Article 9

1. Any person having or having had an interest in obtaining a particular contract falling within the scope of Directive 90/531/EEC and who, in relation to the procedure for the award of that contract, considers that he has been or risks being harmed by an alleged infringement of Community law in the field of procurement or national rules implementing that law may request the application of the conciliation procedure provided for in Articles 10 and 11.

2. The request referred to in paragraph 1 shall be addressed in writing to the Commission or to the national authorities listed in the Annex. These authorities shall forward requests to the Commission as quickly as possible.

Article 10

1. Where the Commission considers, on the basis of the request referred to in Article 9, that the dispute concerns the correct application of Community law, it shall ask the contracting entity to state whether it is willing to take part in the conciliation procedure. If the contracting entity declines to take part, the Commission shall inform the person who made the request that the procedure cannot be initiated. If the contracting entity agrees, paragraphs 2 to 7 shall apply.

2. The Commission shall propose, as quickly as possible, a conciliator drawn from a list of independent persons accredited for this purpose. This list shall be drawn up by the Commission, following consultation of the Advisory Committee for Public Contracts or, in the case of contracting entities the activities of which are defined in Article 2 (2) (d) of Directive 90/531/EEC, following consultation of the Advisory Committee on Telecommunications Procurement.

Each party to the conciliation procedure shall declare whether it accepts the conciliator, and shall designate an additional conciliator. The conciliators may invite not

more than two other persons as experts to advise them in their work. The parties to the conciliation procedure and the Commission may reject any expert invited by the conciliators.

3. The conciliators shall give the person requesting the application of the conciliation procedure, the contracting entity and any other candidate or tenderer participating in the relevant contract award procedure the opportunity to make representations on the matter either orally or in writing.

4. The conciliators shall endeavour as quickly as possible to reach an agreement between the parties which is in accordance with Community law.

5. The conciliators shall report to the Commission on their findings and on any result achieved.

6. The person requesting the application of the conciliation procedure and the contracting entity shall have the right to terminate the procedure at any time.

7. Unless the parties decide otherwise, the person requesting the application of the conciliation procedure and the contracting entity shall be responsible for their own costs. In addition, they shall each bear half of the costs of the procedure, excluding the costs of intervening parties.

Article 11

1. Where, in relation to a particular contract award procedure, an interested person within the meaning of Article 9, other than the person requesting the conciliation procedure, is pursuing judicial review proceedings or other proceedings for review within the meaning of this Directive, the contracting entity shall inform the conciliators. These shall inform that person that a request has been made to apply the conciliation procedure and shall invite that person to indicate within a given time limit whether he agrees to participate in that procedure. If that person refuses to participate, the conciliators may decide, acting if necessary by a majority, to terminate the conciliation procedure if they consider that the participation of this person is necessary to resolve the dispute. They shall notify their decision to the Committee and give the reasons for it.

2. Action taken pursuant to this Chapter shall be without prejudice to:

(a) any action that the Commission or any Member State might take pursuant to Articles 169 or 170 of the Treaty or pursuant to Chapter 3 of this Directive;

(b) the rights of the persons requesting the conciliation procedure, of the contracting entity or of any other person.

CHAPTER 5

Final provisions

Article 12

1. Not later than four years after the application of this Directive, the Commission, in consultation with the Advisory Committee for Public Contracts, shall review the manner in which the provisions of this Directive have been implemented and, in particular, the use of the European Standards and, if necessary, make proposals for amendments.

2. Before 1 March each year the Member States shall communicate to the Commission information on the operation of their national review procedures during the preceding calendar year. The nature of the information shall be determined by the Commission in consultation with the Advisory Committee for Public Contracts.

3. In the case of matters relating to contracting entities the activities of which are defined in Article 2 (2) (d) of Directive 90/531/EEC, the Commission shall also consult the Advisory Committee on Telecommunications Procurement.

Article 13

1. Member States shall take, before 1 January 1993, the measures necessary to comply with this Directive. The

Kingdom of Spain shall take these measures not later than 30 June 1995. The Hellenic Republic and the Portuguese Republic shall take these measures not later than 30 June 1997. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain an reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall bring into force the measures referred to in paragraph 1 on the same dates as those (laid down in Directive 90/531/EEC).

3. Member States shall communicate to the Commission the texts of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 25 February 1992.

For the Council

The President

VITOR MARTINS

ANNEX

National authorities to which requests for application of the conciliation procedure referred to in Article 9 may be addressed

Belgium

Services du Premier Ministre
Diensten Van de Eerste Minister
Ministère des Affaires économiques
Ministerie van Economische Zaken

Denmark

Industri- og Handelsstyrelsen (supply contracts)
Boligsministeriet (works contracts)

Germany

Bundesministerium für Wirtschaft

Greece

Υπουργείο Βιομηχανίας, Ενέργειας και Τεχνολογίας
Υπουργείο Εμπορίου Υπουργείο Περιβάλλοντος, Χωροταξίας και Δημοσίων Έργων

Spain

Ministerio de Economía y Hacienda

France

Commission centrale des marchés

Ireland

Department of Finance

Italy

Presidenza del Consiglio dei Ministri Politiche Comunitarie

Luxembourg

Ministère des travaux publics

Netherlands

Ministerie van Economische Zaken

Portugal

Conselho de mercados de obras publicas e particulares

United Kingdom

HM Treasury

COUNCIL DECISION

of 31 March 1992

in the field of security of information systems

(92/242/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the Community has as its task, by establishing a common market and progressively approximating the economic policies of the Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the Member States;

Whereas information stored, processed and transmitted electronically plays an increasingly important role in economic and social activities;

Whereas the advent of efficient global communications and the pervasive use of electronic handling of information emphasizes the need for adequate protection;

Whereas the European Parliament has repeatedly stressed the importance of the security of information systems in its debates and resolutions;

Whereas the Economic and Social Committee has emphasized the need to address issues relating to the security of information systems in Community forms of action, particularly in view of the impact of the completion of the internal market;

Whereas forms of action at national, international and Community levels provide a good basis;

Whereas there is a close link between telecommunications, information technology, standardization, the information market and research, development and technology (RDT) policies, as well as the work already undertaken in these areas by the Community;

Whereas it is appropriate to ensure that efforts are concerted by building on existing national and international work and by promoting cooperation between the principal parties concerned; whereas it is therefore appropriate to proceed within the framework of a coherent action plan;

Whereas the complexity of the security of information systems calls for the development of strategies to enable the free movement of information within the single market while ensuring the security of the use of information systems throughout the Community;

Whereas it is the responsibility of each Member State to take into account the constraints imposed by security and public order;

Whereas the responsibilities of the Member States in this area imply a concerted approach based on close collaboration with senior officials of the Member States;

Whereas provision should be made for a plan of action for an initial period of twenty-four months and the setting-up of a Committee of Senior Officials with a long-term mandate to advise the Commission on forms of action in the area of security of information systems;

Whereas an amount of ECU 12 million is considered necessary to implement the action for an initial period of twenty-four months; whereas for 1992, in the context of the present financial perspective, the amount estimated necessary is ECU 2 million;

Whereas the amounts to be committed in order to finance the programme for the period following the 1992 budget year will form part of the existing Community financial framework,

HAS DECIDED AS FOLLOWS:

Article 1

An action in the field of the security of information systems is hereby adopted. It comprises:

- development of overall strategies for the security of information systems (action plan) for an initial period of 24 months, and
- setting-up Senior Officials Group with a long-term mandate to advise the Commission on action to be undertaken in the field of the security of information systems, hereinafter referred to as the 'Committee'.

⁽¹⁾ OJ No C 277, 5. 11. 1990, p. 18.

⁽²⁾ OJ No C 94, 13. 3. 1992.

⁽³⁾ OJ No C 159, 17. 6. 1991, p. 38.

Article 2

1. The Commission shall consult the Committee systematically on issues relating to the security of the information systems for the various activities carried out by the Community, in particular on the definition of work strategies and programmes.
2. The action plan, as indicated in the Annex, shall include preparatory work under the following themes :
 - I. development of a strategic framework for the security of information systems ;
 - II. identification of user and service provider requirements for the security of information systems ;
 - III. solutions for immediate and interim needs of users, suppliers and service providers ;
 - IV. development of specifications, standardization, evaluation and certification in respect of the security of information systems ;
 - V. technological and operational developments in the security of information systems ;
 - VI. provision of security of information systems.

Article 3

1. The Community funds estimated as necessary for the execution of the action amount to ECU 12 million for the initial period, including ECU 2 million for 1992 within the 1988-1992 financial perspective.

For the subsequent period of application of the programme, the amount will have to be included in the Community financial framework in force.

2. The budgetary authority shall determine the appropriations available for each financial year, taking into account the principles of sound management referred to in Article 2 of the Financial Regulation applicable to the general budget of the European Communities.

Article 4

An evaluation of the progress achieved during the initial period shall be carried out for the Commission by a group of independent experts. This group's report, together with any comments by the Commission, shall be submitted to the European Parliament and the Council.

Article 5

1. The Commission shall be responsible for implementing the action. It shall be assisted by an advisory committee composed of representatives of the Member States and chaired by the representative of the Commission.
2. The action plan shall be implemented in accordance with the objectives set out in Article 2 and updated where necessary. It shall set out the detailed objectives and types

of actions to be undertaken, and the financial arrangements to be made for them. The Commission shall make calls for proposals on the basis of the action plan.

3. The action plan shall be implemented in close collaboration with the sector actors. It shall take into account, promote and complement the European and international standardization activities under way in this field.

Article 6

1. The procedure laid down in Article 7 shall apply to :
 - measures relating to Community policy in the field of the security of information systems ;
2. The procedure laid down in Article 8 shall apply to :
 - the preparation and updating of the action plan referred to in Article 5 ;
 - the contents of the calls for proposals, the assessment of proposals and the estimated amount of the Community's contribution to measures where this amount exceeds ECU 200 000 ;
 - the cooperation in any activity under this Decision of non-Community organizations ;
 - arrangements for the dissemination, protection and exploitation of the results of the measures ;
 - the measures to be undertaken to evaluate the action.
3. Where the amount of the Community contribution to the measures is less than, or equal to, ECU 200 000, the Commission shall consult the Committee on the measures to be taken and inform the Committee of the outcome of its assessment.

Article 7

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

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.

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 8

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. The opinion shall be deliv-

ered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the

Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to it the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

Done at Brussels, 31 March 1992.

For the Council

The President

Vitor MARTINS

ANNEX

Summary of action lines

ORIENTATIONS FOR AN ACTION PLAN IN THE FIELD OF THE SECURITY OF INFORMATION SYSTEMS

INTRODUCTION

The action plan shall have as its objective the development of overall strategies aiming to provide users and producers of electronically stored, processed or transmitted information with appropriate protection of information systems against accidental or deliberate threats.

The action plan shall take into account and complement the world-wide standardization activities under way in this field.

It shall include the following lines of action :

- development of a strategic framework for the security of information systems ;
- identification of user and service provider requirements for the security of information systems ;
- solutions for immediate and interim needs of users, suppliers and service providers ;
- development of specifications, standardization, evaluation and certification in respect of the security of information systems ;
- technological and operational developments in the security of information systems ;
- provision of security of information systems.

The action plan shall be implemented by the Commission, in close association with related actions in Member States and in conjunction with related Community research and development actions.

1. Action line I — Development of a strategic framework for the security of information systems

common perception and agreed strategy framework. These are the prerequisites for reconciling interests and needs both in policy-making and in industrial developments.

1.1. Issue

Security of information systems is recognized as a pervasive quality necessary in modern society. Electronic information services need a secure telecommunications infrastructure, secure hard- and software as well as secure usage and management. An overall strategy, considering all aspects of security of information systems, needs to be established, avoiding a fragmented approach. Any strategy for the security of information processed in an electronic form must reflect the wish of any society to operate effectively yet protect itself in a rapidly changing world.

1.3. Status and trends

The situation is characterized by growing awareness of the need to act. However, in the absence of an initiative to coordinate efforts, it seems very likely that dispersed efforts in various sectors will create a situation which will de facto be contradictory, creating progressively more serious legal, social and economic problems.

1.2. Objective

A strategically orientated framework has to be established to reconcile social, economic and political objectives with technical, operational and legislative options for the Community in an international context. The sensitive balance between different concerns, objectives and constraints are to be found by sector actors working together in the development of a

1.4. Requirements, options and priorities

Such a shared framework would need to address and situate risk analysis and risk management concerning the vulnerability of information and related services, the alignment of laws and regulations associated with computer/ telecommunications abuse and misuse, administrative infrastructures including security policies, and how these may be effectively implemented by various industries/disciplines, and social and privacy concerns (e.g. the application of identification, authentication, non-repudiation and possibly authorization schemes in a democratic environment).

Clear guidance is to be provided for the development of physical and logical architectures for secure distributed information services, standards, guidelines and definitions for assured security products and services, pilots and prototypes to establish the viability of various administrative structures, architectures and standards related to the needs of specific sectors.

Security awareness must be created in order to influence the attitude of the users towards an increased concern about security in information technology (IT).

2. Action line II — Identification of user and service provider requirements for the security of information systems

2.1. Issue

Security of information systems is the inherent prerequisite for the integrity and trustworthiness of business applications, intellectual property and confidentiality. This leads inevitably to a difficult balance and sometimes choices, between a commitment to free trade and a commitment to securing privacy and intellectual property. These choices and compromises need to be based on a full appreciation of requirements and the impact of possible options for the security of information systems to respond to them.

User requirements imply the security functionalities of information systems interdependent with technological, operational and regulatory aspects. Therefore, a systematic investigation of security requirements for information systems forms an essential part of the development of appropriate and effective measures.

2.2. Objective

Establishing the nature and characteristics of requirements of users and service providers and their relation to security measures of information systems.

2.3. Status and trends

Hitherto, no concerted effort has been undertaken to identify the rapidly evolving and changing requirements of the major actors for the security of information systems. Member States of the Community have identified the requirements for harmonization of national activities (especially of the 'IT security evaluation criteria'). Uniform evaluation criteria and rules for mutual recognition of evaluation certificates are of major importance.

2.4. Requirements, options and priorities

As a basis for a consistent and transparent treatment of the justified needs of the sector actors, it is considered necessary to develop an agreed classification of user requirements and

its relation to the provision of security in information systems.

It is also considered important to identify requirements for legislation, regulations and codes of practice in the light of an assessment of trends in service characteristics and technology, to identify alternative strategies for meeting the objectives by administrative, service, operational and technical provisions, and to assess the effectiveness, user-friendliness and costs of alternative security options and strategies for information systems for users, service providers and operators.

3. Action line III — Solutions for immediate and interim needs of users, suppliers and service providers

3.1. Issue

At present it is possible to protect adequately computers from unauthorized access from the outside world by 'isolation', i.e. by applying conventional organizational and physical measures. This applies also to electronic communications within a closed user group operating on a dedicated network. The situation is very different if the information is shared between user groups or exchanged via a public, or generally accessible, network. Neither the technology, terminals and services nor the related standards and procedures are generally available to provide comparable security for information systems in these cases.

3.2. Objective

The objective has to be to provide, at short notice, solutions which can respond to the most urgent needs of users, service providers and manufacturers. This includes the use of common IT-security evaluation criteria. These should be conceived as open towards future requirements and solutions.

3.3. Status and trends

Some user groups have developed techniques and procedures for their specific use responding, in particular, to the need for authentication, integrity and non-repudiation. In general, magnetic cards or smart cards are being used. Some are using more or less sophisticated cryptographic techniques. Often this implied the definition of user-group specific 'authorities'. However, it is difficult to generalize these techniques and methods to meet the needs of an open environment.

ISO is working on OSI Information System Security (ISO DIS 7498-2) and CCITT in the context of X400. It is also possible to insert security segments into the messages. Authentication, integrity and non-repudiation are being addressed as part of the messages (EDIFACT) as well as part of the X400 MHS.

At present, the Electronic Data Interchange (EDI) legal framework is still at the stage of conception. The International Chamber of Commerce has published uniform rules of conduct for the exchange of commercial data via telecommunications networks.

Several countries (e.g. Germany, France, the United Kingdom and the United States) have developed, or are developing, criteria to evaluate the trustworthiness of IT and telecommunication products and systems and the corresponding procedures for conducting evaluations. These criteria have been co-ordinated with the national manufacturers and will lead to an increasing number of reliable products and systems starting with simple products. The establishment of national organizations which will conduct evaluations and offer certificates will support this trend.

Confidentiality provision is considered by most users as less immediately important. In the future, however, this situation is likely to change as advanced communication services and, in particular, mobile services will have become all-pervasive.

3.4. *Requirements, options and priorities*

It is essential to develop as soon as possible the procedures, standards, products and tools suited to assure security both in information systems as such (computers, peripherals) and in public communications networks. A high priority should be given to authentication, integrity and non-repudiation. Pilot projects should be carried out to establish the validity of the proposed solutions. Solutions to priority needs on EDI are looked at in the TEDIS programme within the more general content of this action plan.

4. Action line IV — Development of specifications, standardization, evaluation and certification in respect of the security of information systems

4.1. *Issue*

Requirements for the security of information systems are pervasive and as such common specifications and standards are crucial. The absence of agreed standards and specifications for IT security may present a major barrier to the advance of information-based processes and services throughout the economy and society. Actions are also required to accelerate the development and use of technology and standards in several related communication and computer network areas that are of critical importance to users, industry and administrations.

4.2. *Objective*

Efforts are required to provide a means of supporting and performing specific security functions in the general areas of OSI, ONP, ISDN/IBC and network management. Inherently related to standardization and specification are the techniques and approaches required for verification, including certification leading to mutual recognition. Where possible, internationally agreed solutions are to be supported. The development and use of computer systems with security functions should also be encouraged.

4.3. *Status and trends*

The United States, in particular, has taken major initiatives to address the security of information systems. In Europe the subject is treated in the context of IT and telecommunications standardization in the context of ETSI and CEN/CENELEC in preparation of CCITT and ISO work in the field.

In view of growing concern, the work in the United States is rapidly intensifying and both vendors and service providers are increasing their efforts in this area. In Europe, France, Germany and the United Kingdom have independently started similar activities, but a common effort corresponding to the United States is evolving only slowly.

4.4. *Requirements, options and priorities*

In the security of information systems there is inherently a very close relationship between regulatory, operational, administrative and technical aspects. Regulations need to be reflected in standards, and provisions for the security of information systems need to comply in a verifiable manner to the standards and regulations. In several aspects, regulations require specifications which go beyond the conventional scope of standardization, i.e. include codes of practice. Requirements for standards and codes of practice are present in all areas of security of information systems, and a distinction has to be made between the protection requirements which correspond to the security objectives and some of the technical requirements which can be entrusted to the competent European standards bodies (CEN/CENELEC/ETSI).

Specifications and standards must cover the subjects of security services of information systems (personal and enterprise authentication, non-repudiation protocols, legally acceptable electronic proof, authorization control), their communication services (image communication privacy, mobile communications voice and data privacy, data and image data-base protection, integrated services security), their communication and security management (public/private key system for open network operation, network management protection, service provider protection) and their certification (assurance criteria and levels, security assurance procedures for secure information systems).

5. Action line V — Technological and operational developments in the security of information systems

5.1. *Issue*

Systematic investigation and development of the technology to permit economically viable and operationally satisfactory solutions to a range of present and future requirements for the security of information systems is a prerequisite for the development of the services market and the competitiveness of the European economy as a whole.

Any technological developments in the security of information systems will have to include both the aspects of computer security and security of communications as most present-day systems are distributed systems, and access to such systems is through communications services.

5.2. *Objective*

Systematic investigation and development of the technology to permit economically viable and operationally satisfactory solutions to a range of present and future requirements for the security of information systems.

5.3. *Requirements, options and priorities*

Work on security of information systems would need to address development and implementation strategies, technologies, and integration and verification.

The strategic R&D work would have to cover conceptual models for secure systems (secure against compromise, unauthorized modifications and denial of service), functional requirements models, risk models and architectures for security.

The technology-orientated R&D work would have to include user and message authentication (e.g. through voice-analysis and electronic signatures), technical interfaces and protocols for encryption, access control mechanisms and implementation methods for provable secure systems.

Verification and validation of the security of the technical system and its applicability would be investigated through integration and verification projects.

In addition to the consolidation and development of security technology, a number of accompanying measures are required concerned with the creation, maintenance and consistent application of standards, and the validation and certification of IT and telecommunication products with respect to their security properties, including validation and certification of methods to design and implement systems.

The third RDT Community Framework Programme might be used to foster cooperative projects at precompetitive and prenormative levels.

6. Action line VI — Provision of security of information systems

6.1. *Issue*

Depending on the exact nature of the security features of information systems, the required functions will need to be incorporated at different parts of the information system including terminals/computers, services, network management to cryptographic devices, smart cards, public and private keys, etc. Some of these can be expected to be embedded in the hardware or software provided by vendors, while others may be part of distributed systems (e.g. network management), in the possession of the individual user (e.g. smart cards) or provided from a specialized organization (e.g. public/private keys).

Most of the security products and services can be expected to be provided by vendors, service providers or operators. For specific functions, e.g. the provision of public/private keys, auditing authorization, there may be the need to identify and mandate appropriate organizations.

The same applies for certification, evaluation and verification of quality of service which are functions which need to be addressed by organizations independent of the interests of vendors, service providers or operators. These organizations could be private, governmental, or licensed by government to perform delegated functions.

6.2. *Objective*

In order to facilitate a harmonious development of the provision of security of information systems in the Community for the protection of the public and of business interests, it will be necessary to develop a consistent approach as to its provision of security. Where independent organizations will have to be mandated, their functions and conditions will need to be defined and agreed and, where required, embedded into the regulatory framework. The objective would be to come to a clearly defined and agreed sharing of responsibilities between the different actors on a Community level as a prerequisite for mutual recognition.

6.3. *Status and trends*

At present, the provision of security of information systems is well organized only for specific areas and limited to addressing their specific needs. The organization on a European level is mostly informal, and mutual recognition of verification and certification is not yet established outside closed groups. With the growing importance of the security of information systems, the need for defining a consistent approach to the provision of security for information systems in Europe and internationally is becoming urgent.

6.4. *Requirements, options and priorities*

Because of the number of different actors concerned and the close relations to regulatory and legislative questions, it is particularly important to pre-agree on the principles which should govern the provision of the security of information systems.

In developing a consistent approach to this question, one will need to address the aspects of identification and specification of functions requiring, by their very nature, the availability of some independent organizations (or interworking organizations). This could include functions such as the administration of a public/private key system.

In addition, it is required to identify and specify, at an early stage, the functions which in the public interest need to be entrusted to independent organizations (or interworking organizations). This could, for example, include auditing, quality assurance, verification, certification and similar functions.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/31/EEC

of 28 April 1992

amending Directive 89/336/EEC on the approximation of the laws of the Member States relating to electromagnetic compatibility

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Directive 89/336/EEC ⁽⁴⁾ provides for complete harmonization relating to electromagnetic compatibility;

Whereas a uniform application of that Directive requires the availability of harmonized standards; whereas these standards will not be available by the date of application of that Directive;

Whereas that Directive has not provided for an adequate transitional period during which it would be permitted to place on the market apparatus manufactured in accordance with national regulations applicable before the date of application of the said Directive;

Whereas manufacturers must have the time needed to allow apparatus in stock to be marketed;

Whereas Directive 89/336/EEC should accordingly be amended,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/336/EEC is hereby amended as follows:

1. Article 10 (3) shall be deleted.
2. Article 12 (1) shall be supplemented by the following paragraph:

'However, Member States shall, for the period up to 31 December 1995, authorize the placing on the

market and/or the putting into service of apparatus referred to in this Directive conforming to the national regulations in force in their territory on 30 June 1992.'

Article 2

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive not later than three months after its adoption. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Member States shall apply these provisions not later than six months after the adoption of this Directive.

2. Member States shall communicate to the Commission the texts of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 3

This Directive is addressed to the Member States.

Done at Luxembourg, 28 April 1992.

*For the Council**The President*

Arlindo MARQUES CUNHA

⁽¹⁾ OJ No C 126, 21. 6. 1991, p. 7.

⁽²⁾ OJ No C 13, 20. 1. 1992, p. 506 and OJ No C 94, 13. 4. 1992.

⁽³⁾ OJ No C 339, 31. 12. 1991, p. 1.

⁽⁴⁾ OJ No L 139, 23. 5. 1989, p. 19. Directive amended by Directive 91/263/EEC (OJ No L 128, 23. 5. 1991, p. 1).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/38/EEC

of 11 May 1992

on the adoption of standards for satellite broadcasting of television signals

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission (¹),

In cooperation with the European Parliament (²),

Having regard to the opinion of the Economic and Social Committee (³),

Whereas Article 3 of Council Directive 86/529/EEC of 3 November 1986 on the adoption of common technical specifications of the MAC/packet family of standards for direct satellite television broadcasting (⁴) made provision for the adoption of measures to replace that Directive ;

Whereas the Community, through Decision 89/337/EEC (⁵) and Decision 89/630/EEC (⁶), recognized the strategic importance of high-definition television (HDTV) for the European consumer electronics industry and for the European television and film industries, and established the strategy framework for the introduction of HDTV services in Europe ;

Whereas Directive 86/529/EEC, in particular in Article 2, established a dual regime by limiting the application of the Directive to one type of satellite, and, as a result, a dual market appeared with the use of MAC standards in broadcasting satellite service (BSS) and mainly PAL and Secam in fixed satellite service (FSS) ; whereas this should be avoided in the future in order to prevent a split in the satellite market ;

Whereas, in order to reach Community goals as set out in the abovementioned Decisions and to contribute to the achievement of an internal market, as provided for in Article 8 (a) of the Treaty, in satellite broadcasting of television signals, it is necessary to take steps to create a convergence of standards, using in parallel a regulatory instrument and an agreement between major actors in the market ;

Whereas it is in the best interests of European consumers to follow a path towards HDTV based on the criteria of compatibility and evolution, in order to avoid discontinuities and duplication of investments ;

Whereas HD-MAC has been developed as the European transmission standard for HDTV services based on those criteria of compatibility and evolution and D2-MAC offers the best available path towards the development of HDTV with wide-screen 16 : 9 D2-MAC as the main step in that direction ;

Whereas there is a need to establish common standards for satellite transmission as an enabling element for effective free-market competition, taking into account the fact that standards promote competitiveness by lowering costs for producers, shaping customer preferences for products by their familiarity and giving rise to the emergence of new markets, particularly for developing technologies, where they are becoming a pre-condition for industrial production or marketing ;

Whereas services for satellite television broadcasting using 4 : 3 aspect ratio format should not be forced to a compulsory stop or change so as not to jeopardize the present market or inconvenience users ; whereas, however, incentives may be provided, through a parallel legal instrument, in order to support, in addition, the use of the D2-MAC standard, in particular in 16 : 9 format, *inter alia* through simultaneous transmissions ('simulcast') ;

Whereas it is important that, from a certain date on, new services, that is to say services that are not extensions of existing services, will transmit in the D2-MAC norm ;

(¹) OJ No C 194, 25. 7. 1991, p. 20 and OJ No C 332, 21. 12. 1991, p. 13.

(²) OJ No C 326, 16. 12. 1991, p. 71 and OJ No C 94, 13. 4. 1992.

(³) OJ No C 40, 17. 2. 1992, p. 101.

(⁴) OJ No L 311, 6. 11. 1986, p. 28.

(⁵) OJ No L 142, 25. 5. 1989, p. 1.

(⁶) OJ No L 363, 13. 12. 1989, p. 30.

Whereas it is vital to ensure that audiovisual programmes adapted to the new 16:9 format are available in sufficient quantity and quality and provide therefore, where appropriate, through a parallel legal instrument, for Community financial incentives;

Whereas, in the medium term, the capacity of satellite systems is limited and, as a result, the scope for the simulcast transmissions of programmes in different standards is also limited; it will be necessary to make a selection of programmes for such transmissions;

Whereas satellite television transmissions not receivable within the Community by domestic satellite receiving equipment and occasional transmissions are not covered by the obligations of this Directive;

Whereas, in the interests of the consumer, it is necessary to establish a common conditional access system compatible with D2-MAC and HD-MAC, without hampering the technological development of these systems; whereas, therefore, the best solution is a system consisting of a common-access unit to which one or more smart cards can be added;

Whereas the Commission has expressed its intention to issue a mandate to a European standardization organization for the development of a European standard for conditional access to encrypted satellite broadcasts;

Whereas the said standard shall in principle allow for the use of more than one conditional-access encryption system, subject to the following objectives:

- that the standard shall incorporate, or refer to, a standard for a consumer conditional-access unit,
- that any conditional-access encryption system conforming to the standard shall be fully compatible with the abovementioned consumer access unit,
- that the standard shall be backwards compatible with equipment placed on the market prior to the adoption of this Directive for use with any system fully compatible with D2-MAC,
- that the standards shall allow for the updating of encryption methods from time to time without replacement or modification of the consumer conditional-access unit;

Whereas cable TV networks and their technical capabilities as defined by the Member States are a relevant feature in the television infrastructure of many Member States and will be of crucial importance to the future of HDTV services;

Whereas master antenna systems as defined by Member States are not affected by this Directive;

Whereas Decision 89/337/EEC called for an action plan for the introduction of HDTV to be prepared in close

coordination at Community level between the Commission, the Member States and the European industry;

Whereas it is essential that there should be complete agreement between broadcasters, satellite operators, manufacturers and cable operators on the introduction, as soon as possible, of 16:9 D2-MAC services in conformity with the objectives set out in Decision 89/337/EEC; whereas such agreement might be reached by means of a Memorandum of Understanding;

Whereas the said Memorandum of Understanding will set out the obligations of the respective parties for the development and promotion of 16:9 D2-MAC services in Europe in accordance with the terms and provisions of this Directive and will constitute an integral part of the overall strategy for the introduction of HDTV;

Whereas European research efforts must remain in the forefront of all new significant developments, such as a trend towards digital television broadcasting emissions; whereas Europe has to consolidate its research efforts through collaboration and in the framework of Community research programmes;

Whereas a strategy for the introduction of HDTV has been laid down at Community level and European undertakings have made significant investments involving many jobs;

Whereas, in view of the foreseeable technical progress in this sector, account should now be taken of any subsequent developments of the existing systems and provision made for an eventual review of this Directive;

Whereas it is in the general interest, as well as in the interest of the major actors in the market, that this Directive should be put into application at the earliest possible date;

Whereas it is necessary to evaluate this Directive at regular intervals; whereas such evaluation should take into account all relevant market factors, including the services at the time of the evaluation,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Member States shall take all appropriate measures to promote and support the introduction and development of advanced satellite broadcasting services for television programmes, using the HD-MAC standard for not completely digital high-definition television transmission and the D2-MAC standard for other not completely digital transmission in the 16:9 aspect ratio format.

Article 2

1. For any transmission of a television service in the high-definition television format that is not completely digital, only the HD-MAC standard may be used.

Completely digital transmissions receivable by viewers using domestic satellite receiving equipment, even if such transmissions are intended to be redistributed by cable networks, may use only a system standardized by the European Telecommunications Standards Institute (ETSI) but are otherwise not covered by this Directive.

2. For any not completely digital transmission of a 625 line satellite television service receivable by viewers using domestic satellite receiving equipment, even if such transmissions are intended to be redistributed by cable networks:

- in respect of any service in the 16:9 aspect ratio format, only the D2-MAC standard may be used,
- in respect of any other service starting after 1 January 1995, the D2-MAC standard must be used. These services may also be transmitted simultaneously in PAL, SECAM or D-MAC. This provision will take effect only three months after adoption by the Council of a proposal from the Commission, based on the appropriate Article of the Treaty, to provide financial support for the said services.

Article 3

As regards services other than those referred to in Article 2, efforts geared to the widespread introduction up to 1 January 1995 of transmissions using the D2-MAC standard, with an increasing share of 16:9, will be made as from 1992 by means of appropriate measures. Without prejudice to Article 7, the Commission will submit proposals as from 30 June 1992, and not later than 31 December 1993, in order to implement all the appropriate measures required for the widest possible broadcasting in D2-MAC.

Article 4

Member States shall take all measures to ensure that, as from 1 January 1994, all new television sets and all new domestic satellite receivers and video-recorders for sale or rent in the Community:

- in respect of all television sets with 16:9 format, possess a D2-MAC decoder,
- in respect of all other such equipment except miniature television sets, possess at least a standardized socket as standardized by Cenelec by means of which a D2-MAC decoder may be connected to the equipment permitting an open interface standard.

Article 5

Member States shall take appropriate measures to ensure that:

- any new TV cable redistribution system, or any existing TV cable redistribution system having the necessary technical capability, shall be configured in such a way that HD-MAC signals can be transmitted through the network from head-end to individual homes,
- if cable operators decide the redistribution by cable of programmes received by them using the 16:9 aspect ratio format and the D2-MAC standard or the HD-MAC standard, operators shall distribute these programmes using the 16:9 aspect ratio format and the D2-MAC or HD-MAC standard.

Article 6

In the case of all services using the D2-MAC standard, which are encrypted and employ a conditional access system, Member States shall take all the necessary measures to ensure that only a conditional access system fully compatible with D2-MAC and standardized as such by a European standardization organization by 1 July 1993 is used.

Article 7

1. This Directive shall apply until 31 December 1998.
2. Before 1 January 1994 and every two years thereafter, the Commission shall submit to the European Parliament, to the Council and to the Economic and Social Committee a report on the effects of the application of this Directive, on the evolution of the market, in particular on market penetration measured by objective criteria, and the use of the Community funding. If necessary, the Commission shall make proposals to the Council to adapt this Directive to these developments.
3. Before 1 January 1995 the Commission shall submit, if necessary, proposals to the Council on a policy of standardization for HDTV, in accordance with the objective of achieving total harmonization of all television broadcasting media, whether analogue or digital, by satellite, cable or terrestrial redistribution. These proposals should take into account the results of European collaboration in research and development and the work of the relevant standardizing organizations in Europe and relevant interest groups.

Article 8

The rules laid down in this Directive shall be accompanied by commercial measures based on the signing, by the parties concerned, of a Memorandum of Understanding coordinating the actions of the various signatories and, where appropriate, by simultaneous measures designed to support the creation of a European market for the D2-MAC, 16:9 and HD-MAC standards.

Article 9

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than six months after the date of its notification except for the obligations in the second indent of Article 2 (2). They shall forthwith inform the Commission thereof.

2. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

3. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

Article 10

This Directive is addressed to the Member States.

Done at Brussels, 11 May 1992.

For the Council

The President

João PINHEIRO

COUNCIL DECISION

of 11 May 1992

on the introduction of a standard international telephone access code in the Community

(92/264/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the telephone service is the most important telecommunications means in the Community and easy access to international telephone services is vital for European citizens and European businesses;

Whereas at present different telephone access codes are required in the Member States for access to public international telephone services;

Whereas this situation complicates unduly use of these services in a professional or private capacity for citizens travelling in the Member States;

Whereas access to telephone services is provided for in all Member States by law, regulation, or administrative action; whereas continuing divergent developments in access to international telephone services due to different international telephone access codes must be avoided;

Whereas, therefore, the harmonization of the international telephone access code in the Community would promote the establishment and functioning of the internal market;

Whereas the European Conference of Postal and Telecommunications Administrations (CEPT) has advocated in its recommendation T/SF 1 of 1976 the use of the prefix 00 as the standard international telephone access code;

Whereas this recommendation has been followed by only six Member States;

Whereas all Member States will find it possible to devise a plan to make the 00 code available;

Whereas several Member States have already introduced 00 as the international telephone access code or could do so by the end of 1992;

Whereas the introduction of this code could cause serious difficulties for other Member States, since they would need to make unplanned changes or to advance plans already made; whereas, therefore, a certain measure of flexibility is needed in the time schedule to allow these Member States to carry out the necessary adjustments;

Whereas the introduction of the 00 code will, however, be possible by 1998, even in Member States where difficulties exist;

Whereas these Member States should, nevertheless, do their best to introduce the 00 code by a date which is as close as possible to 1992;

Whereas special arrangements for making calls between adjacent locations across borders between Member States may be established or continued,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall ensure that the 00 code is introduced in public telephone networks as the standard international telephone access code.

Article 2

The standard international telephone access code shall be introduced by 31 December 1992 at the latest, except as provided for in Article 3.

Article 3

Should a telecommunications organization in a Member State experience particular technical, financial or organizational difficulties in introducing the standard international telephone access code by the date laid down in Article 2, the Member State in question shall inform the Commission accordingly.

The Member State concerned shall communicate to the Commission, within the three months following notification of this Decision, with adequate explanations and justification, a new date for the introduction of the standard international telephone access code which, however, shall not be later than 31 December 1998.

⁽¹⁾ OJ No C 157, 15. 6. 1991, p. 6.

⁽²⁾ OJ No C 326, 16. 11. 1991, p. 120 and OJ No C 94, 13. 4. 1992.

⁽³⁾ OJ No C 269, 14. 10. 1991, p. 33.

Article 4

1. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued.

2. The telephone subscribers in the locations concerned shall be fully informed of the arrangements referred to in paragraph 1.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 11 May 1992.

For the Council

The President

João PINHEIRO

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 92/44/EEC

of 5 June 1992

on the application of open network provision to leased lines

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

rights for the provision and operation of public telecommunications networks shall take the necessary measures to make the conditions governing access to and use of the network objective and non-discriminatory and publish them; whereas it is necessary to harmonize which specifications should be published and under which form, in order to facilitate the provision of competitive services using leased lines, within Member States and between Member States, and in particular the provision of services by companies, firms or natural persons established in a Member State other than that of the company, firm or natural person for whom the services are intended;

(1) Whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision ⁽⁴⁾, provides that the Council shall adopt specific open network provision conditions for leased lines;

(2) Whereas in this Directive the concept of leased lines covers the offer of transparent transmission capacity between network termination points as a separate service and does not include on-demand switching or offers which form part of a switched service offered to the public;

(3) Whereas, in accordance with Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services ⁽⁵⁾, Member States which maintain special or exclusive

(4) Whereas, in application of the principle of non-discrimination, leased lines shall be offered and provided on request without discrimination to all users;

(5) Whereas the principle of non-discrimination as laid down in the Treaty applies to, *inter alia*, availability of technical access, tariffs, quality of service, provision time (delivery period), fair distribution of capacity in case of scarcity, repair time, availability of network information and customer proprietary information, subject to relevant regulatory provisions on data protection;

(6) Whereas a number of technical restrictions have been applied, in particular for the interconnection of leased lines among each other or for the interconnection of leased lines and public telecommunications networks; whereas such restrictions, which impede the use of leased lines for the provision of competitive services, are not justified, as they can be replaced by less restrictive regulatory measures;

⁽¹⁾ OJ No C 58, 7. 3. 1991, p. 10.

⁽²⁾ OJ No C 305, 25. 11. 1991, p. 61 and Decision of 13 May 1992 (not yet published in the Official Journal).

⁽³⁾ OJ No C 269, 14. 10. 1991, p. 30.

⁽⁴⁾ OJ No L 192, 24. 7. 1990, p. 1.

⁽⁵⁾ OJ No L 192, 24. 7. 1990, p. 10.

- (7) Whereas, in accordance with Community law, access to and use of leased lines may only be restricted in application of essential requirements as defined in this Directive and to safeguard exclusive or special rights; whereas those restrictions must be objectively justified, must follow the principle of proportionality and must not be excessive in relation to the aim pursued; whereas it is necessary to specify the application of these essential requirements in respect of leased lines;
- (8) Whereas, in accordance with Directive 90/388/EEC which does not apply to telex, mobile radiotelephony, paging and satellite services, Member States shall withdraw all special or exclusive rights for the supply of telecommunications services other than voice telephony; whereas this is the commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point;
- (9) Whereas Member States may, until the dates provided in Directive 90/388/EEC prohibit, as regards packet- or circuit-switched data services, economic operators from offering leased line capacity for simple resale to the public; whereas there should be no other restriction on the use of leased lines, in particular in respect of the transmission of signals which are not originated by the user who subscribed to the leased line offering, the transmission of signals which are not finally destined for the user who subscribed to the leased line offering, or the transmission of signals which are neither originated by nor finally destined for the user who subscribed to the leased line offering;
- (10) Whereas, in accordance with Directive 90/387/EEC, 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;
- (11) Whereas, in accordance with Directive 90/388/EEC, Member States which maintain special or exclusive rights for the provision and operation of public telecommunications networks shall ensure that those who so request can obtain leased lines within a reasonable period;
- (12) Whereas, in order to make leased lines available to a sufficient extent to users for their own use, for shared use or for the provision of services to third parties, it is necessary that Member States ensure that a harmonized set of leased lines with defined network termination points is made available in all Member States both for communications within a Member State and between Member States; whereas it is therefore necessary to determine which type of leased lines should be included in the harmonized set and within which time limit if they are not yet available; whereas given the dynamic technological development in this sector, it is necessary to establish a procedure for adjusting or enlarging such a set;
- (13) Whereas other leased lines, in addition to the harmonized minimum set, will also be provided subject to market demand and the state of public telecommunications network; whereas the other provisions of this Directive apply to these leased lines; whereas however it should be ensured that the provision of these other leased lines does not impede the provision of the minimum set of leased lines;
- (14) Whereas in conformity with the principle of separation of regulatory and operational functions and in application of the principle of subsidiarity, the national regulatory authority of each Member State will play an important role for the implementation of this Directive;
- (15) Whereas common ordering procedures, as well as one-stop ordering and one-stop billing are needed in order to encourage the use of leased lines throughout the Community; whereas any cooperation of the telecommunications organizations in that respect is subject to compliance with Community competition law; whereas, in particular, such procedures should respect the principle of cost orientation and should not result in any price fixing or market sharing;
- (16) Whereas the implementation of one-stop ordering and one-stop billing procedures by telecommunications organizations must not prevent offers by service providers other than telecommunications organizations;
- (17) Whereas, in accordance with Directive 90/387/EEC, tariffs for leased lines must be based on the following principles; they must be based on objective criteria and must follow the principle of cost-orientation, taking into account a reasonable time needed for rebalancing; they must be transparent and properly published; they must be sufficiently unbundled in accordance with the competition rules of the Treaty and they must be non-discriminatory and guarantee equality of treatment; whereas tariffs for leased lines provided by one or more telecommunications organization must be based on the same principles; whereas a favourable prejudice is given to a tariff based on a flat-rate periodic rental, except where other types of tariffs are justified by cost;

- (18) Whereas any charge for access to and use of leased lines must comply with the principles set out above and with the competition rules of the Treaty and must also take into account the principle of fair sharing in the global cost of the resources used and the need for a reasonable level of return on investment which is required for the further development of the telecommunications infrastructure ;
- (19) Whereas, in order to ensure the application of the tariff principles set out in the previous two recitals, telecommunications organizations shall use an appropriate transparent cost accounting system which can be verified by accounting experts ensuring the production of recorded figures ; whereas such requirement can be fulfilled for example by the implementation of the principle of fully distributed costing ;
- (20) Whereas to enable the Commission to monitor effectively the application of this Directive, it is necessary that Member States notify to the Commission which national regulatory authority will be responsible for its implementation and provide the relevant information requested by the Commission ;
- (21) Whereas the Committee referred to in Articles 9 and 10 of Directive 90/387/EEC should play an important role for the application of this Directive ;
- (22) Whereas disagreements between users and telecommunications organizations on the provision of leased lines will normally be solved between these parties involved ; whereas it must be possible for parties to refer their case to a national regulatory authority and the Commission in cases where this is considered necessary ; whereas this does not prejudice normal application of the procedures laid down in Articles 169 and 170 and the competition rules of the Treaty ;
- (23) Whereas a specific procedure must be established in order to examine whether, in justified cases, the time limit set out in this Directive for the provision of a minimum set of leased lines and for the implementation of an appropriate cost accounting system may be extended ;
- (24) Whereas this Directive does not apply to leased lines one network termination point of which is located outside the Community,

HAS ADOPTED THIS DIRECTIVE :

Article 1

Scope

This Directive concerns the harmonization of conditions for open and efficient access to and use of the leased lines provided to users on public telecommunications networks, and the availability throughout the Community of a minimum set of leased lines with harmonized technical characteristics.

Article 2

Definitions

1. The definitions given in Directive 90/387/EEC shall apply, where relevant, to this Directive.
2. In addition, for the purposes of this Directive,
 - *leased lines* means the telecommunications facilities provided in the context of the establishment, development and operation of the public telecommunications network, which provide for transparent transmission capacity between network termination points and which do not include on-demand switching (switching functions with the user can control as part of the leased line provision),
 - *ONP Committee* means the Committee referred to in Articles 9 and 10 of Directive 90/387/EEC,
 - *users* means end users and service providers, including telecommunications organizations where the latter are engaged in providing services which are or may be provided also by others,
 - *national regulatory authority* means the body or bodies in each Member State, legally distinct and functionally independent of the telecommunications organizations, entrusted by that Member State *inter alia* with the regulatory functions addressed in this Directive,
 - *simple resale of capacity* means the commercial provision on leased lines for the public of data transmission as a separate service, including only such switching, processing, data storage or protocol conversion as is necessary for transmission in real time to and from the public switched network,
 - *common ordering procedure* means an ordering procedure for the procurement of intra-Community leased lines which ensures that there is commonality across the telecommunications organizations in the information that has to be supplied by the user and the telecommunications organizations, and in the format in which the information is presented,

— *one-stop-ordering* is a system whereby all transactions involving a user, required for the procurement of intra-Community leased lines, supplied by more than one telecommunications organization to a single user, can be completed at one location between the user and a single telecommunications organization,

— *one-stop-billing* is a system whereby the billing and payment transaction for intra-Community leased lines supplied by more than one telecommunications organization to a single user can be completed at one location between the user and a single telecommunications organization.

Article 3

Availability of information

1. Member States shall ensure that information in respect of leased lines, offerings on technical characteristics, tariffs, supply and usage conditions, licensing and declaration requirements, and the conditions for the attachment of terminal equipment is published in accordance with the presentation given in Annex I. Changes in existing offerings shall be published as soon as possible and, unless the national regulatory authority agrees otherwise, no later than two months before the implementation.

2. The information referred to in paragraph 1 shall be published in an appropriate manner so as to provide easy access for users to that information. Reference shall be made in the national Official Journal of the Member State concerned to the publication of this information.

Member States shall notify to the Commission before 1 January 1993, and thereafter in case of any change, the manner in which the information is made available. The Commission will regularly publish reference to such notifications.

3. Member States shall ensure that information concerning new types of leased line offerings will be published as soon as possible, and no later than two months before the implementation of the offering.

Article 4

Information on supply conditions

The supply conditions to be published pursuant to Article 3 shall include at least:

- information concerning the ordering procedure
- the typical delivery period, which is the period, counted from the date when the user has made a firm request for a leased line, in which 80 % of all leased lines of the same type have been put through to the customers.

This period will be established on the basis of the actual delivery periods of leased lines during a recent time interval of reasonable duration. The calculation

must not include cases where late delivery periods were requested by users. For new types of leased lines a target delivery period shall be published instead of the typical delivery period,

- the contractual period, which includes the period which is in general foreseen for the contract and the minimum contractual period which the user is obliged to accept,
- the typical repair time, which is the period, counted from the time when a failure message has been given to the responsible unit within the telecommunications organization up to the moment in which 80 % of all leased lines of the same type have been re-established and in appropriate cases notified back in operation to the users. For new types of leased lines a target repair time period shall be published instead of the typical repair time. Where different classes of quality of repair are offered for the same type of leased lines, the different typical repair times shall be published,
- any refund procedure.

Article 5

Conditions for the termination of offerings

Member States shall ensure that existing offerings continue for a reasonable period of time, and that termination of an offering can be done only after consultation with users affected. Without prejudice to other rights of appeal provided for by national laws, Member States shall ensure that users can bring the case before the national regulatory authority where the users do not agree with the termination date as envisaged by the telecommunications organization.

Article 6

Access conditions, usage conditions and essential requirements

1. Without prejudice to Articles 2 and 3 of Directive 90/388/EEC, Member States shall ensure that when access to and usage of leased lines is restricted, these restrictions are aimed only at ensuring compliance with the essential requirements, compatible with Community law, and are imposed by the national regulatory authorities through regulatory means.

No technical restrictions shall be introduced or maintained for the intercommunication of leased lines and public telecommunications networks.

2. Where access to and use of leased lines are restricted on the basis of essential requirements, Member States shall ensure that the relevant national provisions identify which of the essential requirements listed in paragraph 3 are the basis of such restrictions.

3. The essential requirements specified in Article 3 (2) of Directive 90/387/EEC shall apply to leased lines in the following manner:

(a) *Security of network operations*

A telecommunication organization may take the following measures in order to safeguard the security of network operations during the period when an emergency situation prevails:

- the interruption of the service,
- the limitation of service features,
- the denial of access to the service.

An emergency situation in this context means an exceptional case of *force majeure*, such as extreme weather, flood, lightning or fire, industrial action or lockouts, war, military operations, or civil disorder.

In an emergency situation the telecommunications organization shall make every endeavour to ensure that service is maintained to all users. The Member States shall ensure that the telecommunications organization immediately notifies to the users and to the national regulatory authority the beginning and the end of the emergency as well as the nature and extent of temporary service restrictions;

(b) *Maintenance of network integrity*

The user has the right to be provided with a fully transparent service, in conformity with the specifications of the network termination point, which he can use in an unstructured manner as he wants, e.g. where no channel allocations are forbidden or prescribed. There shall be no restrictions on the use of leased lines on the ground of the maintenance of network integrity, as long as the access conditions related to terminal equipment are fulfilled;

(c) *Interoperability of services*

Without prejudice to the application of Article 3 (5) and Article 5 (3) of Directive 90/387/EEC, the use of a leased line shall not be restricted on the grounds of the interoperability of services, when the access conditions related to terminal equipment are fulfilled;

(d) *Protection of data*

In respect of data protection, Member States may restrict the use of leased lines only to the extent necessary to ensure compliance with relevant regulatory provisions on the protection of data including protection of personal data, the confidentiality of information transmitted or stored, as well as the protection of privacy compatible with Community law.

4. Access conditions related to terminal equipment

Access conditions related to terminal equipment are considered to be fulfilled when the terminal equipment

complies with the approval conditions set out for its connection to the network termination point of the type of leased line concerned, in accordance with Directive 91/263/EEC⁽¹⁾.

In the case where a user's terminal equipment does not comply or no longer complies with these conditions, the provision of the leased line may be interrupted until the terminal is disconnected from the network termination point.

Member States shall ensure that the telecommunications organization immediately informs the user about the interruption, giving the reasons for the interruption. As soon as the user has ensured that the non-complying terminal equipment is disconnected from the network termination point, the provision of the leased line shall be restored.

Article 7

Provision of a minimum set of leased lines in accordance with harmonized technical characteristics

1. Member States shall ensure that the respective telecommunications organizations separately or jointly provide a minimum set of leased lines in accordance with Annex II, in order to guarantee a harmonized offering throughout the Community.

2. Where leased lines which implement the standards listed in Annex II are not yet available, Member States shall take the necessary measures to ensure that these types of leased lines will be implemented by the date resulting from the application of Article 15.

3. The modifications necessary to adapt Annex II to new technical developments and to changes in market demand, including the possible deletion of certain types of leased lines from the Annex, shall be adopted by the Commission under the procedure provided for in Article 10 of Directive 90/387/EEC, taking into account the state of development of national networks.

4. The provision of other leased lines beyond the minimum set of leased lines which must be provided by Member States shall not impede the provision of this minimum set of leased lines.

⁽¹⁾ Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity (OJ No L 128, 23. 5. 1991, p. 1).

*Article 8***Control by the national regulatory authority**

1. Member States shall ensure that the national regulatory authority lays down the procedures whereby it decides, on a case-by-case basis and in the shortest time period, to allow or not telecommunications organizations to take measures such as the refusal to provide a leased line, the interruption of the provision of leased lines or the reduction of the availability of leased line features for reasons of alleged failure to comply with the usage conditions by users of leased lines. These procedures may also foresee the possibility for the national regulatory authority to authorize, a priori, specified measures in the case of defined infringements of usage conditions.

Member States shall ensure that these procedures provide for a transparent decision-making process in which due respect is given to the rights of the parties. The decision shall be taken after having given the opportunity to both parties to state their case. The decision shall be motivated and notified to the parties within one week of its adoption: it shall not be enforced before its notification.

This provision shall not prejudice the right of the parties concerned to apply to the courts.

2. The national regulatory authority shall ensure that telecommunications organizations adhere to the principle of non-discrimination when they make use of the public telecommunications network for providing services which are or may be provided also by other service providers. When telecommunications organizations use leased lines for the provision of services not covered by special and/or exclusive rights, the same type of leased lines must be provided to other users on request and under equal conditions.

3. Where, in response to a particular request, a telecommunications organization considers it unreasonable to provide a leased line under its published tariffs and supply conditions, it must seek the agreement of the national regulatory authority to vary those conditions in that case.

*Article 9***Common ordering and billing procedures**

1. Member States shall encourage the establishment, by 31 December 1992 at the latest, in conformity with the

procedural and substantive rules of competition of the Treaty and in consultation with users, of:

- a common ordering procedure for leased lines throughout the Community,
- a one-stop-ordering procedure for leased lines, to be applied where requested by the user,
- a one-stop-billing procedure for leased lines, to be applied where requested by the user. The procedure shall foresee that all price elements resulting from the national leased lines and the respective parts of international leased lines provided by the telecommunications organizations involved are identified separately in the bill for the user.

2. Member States shall report to the Commission one year after this Directive is brought into effect on the results achieved with respect to the procedures provided for in paragraph 1. These results shall be examined by the ONP Committee.

*Article 10***Tariffing principles and cost accounting**

1. Member States shall ensure that tariffs for leased lines follow the basic principles of cost orientation and transparency in accordance with the following rules:

- (a) tariffs for leased lines shall be independent of the type of application which the users of the leased lines implement;
- (b) tariffs for leased lines shall normally contain the following elements:
 - an initial connection charge,
 - a periodic rental charge, i.e. a flat-rate element.
 When other tariff elements are applied, these must be transparent and based on objective criteria;
- (c) tariffs for leased lines apply to the facilities provided between network termination points at which the user has access to the leased lines.

For leased lines provided by more than one telecommunications organization, half-circuit tariffs, i.e. from one network termination point to a hypothetical mid-circuit point, can be applied.

2. Member States shall ensure that their telecommunications organizations formulate and put in practice, by 31 December 1993 at the latest, a cost accounting system suitable for the implementation of paragraph 1.

Without prejudice to the last subparagraph, the system referred to in the first subparagraph shall include the following elements:

- (a) the costs of leased lines shall in particular include the direct costs incurred by the telecommunications organizations for setting up, operating and maintaining leased lines, and for marketing and billing of leased lines;
- (b) common costs, that is costs which can neither be directly assigned to leased lines nor to other activities, are allocated as follows:
 - (i) whenever possible, common cost categories shall be allocated based upon direct analysis of the origin of the costs themselves;
 - (ii) when direct analysis is not possible, common cost categories shall be allocated based upon an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible. The indirect linkage shall be based on comparable cost structures;
 - (iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated based upon a general allocator computed by using the ratio of all expenses directly assigned or allocated to, on the one hand, services which are provided under special or exclusive rights and, on the other hand, to other services.

After 31 December 1993, other cost accounting systems may be applied only if they are suitable for the implementation of paragraph 1 and have as such been approved by the national regulatory authority for application by the telecommunications organization, subject to the Commission being informed prior to their application.

3. The national regulatory authority shall keep available, with an adequate level of detail, information on the cost accounting systems applied by the telecommunications organizations pursuant to paragraph 2. It shall submit this information to the Commission on request.

Article 11

Notification and reporting

1. Member States shall notify before 1 January 1993 to the Commission their national regulatory authority as defined in Article 2, fourth indent.
2. The national regulatory authority shall make available statistical reports showing the performance in relation to the supply conditions, in particular with respect to delivery time and repair time, published in accordance with Article 3 at least for each calendar year. The reports shall be sent to the Commission no later than five months after the end of the annual reporting period.

The national regulatory authority shall keep available and submit to the Commission on request the data on cases

where the access to or use of leased lines has been restricted, in particular because of alleged infringements of special or exclusive rights or the prohibition of simple resale of capacity, as well as details of the measures taken, including their motivation.

Article 12

Conciliation procedure

Without prejudice to:

- (a) any action that the Commission or any Member State might take pursuant to the Treaty, and in particular Articles 169 or 170 thereof;
- (b) the rights of the person invoking the procedure in paragraphs 1 to 5 of this Article of the telecommunications organizations concerned or any other person under applicable national law, except in so far as they enter into an agreement for the resolution of issues between them;

the following conciliation procedure shall be available to the user:

1. Any user complaining that he has been or may be injured by the infringement of the provisions of this Directive, particularly regarding intra-Community leased lines, shall have the right to appeal to the national regulatory authority or authorities.
2. Where agreement cannot be reached at a national level, the aggrieved party may invoke the procedure provided for in paragraphs 3 and 4, by way of a written notification to the national regulatory authority and the Commission.
3. Where the national regulatory authority or the Commission finds that there is a case for further examination, following a notification based on paragraph 2, it can refer it to the Chairman of the ONP Committee.
4. In the case referred to in paragraph 3, the Chairman of the ONP Committee shall initiate the procedure described below if he is satisfied that all reasonable steps have been taken at a national level:
 - (a) the Chairman of the ONP Committee shall convene as soon as possible a working group including at least two members of the ONP Committee and one representative of the national regulatory authorities concerned and the Chairman of the ONP Committee or another official of the Commission appointed by him. The working group shall normally meet within 10 days of the meeting being convened. The Chairman may decide, upon proposal of any of the members of the working group, to invite a maximum of two other persons as experts to advise it.

- (b) the working group shall give the party invoking this procedure, the national regulatory authorities of the Member States, and the telecommunications organizations involved the opportunity to present their opinions in oral or written form;
 - (c) the working group shall endeavour to reach agreement between the parties involved. The Chairman shall inform the ONP Committee of the results of this procedure.
5. The party invoking the procedure referred to in this Article shall bear its own costs of participating in this procedure.

Article 13

Deferment of certain obligations

1. When a Member State is not able to or can foresee that it will not be able to fulfil the requirements of Article 7 (1) or (2) or Article 10 (1) or (2), it shall notify the Commission of the reasons.
2. Deferment of the obligations under Article 7 (1) or (2) can be accepted only in cases where the Member State concerned can prove that the actual state of development of its public telecommunications network or the conditions of demand are such that the obligations under Article 7 would impose an excessive burden on the telecommunications organization in that Member State.
3. Deferment of the obligations under Article 10 (1) or (2) can be accepted only in cases where the Member State concerned can prove that the fulfilment of the requirements would impose an excessive burden on the telecommunications organization in that Member State.
4. The Member State shall inform the Commission of the date by which the requirements can be met and of the measures envisaged in order to meet this deadline.
5. When the Commission receives a notification in accordance with paragraph 1, it shall inform the Member State whether it deems that the particular situation of the Member State concerned justifies, on the basis of criteria set out in paragraphs 2 and 3, a deferment for this Member State of the application of Article 7 (1) or (2) of

Article 10 (1) or (2) and until which date such deferment is justified.

6. No deferment can be granted in application of paragraph 2 where the non-compliance with Article 7 results from activities of telecommunications organizations of the Member State concerned in competitive areas within the meaning of Community law.

Article 14

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than three years after this Directive is brought into effect. The report shall be based *inter alia* on the information provided by the Member States to the Commission and to the ONP Committee. Where necessary, further measures can be proposed in the report for the full implementation of the aims of the Directive.

Article 15

1. Member States shall take the measures necessary to comply with this Directive before 5 June 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

Article 16

This Directive is addressed to the Member States.

Done at Luxembourg, 5 June 1992.

For the Council

The President

Joaquim FERREIRA DO AMARAL

ANNEX I.**PRESENTATION OF THE INFORMATION TO BE PROVIDED IN RESPECT OF LEASED LINES IN ACCORDANCE WITH ARTICLE 3 (1)**

The information referred to in Article 3 (1) of this Directive shall follow the presentation given below:

A. Technical characteristics

The technical characteristics include the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point, without prejudice to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾. Clear reference shall be made to the standards implemented.

B. Tariffs

The tariffs include the initial connection charges, the periodic rental charges, and other charges. Where tariffs are differentiated, e.g. for reasons of different levels of quality of service or the number of leased lines provided to a user (bulk provision), this must be indicated.

C. Supply conditions

The supply conditions include at least the elements defined in Article 4 (1).

D. Licensing requirements

The information on licensing requirements, licensing procedures and/or licensing conditions provides a complete overview of all factors which have an impact on the usage conditions set out for leased lines. It shall include the following information, where applicable:

1. a clear description of the service categories for which the licensing procedures have to be followed and for which the licensing conditions have to be met by the user of the leased line or by his customers;
2. information on the character of the licensing conditions, in particular whether such licence is of a general nature which does not require individual registration and/or authorization, or whether the licensing conditions require registration and/or authorization on an individual basis;
3. a clear indication of the validity in time of the licence, including a review date, where applicable;
4. the conditions resulting from the application of the essential requirements in conformity with Article 6;
5. other obligations which the Member States may impose on the users of leased lines in accordance with Directive 90/388/EEC as regards packet- or circuit-switched data services, requiring the adherence to conditions of permanence, availability, or quality of service;
6. a clear reference to conditions aiming at the enforcement of the prohibition to provide services for which exclusive and/or special rights have been maintained by the Member State concerned in conformity with Community law;
7. a list referring to all documents containing licensing conditions which the Member State imposes on the users of leased lines when these are using leased lines for the provision of services to others.

E. Conditions for the attachment of terminal equipment

The information on the attachment conditions includes a complete overview of the requirements which terminal equipment to be attached to the relevant leased line has to fulfil in accordance with Directive 91/263/EEC.

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8. Directive last amended by Commission Decision 90/230/EEC (OJ No L 128, 18. 5. 1990, p. 15).

ANNEX II

DEFINITION OF A MINIMUM SET OF LEASED LINES WITH HARMONIZED TECHNICAL CHARACTERISTICS, IN ACCORDANCE WITH ARTICLE 7, TO BE PROVIDED AS SOON AS POSSIBLE AND NOT LATER THAN THE DATE ON WHICH THIS DIRECTIVE IS BROUGHT INTO EFFECT

Leased line type	Technical characteristics (*)	
	Interface specifications	Performance specifications
Ordinary quality voice bandwidth	2 or 4 wire analogue	CCITT M. 1040
Special quality voice bandwidth	2 or 4 wire analogue	CCITT M. 1020/M. 1025
64 kbit/s digital	CCITT G. 703 (*)	Relevant CCITT G. 800 series recommendations
2 048 kbit/s digital unstructured	CCITT G. 703	Relevant CCITT G. 800 series recommendations
2 048 kbit/s digital structured	CCITT G. 703 and G. 704 (excluding section 5) (*)	Relevant CCITT G. 800 series recommendations In-service monitoring (*)

(*) The CCITT recommendations referenced refer to the 1988 version. ETSI has been requested to carry out further work on standards for leased lines.

(*) The majority of applications are converging towards the G. 703 specification. For an interim period, leased lines may be provided using other interfaces, based on X.21 or X.21 (a), instead of G. 703.

(*) With cyclic redundancy checking in accordance with CCITT G. 706.

(*) In-service monitoring can facilitate improved maintenance by the telecommunications organization.

For the types of leased lines listed above, the specifications referred to also define the network termination points (NTPs), in accordance with the definition given in Article 2 of Directive 90/387/EEC.

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 5 June 1992

on the development of the integrated services digital network (ISDN) in the Community as a European-wide telecommunications infrastructure for 1993 and beyond

(92/C 158/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Whereas Council recommendation 86/659/EEC (*) calls for the coordinated introduction of the integrated services digital network (ISDN) in the European Community;

Whereas Council resolution 89/196/04 (**) calls for the availability of a set of European-wide compatible ISDN offerings to be implemented in the context of a Memorandum of Understanding (MoU) between the public telecommunication network operators;

Whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (**) calls upon the Council to adopt a specific recommendation on ISDN; whereas Council recommendation 92/.../EEC (*) invites Member States to implement on their territory harmonized access arrangements and a minimum set of offerings, which will therefore have a significant impact on the development of ISDN;

Whereas the European Council agreed at Maastricht on the importance of trans-European networks, including in the field of telecommunications, where ISDN may play an important role as an advanced network;

Whereas the Commission's 'Third Annual Progress Report on the coordinated introduction of ISDN in the European Community' establishes the status of the implementation of ISDN in the Member States;

Whereas the same report proposes to focus the efforts for the coordinated introduction of ISDN in the Community on the implementation of the Euro-ISDN (*),

RECOGNIZES:

1. the role which the availability of a coherent set of harmonized ISDN standards plays as an important prerequisite for the implementation of the Euro-ISDN and the significant progress which the European Telecommunications Standards Institute (ETSI) has made in this area;
2. the efforts already undertaken by the public telecommunications network operators within the framework of the Memorandum of Understanding on ISDN;
3. the importance of developing ISDN in the context of trans-European networks;

CONSIDERS THE FOLLOWING MEASURES AS NECESSARY:

4. to finalize and adopt the Euro-ISDN standards as a highest priority for ETSI, taking into account the subsequent adoption by the Community of appropriate common technical regulations in this area;

(*) OJ No L 382, 31. 12. 1989, p. 36.

(**) OJ No C 196, 1. 8. 1989, p. 4.

(**) OJ No L 192, 24. 7. 1990, p. 1.

(*) Not yet published in the Official Journal.

(*) The term Euro-ISDN is used to address an ISDN implementation fully based on harmonized European standards and in accordance with the Memorandum of Understanding on ISDN.

5. to continue with the coordination of the introduction of ISDN within the Community and to focus these efforts on the rapid introduction of the Euro-ISDN;

6. to promote Euro-ISDN at a world-wide level;

INVITES THE PUBLIC TELECOMMUNICATIONS NETWORK OPERATORS TO:

7. develop, harmonize to the extent suitable and publish migration plans from currently existing ISDN offerings to the Euro-ISDN, taking into account technical and commercial issues;

8. examine further harmonization in respect of the introduction and integration of packet-switched services in the context of ISDN;

9. study the feasibility of an alignment of the national ISDN signalling systems;

10. contribute, in cooperation with the other interested parties, to the identification of cross border-communication requirements arising from the completion of the internal market and the specific role which ISDN can play in that area;

11. collaborate with third countries network operators on interconnection experiments;

INVITES THE COMMISSION AND THE PUBLIC TELECOMMUNICATIONS NETWORK OPERATORS TO:

12. proceed, with appropriate consultations with users and manufacturers, to review the progress on implementing Euro-ISDN;

INVITES THE MEMBER STATES TO:

13. encourage the rapid introduction of Euro-ISDN, taking into account the application of the open network provision (ONP) principles in this area;

INVITES THE COMMISSION TO:

14. intensify consultations and develop appropriate initiatives concerning the implementation of ISDN, taking into account the general framework of trans-European networks;

15. continue to promote the identification of user requirements in the context of the European ISDN User Forum (EIUF);

16. identify and promote the application of ISDN communication means for small and medium-sized enterprises, in particular for transnational applications, in the context of the internal market;

17. promote a European-wide ISDN terminal market, in particular by the development of appropriate standards ensuring interoperability and interchangeability;

18. analyse the possibilities for a specific support to the introduction of Euro-ISDN in the less-favoured regions.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 5 June 1992

on the harmonized provision of a minimum set of packet-switched data services (PSDS) in accordance with open network provision (ONP) principles

(92/382/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (1),

Having regard to the proposal from the Commission,

Whereas Council Directive 90/387/EEC considers, *inter alia*, the principles for the application of open network provision (ONP) to the areas of packet and circuit-switched data services;

Whereas Directive 90/387/EEC provides in point 3 of Annex III for the adoption of a recommendation on the supply of technical interfaces, conditions of usage and tariff principles applying to the provision of packet-switched data services (PSDS) complying with open network principles;

Whereas packet-switched public data networks are the most common networks through which packet-switched data services (PDS) are made available in all Member States;

Whereas packet-switched public data networks have developed on a national basis and the availability in each Member State of packet-switched public data networks with equivalent capabilities and providing full interconnectivity is important to meet the requirements of pan-European data networking for value-added services provision;

Whereas PSDSs are important in supporting value added services at a European-wide level;

Whereas Directive 90/387/EEC calls for the availability in each Member State of a harmonized PSDS;

Whereas Member States should notify to the Commission those organizations whose provision of PSDSs enables Member States to comply with the provisions of point 3 of Annex III to Council Directive 90/387/EEC; whereas other organizations may offer PSDSs in accordance with this recommendation;

Whereas, pursuant to the principle of non-discrimination, PSDSs shall be available and provided on request without discrimination to all users; whereas, therefore, the terms and conditions which apply to telecommunication organizations when using PSDSs for the provision of services for which no special or exclusive rights may be maintained should be equivalent to the terms and conditions which apply to other users;

Whereas, in accordance with Directive 90/387/EEC, the conditions of ONP may not restrict access to and use of PSDSs except in the application of essential requirements as defined in the said Directive; whereas these restrictions must be objectively justified, follow the principle of proportionality and not be excessive in relation to the aim pursued;

Whereas, in accordance with Article 3 (5) of Directive 90/387/EEC, the Commission will determine the rules for uniform application of the essential requirements in accordance with the procedure laid down in Article 10 of that Directive;

Whereas usage conditions for PSDSs must be derived from essential requirements compatible with Community law and

(1) OJ No L 192, 24. 7. 1990, p. 1.

are to be imposed through regulatory means and not through technical restrictions;

Whereas, in accordance with Commission Directive 90/388/EEC ⁽¹⁾, Member States may make the supply of packet- or circuit-switched data services subject to licensing or declaration procedures which are aimed at compliance with essential requirements, or trade regulations relating to conditions of permanence, availability and quality of service, or measures to safeguard the task of general economic interest which they have entrusted to a telecommunications organization for the provision of switched data services, if the performance of that task is likely to be obstructed by the activities of private service providers;

Whereas, in accordance with Directive 90/387/EEC, the Commission has published in the *Official Journal of the European Communities* ⁽²⁾ the list of packet-switched public data networks standards suitable for ONP; this list may be amended by further publication;

Whereas common ordering procedures, one-stop-ordering and one-stop billing and maintenance are desirable in order to encourage the use of PSDSs and the development of competition in the provision of value added services throughout the Community and have been requested by users; whereas any cooperation between organizations in that area is subject to compliance with Community competition law; whereas, in particular, such procedures should not result in price fixing or market sharing; whereas, these procedures are to be established through commercial arrangements, e.g. through memoranda of understanding;

Whereas the implementation of one-stop ordering and one-stop billing procedures by telecommunications organizations must not prevent offers by service providers other than telecommunications organizations;

Whereas, in order to promote European-wide operation by service providers using PSDSs, it is desirable to allow for a system where the called party pays for the calls on the basis of the number called, allowing the offering of free-of-charge calls to the subscriber accessing the service offered by the provider (green number type arrangements);

Whereas, in order to promote the use of PSDSs by small- and medium-size providers of value-added services, it is desirable that billing arrangements which facilitate such operations across the Community are established; whereas such billing arrangements should allow for a system where the cost of the value-added service and the cost of the call are combined in a single bill collected by the organization supplying PSDSs ('kiosk type arrangement');

Whereas it is important in this context that appropriate allocation of harmonized numbering capacity is made to allow the establishment of such service arrangements across

the Community; whereas such allocation should be made in accordance with the principles of transparency and equal treatment;

Whereas quality of service as perceived by the users is an essential aspect of packet-switching; whereas information for users should allow for a comparison between achieved performance and typical or target values;

Whereas, in accordance with Directive 90/387/EEC, tariffs must be based on objective criteria, taking into account that, in a competitive environment, tariffs will align with cost; whereas they must be transparent and properly published and sufficiently unbundled in accordance with the competition rules of the Treaty; whereas they must be non-discriminatory and must guarantee equal treatment;

Whereas Member States may restrict use and provision of PSDSs to the extent necessary to ensure compliance with the regulations on the protection of data, including protection of personal data, the confidentiality of information transmitted or stored and the protection of privacy compatible with Community law;

Whereas other offerings provided by organizations supplying PSDSs in addition to those provided in accordance with the provisions of this recommendation shall not impede the provision of the minimum set;

Whereas, in accordance with the principle of separation of regulatory and operational functions and pursuant to the principle of subsidiarity, the national regulatory authority of each Member State should play an important role in the application of this recommendation;

Whereas, to enable the Commission to monitor effectively the application of this recommendation, it is necessary that Member States provide the relevant information requested by the Commission;

Whereas the Committee referred to in Articles 9 and 10 of Directive 90/387/EEC should play an important role in the application of this recommendation,

HEREBY RECOMMENDS:

1. That Member States ensure that on their territory a minimum set of packet-switched data services (PSDSs) with harmonized technical characteristics in accordance with Annex I is provided, taking into account market demand.
2. That modifications necessary to adapt Annex I to new technical developments and to changes in market demand be determined by the Commission in accordance with the procedure laid down in Article 10 of Directive 90/387/EEC, taking into account the state of development of the national networks.

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 10.

⁽²⁾ OJ No C 327, 29. 12. 1990, p. 19. List of standards reference — Packet-switched public data networks.

3. That Member States take the necessary steps so that, in respect of the PSDSs provided in accordance with point 1, information is published on technical characteristics, supply and usage conditions, tariffs, licensing and/or declaration conditions and the conditions for the attachment of terminal equipment, in accordance with the presentation given in Annex II.

4. That the supply conditions referred to in point 3 include at least:

- information concerning the ordering procedure,
- the typical delivery periods, which are the periods counted from the date when the user has made a firm request for the service in question and in which 80 % of the requests for each type of PSDSs have been put through to the users.

Each period will be established on the basis of the actual delivery periods for each type of PSDSs during a recent time interval of reasonable duration. The calculation must not include cases where late delivery periods were requested by users. For new types of PSDSs, a target delivery period shall be published in place of the typical delivery period,

- contractual periods, which include periods generally prescribed for contracts and the minimum contractual periods which the user is obliged to accept for each type of PSDSs,
- typical repair times, which are the periods, counted from the time when a failure message has been given to the responsible unit within the organization supplying PSDSs up to the moment in which 80 % of all PSDSs of the same type have been re-established and, in appropriate cases, notified as back in operation to the users. For new types of PSDSs a target repair time period shall be published in place of the typical repair time. Where different classes of quality of repair are offered for the same type of PSDSs, the different typical repair times shall be published,
- any refund procedure.
- target values for the indicators of quality of service established in accordance with point 6.

5. That Member States, taking into account the work of the European Conference on Postal and Telecommunications Administrations (CEPT)⁽¹⁾, encourage the establishment, in accordance with the procedural and substantive rules of competition of the Treaty and in consultation with users, of harmonized

procedures for user access to PSDSs, provided in accordance with the provisions of this recommendation, in particular via the establishment of the following procedures:

- a common ordering procedure for PSDSs throughout the Community, i.e. an ordering procedure for the procurement of intra-Community PSDSs which ensures that there is commonality, across the organizations supplying PSDSs, in the information which has to be supplied by the user and the organization supplying PSDSs and the format in which the information is presented,
- a one-stop ordering procedure for PSDSs, to be applied where requested by the user, i.e. a system whereby all transactions involving a user which are required for the procurement of intra-Community PSDSs supplied by more than one organization to a single user can be completed at one location between the user and a single organization supplying PSDSs,
- a one-stop-billing procedure for PSDSs, to be applied where requested by the user, i.e. a system whereby the billing and payment transaction for intra-Community PSDSs supplied by more than one organization to a single user can be completed at one location between the user and a single organization supplying PSDSs, and
- a one-stop-maintenance procedure for PSDSs, to be applied where requested by the user, i.e. a system whereby the reporting of faults for intra-Community PSDSs supplied by more than one organization to a single user can be done at one location between the user and a single organization supplying PSDSs, which will coordinate the restoration of services.

The inclusion of the provision of Community-wide charging and billing procedures, allowing notably facilities which enable the called party to pay for the calls⁽²⁾ or the combination in a single bill for the charge for the calls and the charge for the value-added service used⁽³⁾, is to be envisaged, taking into account its technical and administrative feasibility and commercial viability.

These harmonized procedures are to be established through commercial arrangements, e.g. through memoranda of understanding.

6. That common indicators and common measurement methods be adopted for the network performance aspects of the quality of service by organizations

⁽¹⁾ One-stop shopping service Specific Schedule for PSPDN, CAC October 1990.

⁽²⁾ Green number type arrangements.

⁽³⁾ Kiosk type arrangements.

supplying PSDSs in accordance with this recommendation, notably for those indicators in Annex III, in order to allow for the determination of a representative sample of the performance of the PSDSs as well as the statistical end-to-end performance achieved by the network as a whole.

7. That national regulatory authorities take the necessary steps so that annual statistical information showing achieved performance in relation to the quality of service indicators identified in Annex III is made publicly available.

The first annual period should run from 1 January to 31 December 1995.

8. That tariffs be transparent, based on objective criteria and independent of the type of application implemented by the users of the PSDSs, where the same type of offerings is used.
9. That tariffs for PSDSs normally contain the following elements:
- an initial connection charge,
 - a periodic rental charge,
 - a usage charge,

Where other tariff elements are applied, these must be in accordance with point 8.

10. That Member States inform the Commission before 31 December 1992 of those organizations whose provision of PSDSs enables Member States to comply with the provisions of point 3 of Annex III to Council Directive 90/387/EEC and, thereafter, of any changes to this information.

11. That national regulatory authorities prepare annual summary reports in particular with regard to the availability of PSDSs provided in accordance with point 1 of this recommendation. These summary reports should be sent to the Commission no later than five months after the end of each calendar year, this requirement being reviewed by the Commission in consultation with the ONP Committee in accordance with Article 9 of Directive 90/387/EEC during 1995. The Commission will transmit these summary reports to the ONP Committee.
12. That national regulatory authorities keep available and submit to the Commission on request data on the application of the supply conditions under points 3 and 4 and the statistical information under point 7.
13. That national regulatory authorities establish simple procedures for users of PSDSs which may be invoked in the event of any difficulties encountered in relation to the application of this recommendation.
14. That the Commission, in consultation with the ONP Committee, examine the results of the application of this recommendation, with a view to the fulfilment of the objectives of Directive 90/387/EEC, on the basis of the summary reports provided under point 11.

Done at Luxembourg, 5 June 1992.

For the Council

The President

Joãoquim FERREIRA DO AMARAL

ANNEX I

DEFINITION OF A COMMUNITY-WIDE MINIMUM SET OF PACKET-SWITCHED DATA SERVICES
WITH HARMONIZED TECHNICAL CHARACTERISTICS IN ACCORDANCE WITH POINT 1 AND
RECOMMENDED TIMETABLE FOR THEIR AVAILABILITY

A. GENERAL CONSIDERATIONS

The recommendation aims at the harmonized provision by the organizations notified in accordance with point 10 of a minimum set of PSDSs in accordance with open network provision principles to users in order to facilitate the development of European-wide services.

These services should:

- (i) be made available on an adequately unbundled basis in order to give users maximum flexibility;
- (ii) be structured in the following way (on a service basis):
 - ONP core offering:
 - access/feature set(s) which must be offered by all the networks,
 - user selects (one) set in order to have the basic service,
 - set to be tariffed as a bundle.
 - ONP user options:
 - feature offered by all networks on an individual basis,
 - feature which may be selected by user,
 - may in specific cases substitute core offerings features;
- (iii) take into account technological development and the growth in availability of features not considered in the proposed service.

B. STANDARDS TO BE UTILIZED

The standards applicable for this minimum set of PSDSs with harmonized technical characteristics are in particular those in the indicative list of packet-switched public data networks standards suitable for ONP published in the *Official Journal of the European Communities*, in accordance with the procedure in Article 5 (1) of Directive 90/387/EEC. The initial indicative list of PSDS standards suitable for ONP already published in the *Official Journal of the European Communities* will be amended/updated by further publication in the *Official Journal of the European Communities*.

C. TECHNICAL CHARACTERIZATION OF EACH SERVICE AND RECOMMENDED TIMETABLE FOR IMPLEMENTATION

C.1. Offerings to be provided at the latest by 31 December 1992

SERVICE	OFFERING
X.25	<p>CORE OFFERING</p> <p>access link data rates: 2 400, 4 800, 9 600 bit/s</p> <p>layer 3 for VC (one logical channel)</p> <p>USER OPTIONS</p> <p>additional logical channels at least to a total of 32 for 9 600 bit/s</p> <p>options indicated (*) in CEPT T/TE 08-02 (*) as E or EA</p>

SERVICE	OFFERING
X.28 ⁽¹⁾ dial-in only	<p>CORE OFFERING</p> <p>access link data rate 300 bit/s (V.21 modem), 1 200 bit/s (V.22 modem)</p> <p>X.28 standard terminal profiles</p> <p>USER OPTIONS</p> <p>NUI</p> <p>additional standardized profiles selection (*)</p> <p>reverse charging (*)</p>
X.32 Unidentified service	<p>CORE OFFERING</p> <p>for national use at least one of the two sets:</p> <ol style="list-style-type: none"> 1. 2 400 bit/s (V.22 bis or V.32 modem) 2. 4 800, 9 600 bit/s (V.32 modem) <p>one or more logical channels</p> <p>reverse charging</p> <p>VC operation</p>
X.32 Identified service dial-in only	<p>CORE OFFERING</p> <p>data rates and modems as per unidentified case</p> <p>identification by NUI or XID</p> <p>support of DTEs as per unidentified case</p> <p>one or more logical channels, VC operation</p>

(1) Except: Call redirection within a network with the same DNIC
International use of CUG facilities
International use of reverse charging facilities
Hunt group
Called line address modified notification
Extended interrupt
CCITT specified DTE facilities

(2) Interworking aspects of packet-switched public data networks.

(3) The X.28 messages are not intended for automatic DTE operation and as a consequence may be nationally dependent. The progressive implementation of X.3 (1988) and X.28 (1988) will allow to set an X.3 parameter to determine whether CCITT standardized or national messages shall be used at the interface.

(*) For national use.

C.2. Offerings to be provided in addition to those in C.1 at the latest by 30 June 1993

SERVICE	OFFERING
X.25	<p>CORE OFFERING</p> <p>access link data rate 48 000 bit/s or 64 000 bit/s</p> <p>USER OPTIONS</p> <p>additional logical channels at least to a total of 128 for 48 000 or 64 000 bit/s</p> <p>Hunt group</p> <p>call redirection within a network with the same DNIC</p> <p>extended interrupt</p> <p>CCITT specified DTE facilities</p> <p>intra-community use of CUG facilities</p> <p>called line address modified notifications</p>

C.3. Offerings to be provided in addition to those in C.1 and C.2 at the latest by 31 December 1993

SERVICE	OFFERING
X.25	<p>USER OPTIONS</p> <p>intra-community use of reverse charging facilities</p>
X.28 dial-in only	<p>CORE OFFERING</p> <p>access link data rate: 2 400 bit/s (V.22 bis modem)</p> <p>USER OPTIONS</p> <p>intra-community use of reverse charging facilities</p>
X.32 Unidentified service	<p>CORE OFFERING</p> <p>intra-community use of the service</p>

ANNEX II

PUBLICATION PRESENTATION FOR THE INFORMATION TO BE PROVIDED IN RESPECT OF
PACKET-SWITCHED DATA SERVICES IN ACCORDANCE WITH POINT 3

The information referred to in point 3 of the recommendation should follow the presentation given below.

A. TECHNICAL CHARACTERISTICS

The technical characteristics include the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point, without prejudice to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾. Clear reference shall be made to the standards implemented.

B. SUPPLY CONDITIONS

The supply conditions include at least the elements identified in point 4.

C. USAGE CONDITIONS

The conditions resulting from the application of essential requirements.

D. TARIFFS

In accordance with point 9, tariffs will normally include an initial connection charge, a periodic rental charge and a usage charge. Usage charge will normally include:

- (a) a fixed per-call charge, based either on a minimum time and/or volume charge or on a call set-up charge;
- (b) a volume related charge based on the use of an integral number of segments⁽²⁾,
- (c) a duration charge based on time intervals sufficiently short to avoid discrimination against short-type transactions.

Clear indication of other charges, e.g. charges related to quality of service, or bulk provision, should be available.

E. LICENSING AND/OR DECLARATION CONDITIONS FOR USE OF PSDS, WHERE APPLICABLE

This should include information on any licensing conditions which have to be met by the user or by its customers.

F. CONDITIONS FOR THE ATTACHMENT OF TERMINAL EQUIPMENT

Conditions approved by the national regulatory authority, in accordance with the provisions of Directive 91/263/EEC⁽³⁾.

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ A segment is up to 64 octets (or bytes) of user data where the octet is 8 bits.

⁽³⁾ OJ No L 128, 23. 5. 1991, p. 1.

ANNEX III

INDICATORS FOR THE NETWORK PERFORMANCE ASPECTS OF THE QUALITY OF SERVICE OF PSDS

Indicators for the network performance aspects of the quality of service of PSDSs and measurement methods should be based on the ongoing work in CEPT, and notably on recommendations T/CAC 2⁽¹⁾, T/CAC 3⁽²⁾, T/CAC 4⁽³⁾

For each of the above performance criteria, indicators should be chosen which are representative of the service:

Availability	Unsuccessful network congestion (NC) calls ratio (UNCR), Service availability,
Dependability	Mean time between NC disconnections (MTNC),
Speed of service	Transmitted throughput (TTP), Received throughput (RTP), Round trip delay (RTD), Call set-up delay (CSD).

⁽¹⁾ Indicators for the network performance aspects of the quality of service of international packet-switched services.

⁽²⁾ Monitoring of network performance aspects of quality of international packet-switched service using internally derived indicators.

⁽³⁾ Monitoring of network performance aspects of quality of international packet-switched service using externally derived indicators.

COUNCIL RECOMMENDATION

of 5 June 1992

on the provision of harmonized integrated services digital network (ISDN) access arrangements and a minimum set of ISDN offerings in accordance with open network provision (ONP) principles

(92/383/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas Directive 90/387/EEC considers, *inter alia*, the application of the principles of open network provision (ONP) to the integrated services digital network (ISDN);

Whereas the full establishment of a Community-wide market in telecommunications services will be promoted by the rapid introduction of ONP principles to ISDN, as provided for in Directive 90/387/EEC; whereas ONP conditions should ensure transparency and equal access and be based on objective criteria; whereas applying ONP principles to ISDN means harmonizing the conditions for open and efficient access to and use of ISDN;

Whereas recommendation 86/659/EEC⁽²⁾ calls for the coordinated introduction of the ISDN in the European Community;

Whereas resolution 89/C 196/04⁽³⁾ calls for strengthening of the further coordination of the ISDN in the European Community up to 1992;

Whereas in 1989 several telecommunications organizations signed a memorandum of understanding (MoU) for the phased and harmonized implementation of European ISDN services; whereas within the framework of this MoU, a range of services has been recognized as commercially valid for ISDN and agreement has been reached on a minimum ISDN service offering to be introduced by 31 December 1993 at the latest; whereas other services will be introduced on the basis of harmonized standards according to market need;

Whereas ISDN can be considered a natural development of the telephone network; whereas it will allow, via a single access, using the existing subscriber line, the transmission of

voice telephony, text, data and images in the form of a multitude of more efficient or new services;

Whereas Member States should notify to the Commission those organizations whose provision of ISDN offerings enables Member States to comply with the provisions of point 4 of Annex III to Directive 90/387/EEC; whereas other organizations may offer certain ISDN services in accordance with the recommendation;

Whereas, in accordance with Directive 90/387/EEC, voice telephony means the commercial provision for the public of the direct transport of real time speech via the public switched network or networks such that any user can use equipment connected to a network termination point to communicate with another user of equipment connected to another termination point;

Whereas Commission Directive 90/388/EEC⁽⁴⁾ applies;

Whereas, in accordance with Directive 90/388/EEC, Member States may make the supply of certain services subject to a licensing or declaration procedure aimed at compliance with the essential requirements and in that case they shall ensure that the conditions for the granting of licenses are objective, non-discriminatory and transparent, that reasons are given for any refusal and that there is a procedure for appealing against any such refusal; whereas the Commission will carry out an overall assessment of the situation in the telecommunications sector, in connection with the aims of this Directive in 1992;

Whereas ISDN is a means to support both services provided under special or exclusive rights and services for which no such rights may be maintained;

Whereas, pursuant to the principle of non-discrimination, access to ISDN should be available and provided on request without discrimination to all users; whereas therefore, the terms and conditions which apply to telecommunication organizations using ISDN for the provision of services for which no special or exclusive rights may be maintained should be equivalent to the terms and conditions which apply to other users;

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 1.

⁽²⁾ OJ No L 382, 31. 12. 1986, p. 36.

⁽³⁾ OJ No C 196, 1. 8. 1989, p. 4.

⁽⁴⁾ OJ No L 192, 24. 7. 1990, p. 10.

Whereas cross-subsidization between services provided by telecommunications organizations (TOs) under special and exclusive rights and services for which no such rights may be maintained, provided by TOs, may be incompatible with Community competition rules;

Whereas Article 4 (4) (b) of Directive 90/387/EEC provides for a period for public comment on the reports on the detailed analysis on the application of ONP to specific areas; whereas public comments on the analysis report on the application of ONP to ISDN were invited by notice in the *Official Journal of the European Communities* ⁽¹⁾;

Whereas it became evident from public comments that users are requiring a high degree of transparency in the provision of ISDN offerings; whereas users are requiring further access arrangements to be considered, such as M- and U-type interfaces;

Whereas the European Telecommunications Standards Institute (ETSI) is developing standards for ISDN; whereas the Commission has given a special study and investigation mandate to ETSI to study the technical implications of the specification of M- and U-type interfaces in ISDN; whereas the Commission will also carry out studies on the economic and market impact related to the provision of these interfaces;

Whereas Community policy in relation to the coordinated introduction of ISDN is given in recommendation 86/659/EEC and resolution 89/C 196/04; whereas a broad range of services to be provided are defined in the abovementioned documents;

Whereas ISDN networks have developed on a national basis and the availability in each Member State of an ISDN with equivalent capabilities and providing full interconnectivity is important to meet the requirements of pan-European provision of telecommunications services;

Whereas users have stressed the value of the availability in all Member States of a minimum set of harmonized offerings;

Whereas Member States should encourage their telecommunications organizations to provide ISDN offerings in addition to the minimum set, both in response to market demand;

Whereas, however, such additional offerings should in no way impede the provision of the minimum set;

Whereas interoperability between ISDN and existing public network services should be ensured, in particular with the public voice telephony service and the public packet switched data service?

Whereas adequate and efficient interoperability between ISDN networks is essential for the provision of Community-wide services;

Whereas Directive 90/387/EEC provides, in point 1 of Annex III, for the adoption of a specific directive on voice telephony;

Whereas ISDN provides for the opportunity to offer voice telephony in an efficient way; whereas, therefore, the provision of voice telephony service by means of ISDN should meet the relevant requirements of ONP applied to voice telephony;

Whereas Directive 90/387/EEC provides, in point 3 of Annex III, for the adoption of a recommendation on the supply of technical interfaces, conditions of usage and tariff principles applying to the provision of packet-switched data services (PSDSs) complying with open network principles; whereas the Council has adopted a recommendation on the harmonized provision of a minimum set of PSDSs in accordance with ONP principles ⁽²⁾;

Whereas ISDN may be used to provide packet-switched data services (PSDSs); whereas, therefore, the provision of data services by means of ISDN should in principle meet the relevant requirements of ONP applied to PSDSs;

Whereas, in accordance with Directive 90/387/EEC, the Commission has published in the *Official Journal of the European Communities* ⁽³⁾ the list of ISDN standards suitable for ONP; whereas this list may be amended by further publication;

Whereas common ordering procedures, one-stop-ordering and one-stop billing and maintenance are desirable in order to encourage the use of ISDN and the development of competition in the provision of value-added services throughout the Community and have been requested by users; whereas any cooperation between organizations in that respect is subject to compliance with Community competition law; whereas, in particular, such procedures should not result in any price fixing or market sharing; whereas these procedures are to be established through commercial arrangements, e.g. through memoranda of understanding;

Whereas the implementation of one-stop-ordering and one-stop-billing procedures by telecommunications organizations must not prevent offers by service providers other than telecommunications organizations;

Whereas, in order to promote European-wide operation by service providers using ISDN, it is desirable to allow for a system where the called party pays for the calls on the basis of the number called, allowing the offering of free of charge calls to the subscriber accessing the service offered by the provider ('green number/freephone');

⁽¹⁾ See page 1 of this Official Journal.

⁽²⁾ OJ No C 327, 29. 12. 1990, p. 19. List of standards reference — ISDN.

⁽¹⁾ OJ No C 38, 14. 2. 1991, p. 12. (Notice No 91/C 38/21).

Whereas, in order to promote the use of ISDN by small- and medium-size providers of value-added services, it is desirable that billing arrangements which facilitate such operations across the Community are established; whereas such billing arrangements should allow for a system where the cost of the value-added service and the cost of the call are combined in a single bill ('kiosk type arrangement');

Whereas it is important in this context that appropriate allocation of harmonized numbering capacity is made to allow the establishment of such service arrangements across the Community; whereas such allocation should be made in accordance with the principles of transparency and equal treatment; whereas numbering issues at a national and European level, including the area of ISDN, will play a major role in the future worldwide telecommunications environment;

Whereas quality of service — including delivery time and repair time — as perceived by the users is an essential aspect of the service provided; whereas information for users should allow for a comparison between achieved performance and typical or target values;

Whereas the quality of service indicators, as identified in other ONP measures, will apply where appropriate to services provided by means of ISDN;—

Whereas, in accordance with Community law and in particular Directive 90/387/EEC, usage conditions for ISDN should be compatible with Community law and should be imposed through regulatory means and not through technical restrictions;

Whereas, without prejudice to Article 3 of Directive 90/388/EEC, restrictions on the use of ISDN may be based only on infringement of special or exclusive rights compatible with Community law, or on the conditions generally applicable to the connection of terminal equipment as laid down in Directive 91/263/EEC⁽¹⁾, or on essential requirements, in particular on the basis of data protection; whereas Member States may restrict use of ISDN to the extent necessary to ensure compliance with regulations on the protection of data, including protection of personal data, the confidentiality of information transmitted or stored, as well as the protection of privacy compatible with Community law; whereas those restrictions should be objectively justified, follow the principle of proportionality and not be excessive in relation to the aim pursued; whereas open access to ISDN via the proposed access arrangements should not jeopardize ISDN network integrity and security requirements;

Whereas, in accordance with Directive 90/387/EEC, tariffs must be based on objective criteria and, especially in the case of services and areas subject to special or exclusive rights, must in principle be cost-oriented; whereas they must be

transparent and properly published, sufficiently unbundled in accordance with the competition rules of the Treaty and non-discriminatory and must guarantee equal treatment;

Whereas the availability of itemized billing will enable ISDN users to check their bills;

Whereas, in accordance with the principle of separation of regulatory and operational functions and pursuant to the principle of subsidiarity, the national regulatory authority of each Member State should play an important role in the application of this recommendation;

Whereas, to enable the Commission to monitor effectively the application of this recommendation, it is necessary that Member States provide the relevant information requested by the Commission;

Whereas implementation of harmonized ONP conditions for access to and use of ISDN are dependent on the state of network development and market demand in Member States;

Whereas the Committee referred to in Articles 9 and 10 of Directive 90/387/EEC should play an important role in the application of this recommendation.

HEREBY RECOMMENDS:

1. That, in line with previous Council measures on integrated services digital network (ISDN), and taking into account market demand, Member States:
 - (a) ensure that, on their territory, the telecommunications organizations notified in accordance with point 15 provide an ISDN with harmonized access arrangements and a minimum set of offerings in accordance with Annex I, together with adequate and efficient interoperability between ISDNs in order to allow for Community-wide operation. Where no dates are indicated in Annex I, Member States should encourage telecommunications organizations to publish target dates for the availability of these features;
 - (b) encourage the harmonized provision by the same organizations of additional offerings as identified in Annex II. This additional provision should be in accordance with international standardization and in response to market demand but should not endanger or delay the provision of the minimum set referred to in subparagraph (a).
2. That modifications necessary to adapt Annex I to new technical developments and to changes in market demand be determined by the Commission in accordance with the procedure laid down in Article 10 of Directive 90/387/EEC, taking into account the state of development of the national networks.

⁽¹⁾ OJ No L 128, 23. 5. 1991, p. 1.

3. That Member States take the necessary steps so that, in respect of the ISDN offerings provided in accordance with point 1, information is published on technical characteristics, supply conditions, contractual conditions, usage conditions, tariffs, licensing and/or declaration conditions and conditions for the attachment of terminal equipment, in accordance with the presentation given in Annex III.

Information on changes in existing offerings should be published as soon as possible and not later than two months before the implementation, unless the national regulatory authority agrees otherwise.

4. That the supply conditions referred to in point 3 include at least:

- information concerning the ordering procedure,
- typical delivery periods, which are the periods, counted from the date when the user has made a firm request for an ISDN offering, in which 80 % of all requests for each type of ISDN offerings have been put through to the users. Each period will be established on the basis of the actual delivery periods of ISDN offerings during a recent time interval of reasonable duration. The calculation must not include cases where late delivery periods were requested by users.

Until actual data are available, a target delivery period shall be published in place of the typical delivery period,

- typical repair times, which are the periods, counted from the time when a failure message has been given to the responsible unit within the organization supplying ISDN up to the moment in which 80 % of all ISDN offerings of the same type have been re-established and, in appropriate cases, notified as back in operation to the users.

Until actual data are available, a target repair time shall be published instead of the typical repair time.

Where different classes of quality of repair are offered for the same type of ISDN offerings, the different typical repair times shall be published:

- contractual periods, which include the periods generally provided for in the case of contracts and the minimum contractual periods which the user is obliged to accept for each type of ISDN offering,
- any refund procedure,
- target values for the indicators of quality of service identified in point 6.

5. That the supply of ISDN offerings be based on a contract specifying the elements of the ISDN offerings to be provided.

6. That, by 1 January 1995, at least for the bearer services identified in Annex I, common indicators and common measurement methods be adopted for the network performance aspects of the quality of service, by organizations supplying ISDN offerings in accordance with this recommendation, notably for those indicators in Annex IV.

7. That the common indicators and measurement methods referred to in point 6 be based on appropriate standards adopted by ETSI allowing for the determination of a representative sample of the performance of the ISDN offerings as well as the statistical end-to-end performance achieved by the network as a whole.

8. That national regulatory authorities take the necessary steps so that annual statistical information showing achieved performance in the following areas is made publicly available:

- delivery periods,
- repair times,
- quality of service indicators, where possible those identified in Annex IV.

The first annual period should run from 1 January to 31 December 1994.

9. That Member States encourage the establishment, in accordance with the procedural and substantive rules of competition of the Treaty and in consultation with users, of harmonized procedures for user access to ISDN, in particular via the establishment of the following procedures:

- a common ordering procedure for ISDN throughout the Community, i.e. an ordering procedure for the procurement of intra-Community ISDN offerings which ensures that there is commonality across the organizations supplying ISDN offerings, in both the information which has to be supplied by the user and the organization supplying ISDN offerings and the format in which the information is presented,
- a one-stop-ordering procedure for ISDN, to be applied where requested by the user, i.e. a system whereby all transactions involving a user, required for the procurement of intra-Community ISDN offerings supplied by more than one organization to a single user, can be completed at one location between the user and a single organization supplying ISDN offerings,
- a one-stop-billing procedure for ISDN, to be applied where requested by the user, i.e. a system whereby the billing and payment transaction for intra-Community ISDN offerings supplied by more than one organization to a single user can be completed at one location between the user and a single organization supplying ISDN offerings, and

- a one-stop-maintenance procedure for ISDN, to be applied where requested by the user, i.e. a system whereby the reporting of faults for intra-Community ISDN offerings supplied by more than one organization to a single user can be done at one location between the user and a single organization supplying ISDN offerings, which will coordinate the restoration of services.

It is envisaged that, taking into account technical feasibility and commercial viability, these procedures should include Community-wide charging and billing procedures, allowing for the capability where:

- the called party pays for the calls (green number/freephone),
- the cost of the value-added service and the cost of the call are combined in a single bill collected by the organization supplying ISDN offerings, or other arrangements equally effective for users ('kiosk type arrangements').

These harmonized procedures are to be established through commercial arrangements, e.g. through memoranda of understanding.

10. That ISDN numbering plans be controlled by the national regulatory authority, in order to provide for fair competition. In particular, procedures for the allocation of individual numbers for specific services should be transparent, equitable and timely.
11. That Member States take the necessary steps so that usage conditions for ISDN are subject to scrutiny by the national regulatory authority.
12. That tariffs be transparent, based on objective criteria, independent of the type of application implemented by users where the same type of offerings is used and in principle oriented towards cost. Each ISDN offering should in principle be tariffed on an individual basis. Offerings should be sufficiently unbundled, in accordance with Community law. In addition, the tariff principles of recommendation 86/659/EEC should be taken into due account.
13. That tariffs for ISDN offerings normally contain the following elements:
 - an initial connection charge,
 - a periodic rental charge.
 - a usage charge.

Where other tariff elements are applied, these should be approved by the national regulatory authority and must be in accordance with point 12.

14. That under the control of national regulatory authorities targets are set and published for the provision of itemized billings as a facility available on users' request, subject to technical feasibility. The level of detail given in itemized bills may be subject to relevant law relating to the protection of personal data and privacy.

15. That Member States notify to the Commission before 31 December 1992 those organizations whose provisions of ISDN enables Member States to comply with the provisions of Annex III, point 4, of Directive 90/387/EEC and thereafter any changes to this information.

16. That national regulatory authorities prepare annual summary reports covering the availability of ISDN offerings, including level of penetration, provided in accordance with point 1. These summary reports should be sent to the Commission no later than five months after the end of the calendar year, this requirement being reviewed by the Commission in consultation with the ONP Committee in accordance with Article 9 of Directive 90/387/EEC during 1995. The Commission will transmit these summary reports to the ONP Committee.

The execution of this requirement fulfils corresponding requirements of recommendation 86/659/EEC.

17. That national regulatory authorities keep available, and submit to the Commission on request, data on the application of the supply conditions under points 3 and 4 and the statistical information under point 8.
18. That national regulatory authorities establish simple procedures for users of the ISDN offerings to invoke with regard to any difficulties encountered in relation to the application of this recommendation.
19. That the Commission, in consultation with the ONP Committee, examine the results of the application of this recommendation, in view of the fulfilment of the objectives of Directive 90/387/EEC, on the basis of the summary reports provided under point 16.

Done at Luxembourg, 5 June 1992.

For the Council

The President

Joaquim FERREIRA DO AMARAL

ANNEX I

DEFINITION OF THE HARMONIZED ISDN ACCESS ARRANGEMENTS AND THE MINIMUM SET OF ISDN OFFERINGS IN ACCORDANCE WITH POINT 1, AND RECOMMENDED TIMETABLE FOR THEIR AVAILABILITY

GENERAL CONSIDERATIONS

This Annex describes the harmonized ISDN access arrangements and the minimum set of ISDN offerings which are to be made available in all Member States.

The ISDN offerings are structured in two parts: Part A contains the minimum set of offerings which are to be made available in all Member States by 1 January 1994; Part B contains those offerings which are to be made available in all Member States according to published target dates.

The CCITT distinctions of bearer services, supplementary services and teleservices ⁽¹⁾ are used. The bearer services and supplementary services in Part A are those indicated as the minimum service offering in the ISDN memorandum of understanding (MoU) of June 1991, and the date for implementation is in accordance with the commitment given by the signatories of the MoU.

Implementation of these offerings should take account of relevant legislation concerning data protection and privacy.

STANDARDS TO BE UTILIZED

In accordance with the procedure in Article 5 (1) of Directive 90/387/EEC, reference to relevant ISDN standards will be published in the *Official Journal of the European Communities*.

The initial indicative list of ISDN standards suitable for ONP already published in the *Official Journal of the European Communities* will be amended/updated by further publication in the *Official Journal of the European Communities*.

PART A.

Offerings to be made available in all Member States by 1 January 1994

A.1. Access arrangements

Access arrangements concerning the interfaces at CCITT defined reference points.

Basic rate access (2B + D) at the S/T reference point

Primary rate access (30B + D) at the S/T reference point

A.2. Bearer service

Circuit mode 64 kbit/s unrestricted bearer service

Circuit mode 3.1 kHz audio bearer service

A.3. Supplementary services

Calling line identification presentation (CLIP)

Calling line identification restriction (CLIR)

Direct dialling in (DDI)

Multiple subscriber number (MSN)

Terminal portability (TP)

A.4. Teleservices

Telephony (3.1 kHz bandwidth).

⁽¹⁾ Appropriate associations between access arrangements, bearer services and supplementary services are given in CCITT Recommendation I.250.

PART B.

Offerings to be provided in all Member States, according to published target dates and the availability of international standards

Dates for the implementation of these offerings will depend on market demand in each Member States. In accordance with point 1 (a), telecommunications organizations are to be encouraged to publish targets for the availability of each of these offerings.

B.1. *Access arrangements*

Future access arrangements to be included in the minimum set are subject to further study by ETSI and the Commission.

The situation will be reviewed at the latest by 31 December 1992, after completion of a study and investigation mandate given to ETSI on the technical implications of the M- and U-type interfaces, and completion of an economic and market assessment. Consideration should be given to the inclusion of these access arrangements into the minimum set in accordance with the procedure given in point 2 of this recommendation.

B.2. *Bearer services*

Circuit mode 64 kbit/s unrestricted bearer service on reserved or permanent mode

Packet mode bearer service provided over the B and/or D channels (see Note 1)

B.3. *Other services*

Call transfer services

Call forwarding services

Closed user group

User to user signalling

Malicious call identification

Reverse charging

Green number (freephone) for voice and non-voice applications

Kiosk billing or equivalent features, for voice and non-voice applications.

Note 1

When ISDN is used for the provision of packet-switched data services, users should, where feasible, have equivalent functionality to users of the dedicated packet network, as defined in Council recommendation 92/382/EEC ⁽¹⁾ on the harmonized provisions of a minimum set of packet switched data services in accordance with ONP principles.

⁽¹⁾ See page 1 of this Official Journal.

ANNEX II

ADDITIONAL OFFERINGS WHICH MAY BE IMPLEMENTED, IN ACCORDANCE WITH PROGRESS IN INTERNATIONAL STANDARDIZATION

I. Supplementary services

Advice of charge (AOC) services

Number identification services (COLP, COLR)

Call waiting (CW)

Completion of calls to busy subscribers (CCBS)

Conference services

Sub-addressing (SUB)

Three party service (3PTY)

II. Network management services (1)

Note: These supplementary services are covered by the ISDN MoU.

(1) The Commission has given ETSI a mandate to study network management standards.

ANNEX III

PUBLICATION PRESENTATION FOR THE INFORMATION TO BE PROVIDED IN RESPECT OF ISDN OFFERINGS IN ACCORDANCE WITH POINT 3

The information referred to in point 3 should follow the presentation given below.

A. Technical characteristics

The technical characteristics include the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point, without prejudice to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾. Clear reference shall be made to the standards implemented.

B. Supply conditions

The supply conditions include at least the elements identified in point 4.

C. Contractual conditions or terms of subscription

D. Usage conditions

The conditions resulting from the application of essential requirements and from the exercise of exclusive or special rights.

E. Tariffs

In accordance with point 13, tariffs will normally include an initial connection charge, a periodic rental charge and a usage charge.

- (a) The initial charge for connection to the ISDN network may depend on the type of access and offerings.
- (b) The periodic subscription charge will vary according to the type of access and range of ISDN capabilities provided.
- (c) The usage charges will normally include a call duration charge and supplementary services usage charges and may also include a call-set-up charge and, in the case of packet mode bearer services, there may also be a volume related usage charge. These charges may depend on time and/or day.

Clear indication of other charges, e.g. charges related to different levels of quality of service, or bulk provision, should be available.

F. Licensing and/or declaration conditions for use of ISDN service, where applicable

This should include information on any licensing conditions which have to be met by the user or by its customer.

G. Conditions for the attachment of terminal equipment

Conditions approved by the national regulatory authority, in accordance with the provisions of Directive 91/263/EEC.

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

ANNEX IV

INDICATORS FOR THE NETWORK PERFORMANCE
ASPECTS OF THE QUALITY OF SERVICE OF ISDN BEARER SERVICES (1)

IV.1. Indicators for all bearer services

Availability of access, defined as the average, for all connections of a given type, of the number of hours in a reasonable period for which service was available to a user, divided by the total number of hours in the period.

Mean time between interruptions, defined as the average time duration between the end of one interruption and the beginning of the next. An interruption is defined as the temporary inability of a service to be provided persisting for more than a given time duration characterized by a change beyond given limits in at least one parameter essential for the service.

Bit error ratio, defined as the ratio of the number of bit errors to the total number of bits transmitted in a given time interval (for non-speech bearer service).

IV.2. Indicators for circuit mode switched bearer services

Connection processing delay, as defined in CCITT recommendation I.352.

Network transit delay, defined as the time which elapses between the initial offering of a unit of user data to an ISDN network by a transmitting terminal equipment and the complete delivery of that unit to the receiving terminal equipment (a unit of user data may be a bit, byte, packet, etc.).

Average figures for national calls and for intra-Community calls should be considered.

Unsuccessful calls ratio, defined as the ratio of unsuccessful calls to the total number of calls in a specified time period.

IV.3. Indicators for packet-mode bearer services

The indicators for packet-mode bearer services should in principle be the same as those featuring in the proposal for a recommendation 92/382/EEC on the harmonized provision of a minimum set of packet-switched data services in accordance with ONP principles.

(1) The Commission has given ETSI a mandate to develop standards covering definitions for the above quality of service indicators and appropriate measurement methods.

COMMISSION DECISION

of 15 July 1992

amending the lists of standards institutions annexed to Council Directive
83/189/EEC

(92/400/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽¹⁾, as last amended by Commission Decision 90/230/EEC ⁽²⁾,

Having regard to the opinion of the Standing Committee set up by Article 5 of that Directive,

Whereas the Commission, in its 1987 Green Paper on telecommunications, recommended a substantial increase in standardization activity in the Community, in particular by means of the creation of a European standardization body in the telecommunications field;

Whereas the PTT authorities of the countries of the European Conference of Postal and Telecommunications Administrations (CEPT) acted on this recommendation from the Commission in March 1988 by setting up ETSI (European Telecommunications Standards Institute), a non-profit-making association under French law;

Whereas the set of rules of the procedure adopted by the ETSI General Assembly on 21 November 1990, on 7 March 1991 and on 3 April 1992 designed to ensure its smooth functioning as a European standardization body after the start-up phase;

Whereas the Member States responded positively to the Council resolution of 27 April 1989 on standardization in the field of information technology and telecommunica-

tions ⁽³⁾, and in particular to the call for national standardization bodies to be nominated without delay to take part in the procedure for the adoption of ETSI standards;

Whereas CEN, Cenelec and ETSI responded favourably to this resolution, in particular by setting up a Joint Presidents Group of CEN, Cenelec and ETSI in December 1989, signing a general agreement on cooperation between the three bodies in June 1990, and defining the terms of reference for collaboration within the ITSTC (Information Technology Steering Committee),

HAS ADOPTED THIS DECISION:

Article 1

The lists annexed to Directive 83/189/EEC are hereby replaced by the lists annexed to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 15 July 1992.

For the Commission

Martin BANGEMANN

Vice-President

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ OJ No L 128, 18. 5. 1990, p. 15.

⁽³⁾ OJ No C 117, 11. 5. 1989, p. 1.

ANNEX

LIST 1

Standards institutions

1. Aenor (Spain)
Asociación Española de Normalización y Certificación,
C/Fernández de la Hoz, nº 52,
E-28010 Madrid
2. Afnor (France)
Association française de normalisation,
Tour Europe — Cedex 7,
F-92049 Paris La Défense

UTE (France):
Union technique de l'électricité,
Cedex 64,
F-92052 Paris La Défense
3. BSI (United Kingdom)
British Standards Institution,
2, Park Street,
UK-London W1A 2BS

BEC (United Kingdom):
British Electrotechnical Committee,
British Standards Institution,
2, Park Street,
UK-London W1A 2BS;
4. DS (Denmark)
Dansk Standardiseringsråd,
Baunegårdsvej, 73,
DK-2900 Hellerup 12

DEK (Denmark)
Dansk Elektroteknisk Komité,
Strandgade, 36 st.,
DK-1401 København K
5. DIN (Germany)
Deutsches Institut für Normung eV,
Burggrafenstraße 6,
Postfach 1107,
D-1000 Berlin 30;

DKE (Germany)
Deutsche Elektrotechnische Kommission im
DIN und VDE,
Stresemannallee 15,
D-6000 Frankfurt am Main 70
6. ELOT (Greece)
Hellenic Organization for Standardization,
Acharnon St, 313,
GR-11145 Athens
7. IBN/BIN (Belgium)
Institut belge de normalisation,
Belgisch Instituut voor Normalisatie,
29, avenue de la Brabançonne/
Brabançonnellaan,
B-1040 Bruxelles/Brussel

CEB/BEC (Belgium)
Comité électrotechnique Belge,
Belgisch Elektrotechnisch Comité,
28, Galerie Ravenstein, boîte 2,
28, Ravensteingalerij, bus 2,
B-1000 Bruxelles/Brussel
8. IPQ (Portugal)
Instituto Português da Qualidade,
Rua José Estêvão, 83 A,
P-1199 Lisboa Codex
9. ITM (Luxemburg)
Inspection du travail et des mines,
26, rue Zithe — BP 27,
L-2010 Luxembourg

Service de l'énergie de l'État,
34, avenue Marie-Thérèse,
L-2010 Luxembourg
10. NSAI (Ireland)
National Standards Authority of Ireland,
Glasnevin,
IRL-Dublin 9

ETCI (Ireland)
Electro-Technical Council of Ireland,
Parnell Avenue, Harold's Cross
IRL-Dublin 9
11. NNI (Netherlands)
Nederlands Normalisatie Instituut,
Kalfjeslaan 2,
Postbus 5059,
NL-2600 GB Delft

NEC (Netherlands)
Nederlands Elektrotechnisch Comité,
Kalfjeslaan 2,
Postbus 5059,
NL-2600 GB Delft;
12. UNI (Italy)
Ente Nazionale italiano di unificazione,
Via Battistotti Sassi 11,
I-20100 Milano

CEI (Italy)
Comitato Elettrotecnico Italiano,
Viale Monza 259,
I-20126 Milano
13. CEN
Comité Européen de normalisation,
36, rue de Strassart
B-1050 Bruxelles

CENELEC
Comité Européen de normalisation électro-
technique,
35, rue Strassart
B-1050 Bruxelles.

ETSI
European Telecommunications
Standards Institute
BP 152
F-06561 Valbonne Cédex

LIST 2

National standards institutions in the Member States of the European Community

Same as those in List 1 except for CEN, Cenelec and ETSI.

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 19 November 1992

on the implementation in the Community of the European Radiocommunications Committee Decisions

(92/C 318/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Economic Community,

Whereas the Council resolution of 28 June 1990⁽¹⁾ calls for the strengthening of European cooperation in the field of radio frequency coordination with the objective of providing sufficient frequency spectrum for new services, according to market demand and taking account of the requirements of existing services and of different categories of users; whereas that resolution saw the development of the existing Conference of Postal and Telecommunications Administrations (CEPT) coordination mechanisms as a major policy goal, and noted with satisfaction in that context the creation of the European Radiocommunications Office (ERO);

Whereas the CEPT European Radiocommunications Committee (ERC) consists of representatives of the radio regulatory authorities in all CEPT Member countries, responsible for the allocation and assignment of radio frequencies within their respective countries;

Whereas the ERC is developing working methods to allow wide consultation with telecommunication organizations and other service providers, industry and users, and cooperation and interaction with the European Telecommunications Standards Institute (ETSI) and the Commission of the European Communities;

Whereas the Commission participates in the work of the ERC with the special status of Counsellor;

Whereas the ERC is establishing the ERO as a centre for expertise to develop proposals especially for long-term plans for the use of the radio frequency spectrum in Europe;

(¹) Council Resolution of 28 June 1990 on the strengthening of the European-wide cooperation on radio frequencies, in particular with regard to services with a pan-European dimension (OJ No C 166, 7. 7. 1990, p. 4).

Whereas the ERC has introduced a mechanism for the adoption of ERC decisions on significant harmonization measures in the field of radiocommunications;

Whereas the Commission has submitted to the Council proposals for directives on common frequency bands to be designated for the coordinated introduction of the Terrestrial Flight Telecommunications System (TFTS) and Road Transport Telematics (RTT) systems, in the Community;

Whereas the ERC has adopted decisions on the provision of suitable frequency bands for the introduction in Europe of TFTS and RTT systems;

Whereas these systems are important trans-European telecommunications developments;

Whereas the commitment of all Member States to the implementation of the ERC decisions on TFTS and RTT systems will ensure the provision of the necessary frequencies for these systems,

RESOLVES:

1. that in future, Member States should actively participate in the development of ERC decisions aimed at supporting the provision of significant Europe-wide radio services, taking account of the obligations of Member States under Community law, in particular the competition rules, and the general policy goals defined in the Council Resolution of 28 June 1990;
2. that Member States should commit themselves to implementing the ERC decisions on frequency bands to be designated for the coordinated introduction of TFTS and RTT systems, according to the procedure adopted by the ERC,

INVITES THE COMMISSION:

to give full consideration in future to the mechanism of ERC decisions as the primary method of ensuring the provision of the necessary frequencies for new Europe-wide radio services.

COUNCIL RESOLUTION

of 19 November 1992

on the promotion of Europe-wide cooperation on numbering of telecommunications services

(92/C 318/02)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the proposal from the Commission,

1. Whereas the Council resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 ⁽¹⁾ calls for promotion of the creation of Europe-wide services according to market requirements and appropriate social needs;
2. Whereas Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services ⁽²⁾ provides for competitive provision of telecommunications services and services based on public telecommunications networks and/or services;
3. Whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision ⁽³⁾ emphasizes the need for open and efficient access to and use of public telecommunications services;
4. Whereas numbers are the key for access to, and use of, telecommunications services and, as such, are essential for the provision of telecommunications services and services based thereon, particularly as regards the introduction of new and competitively-provided services; whereas, in addition, the ease of use of telephony-based services is largely dictated by how familiar and easily understood numbering and dialling arrangements are;
5. Whereas numbering changes can cause high levels of cost and disruption to service providers and users, particularly where they are required to change their existing numbers;
6. Whereas competition and innovation in telecommunications service provision will serve further to intensify demands on the supply of numbers;
7. Whereas the design of numbering schemes from which numbers are allocated is an important factor

in the design of networks and equipment which support pan-European services serving areas employing different numbering schemes, since numbering information is used to perform essential functions such as route selection and charging;

8. Whereas management of numbering schemes in Europe is undertaken by individual Member States;
9. Whereas there is a requirement for increased coordination in the management of numbering schemes at the European level in order best to support the development of, and growth in, services with Europe-wide applications;
10. Whereas management of numbering schemes for pan-European services must be carried out within a framework of Europe-wide cooperation allowing account to be taken, in a timely manner, of the opinions of representatives of national authorities concerned with numbering schemes, network operators including an appropriate involvement of the Association of European Telecommunications Network Operators (ETNO), service providers, industry and users;
11. Whereas such a framework of cooperation must respect the principle of separation of regulatory and operational functions required according to Directive 90/388/EEC; whereas, therefore, decisions on the development of numbering schemes and procedures for the allocation of numbers must rest with national regulatory authorities, according to this principle;
12. Whereas management of numbering schemes must be carried out in an objective, transparent and non-discriminatory manner in order to ensure equality of treatment of the requirements for numbers of different categories of service providers and users;
13. Whereas such a framework should draw on the organizational experience of existing cooperation mechanisms involving the *Conférence Européenne des Postes et Télécommunications* (CEPT); whereas, in this respect, such a framework might be brought about through the creation of a European Numbering Office (ENO) and draw on established mechanisms of regulatory coordination, in particular the European Committee for Telecommunications Regulatory Affairs (ECTRA);
14. Whereas the Commission should be involved as appropriate in such a framework;

⁽¹⁾ OJ No C 257, 30. 11. 1988, p. 1.

⁽²⁾ OJ No L 192, 24. 7. 1990, p. 10.

⁽³⁾ OJ No L 192, 24. 7. 1990, p. 1.

15. Whereas such a framework should facilitate long-term number supply planning at European level; whereas this should have regard to the most efficient use of numbering space and the significant timescales needed to phase out or relocate existing uses and the substantial investments which may accompany such numbering changes;
16. Whereas such a framework may also facilitate the working out of common European positions concerning numbering at the global level, in particular with regard to the work of the International Telecommunications Union (ITU) in this area; whereas the Council resolution of 30 June 1988 recognizes the desirability of Community coordination in relation to international telecommunications matters, which include the field of numbering;
17. Whereas the opening of a European numbering space as a means of establishing common telephony numbering and dialling arrangements could promote the functioning of the single market through facilitating provision of Europe-wide services;
18. Whereas such a European telephony numbering space could be created through a number of different options;
19. Whereas there is a need to study further the possible implementation of each option for the creation of a European telephony numbering space, including routing, tariffing and general policy issues, as well as practical questions, related to numbering management, flexibility and efficiency; whereas appropriate consultation with network operators, service providers and users is still required;
20. Whereas the creation of a European telephony numbering space should be a first priority for a framework of cooperation;
21. Whereas this resolution proposes that detailed work on numbering could be carried out by the Member States in the framework of the ENO that could be created, and to the extent that the objectives of the proposed actions cannot be sufficiently achieved on an individual basis by the Member States for reasons of effectiveness of this work, appropriate Community action may be required,
- working towards the fair equitable and timely allocation of numbers for provision and use of such services,
 - promoting the most efficient use of numbering space by taking timely account of service and user requirements against the background of industrial development and global changes in numbering.
2. Facilitating the development of common European positions in relation to global numbering developments, in particular with regard to the work of the ITU in this area.
3. The creation of a European telephony numbering space to support the achievement of European telecommunications policy goals, in particular:
- promotion of the development of Europe-wide applications according to market requirements and appropriate social needs,
 - open and efficient access to, and use of, public telecommunications networks and services.
4. In order to facilitate the achievement of these goals, encouraging development of a Europe-wide framework of cooperation on numbering between representatives of national authorities concerned with numbering schemes, network operators, service providers, industry and users, drawing on the organizational experience of existing coordination mechanisms set up by the CEPT, in particular as regards the arrangements relating to radio frequencies which may provide, where appropriate, a suitable model on which to base the arrangements for numbering and which could, in this respect, include the setting up of the ENO. Such a framework should:
- be open to the opinions of any member of the categories mentioned above,
 - provide a forum for common studies towards development of European numbering schemes in a manner most suited for existing and future services, taking due account of the diversity of market and technological factors influencing service and product development,
 - have available the resources to carry out analyses of long-term market and technology implications of numbering recommendations at European level;

CONSIDERS THE FOLLOWING POINTS AS MAJOR POLICY GOALS IN THIS AREA:

1. Strengthening cooperation at European level on the numbering arrangements for services with pan-European applications, with the objectives of:
- ensuring that long-term demand for numbers for such services can be met according to the needs of the European market and different categories of use,

INVITES THE MEMBER STATES:

5. to coordinate their actions within CEPT to promote the development and implementation, in conformity with Community law and in particular the competition rules of the Treaty, of a framework of Europe-wide cooperation on numbering allowing the opinions of all interested parties to be taken into account and involving the Commission as appropriate. This framework, which could in this respect include the setting up of the ENO on the basis of an appro-

appropriate statute, for which the resources necessary to ensure efficiency and the ability to respond rapidly to changes in the demand for, and use of, numbers should be made available. The tasks carried out within this framework should include:

- undertaking studies to support the long-term development of European numbering schemes and capabilities such as number portability, taking into account market needs, the needs of different categories of user and global considerations, and forwarding recommendations to regulatory authorities and the Community as appropriate,
 - carrying out investigations to support developments in practices of management and allocation of numbers and forwarding recommendations to regulatory authorities and the Community,
 - undertaking studies in preparation of common positions at ITU numbering fora as required to facilitate the attainment of common global positions,
 - liaison with bodies responsible for numbering scheme management, particularly at national level, and with authorities charged with the registration of names, numbers and addresses, particularly as regards the ongoing development of European directory services,
 - cooperation and interaction with the European Telecommunications Standards Institute (ETSI) and other standardization bodies in order to take full account of the link between standards development and numbering resource management;
- and, as a high priority,
- investigation of the case for the introduction of a European area code for use in parallel with Member States' existing country codes, as a mechanism by which the creation of a European telephony numbering space may be achieved and, should this case be established, subsequent investigation of the choice of such a code, including the preparation of a coordinated proposal to the ITU for the issuing of such a code,
 - completing, not later than 1 October 1993, studies for the creation of the European telephony numbering space and proposing, during 1994, any feasible solutions arising from these studies,
 - development of coordinated procedures for the management and allocation of telephony numbers from the European numbering space, in particular with regard to the provision of the pan-European services listed in the Annex,

INVITES THE COMMISSION:

6. should investigations within the framework of European cooperation demonstrate that the introduction of a European area code is feasible and justified, to facilitate, where necessary, its coordinated introduction in the Community;
7. subject to the outcome of these investigations, to facilitate the rapid introduction of pan-European services numbered from the European telephony numbering space.

ANNEX

Pan-European services which may be introduced under the final indent of point 5

- Europe-wide subscriber telephony numbers,
- Flexible routing service,
 - providing the ability flexibly to route calls to different answering points, e.g. according to country of call origination, time of day, etc,
- Europe-wide green/freephone call service,
 - particularly making use of flexible routing,
- Europe-wide kiosk billing service,
 - including flexibility for private service operators to choose the charge for a call, up to a maximum set by the national regulatory authority,
- Europe-wide shared cost call service,
- Europe-wide mobile services.

COUNCIL DIRECTIVE 93/38/EEC

of 14 June 1993

coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the last sentence of Articles 57 (2), 66, 100a and 113 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard of the opinion of the Economic and Social Committee (3),

1. Whereas the measures aimed at progressively establishing the internal market during the period up to 31 December 1992 need to be taken; whereas the internal market consists of an area without internal frontiers in which free movement of goods, persons, services and capital is guaranteed;
2. Whereas restrictions on the free movement of goods and on freedom to provide services in respect of supply and service contracts awarded in the water, energy, transport and telecommunications sectors are prohibited by the terms of Articles 30 and 59 of the EEC Treaty;
3. Whereas Article 97 of the Euratom Treaty prohibits any restrictions based on nationality as regards companies under the jurisdiction of a Member State where they desire to participate in the construction of nuclear installations of a scientific or industrial nature in the Community or to provide the relevant service in the Community;
4. Whereas these objectives also require the coordination of the procurement procedures applied by the entities operating in these sectors;
5. Whereas the White Paper on the completion of the internal market contains an action programme and a

timetable for opening up public procurement markets in sectors which are currently excluded from Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (4), and Council Directive 77/62/EEC of 21 December 1976 coordinating procedure for the award of public supply contracts (5);

6. Whereas the White Paper on the completion of the internal market also contains an action programme and a timetable for opening up service contracts;
7. Whereas among such excluded sectors are those concerning the provision of water, energy and transport services and, as far as Directive 77/62/EEC is concerned, the telecommunications sector;
8. Whereas the main reason for their exclusion was that entities providing such services are in some cases governed by public law, in others by private law;
9. Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors requires that the entities to be covered must be identified on a different basis than by reference to their legal status;
10. Whereas, in the four sectors concerned, the procurement problems to be solved are of a similar nature, thus permitting them to be addressed in one instrument;
11. Whereas, among the main reasons why entities operating in these sectors do not purchase on the basis of Community-wide competition is the closed nature of the markets in which they operate, due to the existence of special or exclusive rights granted by the national authorities, concerning the supply to,

(1) OJ No C 337, 31. 12. 1991, p. 1.

(2) OJ No C 176, 13. 7. 1992, p. 136 and OJ No C 150, 31. 5. 1993.

(3) OJ C 106, 27. 4. 1992, p. 6.

(4) OJ No L 185, 16. 8. 1971, p. 5. Directive as last amended by Directive 89/440/EEC (OJ No L 210, 21. 7. 1989, p. 1).

(5) OJ No L 13, 15. 1. 1977, p. 1. Directive as last amended by Directive 88/295/EEC (OJ No L 127, 20. 5. 1988, p. 1).

- provision or operation of, networks for providing the service concerned, the exploitation of a given geographical area for a particular purpose, the provision or operation of public telecommunications networks or the provision of public telecommunications services;
12. Whereas the other main reason for the absence of Community-wide competition in these areas results from various ways in which national authorities can influence the behaviour of these entities, including participations in their capital and representation in the entities administrative, managerial or supervisory bodies;
 13. Whereas this Directive should not extend to activities of those entities which either fall outside the sectors of water, energy and transport services or outside the telecommunications sector, or which fall within those sectors but are nevertheless directly exposed to competitive forces in markets to which entry is unrestricted;
 14. Whereas it is appropriate that these entities apply common procurement procedures in respect of their activities relating to water; whereas certain entities have been covered up to now by Directives 71/305/EEC and 77/62/EEC in respect of their activities in the field of hydraulic engineering projects, irrigation, land drainage or the disposal and treatment of sewage;
 15. Whereas, however, procurement rules of the type proposed for supplies of goods are inappropriate for purchases of water, given the need to procure water from sources near the area it will be used;
 16. Whereas, when specific conditions are fulfilled, exploitation of a geographical area with the aim of exploring for or extracting oil, gas, coal or other solid fuels may be made subject to alternative arrangements which will enable the same objective of opening up contracts to be achieved; whereas the Commission must ensure that these conditions are complied with by the Member States who implement these alternative arrangements;
 17. Whereas the Commission has announced that it will propose measures to remove obstacles to cross-frontier exchanges of electricity by 1992; whereas procurement rules of the type proposed for supplies of goods would not make it possible to overcome existing obstacles to the purchases of energy and fuels in the energy sector; whereas, as a result, it is not appropriate to include such purchases in the scope of this Directive, although it should be borne in mind that this exemption will be re-examined by the Council on the basis of a Commission report and Commission proposals;
 18. Whereas Regulations (EEC) No 3975/87⁽¹⁾ and (EEC) No 3976/87⁽²⁾, Directive 87/601/EEC⁽³⁾ and Decision 87/602/EEC⁽⁴⁾ are designed to introduce more competition between the entities offering air transport services to the public and it is therefore not appropriate for the time being to include such entities in the scope of this Directive although the situation ought to be reviewed at a later stage in the light of progress made as regards competition;
 19. Whereas, in view of the competitive position of Community shipping, it would be inappropriate for the greater part of the contracts in this sector to be subject to detailed procedures; whereas the situation of shippers operating sea-going ferries should be kept under review; whereas certain inshore and river ferry services operated by public authorities should no longer be excluded from the scope of Directives 71/305/EEC and 77/62/EEC;
 20. Whereas it is appropriate to facilitate compliance with provisions relating to activities not covered by this Directive;
 21. Whereas the rules on the award of service contracts should be as close as possible to the rules on the works and supply contracts referred to in this Directive;
 22. Whereas obstacles to the free movement of services need to be avoided; whereas, therefore, service providers may be either natural or legal persons; whereas this Directive shall not, however, prejudice the application, at national level, of rules concerning the conditions for the pursuit of an activity or a profession provided that they are compatible with Community law;
 23. Whereas the field of services is best described, for the purpose of application of procedural rules and for monitoring purposes, by subdividing the services into categories corresponding to particular positions of a common classification; whereas Annexes XVI A and XVI B to this Directive refer to the United Nations CPC (Central Product Classification) nomenclature; whereas that nomenclature is likely to be replaced by a Community nomenclature in the future; whereas it is

(1) OJ No L 374, 31. 12. 1987, p. 1.

(2) OJ No L 374, 31. 12. 1987, p. 9.

(3) OJ No L 374, 31. 12. 1987, p. 12.

(4) OJ No L 374, 31. 12. 1987, p. 19.

- necessary to make provision for the possibility of adapting the reference made to the CPC nomenclature in Annexes XVI A and XVI B accordingly;
24. Whereas the provision of services is covered by this Directive only in so far as it is based on contracts; whereas the provision of services on other bases, such as law, regulations or administrative provisions or employment contracts, is not covered;
 25. Whereas, in accordance with Article 103f of the EEC Treaty, the encouragement of research and development is a means of strengthening the scientific and technological basis of European industry and the opening-up of public contracts will contribute to this end; whereas contributions to the financing of research programmes should not be subject to this Directive; whereas research and development service contracts other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority, are not therefore covered by this Directive;
 26. Whereas contracts for the acquisition or rental of land, existing buildings or other immovable property have particular characteristics, which make the application of procurement rules inappropriate;
 27. Whereas arbitration and conciliation services are usually provided by bodies or individuals which are agreed on, or selected, in a manner which cannot be governed by procurement rules;
 28. Whereas the service contracts covered by this Directive do not include contracts for the issue, purchase sale or transfer of securities or other financial instruments;
 29. Whereas this Directive should not apply to procurement contracts which are declared secret or may affect basic State security interests or are concluded according to other rules set up by existing international agreements or international organizations;
 30. Whereas contracts with a designated single source of supply may, under certain conditions, be fully or partly exempted from this Directive;
 31. Whereas the Community's or the Member States' existing international obligations must not be affected by the rules of this Directive;
 32. Whereas it is appropriate to exclude certain service contracts awarded to an affiliated undertaking having as its principal activity, with respect to services, the provision of such services to the group of which it is part, rather than the offering of its services on the market;
 33. Whereas full application of this Directive must be limited, for a transitional period, to contracts for those services where its provisions will enable the full potential for increased cross-frontier trade to be realized; whereas contracts for other services need to be monitored for a certain period before taking a decision on the full application of the said Directive; whereas the mechanism for such monitoring needs to be set up by this Directive and whereas it should at the same time enable those interested to share the relevant information;
 34. Whereas the relevant Community rules on mutual recognition of diplomas, certificates or other evidence of formal qualifications apply when evidence of a particular qualification is required for participation in an award procedure or a design contest;
 35. Whereas products, works or services must be described by reference to European specifications; whereas, in order to ensure that a product, work or service fulfils the use for which it is intended by the contracting entity, such reference may be complemented by specifications which do not change the nature of the technical solution or solutions set out in the European specification;
 36. Whereas the principles of equivalence and of mutual recognition of national standards, technical specifications and manufacturing methods are applicable in the field of application of this Directive;
 37. Whereas Community undertakings should be granted access to the award of service contracts in third countries; whereas the Community should endeavour to remedy any situation whereby such access, in law or in fact, is found to be restricted and whereas it should be possible, under certain conditions, to take measures as regards access to service contracts covered by this Directive for undertakings of the third country concerned or for tenders originating in that country;
 38. Whereas, when the contracting entities define by common accord with tenderers the deadlines for receiving tenders, they shall comply with the principles of non-discrimination, and whereas, if there is no such agreement, it is necessary to lay down suitable provisions;

39. Whereas it could prove useful to provide for greater transparency as to the requirements regarding the protection and conditions of employment applicable in the Member State in which the works are to be carried out;
40. Whereas it is appropriate that national provisions for regional development requirements to be taken into consideration in the award of public contracts should be made to conform to the objectives of the Community and be in keeping with the principles of the EEC Treaty;
41. Whereas contracting entities must not be able to reject abnormally low tenders before having requested in writing explanations as to the constituent elements of the tender;
42. Whereas, within certain limits, preference should be given to an offer of Community origin where there are equivalent offers of third-country origin;
43. Whereas this Directive should not prejudice the position of the Community in any current or future international negotiations;
44. Whereas, based on the results of such international negotiations, this Directive should be extendable to offers of third-country origin, pursuant to a Council Decision;
45. Whereas the rules to be applied by the entities concerned should establish a framework for sound commercial practice and should leave a maximum of flexibility;
46. Whereas, as a counterpart for such flexibility and in the interest of mutual confidence, a minimum level of transparency must be ensured and appropriate methods adopted for monitoring the application of this Directive;
47. Whereas it is necessary to adapt Directives 71/305/EEC and 77/62/EEC to establish well-defined fields of application; whereas the scope of Directive 71/305/EEC should not be reduced, except as regards contracts in the water and telecommunications sectors; whereas the scope of Directive 77/62/EEC should not be reduced, except as regards certain contracts in the water sector; whereas the scope of Directives 71/305/EEC and 77/62/EEC should not, however, be extended to contracts awarded by carriers by land, air, sea, inshore or inland waterway which, although carrying out economic activities of an industrial or commercial nature, belong to the State administration; whereas,

nevertheless, certain contracts awarded by carriers by land, air, sea, inshore or inland waterway which belong to the State administration and are carried out only for reasons of public service should be covered by those Directives;

48. Whereas this Directive should be re-examined in the light of experience;
49. Whereas the opening-up of contracts in the sectors covered by this Directive might have an adverse effect upon the economy of the Kingdom of Spain; whereas the economies of the Hellenic Republic and the Portuguese Republic will have to sustain even greater efforts; whereas it is appropriate that these Member States be granted adequate additional periods to implement this Directive,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General provisions

Article 1

For the purpose of this Directive:

1. 'public authorities' shall mean the State, regional or local authorities, bodies governed by public law, or associations formed by one or more of such authorities or bodies governed by public law.

A body is considered to be governed by public law where it:

- is established for the specific purpose of meeting needs in the general interest, not being of an industrial or commercial nature,
- has legal personality, and
- is financed for the most part by the State, or regional or local authorities, or other bodies governed by public law, or is subject to management supervision by those bodies, or has an administrative, managerial or supervisory board more than half of whose members are appointed by the State, regional or local authorities, or other bodies governed by public law;

2. 'public undertaking' shall mean any undertaking over which the public authorities may exercise directly or indirectly a dominant influence by virtue of their ownership of it, their financial participation therein, or the rules which govern it. A dominant influence on

the part of the public authorities shall be presumed when these authorities, directly or indirectly, in relation to an undertaking:

- hold the majority of the undertaking's subscribed capital, or
- control the majority of the votes attaching to shares issued by the undertaking, or
- can appoint more than half of the members of the undertaking's administrative, managerial or supervisory body;

3. 'affiliated undertaking' shall mean any undertaking the annual accounts of which are consolidated with those of the contracting entity in accordance with the requirements of the seventh Council Directive 83/349/EEC of 13 June 1983, based on Article 54 (3) (g) of the EEC Treaty on consolidated accounts ⁽¹⁾ or, in the case of entities not subject to that Directive, any undertaking over which the contracting entity may exercise, directly or indirectly, a dominant influence within the meaning of paragraph 2, or which may exercise a dominant influence over the contracting entity or which, in common with the contracting entity, is subject to the dominant influence of another undertaking by virtue of ownership, financial participation, or the rules which govern it;

4. 'supply, works and service contracts' shall mean contracts for pecuniary interest concluded in writing between one of the contracting entities referred to in Article 2, and a supplier, a contractor or a service provider, having as their object:

- (a) in the case of supply contracts, the purchase, lease, rental or hire-purchase, with or without options to buy, of products;
- (b) in the case of works contracts either the execution, or both the execution and design or the realization, by whatever means, of building or civil engineering activities referred to in Annex XI. These contracts may, in addition, cover supplies and services necessary for their execution;
- (c) in the case of service contracts, any object other than those referred to in (a) and (b) and to the exclusion of:
 - (i) contracts for the acquisition or rental, by whatever financial means, of land, existing buildings, or other immovable property or concerning rights thereon; nevertheless, financial service contracts concluded at the

same time as, before or after the contract of acquisition or rental, in whatever form, shall be subject to this Directive;

- (ii) contracts for voice telephony, telex, radiotelephony, paging and satellite services;
- (iii) contracts for arbitration and conciliation services;
- (iv) contracts for the issue, sale, purchase or transfer of securities or other financial instruments;
- (v) employment contracts;
- (vi) research and development service contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting entity.

Contracts which include the provision of services and supplies shall be regarded as supply contracts if the total value of supplies is greater than the value of the services covered by the contract;

5. 'framework agreement' shall mean an agreement between one of the contracting entities defined in Article 2 and one or more suppliers, contractors or service providers the purpose of which is to establish the terms, in particular with regard to the prices and, where appropriate, the quantity envisaged, governing the contracts to be awarded during a given period;

6. 'tenderer' shall mean a supplier, contractor or service provider who submits a tender and 'candidate' shall mean a person who has sought an invitation to take part in a restricted or negotiated procedure; service providers may be either natural or legal persons, including contracting entities within the meaning of Article 2;

7. 'open, restricted and negotiated procedures' shall mean the award procedures applied by contracting entities whereby:

- (a) in the case of open procedures, all interested suppliers, contractors or service providers may submit tenders;
- (b) in the case of the restricted procedures, only candidates invited by the contracting entity may submit tenders;
- (c) in the case of negotiated procedures, the contracting entity consults suppliers, contractors or service providers of its choice and negotiates the terms of the contract with one or more of them;

⁽¹⁾ OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

8. 'technical specifications' shall mean the technical requirements contained in particular in the tender documents, defining the characteristics of a set of works, material, product, supply or service, and enabling a piece of work, a material, a product, a supply or a service to be objectively described in a manner such that it fulfils the use for which it is intended by the contracting entity. These technical specifications may include quality, performance, safety or dimensions, as well as requirements applicable to the material, product, supply or service as regards quality assurance, terminology, symbols, testing and test methods, packaging, marking or labelling. In the case of works contracts, they may also include rules for the design and costing, the test, inspection and acceptance conditions for works and techniques or methods of construction and all other technical conditions which the contracting entity is in a position to prescribe under general or specific regulations, in relation to the finished works and to the materials or parts which they involve;
9. 'standard' shall mean a technical specification approved by a recognized standardizing body for repeated or continuous application, compliance with which is in principle not compulsory;
10. 'European standard' shall mean a standard approved by the European Committee for Standardization (CEN) or by the European Committee for Electrotechnical Standardization (Cenelec) as a 'European Standard (EN)' or 'Harmonization Document (HD)', according to the common rules of those organizations, or by the European Telecommunications Standards Institute (ETSI) according to its own rules as a 'European Telecommunications Standard (ETS)';
11. 'common technical specification' shall mean a technical specification drawn up in accordance with a procedure recognized by the Member States with a view to uniform application in all Member States and published in the *Official Journal of the European Communities*;
12. 'European technical approval' shall mean a favourable technical assessment of the fitness for use of a product for a particular purpose, based on fulfilment of the essential requirements for building works, by means of the inherent characteristics of the product and the defined conditions of application and use, as provided for in Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products⁽¹⁾. European technical approval shall be issued by an approval body designated for this purpose by the Member State;
13. 'European specification' shall mean a common technical specification, a European technical approval or a national standard implementing a European standard;
14. 'public telecommunications network' shall mean the public telecommunications infrastructure which enables signals to be conveyed between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means;
- 'network termination point' shall mean all physical connections and their technical access specification which form part of the public telecommunications network and are necessary for access to, and efficient communication through, that public network;
15. 'public telecommunications services' shall mean telecommunications services the provision of which the Member States have specifically assigned notably to one or more telecommunications entities;
- 'Telecommunications services' shall mean services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of radio-broadcasting and television;
16. 'design contests' shall mean the national procedures which enable the contracting entity to acquire, mainly in the fields of architecture, engineering or data processing, a plan or design selected by a jury after having been put out to competition with or without the award of prizes.

Article 2

1. This Directive shall apply to contracting entities which:
- are public authorities or public undertakings and exercise one of the activities referred to in paragraph 2;
 - when they are not public authorities or public undertakings, have as one of their activities any of those referred to in paragraph 2 or any combination thereof and operate on the basis of special or exclusive rights granted by a competent authority of a Member State.
2. Relevant activities for the purposes of this Directive shall be:

⁽¹⁾ OJ No L 40, 11. 2. 1989, p. 12.

- (a) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of:
- (i) drinking water; or
 - (ii) electricity; or
 - (iii) gas or heat;
- or the supply of drinking water, electricity, gas or heat to such networks;
- (b) the exploitation of a geographical area for the purpose of:
- (i) exploring for or extracting oil, gas, coal or other solid fuels, or
 - (ii) the provision of airport, maritime or inland port or other terminal facilities to carriers by air, sea or inland waterway;
- (c) the operation of networks providing a service to the public in the field of transport by railway, automated systems, tramway, trolley bus, bus or cable.

As regards transport services, a network shall be considered to exist where the service is provided under operating conditions laid down by a competent authority of a Member State, such as conditions on the routes to be served, the capacity to be made available or the frequency of the service;

- (d) the provision or operation of public telecommunications networks or the provision of one or more public telecommunications services.

3. For the purpose of applying paragraph 1 (b), special or exclusive rights shall mean rights deriving from authorizations granted by a competent authority of the Member State concerned, by law, regulation or administrative action, having as their result the reservation for one or more entities of the exploitation of an activity defined in paragraph 2.

A contracting entity shall be considered to enjoy special or exclusive rights in particular where:

- (a) for the purpose of constructing the networks or the facilities referred to in paragraph 2, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over the public highway;
- (b) in the case of paragraph 2 (a), the entity supplies with drinking water, electricity, gas or heat a network which is itself operated by an entity enjoying special or exclusive rights granted by a competent authority of the Member State concerned.

4. The provision of bus transport services to the public shall not be considered to be a relevant activity within the meaning of paragraph 2 (c) where other entities are free to

provide those services, either in general or in a particular geographical area, under the same condition as the contracting entities.

5. The supply of drinking water, electricity, gas or heat to networks which provide a service to the public by a contracting entity other than a public authority shall not be considered as a relevant activity within the meaning of paragraph 2 (a) where:

- (a) in the case of drinking water or electricity:
- the production of drinking water or electricity by the entity concerned takes place because its consumption is necessary for carrying out an activity other than that referred to in paragraph 2, and
 - supply to the public network depends only on the entity's own consumption and has not exceeded 30 % of the entity's total production of drinking water or energy, having regard to the average for the preceding three years, including the current year;
- (b) in the case of gas or heat:
- the production of gas or heat by the entity concerned is the unavoidable consequence of carrying on an activity other than that referred to in paragraph 2, and
 - supply to the public network is aimed only at the economic exploitation of such production and amounts to not more than 20 % of the entity's turnover having regard to the average for the preceding three years, including the current year.

6. The contracting entities listed in Annexes I to X shall fulfil the criteria set out above. In order to ensure that the lists are as exhaustive as possible, Member States shall notify the Commission of amendments to their lists. The Commission shall revise Annexes I to X in accordance with the procedure in Article 40.

Article 3

1. Member States may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels shall not be considered to be an activity defined in Article 2 (2) (b) (i) and that entities shall not be considered as operating under special or exclusive rights within the meaning of Article 2 (3) (b) by virtue of carrying on one or more of these activities, provided that all the following conditions are satisfied with respect to the relevant national provisions concerning such activities:

- (a) at the time when authorization to exploit such a geographical area is requested, other entities shall be free to seek authorization for that purpose under the same conditions as the contracting entities;

- (b) the technical and financial capacity of entities to engage in particular activities shall be established prior to any evaluation of the merits of competing applications for authorization;
- (c) authorization to engage in those activities shall be granted on the basis of objective criteria concerning the way in which it is intended to carry out exploitation or extraction, which shall be established and published prior to the requests and applied in a non-discriminatory manner;
- (d) all conditions and requirements concerning the carrying out or termination of the activity, including provisions on operating obligations, royalties, and participation in the capital or revenue of the entities, shall be established and made available prior to the requests for authorization being made and then applied in a non-discriminatory manner; every change concerning these conditions and requirements shall be applied to all the entities concerned, or else amendments must be made in a non-discriminatory manner; however, operating obligations need not be established until immediately before the authorization is granted; and
- (e) contracting entities shall not be required by any law, regulation, administrative requirement, agreement or understanding to provide information on a contracting entity's intended or actual sources of procurement, except at the request of national authorities with a view to the objectives mentioned in Article 36 of the EEC Treaty.

2. Member States which apply the provisions of paragraph 1 shall ensure, through the conditions of the authorization or other appropriate measures, that any entity:

- (a) observes the principles of non-discrimination and competitive procurement in respect of the award of supplies, works and service contracts, in particular as regards the information which the entity makes available to undertakings concerning its procurement intentions;
- (b) communicates to the Commission, under conditions to be defined by the latter in accordance with Article 40, information relating to the award of contracts.

3. As regards individual concessions or authorizations granted before the date on which Member States apply this Directive in accordance with Article 45, paragraph 1 (a), (b) and (c) shall not apply, provided that at that date other entities are free to seek authorization for the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, on a non-discriminatory basis and in the light of objective criteria. Paragraph 1 (d) shall not apply as regards

conditions or requirements established, applied or amended before the date referred to above.

4. A Member State which wishes to apply paragraph 1 shall inform the Commission accordingly. In so doing, it shall inform the Commission of any law, regulation or administrative provision, agreement or understanding relating to compliance with the conditions referred to in paragraphs 1 and 2.

The Commission shall take a decision in accordance with the procedure laid down in Article 40 (5) to (8). It shall publish its decision, giving its reasons, in the *Official Journal of the European Communities*.

It shall forward to the Council each year a report on the implementation of this Article and review its application in the framework of the report provided for in Article 44.

Article 4

1. When awarding supply, works or service contracts, or organizing design contests, the contracting entities shall apply procedures which are adapted to the provisions of this Directive.

2. Contracting entities shall ensure that there is no discrimination between different suppliers, contractors or service providers.

3. In the context of provision of technical specifications to interested suppliers, contractors or service providers, of qualification and selection of suppliers, contractors or service providers and of award of contracts, contracting entities may impose requirements with a view to protecting the confidential nature of information which they make available.

4. This Directive shall not limit the right of suppliers, contractors or service providers to require a contracting entity, in conformity with national law, to respect the confidential nature of information which they make available.

Article 5

1. Contracting entities may regard a framework agreement as a contract within a meaning of Article 1 (4) and award it in accordance with this Directive.

2. Where contracting entities have awarded a framework agreement in accordance with this Directive, they may avail themselves of Article 20 (2) (i) when awarding contracts based on that agreement.

3. Where a framework agreement has not been awarded in accordance with this Directive, contracting entities may not avail themselves of Article 20 (2) (i).

4. Contracting entities may not misuse framework agreements in order to hinder, limit or distort competition.

Article 6

1. This Directive shall not apply to contracts or design contests which the contracting entities award or organize for purposes other than the pursuit of their activities as described in Article 2 (2) or for the pursuit of such activities in a non-member country, in conditions not involving the physical use of a network or geographical area within the Community.

2. However, this Directive shall apply to contracts or design contests awarded or organized by the entities which exercise an activity referred to in Article 2 (2) (a) (i) and which:

- (a) are connected with hydraulic engineering projects, irrigation or land drainage, provided that the volume of water intended for the supply of drinking water represents more than 20 % of the total volume of water made available by these projects or irrigation or drainage installations, or
- (b) are connected with the disposal or treatment of sewage.

3. The contracting entities shall notify the Commission at its request of any activities they regard as excluded under paragraph 1. The Commission may periodically publish lists of the categories of activities which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 7

1. This Directive shall not apply to contracts awarded for purposes of resale or hire to third parties, provided that the contracting entity enjoys no special or exclusive right to sell or hire the subject of such contracts and other entities are free to sell or hire it under the same conditions as the contracting entity.

2. The contracting entities shall notify the Commission at its request of all the categories of products or activities which they regard as excluded under paragraph 1. The

Commission may periodically publish lists of the categories of products or activities which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information.

Article 8

1. This Directive shall not apply to contracts which contracting entities exercising an activity described in Article 2 (2) (d) award for purchases intended exclusively to enable them to provide one or more telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.

2. The contracting entities shall notify the Commission at its request of any services which they regard as excluded under paragraph 1. The Commission may periodically publish the list of services which it considers to be covered by this exclusion for information in the *Official Journal of the European Communities*. In so doing, the Commission shall respect any sensitive commercial aspects the contracting entities may point out when forwarding this information.

Article 9

1. This Directive shall not apply to:

- (a) contracts which the contracting entities listed in Annex I award for the purchase of water;
- (b) contracts which the contracting entities listed in Annexes II to V award for the supply of energy or of fuels for the production of energy.

2. The Council shall re-examine the provisions of paragraph 1 when it has before it a report from the Commission together with appropriate proposals.

Article 10

This Directive shall not apply to contracts when they are declared to be secret by Member States, when their execution must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic security interests of that State so requires.

Article 11

This Directive shall not apply to service contracts awarded to an entity which is itself a contracting authority within

the meaning of Article 1 (b) of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts ⁽¹⁾ on the basis of an exclusive right which it enjoys pursuant to a published law, regulation or administrative provision which is compatible with the EEC Treaty.

Article 12

This Directive shall not apply to contracts governed by different procedural rules and awarded:

1. pursuant to an international agreement concluded in conformity with the Treaty between a Member State and one or more third countries and covering supplies, works, services or design contests intended for the joint implementation or exploitation of a project by the signatory States; every agreement shall be communicated to the Commission, which may consult the Advisory Committee for Public Contracts set up by Council Decision 71/306/EEC ⁽²⁾ or, in the case of agreements governing contracts awarded by entities exercising an activity defined in Article 2 (2) (d), the Advisory Committee on Telecommunications Procurement referred to in Article 39;
2. to undertakings in a Member State or a third country in pursuance of an international agreement relating to the stationing of troops;
3. pursuant to the particular procedure of an international organization.

Article 13

1. This Directive shall not apply to service contracts which:

- (a) a contracting entity awards to an affiliated undertaking;
- (b) are awarded by a joint venture formed by a number of contracting entities for the purpose of carrying out a relevant activity within the meaning of Article 2 (2) to one of those contracting entities or to an undertaking which is affiliated with one of these contracting entities,

provided that at least 80 % of the average turnover of that undertaking with respect to services arising within the Community for the preceding three years derives from the provision of such services to undertakings with which it is affiliated.

⁽¹⁾ OJ No L 209, 24. 7. 1992, p. 1.

⁽²⁾ OJ No L 185, 16. 8. 1971, p. 15. Decision as last amended by Decision 77/63/EEC (OJ No L 13, 15. 1. 1977, p. 15).

Where more than one undertaking affiliated with the contracting entity provides the same service or similar services, the total turnover deriving from the provision of services by those undertakings shall be taken into account.

2. The contracting entities shall notify to the Commission, at its request, the following information regarding the application of the provisions of paragraph 1:

- the names of the undertakings concerned,
- the nature and value of the service contracts involved,
- such proof as may be deemed necessary by the Commission that the relationship between the undertaking to which the contracts are awarded and the contracting entity is in conformity with the requirements of this Article.

Article 14

1. This Directive shall apply to contracts the estimated value, not of VAT, for which is not less than:

- (a) ECU 400 000 in the case of supply and service contracts awarded by entities exercising an activity defined in Article 2 (2) (a), (b) and (c);
- (b) ECU 600 000 in the case of supply and service contracts awarded by entities carrying out an activity defined in Article 2 (2) (d);
- (c) ECU 5 000 000 in the case of works contracts.

2. For the purposes of calculating the estimated amount of a service contract, the contracting entity shall include the total remuneration of the service provider, taking account of the elements specified in paragraphs 3 to 13.

3. For the purposes of calculating the estimated contract amount of financial services, the following amounts shall be taken into account:

- as regards insurance services, the premium payable,
- as regards banking and other financial services, fees, commissions, interest and other types of remuneration,
- as regards contracts which involve design, the fee or commission payable.

4. In the case of supply contracts for lease, rental or hire-purchase, the basis for calculating the contract value shall be:

- (a) in the case of fixed-term contracts, where their term is 12 months or less, the estimated total value for the contract's duration, or, where their term exceeds 12 months, the contract's total value including the estimated residual value;
- (b) in the case of contracts for an indefinite period or in cases where there is doubt as to the duration of the contracts, the anticipated total instalments to be paid in the first four years.
5. In the case of service contracts which do not indicate a total cost, the basis for calculating the estimated contract value shall be:
- for fixed-term contracts, where their term is 48 months or less, the total value for their whole duration,
 - for contracts without a fixed term or for a term exceeding 48 months, the monthly value multiplied by 48.
6. Where a proposed supply or service contract expressly specifies option clauses, the basis for calculating the contract value shall be the highest possible total purchase, lease, rental or hire-purchase permissible, inclusive of the option clauses.
7. In the case of a procurement of supplies or services over a given period by means of a series of contracts to be awarded to one or more suppliers or service providers or of contracts which are to be renewed, the contract value shall be calculated on the basis of:
- (a) the total value of contracts with similar characteristics which were awarded over the previous financial year or 12 months, adjusted where possible for anticipated changes in quantity or value over the subsequent twelve months; or
- (b) the aggregate value of contracts to be awarded during the 12 months following the first award or during the whole term of the contract, where this is longer than 12 months.
8. The basis for calculating the estimated value of a contract including both supplies and services shall be the total value of the supplies and services, regardless of their respective values. The calculation shall include the value of the siting and installation operations.
9. The basis for calculating the value of a framework agreement shall be the estimated maximum value of all the contracts envisaged for the period in question.

10. The basis for calculating the value of a works contract for the purposes of paragraph 1 shall be the total value of the work. 'Work' shall mean the result of building and civil engineering activities, taken as a whole, which are intended to fulfil an economic and technical function by themselves.

In particular, where a supply, work or service is the subject of several lots, the value of each lot shall be taken into account when assessing the value referred to in paragraph 1. Where the aggregate value of the lots equals or exceeds the value laid down in paragraph 1, that paragraph shall apply to all the lots. However, in the case of works contracts, contracting entities may derogate from paragraph 1 in respect of lots the estimated value net of VAT for which is less than ECU 1 million, provided that the aggregate value of those lots does not exceed 20 % of the overall value of the lots.

11. For the purposes of paragraph 1, contracting entities shall include in the estimated value of a works contract the value of any supplies or services necessary for the execution of the contracts which they make available to the contractor.

12. The value of supplies or services which are not necessary for the execution of a particular works contract may not be added to that of the works contract with the result of avoiding application of this Directive to the procurement of those supplies or services.

13. Contracting entities may not circumvent this Directive by splitting contracts or using special methods of calculating the value of contracts.

TITLE II

Two-tier application

Article 15

Supply and works contracts and contracts which have as their object services listed in Annex XVI A shall be awarded in accordance with the provisions of Titles III, IV and V.

Article 16

Contracts which have as their object services listed in Annex XVI B shall be awarded in accordance with Articles 18 and 24.

Article 17

Contracts which have as their object services listed in both Annexes XVI A and XVI B shall be awarded in accordance with the provisions of Titles III, IV and V where the value of the services listed in Annex XVI A is greater than the value of the services listed in Annex XVI B. Where this is not the case, they shall be awarded in accordance with Articles 18 and 24.

TITLE III

Technical specifications and standards

Article 18

1. Contracting entities shall include the technical specifications in the general documents or the contract documents relating to each contract.
2. The technical specifications shall be defined by reference to European specifications, where these exist.
3. In the absence of European specifications, the technical specifications should as far as possible be defined by reference to other standards having currency within the Community.
4. Contracting entities shall define such further requirements as are necessary to complete European specifications or other standards. In so doing, they shall prefer specifications which indicate performance requirements rather than design or description characteristics, unless the contracting entity has objective reasons for considering that such specifications are inadequate for the purposes of the contract.
5. Technical specifications which mention goods of a specific make or source or of a particular process, and which have the effect of favouring or eliminating certain undertakings, shall not be used unless such specifications are indispensable for the subject of the contract. In particular, the indication of trade marks, patents, types, of specific origin or production shall be prohibited; however, such an indication accompanied by the words 'or equivalent' shall be authorized where the subject of the contract cannot otherwise be described by specifications which are sufficiently precise and fully intelligible to all concerned.
6. Contracting entities may derogate from paragraph 2 if:
 - (a) it is technically impossible to establish satisfactorily that a product conforms to the European specifications;
 - (b) the application of paragraph 2 would prejudice the application of Council Directive 86/361/EEC of 24 July 1986 on the initial stage of the mutual recognition

of type approval for telecommunications terminal equipment⁽¹⁾, or of Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications⁽²⁾;

- (c) in the context of adapting existing practice to take account of European specifications, use of those specifications would oblige the contracting entity to acquire supplies incompatible with equipment already in use or would entail disproportionate cost or disproportionate technical difficulty. Contracting entities which have recourse to this derogation shall do so only as part of clearly-defined and recorded strategy with a view to a changeover to European specifications;
 - (d) the relevant European specification is inappropriate for the particular application or does not take account of technical developments which have come about since its adoption. Contracting entities which have recourse to this derogation shall inform the appropriate standardizing organization, or any other body empowered to review the European specification, of the reasons why they consider the European specification to be inappropriate and shall request its revision;
 - (e) the project is of a genuinely innovative nature for which use of European specifications would not be appropriate.
7. Notices published pursuant to Article 21 (1) (a) or Article 21 (2) (a) shall indicate any recourse to the derogations referred to in paragraph 6.
8. This Article shall be without prejudice to compulsory technical rules in so far as these are compatible with Community law.

Article 19

1. Contracting entities shall make available on request to suppliers, contractors or service providers interested in obtaining a contract the technical specifications regularly referred to in their supply, works or service contracts or the technical specifications which they intend to apply to contracts covered by periodic information notices within the meaning of Article 22.
2. Where such technical specifications are based on documents available to interested suppliers, contractors or service providers, a reference to those documents shall be sufficient.

(1) OJ No L 217, 5. 8. 1986, p. 21.

(2) OJ No L 36, 7. 2. 1987, p. 31.

TITLE IV

Procedures for the award of contracts

Article 20

1. Contracting entities may choose any of the procedures described in Article 1 (7), provided that, subject to paragraph 2, a call for competition has been made in accordance with Article 21.

2. Contracting entities may use a procedure without prior call for competition in the following cases:

- (a) in the absence of tenders or suitable tenders in response to a procedure with a prior call for competition, provided that the original contract conditions have not been substantially changed;
- (b) where a contract is purely for the purpose of research, experiment, study or development and not for the purpose of ensuring profit or of recovering research and development costs and in so far as the award of such contract does not prejudice the competitive award of subsequent contracts which have in particular these purposes;
- (c) when, for technical or artistic reasons or for reasons connected with protection of exclusive rights, the contract may be executed only by a particular supplier, contractor or service provider;
- (d) in so far as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting entities, the time limits laid down for open and restricted procedures cannot be adhered to;
- (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting entity to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (f) for additional works or services not included in the project initially awarded or in the contract first concluded but which have, through unforeseen circumstances, become necessary for the execution of the contract, on condition that the award is made to the contractor or service provider executing the original contract:

— when such additional works or services cannot be technically or economically separated from the main contract without great inconvenience to the contracting entities,

— or when such additional works or services, although separable from the execution of the original contract, are strictly necessary to its later stages;

(g) in the case of works contracts, for new works consisting of the repetition of similar works entrusted to the contractor to which the same contracting entities awarded an earlier contract, provided that such works conform to a basic project for which a first contract was awarded after a call for competition. As soon as the first project is put up for tender, notice must be given that this procedure might be adopted and the total estimated cost of subsequent works shall be taken into consideration by the contracting entities when they apply the provisions of Article 14;

(h) for supplies quoted and purchased on a commodity market;

(i) for contracts to be awarded on the basis of a framework agreement, provided that the condition referred to in Article 5 (2) is fulfilled;

(j) for bargain purchases, where it is possible to procure supplies taking advantage of a particularly advantageous opportunity available for a very short space of time at a price considerably lower than normal market prices;

(k) for purchases of goods under particularly advantageous conditions from either a supplier definitively winding up his business activities or the receivers or liquidators of a bankruptcy, an arrangement with creditors or a similar procedure under national laws or regulations;

(l) when the service contract concerned is part of the follow-up a design contest organized in conformity with the provisions of this Directive and must, in accordance with the relevant rules, be awarded to the winner or to one of the winners of that contest. In the latter case, all the winners must be invited to participate in the negotiations.

Article 21

1. In the case of supplies, works or service contracts, the call for competition may be made:

(a) by means of a notice drawn up in accordance with Annex XII A, B or C; or

(b) by means of a periodic indicative notice drawn up in accordance with Annex XIV; or

(c) by means of a notice on the existence of a qualification system drawn up in accordance with Annex XIII.

2. When a call for competition is made by means of a periodic indicative notice:

- (a) the notice must refer specifically to the supplies, works or services which will be the subject of the contract to be awarded;
- (b) the notice must indicate that the contract will be awarded by restricted or negotiated procedure without further publication of a notice of a call for competition and invite interested undertakings to express their interest in writing;
- (c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations.

2. When a call for competition is made by means of a notice on the existence of a qualification system, tenderers in a restricted procedure or participants in a negotiated procedure shall be selected from the qualified candidates in accordance with such a system.

4. In the case of design contests, the call for competition shall be made by means of a notice drawn up in accordance with Annex XVII.

5. The notices referred to in this Article shall be published in the *Official Journal of the European Communities*.

Article 22

1. Contracting entities shall make known, at least once a year, by means of a periodic indicative notice:

- a) in the case of supply contracts, the total of the contracts for each product area of which the estimated value, taking into account the provisions of Article 14, is equal to or greater than ECU 750 000, and which they intend to award over the following twelve months;
- b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than the threshold laid down in Article 14 (1).
- c) in the case of service contracts, the estimated total value of the service contracts in each of the categories of services listed in Annex XVI A which they intend to award over the following 12 months, where such estimated total value, taking into account the provisions of Article 14, is equal to or greater than ECU 750 000.

2. The notice shall be drawn up in accordance with Annex XIV and published in the *Official Journal of the European Communities*.

3. Where the notice is used as a means of calling for competition in accordance with Article 21 (1) (b), it must have been published not more than 12 months prior to the date on which the invitation referred to in Article 21 (2) (c) is sent. Moreover, the contracting entity shall meet the deadlines laid down in Article 26 (2).

4. Contracting entities may, in particular, publish periodic indicative notices relating to major projects without repeating information previously included in a periodic indicative notice, provided that it is clearly stated that such notices are additional notices.

Article 23

1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract the estimated value net of VAT for which is not less than the value referred to in Article 14 (1).

2. This Article shall apply to all design contests where the total amount of contest prizes and payments to participants is not less than ECU 400 000 for design contests organized by entities exercising an activity referred to in Article 2 (2) (a), (b) and (c) and ECU 600 000 for design contests organized by entities exercising an activity referred to in Article 2 (2) (d).

3. The rules for the organization of a design contest shall be in conformity with the requirements of this Article and shall be communicated to those interested in participating in the contest.

4. The admission of participants to design contests shall not be limited:

- by reference to the territory or part of the territory of a Member State,
- on the grounds that, under the law of the Member State in which the contest is organized, they would have been required to be either natural or legal persons.

5. Where design contests are restricted to a limited number of participants, the contracting authorities shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

6. The jury shall be composed exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of its members must have the same qualification or its equivalent.

The jury shall be autonomous in its decisions or opinions. These shall be reached on the basis of projects submitted anonymously and solely on the grounds of the criteria indicated in the notice provided for in Annex XVII.

Article 24

1. Contracting entities which have awarded a contract or organized a design contest shall communicate to the Commission, within two months of the award of the contract and under conditions to be laid down by the Commission in accordance with the procedure laid down in Article 40, the results of the awarding procedure by means of a notice drawn up in accordance with Annex XV or Annex XVIII.

2. Information provided under Section I of Annex XV or under Annex XVIII shall be published in the *Official Journal of the European Communities*. In this connection the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information in connection with points 6 and 9 of Annex XV.

3. Contracting entities awarding service contracts within category No 8 of Annex XVI A to which Article 20 (2) (b) applies need mention, concerning point 3 of Annex XV, only the main title thereof within the meaning of the classification of Annex XVI. Contracting entities awarding service contracts within category No 8 of Annex XVI A to which Article 20 (2) (b) does not apply may, on the grounds of commercial confidentiality, limit the information provided for in point 3 of Annex XV. However, they must ensure that any information published under this point is no less detailed than that contained in the notice of the call for competition published in accordance with Article 20 (1) or, where a qualification system is used, no less detailed than the category referred to in Article 30 (7). In the case listed in Annex XVI B, the contracting entities shall indicate in the notice whether they agree on its publication.

4. Information provided under Section II of Annex XV must not be published, except in aggregated form, for statistical purposes.

Article 25

1. The contracting entities must be able to supply proof of the date of dispatch of the notices referred to in Articles 20 to 24.

2. The notices shall be published in full in their original language in the *Official Journal of the European Communities* and in the TED data bank. A summary of the important elements of each notice shall be published in the other official languages of the Community, the original text alone being authentic.

3. The Office for Official Publications of the European Communities shall publish the notices not later than 12 days after their dispatch. In exceptional cases it shall endeavour to publish the notice referred to in Article 21 (1) (a) within five days in response to a request by the contracting entity and provided that the notice has been sent to the Office by electronic mail, telex or telefax. Each edition of the *Official Journal of the European Communities* which contains one or more notices shall reproduce the model notice or notices on which the published notice or notices is/are based.

4. The cost of publication of the notices in the *Official Journal of the European Communities* shall be borne by the Communities.

5. Contracts or design contests in respect of which a notice is published in the *Official Journal of the European Communities* pursuant to Article 21 (1) or (4) shall not be published in any other way before that notice has been dispatched to the Office for Official Publications of the European Communities. Such publication shall not contain information other than that published in the *Official Journal of the European Communities*.

Article 26

1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice. This time limit may be shortened to 36 days where contracting entities have published a notice in accordance with Article 22 (1).

2. In restricted procedures and in negotiated procedures with a prior call for competition, the following arrangements shall apply:

(a) the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 21 (1) (a) or in response to an invitation from a

- contracting entity in accordance with Article 21 (2) (c), shall, as a general rule, be at least five weeks from the date of dispatch of the notice or invitation and shall in any case not be less than the time limit for publication laid down in Article 25 (3), plus 10 days;
- (b) the time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;
- (c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least three weeks and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 28 (3).

Article 27

In the contract documents, the contracting entity may ask the tenderer to indicate in his tender any share of the contract which he may intend to subcontract to third parties.

This indication shall be without prejudice to the question of the principal contractor's responsibility.

Article 28

1. Provided that they have been requested in good time, the contract documents and supporting documents must be sent to the suppliers, contractors or service providers by the contracting entities as a general rule within six days of receipt of the application.
2. Provided that it has been requested in good time, additional information relating to the contract documents shall be supplied by the contracting entities not later than six days before the final date fixed for receipt of tenders.
3. Where tenders require the examination of voluminous documentation such as lengthy technical specifications, a visit to the site or an on-the-spot inspection of the documents supporting the contract documents, this shall be taken into account when the appropriate time limits are fixed.
4. Contracting entities shall invite the selected candidates simultaneously and in writing. The letter of invitation shall be accompanied by the contract documents and supporting documents. It shall include at least the following information:
 - (a) the address from which any additional documents can be requested, the final date for such requests and the

- amount and methods of payment of any sum to be paid for such documents;
- (b) the final date for receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
 - (c) a reference to any tender notice published;
 - (d) an indication of any document to be annexed;
 - (e) the criteria for the award of the contract if these are not given in the notice;
 - (f) any other special condition for participation in the contract.

5. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, telephone or any electronic means, they must be confirmed by letter dispatched before the expiry of the time limit referred to in Article 26 (1) or of the time limit set by contracting entities pursuant to Article 26 (2).

Article 29

1. The contracting entity may state in the contract documents, or be obliged by a Member State so to do, the authority or authorities from which a tenderer may obtain the appropriate information on the obligations relating to the employment protection provisions and the working conditions which are in force in the Member State, region or locality in which the works or services are to be executed or performed and which shall be applicable to the works carried out or the services performed on site during the performance of the contract.

2. A contracting entity which supplies the information referred to in paragraph 1 shall request the tenderers or those participating in the contract procedure to indicate that they have taken account, when drawing up their tender, of the obligations relating to employment protection provisions and the working conditions which are in force in the place where the work or the service is to be carried out or performed. This shall be without prejudice to the application of Article 34 (5) concerning the examination of abnormally low tenders.

TITLE V

Qualification, selection and award

Article 30

1. Contracting entities which so wish may establish and operate a system of qualification of suppliers, contractors or service providers.

2. The system, which may involve different qualification stages, shall operate on the basis of objective criteria and rules to be established by the contracting entity. The contracting entity shall use European standards as a reference where they are appropriate. The criteria and rules may be updated as required.

3. The criteria and rules for qualification shall be made available on request to interested suppliers, contractors or service providers. The updating of these criteria and rules shall be communicated to the interested suppliers, contractors and service providers. Where a contracting entity considers that the qualification system of certain third entities or bodies meets its requirements, it shall communicate to interested suppliers, contractors and service providers the names of such third entities or bodies.

4. Contracting entities shall inform applicants of their decision as to qualification within a reasonable period. If the decision will take longer than six months from the presentation of an application, the contracting entity shall inform the applicant, within two months of the application, of the reasons justifying a longer period and of the date by which its application will be accepted or refused.

5. In reaching their decision as to qualification or when the criteria and rules are being updated, contracting entities may not:

- impose conditions of an administrative, technical or financial nature on some suppliers, contractors or service providers which are not imposed on others,
- require tests or proof which duplicate objective evidence already available.

6. Applicants whose qualification is refused shall be informed of this decision and the reasons for refusal. The reasons must be based on the criteria for qualification referred to in paragraph 2.

7. A written record of qualified suppliers, contractors or service providers shall be kept and it may be divided into categories, according to the type of contract for which the qualification is valid.

8. Contracting entities may bring the qualification of a supplier, contractor or service provider to an end only for reasons based on the criteria referred to in paragraph 2. The intention to bring qualification to an end must be notified in writing to the supplier, contractor or service provider beforehand, together with the reason or reasons justifying the proposed action.

9. The qualification system shall be the subject of a notice drawn up in accordance with Annex XIII and published in the *Official Journal of the European Communities*, indicating the purpose of the qualification system and the

availability of the rules concerning its operation. Where the system is of a duration greater than three years, the notice shall be published annually. Where the system is of a shorter duration, an initial notice shall suffice.

Article 31

1. Contracting entities which select candidates to tender in restricted procedures or to participate in negotiated procedures shall do so according to objective criteria and rules which they lay down and which they shall make available to interested suppliers, contractors or service providers.

2. The criteria used may include the criteria for exclusion specified in Article 23 of Directive 71/305/EEC and in Article 20 of Directive 77/62/EEC.

3. The criteria may be based on the objective need of the contracting entity to reduce the number of candidates to a level which is justified by the need to balance the particular characteristics of the contract award procedure and the resources required to complete it. The number of candidates selected must, however, take account of the need to ensure adequate competition.

Article 32

Should contracting entities require the production of certificates drawn up by independent bodies for attesting conformity of the service provider to certain quality assurance standards, they shall refer to quality assurance systems based on the relevant EN 29 000 European standards series certified by bodies conforming to the EN 45 000 European standards series.

Entities shall recognize equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent quality assurance measures from service providers who have no access to such certificates or no possibility of obtaining them within the relevant time limits.

Article 33

1. Groupings of suppliers, contractors or service providers shall be permitted to tender or negotiate. The conversion of such groupings into a specific legal form shall not be required in order to submit a tender or to negotiate, but the grouping selected may be required so to convert itself once it has been awarded the contract where such conversion is necessary for the proper performance of the contract.

2. Candidates or tenderers who, under the law of the Member State in which they are established, are entitled to carry out the relevant service activity shall not be rejected on the sole ground that under the law of the Member State in which the contract is awarded they would have been required to be either a natural or a legal person.

3. However, legal persons may be required to indicate, in the tender or the request for participation, the names and relevant professional qualifications of the staff to be responsible for the performance of the service.

Article 34

1. Without prejudice to national laws, regulations or administrative provisions on the remuneration of certain services, the criteria on which the contracting entities shall base the award of contracts shall be:

(a) the most economically advantageous tender, involving various criteria depending on the contract in question, such as: delivery or completion date, running costs, cost-effectiveness, quality, aesthetic and functional characteristics, technical merit, after-sales service and technical assistance, commitments with regard to spare parts, security of supplies and price; or

(b) the lowest price only.

2. In the case referred to in paragraph 1 (a), contracting entities shall state in the contract documents or in the tender notice all the criteria which they intend to apply to the award, where possible in descending order of importance.

3. Where the criterion for the award of the contract is that of the most economically advantageous tender, contracting entities may take account of variants which are submitted by a tenderer and meet the minimum specifications required by the contracting entities. Contracting entities shall state in the contract documents the minimum specifications to be respected by the variants and specific requirements for their presentation. Where variants are not permitted, they shall so indicate in the contract documents.

4. Contracting entities may not reject the presentation of a variant on the sole ground that it was drawn up on the basis of technical specifications defined with reference to European specifications or to national technical specifications recognized as complying with the essential requirements within the meaning of Directive 89/106/EEC.

5. If, for a given contract, tenders appear abnormally low in relation to the provision of services, the contracting entity shall, before it may reject those tenders, request in

writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements taking account of the explanations received. It may set a reasonable period within which to reply.

The contracting entity may take into consideration explanations which are justified on objective grounds relating to the economy of the construction or production method, or the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer for the execution of the contract, or the originality of the product or the work proposed by the tenderer.

Contracting entities may reject tenders which are abnormally low owing to the receipt of State aid only if they have consulted the tenderer and if the tenderer has been unable to show that the aid in question has been notified to the Commission pursuant to Article 93 (3) of the EEC Treaty or has received the Commission's approval. Contracting entities which reject a tender under these circumstances shall inform the Commission thereof.

Article 35

1. Article 27 (1) shall not apply where a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of adoption of this Directive, the aim of which is to give preference to certain tenderers, provided that the rules invoked are compatible with the Treaty.

2. Without prejudice to paragraph 1, this Directive shall not prevent, until 31 December 1992, the application of national provisions in force on the award of supply or works contracts which have as their objective the reduction of regional disparities and the promotion of job creation in disadvantaged regions or those suffering from industrial decline, provided that the provisions concerned are compatible with the EEC Treaty and with the Community's international obligations.

Article 36

1. This Article shall apply to tenders comprising products originating in third countries with which the Community has not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for Community undertakings to the markets of those third countries. It shall be without prejudice to the obligations of the Community or its Member States in respect of third countries.

2. Any tender made for the award of a supply contract may be rejected where the proportion of the products originating in third countries, as determined in accordance with Council Regulation (EEC) No 802/68 of 27 June

1968 on the common definition of the concept of the origin of goods ⁽¹⁾, exceeds 50 % of the total value of the products constituting the tender.

For the purposes of this Article, software used in telecommunications network equipment shall be considered as products.

3. Subject to paragraph 4, where two or more tenders are equivalent in the light of the award criteria defined in Article 34, preference shall be given to the tenders which may not be rejected pursuant to paragraph 2. The prices of these tenders shall be considered equivalent for the purposes of this Article, if the price difference does not exceed 3 %.

4. However, a tender shall not be preferred to another pursuant to paragraph 3 where its acceptance would oblige the contracting entity to acquire material having technical characteristics different from those of existing material, resulting in incompatibility or technical difficulties in operation and maintenance or disproportionate costs.

5. For the purpose of this Article, those third countries to which the benefit of the provisions of this Directive has been extended by a Council Decision in accordance with paragraph 1 shall not be taken into account for determining the proportion referred to in paragraph 2 of products originating in third countries.

6. The Commission shall submit an annual report to the Council (for the first time in the second half of 1991) on progress made in multilateral or bilateral negotiations regarding access for Community undertakings to the markets of third countries in the fields covered by this Directive, on any result which such negotiations may have achieved and on the implementation in practice of all the agreements which have been concluded.

The Council, acting by a qualified majority on a proposal from the Commission, may amend the provisions of this Article in the light of such developments.

Article 37

1. The Member States shall inform the Commission of any general difficulties encountered, in law or in fact, by their undertakings in securing the award of service contracts in third countries.

2. The Commission shall report to the Council before 31 December 1994 and periodically thereafter on the

opening-up of service contracts in third countries and on progress in negotiations with these countries on this subject, particularly within the GATT framework.

3. Whenever the Commission establishes, on the basis of either the reports referred to in paragraph 2 or other information, that with regard to the award of service contracts a third country:

- (a) does not grant Community undertakings effective access comparable to that granted by the Community to undertakings from that country;
- (b) does not grant Community undertakings national treatment or the same competitive opportunities as are available to national undertakings; or
- (c) grants undertakings from other third countries more favourable treatment than Community undertakings,

it must approach the third country concerned to try to remedy the situation.

4. Under the conditions referred to in paragraph 3, the Commission may at any time propose that the Council decide to suspend or restrict the award of service contracts to:

- (a) undertakings governed by the law of the third country in question;
- (b) undertakings affiliated to the undertakings specified in (a) and having their registered office in the Community but having no direct and effective link with the economy of a Member State;
- (c) undertakings submitting tenders which have as their object services originating in the third country in question,

during a period to be determined in the decision. The Council shall act by qualified majority as soon as possible.

The Commission may propose these measures on its own initiative or at the request of a Member State.

5. This Article is without prejudice to the obligations of the Community in relation to third countries.

TITLE VI

Final provisions

Article 38

1. The value in national currencies of the thresholds specified in Article 14 shall, in principle, be revised every

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 1. Regulation as last amended by Regulation (EEC) No 3860/87 (OJ No L 363, 23. 12. 1987, p. 30).

two years with effect from the date provided for in Directive 77/62/EEC as far as the thresholds for supply and service contracts are concerned and from the date provided for in Directive 71/305/EEC as far as the thresholds for works contracts are concerned. The calculation of such value shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. The values shall be published in the *Official Journal of the European Communities* at the beginning of November.

2. The method of calculation laid down in paragraph 1 shall be examined pursuant to the provisions of Directive 77/62/EEC.

Article 39

1. The Commission shall be assisted, as regards procurement by the contracting entities exercising an activity referred to in Article 2 (2) (d), by a Committee of an advisory nature which shall be the Advisory Committee on Telecommunications Procurement. The Committee shall be composed of representatives of the Member States and chaired by a representative of the Commission.

2. The Commission shall consult this Committee on:

- (a) amendments to Annex X;
- (b) revision of the currency values of the thresholds;
- (c) the rules concerning contracts awarded under international agreements;
- (d) the review of the application of this Directive;
- (e) the procedures described in Article 40 (2) relating to notices and statistical reports.

Article 40

1. Annexes I to X shall be revised in accordance with the procedure laid down in paragraphs 4 to 8 with a view to ensuring that they fulfil the criteria of Article 2.

2. The conditions for the presentation, dispatch, reception, translation, keeping and distribution of the notices referred to in Articles 21, 22 and 24 and of the statistical reports provided for in Article 42 shall be established, for the purposes of simplification, in accordance with the procedure laid down in paragraphs 4 to 8.

3. The nomenclature cited in Annexes XVI A and XVI B and the references in the notices to particular headings of the nomenclature may be amended in accordance with the procedure laid down in paragraphs 4 to 8.

4. The revised Annexes and the conditions referred to in paragraphs 1 and 2 shall be published in the *Official Journal of the European Communities*.

5. The Commission shall be assisted by the Advisory Committee for Public Contracts and, in the case of the revision of Annex X, by the Advisory Committee on Telecommunications Procurement provided for in Article 39 of this Directive.

6. The Commission representative shall submit to the Committee a draft of the decisions 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.

7. 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.

8. 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 41

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of contractors, suppliers or service providers and award of contracts;
- (b) recourse to derogations from the use of European specifications in accordance with Article 18 (6);
- (c) use of procedures without prior call for competition in accordance with Article 21 (2);
- (d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to provide the necessary information to the Commission if the latter so requests.

Article 42

1. The Member States shall ensure, in accordance with the arrangements to be laid down under the procedure provided for in Article 40 (4) to (8), that the Commission receives each year a statistical report concerning the total value, broken down by Member State and each category of activity to which Annexes I to X refer, of the contracts awarded below the thresholds defined in Article 14 which would, if they were not below those thresholds, be covered by this Directive.

2. Arrangements shall be fixed in accordance with the procedure referred to in Article 40 to ensure that:

- (a) in the interests of administrative simplification, contracts of lesser value may be excluded, provided that the usefulness of the statistics is not jeopardized;
- (b) the confidential nature of the information provided is respected.

Article 43

Article 2 (2) of Directive 77/62/EEC is hereby replaced by the following:

- 2. This Directive shall not apply to:
 - (a) contracts awarded in the fields referred to in Articles 2, 7, 8 and 9 of Council Directive 90/531/EEC of 17 September 1990 on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ⁽¹⁾ or fulfilling the conditions in Article 6 (2) of the said Directive;
 - (b) supplies which are declared secret or when their delivery must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member State concerned or when the protection of the basic interests of that State's security so requires ⁽¹⁾.

⁽¹⁾ OJ No L 297, 29. 10. 1990, p. 1.

Article 44

Not later than four years after the application of this Directive, the Commission, acting in close cooperation with the Advisory Committee for Public Contracts, shall review the manner in which this Directive has operated and its field of application and, if necessary, shall make further proposals to adapt it, in the light of developments linked in particular with progress made in opening up contracts and the level of competition. In the case of entities exercising an activity defined in Article 2 (2) (d), the Commission shall act in close cooperation with the Advisory Committee on Telecommunications Procurement.

Article 45

1. Member States shall adopt the measures necessary to comply with the provisions of this Directive and shall apply them by 1 July 1994. They shall forthwith inform the Commission thereof.

2. Nevertheless, the Kingdom of Spain may provide that the measures referred to in paragraph 1 shall apply from 1 January 1997 only and the Hellenic Republic and the Portuguese Republic may provide that the measures referred to in paragraph 1 shall apply from 1 January 1998 only.

3. Directive 90/531/EEC shall cease to have effect as from the date on which this Directive is applied by the Member States and this shall be without prejudice to the obligations of the Member States concerning the deadlines laid down in Article 37 of that Directive.

4. References to Directive 90/531/EEC shall be construed as referring to this Directive.

Article 46

When Member States adopt the provisions referred to in Article 45, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 47

Member States shall communicate to the Commission the main provisions of national law, whether laws, regulations or administrative provisions, which they adopt in the field covered by this Directive.

Article 48

This Directive is addressed to the Member States.

Done at Luxembourg, 14 June 1993.

For the Council
The President
J. TRØJBORG

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ANNEX I

PRODUCTION, TRANSPORT OR DISTRIBUTION OF DRINKING WATER

BELGIUM

Entity set up pursuant to the *décret du 2 juillet 1987 de la région wallonne érigeant en entreprise régionale de production et d'adduction d'eau le service du ministère de la région chargé de la production et du grand transport d'eau.*

Entity set up pursuant to the *arrêté du 23 avril 1986 portant constitution d'une société wallonne de distribution d'eau.*

Entity set up pursuant to the *arrêté du 17 juillet 1985 de l'exécutif flamand portant fixation des statuts de la société flamande de distribution d'eau.*

Entities producing or distributing water and set up pursuant to the *loi relative aux intercommunales du 22 décembre 1986.*

Entities producing or distributing water set up pursuant to the *code communal, article 47 bis, ter et quater sur les régies communales.*

DENMARK

Entities producing or distributing water referred to in Article 3, paragraph 3 of *lovbekendtgørelse om vandforsyning m.v. af 4. juli 1985.*

GERMANY

Entities producing or distributing water pursuant to the *Eigenbetriebsverordnungen* or *Eigenbetriebsgesetze* of the *Länder* (*Kommunale Eigenbetriebe*).

Entities producing or distributing water pursuant to the *Gesetze über die Kommunale Gemeinschaftsarbeit oder Zusammenarbeit* of the *Länder*.

Entities producing water pursuant to the *Gesetz über Wasser- und Bodenverbände vom 10. Februar 1937* and the *erste Verordnung über Wasser- und Bodenverbände vom 3. September 1937.*

(*Regiebetriebe*) producing or distributing water pursuant to the *Kommunalgesetze* and notably with the *Gemeindeordnungen der Länder.*

Entities set up pursuant to the *Aktiengesetz vom 6. September 1965, zuletzt geändert am 19. Dezember 1985* or *GmbH-Gesetz vom 20. Mai 1898, zuletzt geändert am 15. Mai 1986*, or having the legal status of a *Kommanditgesellschaft*, producing or distributing water on the basis of a special contract with regional or local authorities.

GREECE

The Water Company of Athens / *Εταιρεία Υδρεύσεως — Αποχετεύσεως Πρωτευούσης* set up pursuant to Law 1068/80 of 23 August 1980.

The Water Company of Salonica / *Οργανισμός Υδρεύσεως Θεσσαλονίκης* operating pursuant to Presidential Decree 61/1988.

The Water Company of Voios / *Εταιρεία Υδρεύσεως Βόλου* operating pursuant to Law 890/1979.

Municipal companies / *Δημοτικές Επιχειρήσεις ύδρευσης — αποχέτευσης* producing or distributing water and set up pursuant to Law 1059/80 of 23 August 1980.

Associations of local authorities (*Σύνδεσμοι ύδρευσης*) operating pursuant to the Code of local authorities (*Κώδικας Δήμων και Κοινοτήτων*) implemented by Presidential Decree 76/1985.

SPAIN

- Entities producing or distributing water pursuant to *Ley n° 7/1985 de 2 de abril de 1985. Reguladora de las Bases del Régimen local* and to *Decreto Real n° 781/1986 Texto Refundido Régimen local*.
- *Canal de Isabel II. Ley de la Comunidad Autónoma de Madrid de 20 de diciembre de 1984.*
- *Mancomunidad de los Canales de Taibilla, Ley de 27 de abril de 1946.*

FRANCE

Entities producing or distributing water pursuant to the:

dispositions générales sur les régies, code des communes L 323-1 à L 328-8, R 323-1 à R 323-6 (dispositions générales sur les régies); or

code des communes L 323-8 R 323-4 [régies directes (ou de fait)]; or

décret-loi du 28 décembre 1926, règlement d'administration publique du 17 février 1930, code des communes L 323-10 à L 323-13, R 323-75 à 323-132 (régies à simple autonomie financière); or

code des communes L 323-9, R 323-7 à R 323-74, décret du 19 octobre 1959 (régies à personnalité morale et à autonomie financière); or

code des communes L 324-1 à L 324-6, R 324-1 à R 324-13 (gestion déléguée, concession et affermage); or

jurisprudence administrative, circulaire intérieure du 13 décembre 1975 (gérance); or

code des communes R 324-6, circulaire intérieure du 13 décembre 1975 (régie intéressée); or

circulaire intérieure du 13 décembre 1975 (exploitation aux risques et périls); or

décret du 20 mai 1955, loi du 7 juillet 1983 sur les sociétés d'économie mixte (participation à une société d'économie mixte); or

code des communes L 322-1 à L 322-6, R 322-1 à R 322-4 (dispositions communes aux régies, concessions et affermagés).

IRELAND

Entities producing or distributing water pursuant to the *Local Government (Sanitary Services) Act 1878 to 1964.*

ITALY

Entities producing or distributing water pursuant to the *Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to *Decreto del P.R. n. 902 del 4 ottobre 1986.*

Ente Autonomo Acquedotto Pugliese set up pursuant to RDL 19 ottobre 1919, n. 2060.

Ente Acquedotti Siciliani set up pursuant to leggi regionali 4 settembre 1979, n. 2/2 e 9 agosto 1980, n. 81.

Ente Sardo Acquedotti e Fognature set up pursuant to legge 5 luglio 1963 n. 9.

LUXEMBOURG

Local authorities distributing water.

Associations of local authorities producing or distributing water set up pursuant to the *loi du 14 février 1900 concernant la création des syndicats de communes telle qu'elle a été modifiée et complétée par la loi du 23 décembre 1958 et par la loi du 29 juillet 1981* and pursuant to the *loi du 31 juillet 1962 ayant pour objet le renforcement de l'alimentation en eau potable du grand-duché du Luxembourg à partir du réservoir d'Esch-sur-Sûre.*

NETHERLANDS

Entities producing or distributing water pursuant to the *Waterleidingwet van 6 april 1957, amended by the wetten van 30 juni 1967, 10 september 1975, 23 juni 1976, 30 september 1981, 25 januari 1984, 29 januari 1986.*

PORTUGAL

Empresa Pública das Águas Livres producing or distributing water pursuant to the *Decreto-Lei nº 190/81 de 4 de Julho de 1981*.

Local authorities producing or distributing water.

UNITED KINGDOM

Water companies producing or distributing water pursuant to the *Water Acts 1945 and 1989*.

The *Central Scotland Water Development Board* producing water and the *water authorities* producing or distributing water pursuant to the *Water (Scotland) Act 1980*.

The *Department of the Environment for Northern Ireland* responsible for producing and distributing water pursuant to the *Water and Sewerage (Northern Ireland) Order 1973*.

ANNEX II

PRODUCTION, TRANSPORT OR DISTRIBUTION OF ELECTRICITY

BELGIUM

Entities producing, transporting or distributing electricity pursuant to *article 5: Des régies communales et intercommunales of the loi du 10 mars 1925 sur les distributions d'énergie électrique.*

Entities transporting or distributing electricity pursuant to the *loi relative aux intercommunales du 22 décembre 1986.*

EBES, *Intercom*, *Unerg* and other entities producing, transporting or distributing electricity and granted a concession for distribution pursuant to *article 8 — les concessions communales et intercommunales of the loi du 10 mars 1952 sur les distributions d'énergie électrique.*

The *Société publique de production d'électricité (SPÉ).*

DENMARK

Entities producing or transporting electricity on the basis of a licence pursuant to § 3, *stk. 1*, of the *lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde.*

Entities distributing electricity as defined in § 3, *stk. 2*, of the *lov nr. 54 af 25. februar 1976 om elforsyning, jf. bekendtgørelse nr. 607 af 17. december 1976 om elforsyningslovens anvendelsesområde* and on the basis of authorizations for expropriation pursuant to Articles 10 to 15 of the *lov om elektriske stærkstrømsanlæg, jf. lov bekendtgørelse nr. 669 af 28. december 1977.*

GERMANY

Entities producing, transporting or distributing electricity as defined in § 2 *Absatz 2* of the *Gesetz zur Förderung der Energiewirtschaft (Energiewirtschaftsgesetz) of 13 December 1935.* Last modified by the *Gesetz of 19 December 1977*, and auto-production of electricity so far as this is covered by the field of application of the Directive pursuant to Article 2, paragraph 5.

GREECE

Δημόσια Επιχείρηση Ηλεκτρισμού (Public Power Corporation) set up pursuant to the law 1468 of 2 August 1950 *Περί ιδρύσεως Δημοσίας Επιχειρήσεως Ηλεκτρισμού*, and operating pursuant to the law 57/85: *Δομή, ρόλος και τρόπος διοίκησης και λειτουργίας της κοινωνικοποιημένης Δημοσίας Επιχείρησης Ηλεκτρισμού.*

SPAIN

Entities producing, transporting or distributing electricity pursuant to Article 1 of the *Decreto de 12 de marzo de 1954*, approving the *Reglamento de verificaciones eléctricas y regularidad en el suministro de energía* and pursuant to *Decreto 2617/1966, de 20 de octubre, sobre autorización administrativa en materia de instalaciones eléctricas.*

Red Eléctrica de España SA, set up pursuant to *Real Decreto 91/1985 de 23 de enero.*

FRANCE

Électricité de France, set up and operating pursuant to the *loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz.*

Entities (*sociétés d'économie mixte* or *régies*) distributing electricity and referred to in article 23 of the *loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz.*

Compagnie nationale du Rhône.

IRELAND

The *Electricity Supply Board (ESB)* set up and operating pursuant to the *Electricity Supply Act 1927.*

ITALY

Ente nazionale per l'energia elettrica set up pursuant to *legge n. 1643, 6 dicembre 1962 approvato con Decreto n. 1720, 21 dicembre 1965.*

Entities operating on the basis of a concession pursuant to article 4, n. 5 or 8 of *legge 6 dicembre 1962, n. 1643 — Istituzione dell'Ente nazionale per la energia elettrica e trasferimento ad esso delle imprese esercenti le industrie elettriche.*

Entities operating on the basis of concession pursuant to article 20 of *Decreto del Presidente della Repubblica 18 marzo 1965, n. 342 norme integrative della legge 6 dicembre 1962, n. 1643 e norme relative al coordinamento e all'esercizio delle attività elettriche esercitate da enti ed imprese diverse dell'Ente nazionale per l'energia elettrica.*

LUXEMBOURG

Compagnie grand-ducale d'électricité de Luxembourg, producing or distributing electricity pursuant to the convention du 11 novembre 1927 concernant l'établissement et l'exploitation des réseaux de distribution d'énergie électrique dans le grand-duché du Luxembourg approuvée par la loi du 4 janvier 1928.

Société électrique de l'Our (SEO).

Syndicat de Communes SIDOR.

NETHERLANDS

Elektriciteitsproductie Oost-Nederland.

Elektriciteitsbedrijf Utrecht—Noord-Holland—Amsterdam (UNA).

Elektriciteitsbedrijf Zuid-Holland (EZH)

Elektriciteitsproduktmaatschappij Zuid-Nederland (EPZ).

Provinciale Zeeuwse Energie Maatschappij (PZEM).

Samenwerkende Elektriciteitsbedrijven (SEP).

Entities distributing electricity on the basis of a licence (*vergunning*) granted by the provincial authorities pursuant to the *Provinciewet.*

PORTUGAL

Electricidade de Portugal (EDP), set up pursuant to the *Decreto-Lei nº 502/76 de 30 de Junho de 1976.*

Entities distributing electricity pursuant to *artigo 1º do Decreto-Lei nº 344-B/82 de 1 de Setembro de 1982*, amended by *Decreto-Lei nº 297/86 de 19 de Setembro de 1986.* Entities producing electricity pursuant to *Decreto Lei nº 189/88 de 27 de Maio de 1988.*

Independent producers of electricity pursuant to *Decreto Lei nº 189/88 de 27 de Maio de 1988.*

Empresa de Electricidade dos Açores — EDA, EP, created pursuant to the *Decreto Regional nº 16/80 de 21 de Agosto de 1980.*

Empresa de Electricidade da Madeira, EP, created pursuant to the *Decreto-Lei nº 12/74 de 17 de Janeiro de 1974* and regionalized pursuant to the *Decreto-Lei nº 31/79 de 24 de Fevereiro de 1979, Decreto-Lei nº 91/79 de 19 de Abril de 1979.*

UNITED KINGDOM

Central Electricity Generating (CEGB), and the Areas Electricity Boards producing, transporting or distributing electricity pursuant to the *Electricity Act 1947* and the *Electricity Act 1957.*

The North of Scotland Hydro-Electricity Board (NSHB), producing, transporting and distributing electricity pursuant to the *Electricity (Scotland) Act 1979.*

The South of Scotland Electricity Board (SSEB) producing, transporting and distributing electricity pursuant to the *Electricity (Scotland) Act 1979.*

The Northern Ireland Electricity Service (NIES), set up pursuant to the *Electricity Supply (Northern Ireland) Order 1972.*

ANNEX III

TRANSPORT OR DISTRIBUTION OF GAS OR HEAT

BELGIUM

Distrigaz SA operating pursuant to the *loi du 29 juillet 1983*.

Entities transporting gas on the basis of an authorization or concession pursuant to the *loi du 12 avril 1985* as amended by the *loi du 28 juillet 1987*.

Entities distributing gas and operating pursuant to the *loi relative aux Intercommunales du 22 décembre 1986*.

Local authorities, or associations of these local authorities supplying heat to the public.

DENMARK

Dansk Olie og Naturgas A/S operating on the basis of an exclusive right granted pursuant to *bekendtgørelse nr. 869 af 18. juni 1979 om eneretsbevilgning til indførsel, forhandling, transport og oplagring af naturgas*.

Entities operating pursuant to *lov nr. 294 af 7. juni 1972 om naturgasforsyning*.

Entities distributing gas or heat on the basis of an approval pursuant to Chapter IV of *lov om varmforsyning, jf. lovbekendtgørelse nr. 330 af 29. juni 1983*.

Entities transporting gas on the basis of an authorization pursuant to *bekendtgørelse nr. 141 af 13. marts 1974 om rørledningsanlæg på dansk kontinentalsokkelområde til transport af kulbrinter* (installation of pipelines on the continental shelf for the transport of hydrocarbons).

GERMANY

Entities transporting or distributing gas as defined in § 2 Absatz 2 of the *Gesetz zur Förderung der Energiewirtschaft vom 13. Dezember 1935 (Energiewirtschaftsgesetz)*, as last amended by the law of 19 December 1977.

Local authorities, or associations of these local authorities supplying heat to the public.

GREECE

DEP transporting or distributing gas pursuant to the Ministerial decision 2583/1987 (*Ανάθεση στη Δημόσια Επιχείρηση Πετρελαίου αρμοδιοτήτων σχετικών με το φυσικό αέριο*) Σύσταση της *ΔΕΠΑ ΑΕ (Δημόσια Επιχείρηση Αερίου, Ανώνυμος Εταιρεία)*.

Athens Municipal Gasworks S.A. *DEFA* transporting or distributing gas.

SPAIN

Entities operating pursuant to *Ley n° 10 de 15 de junio de 1987*.

FRANCE

Société nationale des gaz du Sud-Ouest transporting gas.

Gaz de France, set up and operating pursuant to the *loi 46/6288 du 8 avril 1946 sur la nationalisation de l'électricité et du gaz*.

Entities (*sociétés d'économie mixte* or *régies*) distributing electricity and referred to in Article 23 of the *loi 48/1260 du 12 août 1948 portant modification des lois 46/6288 du 8 avril 1946 et 46/2298 du 21 octobre 1946 sur la nationalisation de l'électricité et du gaz*.

Compagnie française du méthane transporting gas.

Local authorities, or associations of, supplying heat to the public.

IRELAND

Irish Gas Board and operating pursuant to the *Gas Act 1976 to 1987* and other entities governed by *Statute*.

Dublin Corporation, supplying heat to the public.

ITALY

SNAM and SGM e Montedison transporting gas.

Entities distributing gas pursuant to the *Testo unico delle leggi sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province approvato con Regio Decreto 15 ottobre 1925, n. 2578* and to the *Decreto del P.R. n. 902 del 4 ottobre 1986*.

Entities distributing heat to the public referred to in Article 10 of the *Legge 29 maggio 1982, n. 308 — Norme sul contenimento dei consumi energetici, lo sviluppo delle fonti rinnovabili di energia, l'esercizio di centrali elettriche alimentate con combustibili diversi dagli idrocarburi*.

Local authorities, or associations of, supplying heat to the public.

LUXEMBOURG

Société de transport de gaz SOTEG SA.

Gaswierk Esch-Uelzecht SA.

Service industriel de la commune de Dudelange.

Service industriel de la commune de Luxembourg.

Local authorities, or associations of these local authorities supplying heat to the public.

NETHERLANDS

NV Nederlandse Gasunie

Entities transporting or distributing gas on the basis of a licence (*vergunning*) granted by the local authorities pursuant to the *Gemeentewet*.

Local or provincial entities transporting or distributing gas to the public pursuant to the *Gemeentewet and the Provinciewet*.

Local authorities, or associations of these local authorities supplying heat to the public.

PORTUGAL

Petroquímica e Gás de Portugal, EP Decreto-Lei nº 346-A/88 de 29 de Setembro de 1988.

UNITED KINGDOM

British Gas plc and other entities operating pursuant to the *Gas Act 1986*.

Local authorities, or associations of, supplying heat to the public pursuant to the *Local Government (Miscellaneous Provisions) Act 1976*.

Electricity Boards distributing heat pursuant to the *Electricity Act 1947*.

ANNEX IV

EXPLORATION FOR AND EXTRACTION OF OIL OR GAS

The entities granted an authorization, permit, licence or concession to explore for or extract oil and gas pursuant to the following legal provisions:

BELGIUM

Loi du 1 mai 1939 complétée par l'arrêté royal n° 83 du 28 novembre 1939 sur l'exploration et l'exploitation du pétrole et du gaz.

Arrêté royal du 15 novembre 1919.

Arrêté royal du 7 avril 1953.

Arrêté royal du 15 mars 1960 loi au sujet de la plate-forme continentale du 15 juin 1969.

Arrêté de l'exécutif régional wallon du 29 septembre 1982.

Arrêté de l'exécutif flamand du 30 mai 1984.

DENMARK

Lov nr. 293 af 10. juni 1981 om anvendelse af Danmarks undergrund.

Lov om kontinentalsoklen, jf. lovbekendtgørelse nr. 182 af 1. maj 1979.

GERMANY

Bundesberggesetz vom 13. August 1980, as last amended on 12 February 1990.

GREECE

Law 87/1975 setting up DEP-EKY (Περι ιδρύσεως Δημοσίας Επιχειρήσεως Πετρελαίου).

SPAIN

Ley sobre Investigación y Explotación de Hidrocarburos de 27 de Junio de 1974 and its implementing decrees.

FRANCE

Code minier (décret 56-838 du 16 août 1956) amended by the loi 56-1327 du 29 décembre 1956, ordonnance 58-1186 du 10 décembre 1958, décret 60-800 du 2 août 1960, décret 61-359 du 7 avril 1961, loi 70-1 du 2 janvier 1970, loi 77-620 du 16 juin 1977, décret 80-204 du 11 mars 1980.

IRELAND

Continental Shelf Act 1960.

Petroleum and Other Minerals Development Act 1960.

Ireland Exclusive Licensing Terms 1975.

Revised Licensing Terms 1987.

Petroleum (Production) Act (NI) 1964.

ITALY

Legge 10 febbraio 1953, n. 136.

Legge 11 gennaio 1957, n. 6, modificata dalla legge 21 luglio 1967, n. 613.

LUXEMBOURG

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NETHERLANDS

Mijnwet nr. 285 van 21 april 1810.

Wet opsporing delfstoffen nr. 258 van 3 mei 1967.

Mijnwet continentaal plat 1965, nr. 428 van 23 september 1965.

PORTUGAL

Decreto-Lei nº 543/74 de 16 de Outubro de 1974, nº 168/77 de 23 de Abril de 1977, nº 266/80 de 7 de Agosto de 1980, nº 174/85 de 21 de Maio de 1985 and Despacho nº 22 de 15 de Março de 1979.

Decreto-Lei nº 47973 de 30 de Setembro de 1967, nº 49369 de 11 de Novembro de 1969, nº 97/71 de 24 de Março de 1971, nº 96/74 de 13 de Março de 1974, nº 266/80 de 7 de Agosto de 1980, nº 2/81 de 7 de Janeiro de 1981 and nº 245/82 de 22 de Junho de 1982.

UNITED KINGDOM

Petroleum (Production) Act 1934 as extended by the Continental Shelf Act 1964.

Petroleum (Production) Act (Northern Ireland) 1964.

ANNEX V

EXPLORATION FOR AND EXTRACTION OF COAL OR OTHER SOLID FUELS

BELGIUM

Entities exploring or extracting coal or other solid fuels pursuant to the *arrêté du Régent du 22 août 1948* and the *loi du 22 avril 1980*.

DENMARK

Entities exploring or extracting coal or other solid fuels pursuant to the *lovbekendtgørelse nr. 531 af 10. oktober 1984*.

GERMANY

Entities exploring or extracting coal or other solid fuels pursuant to the *Bundesberggesetz vom 13. August 1980*, as last amended on 12 February 1990.

GREECE

Public Power Corporation exploring or extracting coal or other fuels pursuant to the *Mining code of 1973 as amended by the law of 27 April 1976*. *Δημόσια Επιχείρηση Ηλεκτρισμού*.

SPAIN

Entities exploring or extracting coal or other solid fuels pursuant to *Ley 22/1973, de 21 de julio, de Minas*, as amended by *Ley 54/1980 de 5 de noviembre* and by *Real Decreto Legislativo 1303/1986, de 28 de junio*.

FRANCE

Entities exploring extracting coal or other solid fuels pursuant to *code minier (décret 58-863 du 16 août 1956)*, as amended by the *loi 77-620 du 16 juin 1977, décret 80-204 et arrêté du 11 mars 1980*.

IRELAND

Bord na Mona.

Entities prospecting or extracting coal pursuant to the *Minerals Development Acts, 1940 to 1970*.

ITALY

Carbo Sulcis SpA

LUXEMBOURG

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NETHERLANDS

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PORTUGAL

Empresa Carbonifera do Douro.

Empresa Nacional de Urânio.

UNITED KINGDOM

British Coal Board (BCC) set up pursuant to the Coal Industry Nationalization Act 1946.

Entities benefiting from a licence granted by the BCC pursuant to the Coal Industry Nationalization Act 1946.

Entities exploring or extracting solid fuels pursuant to the Mineral Development Act (Northern Ireland) 1969.

ANNEX VI

CONTRACTING ENTITIES IN THE FIELD OF RAILWAY SERVICES

BELGIUM

Société nationale des chemins de fer belges/Nationale Maatschappij der Belgische Spoorwegen.

DENMARK

Danske Statsbaner (DSB)

Entities operating set up pursuant to *lov nr. 295 af 6. juni 1984 om privatbanerne, jf. lov nr. 245 af 6. august 1977.*

GERMANY

Deutsche Bundesbahn

Other entities providing railway services to the public as defined in paragraph 2 Abs. 1 of *Allgemeines Eisenbahngesetz of 29 March 1951.*

GREECE

Οργανισμός Σιδηροδρόμων Ελλάδος (ΟΣΕ). Organization of railways in Greece (OSE).

SPAIN

Red Nacional de Los Ferrocarriles Españoles.

Ferrocarriles de Vía Estrecha (FEVE).

Ferrocarrils de la Generalitat de Catalunya (FGC).

Eusko Trenbideak (Bilbao).

Ferrocarriles de la Generalitat Valenciana (FGV).

FRANCE

Société nationale des chemins de fer français and other *réseaux ferroviaires ouverts au public* referred to in the *loi d'orientation des transports intérieurs du 30 décembre 1982, titre II, chapitre 1^{er} du transport ferroviaire.*

IRELAND

Iarnrod Éireann (Irish Rail).

ITALY

Ferrovie dello Stato

Entities providing railway services on the basis of a concession pursuant to Article 10 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities operating on the basis of a concession granted, pursuant to special laws, as referred to in *Titolo XI, Capo II, Sezione I* del *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities providing railway services on the basis of a concession pursuant to Article 4 of *Legge 14 giugno 1949, n. 410 — Concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.*

Entities or local authorities providing railway services on the basis of a concession pursuant to Article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.*

LUXEMBOURG

Chemins de fer luxembourgeois (CFL).

NETHERLANDS

Nederlandse Spoorwegen NV.

PORTUGAL

Caminhos de Ferro Portugueses.

UNITED KINGDOM

British Railways Board.

Northern Ireland Railways.

ANNEX VII

CONTRACTING ENTITIES IN THE FIELD OF URBAN RAILWAY, TRAMWAY, TROLLEYBUS OR BUS SERVICES

BELGIUM

Société nationale des chemins de fer vicinaux (SNCV)/Nationale Maatschappij van Buurtspoorwegen (NMB)

Entities providing transport services to the public on the basis of a contract granted by SNCV pursuant to Articles 16 and 21 of the *arrêté du 30 décembre 1946 relatif aux transports rémunérés de voyageurs par route effectués par autobus et par autocars*.

Société des transports intercommunaux de Bruxelles (STIB),

Maatschappij van het Intercommunaal Vervoer te Antwerpen (MIVA),

Maatschappij van het Intercommunaal Vervoer te Gent (MIVG),

Société des transports intercommunaux de Charleroi (STIC),

Société des transports intercommunaux de la région liégeoise (STIL),

Société des transports intercommunaux de l'agglomération verviétoise (STIAV), and other entities set up pursuant to the *loi relative à la création de sociétés de transports en commun urbains/Wet betreffende de oprichting van maatschappijen voor stedelijk gemeenschappelijk vervoer* of 22 February 1962.

Entities providing transport services to the public on the basis of a contract with STIB pursuant to Article 10 or with other transport entities pursuant to Article 11 of the *arrêté royal 140 du 30 décembre 1982 relatif aux mesures d'assainissement applicables à certains organismes d'intérêt public dépendant du ministère des communications*.

DENMARK

Danske Statsbaner (DSB)

Entities providing bus services to the public (*almindelig rutekørsel*) on the basis of an authorization pursuant to *lov nr. 115 af 29. marts 1978 om buskørsel*.

GERMANY

Entities providing, on the basis of an authorization, short-distance transport services to the public (*Öffentlichen Personennahverkehr*) pursuant to the *Personenbeförderungsgesetz vom 21. März 1961, as last amended on 25 July 1989*.

GREECE

Ηλεκτροκίνητα Λεωφορεία Περιοχής Αθηνών-Πειραιώς, (Electric buses of the Athens — Piraeus area) operating pursuant to *decree 768/1970 and law 588/1977*.

Ηλεκτρικοί Σιδηρόδρομοι Αθηνών-Πειραιώς, (Athen-Piraeus electric railways) operating pursuant to *laws 352/1976 and 588/1977*.

Επιχείρηση Αστικών Συγκοινωνιών, (Enterprise of urban transport) operating pursuant to *law 588/1977*.

Κοινό Ταμείο Εισπράξεως Λεωφορείων, (Joint receipts fund of buses) operating pursuant to *decree 102/1973*.

ΡΟΔΑ (Δημοτική Επιχείρηση Λεωφορείων Ρόδου) Roda: Municipal bus enterprise in Rhodes.

Οργανισμός Αστικών Συγκοινωνιών Θεσσαλονίκης, (Urban transport organization of Thessaloniki) operating pursuant to *decree 3721/1957 and law 716/1980*.

SPAIN

Entities providing transport services to the public pursuant to the *Ley de Régimen local*.

Corporación metropolitana de Madrid.

Corporación metropolitana de Barcelona.

Entities providing urban or inter-urban bus services to the public pursuant to Articles 113 to 118 of the *Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987*.

Entities providing bus services to the public, pursuant to Article 71 of the *Ley de Ordenación de Transportes Terrestres de 31 de julio de 1987*.

FEVE, RENFE (or *Empresa Nacional de Transportes de Viajeros por Carretera*) providing bus services to the public pursuant to the *Disposiciones adicionales. Primera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957*.

Entities providing bus services to the public pursuant to *Disposiciones Transitorias, Tercera, de la Ley de Ordenación de Transportes Terrestres de 31 de julio de 1957*.

FRANCE

Entities providing transport services to the public pursuant to *article 7-11 of the loi n° 82-1153 du 30 décembre 1982, transports intérieurs, orientation*).

Régie autonome des transports parisiens, Société nationale des chemins de fer français, APTR, and other entities providing transport services to the public on the basis of an authorization granted by the syndicat des transports parisiens pursuant to the ordonnance de 1959 et ses décrets d'application relatifs à l'organisation des transports de voyageurs dans la région parisienne.

IRELAND

Iarnrod Éireann (Irish Rail).

Bus Éireann (Irish Bus).

Bus Átha Cliath (Dublin Bus).

Entities providing transport services to the public pursuant to the amended *Road Transport Act 1932*.

ITALY

Entities providing transport services of a concession pursuant to *Legge 28 settembre 1939, n. 1822 — Disciplina degli autoservizi di linea (autolinee per viaggiatori, bagagli e pacchi agricoli in regime di concessione all'industria privata) — Article 1 as modified by Article 45 of Decreto del Presidente della Repubblica 28 giugno 1955, n. 771.*

Entities providing transport services to the public pursuant to Article 1 (15) of *Regio Decreto 15 ottobre 1925, n. 2578 — Approvazione del Testo unico della legge sull'assunzione diretta dei pubblici servizi da parte dei comuni e delle province.*

Entities operating on the basis of a concession pursuant to Article 242 or 255 of *Regio Decreto 9 maggio 1912, n. 1447, che approva il Testo unico delle disposizioni di legge per le ferrovie concesse all'industria privata, le tramvie a trazione meccanica e gli automobili.*

Entities or local authorities operating on the basis of a concession pursuant to Article 4 of *Legge 14 giugno 1949, n. 410, concorso dello Stato per la riattivazione dei pubblici servizi di trasporto in concessione.*

Entities operating on the basis of a concession pursuant to Article 14 of *Legge 2 agosto 1952, n. 1221 — Provvedimenti per l'esercizio ed il potenziamento di ferrovie e di altre linee di trasporto in regime di concessione.*

LUXEMBOURG

Chemins de fer du Luxembourg (CFL).

Service communal des autobus municipaux de la ville de Luxembourg.

Transports intercommunaux du canton d'Esch-sur-Alzette (TICE).

Bus service undertakings operating pursuant to the règlement grand-ducal du 3 février 1978 concernant les conditions d'octroi des autorisations d'établissement et d'exploitation des services de transports routiers réguliers de personnes rémunérées.

NETHERLANDS

Entities providing transport services to the public pursuant to Chapter II (*Openbaar vervoer*) of the *Wet Personenvervoer van 12 maart 1987*.

PORTUGAL

Rodoviaria Nacional, EP.

Companhia Carris de ferro de Lisboa.

Metropolitano de Lisboa, EP.

Serviços de Transportes Colectivos do Porto.

Serviços Municipalizados de Transporte do Barreiro.

Serviços Municipalizados de Transporte de Aveiro.

Serviços Municipalizados de Transporte de Braga.

Serviços Municipalizados de Transporte de Coimbra.

Serviços Municipalizados de Transporte de Portalegre.

UNITED KINGDOM

Entities providing bus services to the public pursuant to the *London Regional Transport Act 1984*.

Glasgow Underground.

Greater Manchester Rapid Transit Company.

Docklands Light Railway.

London Underground Ltd.

British Railways Board.

Tyne and Wear Metro.

ANNEX VIII

CONTRACTING ENTITIES IN THE FIELD OF AIRPORT FACILITIES

BELGIUM

Régie des voies aériennes set up pursuant to the *arrêté-loi du 20 novembre 1946 portant création de la régie des voies aériennes* amended by *arrêté royal du 5 octobre 1970 portant refonte du statut de la régie des voies aériennes*.

DENMARK

Airports operating on the basis of an authorization pursuant to § 55, *stk. 1, lov om luftfart, jf. lov bekendtgørelse nr. 408 af 11. september 1985*.

GERMANY

Airports as defined in Article 38 Absatz 2 no of the *Luftverkehrszulassungsordnung vom 19. März 1979*, as last amended by the *Verordnung vom 21. Juli 1986*.

GREECE

Airports operating pursuant to law 517/1931 setting up the civil aviation service (*Υπηρεσία Πολιτικής Αεροπορίας (ΥΠΑ)*).

International airports operating pursuant to presidential decree 647/1981.

SPAIN

Airports managed by *Aeropuertos Nacionales* operating pursuant to the *Real Decreto 278/1982 de 15 de octubre de 1982*.

FRANCE

Aéroports de Paris operating pursuant to *titre V, articles L 251-1 à 252-1 du code de l'aviation civile*.

Aéroport de Bâle — Mulhouse, set up pursuant to the *convention franco-suisse du 4 juillet 1949*.

Airports as defined in *article L 270-1, code de l'aviation civile*.

Airports operating pursuant to the *cahier de charges type d'une concession d'aéroport, décret du 6 mai 1955*.

Airports operating on the basis of a *convention d'exploitation* pursuant to *article L/221, code de l'aviation civile*.

IRELAND

Airports of *Dublin, Cork and Shannon* managed by *Aer Rianta — Irish Airports*.

Airports operating on the basis of a *Public use License* granted, pursuant to the *Air Navigation and Transport Act No 23 1936*, the *Transport Fuel and Power Transfer of Departmental, Administration and Ministerial Functions Order 1959 (SI No 125 of 1959)* and the *Air Navigation (Aerodromes and Visual Ground Aids) Order 1970 (SI No 291 of 1970)*.

ITALY

Civil Stat. airports (*aerodromi civili istituiti dallo Stato* referred to in Article 692 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327*).

Entities operating airport facilities on the basis of a concession granted pursuant to Article 694 of the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327*.

LUXEMBOURG

Aéroport de Findel.

NETHERLANDS

Airports operating pursuant to Articles 18 and following of the *Luchtvaartwet* of 15 January 1958, amended on 7 June 1978.

PORTUGAL

Airports managed by *Aeroportos de Navegação Aérea (ANA)*, EP pursuant to *Decreto-Lei nº 246/79*.

Aeroporto do Funchal and *Aeroporto de Porto Santo*, regionalized pursuant to the *Decreto-Lei nº 284/81*.

UNITED KINGDOM

Airports managed by *British Airports Authority plc*.

Airports which are *public limited companies (plc)* pursuant to the *Airports Act 1986*.

ANNEX IX

CONTRACTING ENTITIES IN THE FIELD OF MARITIME OR INLAND PORT OR OTHER
TERMINAL FACILITIES

BELGIUM

Société anonyme du canal et des installations maritimes de Bruxelles.

Port autonome de Liège.

Port autonome de Namur.

Port autonome de Charleroi.

Port de la ville de Gand.

La Compagnie des installations maritimes de Bruges — Maatschappij der Brugse haveninrichtingen.

Société intercommunale de la rive gauche de l'Escaut — Intercommunale maatschappij van de linker Scheldeoever (Port d'Anvers).

Port de Nieuwport.

Port d'Ostende.

DENMARK

Ports as defined in Article 1, I to III of the *bekendtgørelse nr. 604 af 16. december 1985 om hvilke havne der er omfattet af lov om trafikhavne, jf. lov nr. 239 af 12. maj 1976 om trafikhavne.*

GERMANY

Seaports owned totally or partially by territorial authorities (*Länder, Kreise, Gemeinden*).

Inland ports subject to the *Hafenordnung* pursuant to the *Wassergesetze der Länder*.

GREECE

Piraeus port (*Οργανισμός Λιμένος Πειραιώς*) set up pursuant to Emergency Law 1559/1950 and Law 1630/1951.

Thessaloniki port (*Οργανισμός Λιμένος Θεσσαλονίκης*) set up pursuant to decree N.A. 2251/1953.

Other ports governed by presidential decree 649/1977 (NA. 649/1977) Εποπτεία, οργάνωση λειτουργίας, διοικητικός έλεγχος λιμένων. (supervision, organization of functioning and administrative control).

SPAIN

Puerto de Huelva set up pursuant to the *Decreto de 2 de octubre de 1969, nº 2380/69. Puertos y Faros. Otorga Régimen de Estatuto de Autonomía al Puerto de Huelva.*

Puerto de Barcelona set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2407/78, Puertos y Faros. Otorga al de Barcelona Régimen de Estatuto de Autonomía.*

Puerto de Bilbao set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2048/78. Puertos y Faros. Otorga al de Bilbao Régimen de Estatuto de Autonomía.*

Puerto de Valencia set up pursuant to the *Decreto de 25 de agosto de 1978, nº 2409/78. Puertos y Faros. Otorga al de Valencia Régimen de Estatuto de Autonomía.*

Juntas de Puertos operating pursuant to the *Lei 27/68 de 20 de junio de 1968; Puertos y Faros. Juntas de Puertos y Estatutos de Autonomía* and to the *Decreto de 9 de abril de 1970, nº 1350/70. Juntas de Puertos. Reglamento.*

Ports managed by the *Comisión Administrativa de Grupos de Puertos*, operating pursuant to the *Ley 27/68 de 20 de junio de 1968, Decreto 1958/78 de 23 de junio de 1978 and Decreto 571/81 de 6 de mayo de 1981.*

Ports listed in the *Real Decreto 989/82 de 14 de mayo de 1982. Puertos. Clasificación de los de interés general.*

FRANCE

Port autonome de Paris set up pursuant to *loi 68/917 du 24 octobre 1968 relative au port autonome de Paris*.

Port autonome de Strasbourg set up pursuant to the *convention du 20 mai 1923 entre l'État et la ville de Strasbourg relative à la constitution du port rhénan de Strasbourg et à l'exécution de travaux d'extension de ce port*, approved by the *loi du 26 avril 1924*.

Other inland waterway ports set up or managed pursuant to *article 6 (navigation intérieure) of the décret 69-140 du 6 février 1969 relatif aux concessions d'outillage public dans les ports maritimes*.

Ports autonomes operating pursuant to *articles L 111-1 et suivants of the code des ports maritimes*.

Ports non autonomes operating pursuant to *articles R 121-1 et suivants of the code des ports maritimes*.

Ports managed by regional authorities (*départements*) or operating pursuant to a concession granted by the regional authorities (*départements*) pursuant to *article 6 of the loi 86-663 du 22 juillet 1983 complétant la loi 83-8 du 7 janvier 1983 relative à la répartition de compétences entre les communes, départements et l'État*.

IRELAND

Ports operating pursuant to the *Harbour Acts 1946 to 1976*.

Port of *Dun Laoghaire* operating pursuant to the *State Harbours Act 1924*.

Port of *Rosslare Harbour* operating pursuant to the *Finguard and Rosslare Railways and Harbours Act 1899*.

ITALY

State ports and other ports managed by the *Capitaneria di Porto* pursuant to the *Codice della navigazione, Regio Decreto 30 marzo 1942, n. 32*.

Autonomous ports (*enti portuali*) set up by special laws pursuant to *Article 19 of the Codice della navigazione, Regio Decreto 30 marzo 1942, n. 327*.

LUXEMBOURG

Port de Merttert set up and operating pursuant to *loi du 22 juillet 1963 relative à l'aménagement et à l'exploitation d'un port fluvial sur la Moselle*.

NETHERLANDS

Havenbedrijven, set up and operating pursuant to the *Gemeentewet van 29 juni 1851*.

Havenschap Vlissingen, set up by the *wet van 10 september 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Vlissingen*.

Havenschap Terneuzen, set up by the *wet van 8 april 1970 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Terneuzen*.

Havenschap Delfzijl, set up by the *wet van 31 juli 1957 houdende een gemeenschappelijke regeling tot oprichting van het Havenschap Delfzijl*.

Industrie- en havenschap Moerdijk, set up by *gemeenschappelijke regeling tot oprichting van het Industrie- en havenschap Moerdijk van 23 oktober 1970*, approved by *Koninklijke Besluit nr. 23 van 4 maart 1972*.

PORTUGAL

Porto do Lisboa set up pursuant to *Decreto Real do 18 de Fevereiro de 1907* and operating pursuant to *Decreto-Lei nº 36976 de 20 de Julho de 1948*.

Porto do Douro e Leixões set up pursuant to *Decreto-Lei nº 36977 de 20 de Julho de 1948*.

Porto de Sines set up pursuant to *Decreto-Lei nº 508/77 de 14 de Dezembro de 1977*.

Portos de Setúbal, Aveiro, Figueira de Foz, Viana do Castelo, Portimão e Faro operating pursuant to the *Decreto-Lei nº 37754 de 18 de Fevereiro de 1950*.

UNITED KINGDOM

Harbour Authorities within the meaning of *Section 57 of the Harbours Act 1964* providing port facilities to carriers by sea or inland waterway.

ANNEX X

OPERATION OF TELECOMMUNICATIONS NETWORKS OR PROVISION
OF TELECOMMUNICATIONS SERVICES

BELGIUM

Régie des télégraphes et des téléphones/Regie van Telegrafie en Telefonie.

DENMARK

Kjøbenhavns Telefon Aktieselskab.

Jydsk Telefon.

Fyns Telefon.

Statens Teletjeneste.

Tele Sønderjylland.

GERMANY

Deutsche Bundespost — Telekom.

Mannesmann — Mobilfunk GmbH.

GREECE

OTE/Hellenic Telecommunications Organization.

SPAIN

Compañía Telefónica Nacional de España.

FRANCE

Direction générale des télécommunications.

Transpac.

Telecom service mobile.

Société française de radiotéléphone.

IRELAND

Telecom Éireann.

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 télécommunications.

NETHERLANDS

Koninklijke PTT Nederland NV and subsidiaries (1).

(1) Except PTT Post BV.

PORTUGAL

Telefones de Lisboa e Porto, SA.

Companhia Portuguesa Rádio Marconi.

Correios e Telecomunicações de Portugal.

UNITED KINGDOM

British Telecommunications plc.

Mercury Communications Ltd.

City of Kingston upon Hull.

Racal Vodafone.

Telecoms Securicor Cellular Radio Ltd (Cellnet).

ANNEX XI

LIST OF PROFESSIONAL ACTIVITIES AS SET OUT IN THE GENERAL INDUSTRIAL CLASSIFICATION OF ECONOMIC ACTIVITIES WITHIN THE EUROPEAN COMMUNITIES

Classes	Groups	Subgroups and items	Description
50			BUILDING AND CIVIL ENGINEERING
	500		General building and civil engineering work (without any particular specification) and demolition work
		500.1	General building and civil engineering work (without any particular specification)
		500.2	Demolition work
	501		Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential
		501.1	General building contractors
		501.2	Roofings
		501.3	Construction of chimneys, kilns and furnaces
		501.4	Water-proofing and damp-proofing
		501.5	Restoration and maintenance of outside walls (repainting, cleaning, etc.)
		501.6	Erection and dismantlement of scaffolding
		501.7	Other specialized activities relating to construction work (including carpentry)
	502		Civil engineering: construction of roads, bridges, railways, etc.
		502.1	General civil engineering work
		502.2	Earth-moving (navvying)
		502.3	Construction of bridges, tunnels and shafts; drillings
		502.4	Hydraulic engineering (rivers, canals, harbours, flows, lochs and dams)
		502.5	Road-building (including specialized construction of airports and runways)
		502.6	Specialized construction work relating to water (i.e. to irrigation land drainage, water supply, sewage disposal, sewerage, etc.)
		502.7	Specialized activities in other areas of civil engineering
	503		Installation (fittings and fixtures)
		503.1	General installation work
		503.2	Gas fitting and plumbing, and the installation of sanitary equipment
		503.3	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
		503.4	Sound and heat insulation; insulation against vibration
		503.5	Electrical fittings
		503.6	Installation of aerials, lightning conductors, telephones, etc.
	504		Building completion work
		504.1	General building completion work
		504.2	Plastering
		504.3	Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet flooring)
		504.4	Painting, glazing and paper-hanging
		504.5	Tiling and otherwise covering floors and walls
		504.6	Other building completion work (putting in fireplaces, etc.)

ANNEX XII

A. OPEN PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement).
Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
 - (a) nature and quantity of the goods to be supplied;
or
nature and extent of the services to be provided and general nature of the work;
 - (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
 - (c) for works contracts:
Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
5. For services:
 - (a) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
 - (b) reference of the law, regulation or administrative provision;
 - (c) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;
 - (d) indication whether suppliers can tender for a part of the services concerned.
6. Authorization to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 13 (6).
8. Time limits for delivery or completion or duration of service contract.
9. (a) Address from which the contract documents and additional documents may be requested.
(b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.
10. (a) Final date for receipt of tenders.
(b) Address to which they must be sent.
(c) Language or languages in which they must be drawn up.
11. (a) Where appropriate, the persons authorized to be present at the opening of tenders.
(b) Date, hour and place of such opening.
12. Where appropriate, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the provisions in which they are contained.
14. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or service providers to whom the contract is awarded.
15. Minimum economic and technical conditions required of the supplier, contractor or provider to whom the contract is awarded.

16. Period during which the tenderer is bound to keep open his tender.
17. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.
18. Other information.
19. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
20. Date of dispatch of the notice by the contracting entities.
21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. RESTRICTED PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement).
Category of service within the sense of annex XVI A or XVI B and description (CPC classification).
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
 - (a) nature and quantity of the goods to be supplied;
or
nature and extent of the services to be provided and general nature of the work;
 - (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and possibility of tendering for one, for several or for all the lots;
 - (c) for works contracts:
information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
5. For services:
 - (a) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
 - (b) reference of the law, regulation or administrative provision;
 - (c) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;
 - (d) indication whether suppliers can tender for a part of the services concerned;
6. Authorization to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 18 (6).
8. Time limits for delivery or completion or duration of service contract.
9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.
10. (a) Final date for receipt of requests to participate.
(b) Address to which they must be sent.
(c) Language or languages in which they must be drawn up.
11. Final date for dispatch of invitations to tender.
12. Where appropriate, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the texts in which these are contained.
14. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.
15. Criteria for the award of the contract where they are not mentioned in the invitation to tender.
16. Other information.
17. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
18. Date of dispatch of the notice by the contacting entities.
19. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

C. NEGOTIATED PROCEDURES

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity
2. Nature of the contract (supply, works or service, where appropriate, state if it is a framework agreement).
Category of service within the sense of Annex XVI A or XVI B and description (CPC classification).
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
 - (a) nature and quantity of the goods to be supplied;
or
nature and extent of the services to be provided and general nature of the work;
 - (b) indication of whether the suppliers can tender for some and/or all the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all the lots;
 - (c) for works contracts:
Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
5. For services:
 - (a) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
 - (b) reference of the law, regulation or administrative provision;
 - (c) indication whether legal persons should indicate the names and professional qualification of the staff to be responsible for the execution of the services;
 - (d) indication whether suppliers can tender for a part of the services concerned.
6. Derogation from the use of European specifications, in accordance with Article 18 (6).
7. Time limits for delivery or completion or duration of service contract.
8. (a) Final date for receipt of tenders.
(b) Address to which they must be sent.
(c) Language or languages in which they must be drawn up.
9. Where appropriate, any deposits and guarantees required.
10. Main terms concerning financing and payment and/or references to the texts in which these are contained.
11. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.
12. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.
13. Where appropriate, the names and addresses of suppliers, contractors or providers already selected by the contracting entity.
14. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*.
15. Other information.
16. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
17. Date of dispatch of the notice by the contracting entities.
18. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

*ANNEX XIII***NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM**

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity.
 2. Purpose of the qualification system.
 3. Address where the rules concerning the qualification system can be obtained (if different from the address mentioned under 1).
 4. Where applicable, duration of the qualification system.
-

ANNEX XIV

PERIODIC INFORMATION NOTICE

A. For supply contracts

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.
2. Nature and quantity or value of the services or products to be supplied.
3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).
(b) Type of award procedure to be used.
4. Other information (for example, indicate if a call for competition will be published later).
5. Date of dispatch of the notice by the contracting entities.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

B. For works contracts

1. Name, address, telegraphic address, telephone, telex and telecopier number of the contracting entity.
2. (a) Site.
(b) Nature and extent of the services to be provided, the main characteristics of the work or of the lots by reference to the work.
(c) An estimate of the cost of the service to be provided.
3. (a) Type of award procedure to be used.
(b) Date scheduled for initiating the award procedures in respect of the contract or contracts.
(c) Date scheduled for the start of the work.
(d) Planned timetable for completion of the work.
4. Terms of financing of the work and of price revision.
5. Other information (for example, indicate if a call for competition will be published later).
6. Date of dispatch of the notice by the contracting entities.
7. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

C. For service contracts

1. Name, address, telephone number, telegraphic address, telex and telecopier number of the contracting entity or the service from which additional information may be obtained.
2. Intended total procurement in each of the service categories listed in Annex XVI A.
3. (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known).
(b) Type of award procedure to be used.
4. Other information (for example, indicate if a call for competition will be published later).
5. Date of dispatch of the notice by the contracting entities.
6. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by the said Office).

ANNEX XV

NOTICE ON CONTRACTS AWARDED

I. Information for publication in the *Official Journal of the European Communities*

1. Name and address of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate state if it is a framework agreement).
3. At least a summary indication of the nature of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).
(b) Reference of publication of the notice in the *Official Journal of the European Communities*.
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 20 (2), or Article 16.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases pursuant to Article 20 (2) (j).
9. Name and address of successful supplier(s), contractor(s) or service provider(s).
10. State, where appropriate, whether the contract has been, or may be, subcontracted.
11. Optional information:
 - value and share of the contract which may be subcontracted to third parties,
 - award criteria,
 - price paid (or range of prices).

II. Information not intended for publication

12. Number of contracts awarded (where an award has been split between more than one supplier).
13. Value of each contract awarded.
14. Country of origin of the product or service (EEC origin or non-Community origin; if the latter, broken down by third country).
15. Was recourse made to the exceptions to the use of European specifications provided for under Article 18 (6). If so, which?
16. Which award criteria was used (most economically advantageous; lowest price; criteria permitted pursuant to Article 35)?
17. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 34 (3)?
18. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 34 (5)?
19. Date of transmission of the notice by the contracting entities.
20. In the case of contracts for services listed in Annex XVI B, agreement by the contracting entity to publication of the notice (Article 24 (3)).

ANNEX XVI A

SERVICES IN THE SENSE OF ARTICLE 15

Category	Subject	CPC reference No
1	Maintenance and repair services	6112, 6122, 633, 886
2	Land transport services ⁽¹⁾ , including armoured car services, and courier services, except transport of mail	712 (except 71235), 7512, 87304
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)
4	Transport of mail by land ⁽¹⁾ and by air	71235, 7321
5	Telecommunications services ⁽²⁾	752
6	Financial services (a) Insurance services (b) Banking and investment services ⁽³⁾	ex 81 812, 814
7	Computer and related services	84
8	R&D services ⁽⁴⁾	85
9	Accounting, auditing and book-keeping services	862
10	Market research and public opinion polling services	864
11	Management consulting services ⁽⁵⁾ and related services	865, 866
12	Architectural services; Engineering services and integrated engineering services; Urban planning and landscape architectural services; Related scientific and technical consulting services; Technical testing and analysis services	867
13	Advertising services	871
14	Building-cleaning services and property management services	874 82201, 82206
15	Publishing and printing services on a fee or contract basis	88442
16	Sewage and refuse disposal services; sanitation and similar services	94

⁽¹⁾ Except for rail transport services covered by category 18.

⁽²⁾ Except voice telephony, telex, radiotelephony, paging and satellite services.

⁽³⁾ Except contracts for the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services.

⁽⁴⁾ Except research and development service contracts other than those where the benefits accrue exclusively to the contracting entity for its use in the conduct of its own affairs on condition that the service provided is wholly remunerated by the contracting entity.

⁽⁵⁾ Except arbitration and conciliation services.

ANNEX XVI B

SERVICES IN THE SENSE OF ARTICLE 16

Category	Subject	CPC reference No
17	Hotel and restaurant services	64
18	Transport services by rail	711
19	Water transport services	72
20	Supporting and auxiliary transport services	74
21	Legal services	861
22	Personnel placement and supply services	872
23	Investigation and security services (except armoured car services)	873 (except 87304)
24	Education and vocational education services	92
25	Health and social services	93
26	Recreational, cultural and sporting services	96
27	Other services	

*ANNEX XVII***DESIGN CONTEST NOTICES**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting entity and of the service from which the relevant documents may be obtained.
2. Project description.
3. Nature of the contest: open or restricted.
4. In the case of open contests: final date for receipt of projects.
5. In the case of restricted contests:
 - (a) the envisaged number of participants, or range;
 - (b) where applicable, names of already selected participants;
 - (c) the criteria to be applied in the selection of participants;
 - (d) final date for receipt of requests to participate.
6. Where applicable, indication whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of selected members of the jury.
9. Indication whether the decision of the jury is binding for the authority.
10. Where applicable, the number and value of the prizes to be awarded.
11. Where applicable, details on payments to all participants.
12. Indication whether the prizewinners are entitled to be awarded any follow-up contracts.
13. Other information.
14. Date of dispatch of the notice.
15. Date of receipt of the notice by the Office for Official Publications of the European Communities.

*ANNEX XVIII***RESULTS OF DESIGN CONTESTS**

1. Name, address, telegraphic address, telephone, telex and fax numbers of the contracting entity.
2. Project description.
3. Total number of participants.
4. Number of foreign participants.
5. Winner(s) of the contest.
6. Where applicable, the prize(s).
7. Other information.
8. Reference of the design contest notice.
9. Date of dispatch of the notice.
10. Date of receipt of the notice by the Office for Official Publications of the European Communities.

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 22 July 1993

on the development of technology and standards in the field of advanced television services

(93/C 209/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Whereas the Community, through Decision 89/337/EEC (¹), Decision 89/630/EEC (²) and Directive 92/38/EEC (³), recognized the strategic importance of high-definition television (HDTV) for the European consumer electronics industry and for the European television and film industries and established the strategy framework for the introduction of European HDTV;

Whereas the Council, through this resolution, has agreed upon the framework for an action plan for the introduction of advanced television services in Europe having the objective of accelerating the development of the market for advanced television services in the widescreen 16:9 format;

Whereas it is necessary to bring forward the review of Directive 92/38/EEC to ensure its coherence with current market and technological realities;

Whereas digital technology will be important for future television systems;

Whereas it is important that Europe have a coherent global approach to the development of technology and standards for new digital television systems;

Having reached agreement on the framework for an action plan as contained in the Annex hereto,

CONSIDERS THAT:

1. An action plan for the introduction of advanced television services in Europe should be accompanied by additional measures to ensure the coherence of Community policy for advanced television.

2. One of these measures is a revision of Directive 92/38/EEC on standards for television broadcasting as provided for in the text, in order to adapt it to the current market and technological realities.

3. Digital technology is essential for future television systems. It is important that the Community develop a coherent global approach to the development of technology and standards for new digital television systems,

INVITES THE COMMISSION:

1. To propose to the Council, before 1 October 1993, a revision of Directive 92/38/EEC reflecting the need for a flexible and workable regulatory framework which responds to the needs of the market and to technological developments. In this respect, the proposals could take account of the following issues, *inter alia*:

(i) the possible need to expand the scope to allow other standards, in addition to D2-MAC, to be used for the broadcast of not completely digital 625 line television services in the 16:9 format;

(ii) the possible need to expand the scope to cover standards for terrestrial transmission and cable distribution;

(iii) the possible need to limit the number of different standards as far as possible;

(iv) the possible need for a European non-proprietary encryption/conditional access system serving a number of competing service providers;

(v) the possible requirement that all new television transmission and encryption systems to be used in the Community should be standardized by the competent European standardization bodies;

(¹) OJ No L 142, 25. 5. 1989, p. 1.

(²) OJ No L 363, 13. 12. 1989, p. 30.

(³) OJ No L 137, 20. 5. 1992, p. 17.

- (vi) the possible need to change other Articles of the Directive to ensure consistency following any changes introduced under the above provisions.
2. To bring forward to the Council before 1 October 1993 a communication and possible proposal on digital television containing the following elements, *inter alia*:
- (i) mechanisms for achieving early agreement on a common Community perspective on the development and needs of the market for digital television systems which can inform and guide the standardization of such systems, including the feasibility of a single (family of) digital television standard(s) and matching encryption system(s);
- (ii) a timetable for the development, system specification, system implementation, evaluation and subsequent standardization;
- (iii) Community funding of the above activities, if required.
- HEREBY ADOPTS the Framework Agreement for an action plan for the introduction of advanced television services in Europe set out in the Annex;
- INSTRUCTS the Permanent Representatives Committee to ensure that the detailed text of the action plan takes account of the principles contained in the Framework Agreement;
- AGREES, that the text of the action plan will be adopted by the Council before the end of July 1993.

ANNEX

Framework Agreement for an action plan for the introduction of advanced television services in Europe

1. The plan is directed solely at promoting the 16:9 format (625 or 1 250 lines), irrespective of the European television standard used, and irrespective of the broadcasting mode (terrestrial, satellite or cable).
 2. The Community funds shall cover only part of the difference in costs between production/broadcasting in the customary 4:3 format and in the 16:9 format; the Community funds shall generally cover up to only 50 % of the extra costs. The remaining 50 % is to be provided from other sources. The Council attaches great importance to the involvement of the economic operators in the financing and agrees that the funding provided by them shall be at least 50 % of the non-Community funding.

Such economic operators shall be afforded due recognition under Community R&D and standardization activities, always in accordance with the general rules for participation in these actions.
 3. The support is allocated on a yearly 'first-come-first-served' basis with preference for projects where the matching funds stem from the economic operators.
 4. 30 % of the Community funding will be reserved for markets not being fully serviced in the early stages of the implementation of the action plan. These funds could cover up to 80 % of the extra costs, while the remaining 20 % is to be provided from other sources.
 5. The action plan should be as simple as possible and based on transparent, fair and unbureaucratic mechanisms.
 6. The funds shall be allocated to broadcasters or producers based in the Community on the basis of hours produced and transmitted in the 16:9 format, with a maximum support of x ECU per hour. The support will depend on the actual costs of the type of programme and its technical quality, with special emphasis on programmes produced in Europe. New productions will thus receive the highest level of support. Only broadcasters transmitting more than 50 hours of 16:9 services per year will receive funding.
 7. Community funding is fixed at ECU 160 million. The funding will be given only provided applicants have demonstrated that other sources have already committed themselves to providing the remaining 50 %. In addition to the ECU 160 million, ECU 68 million are held in reserve until 1 January 1995 for markets not being serviced in the early stages of the implementation of the action plan. The ECU 68 million will have to be matched by ECU 17 million from other sources.
 8. The action plan shall cover a period of four years expiring at the end of June 1997.
 9. Emphasis will be given to creating a considerable spread in the markets serviced by the action plan, with due recognition of the need to achieve the critical mass and facilitating the uptake of all technologies, including fully digital technology.
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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 July 1993

on an action plan for the introduction of advanced television services in Europe

(93/424/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the Community, through Decisions 89/337/EEC ⁽⁴⁾ and 89/630/EEC ⁽⁵⁾, recognized the strategic importance of high definition television (HDTV) for the European consumer electronics industry and for the European television and film industries and established the strategy framework for the introduction of European HDTV;

Whereas the objectives of the strategy for the introduction of HDTV in Europe are an integral part of the Community audio-visual policy; whereas they must take into account other objectives of this policy within the perspective of the development of Europe's audio-visual capacity, which comprise structural objectives such as the development of the independent production sector or the development of production in countries or regions with more limited audio-visual capacity;

Whereas the action plan should ensure that the whole territory of the Community is satisfactorily covered by advanced services;

Whereas financial incentives are initially required to ensure the accelerated development of the advanced television service market in conformity with the strategy indicated above, by contributing to the reduction of the additional start-up costs involved;

Whereas the action plan should be solely directed at promoting the 16:9 format (625 or 1 250 lines), irrespective of the European television standard used and irrespective of the broadcasting mode (terrestrial, satellite or cable);

Whereas the action plan should facilitate the uptake of all technologies, including fully digital technology;

Whereas it is appropriate to set targets for the impact of Community funding on the early market development of advanced television services;

Whereas a programme lasting four years is called for;

Whereas an amount of ECU 405 million is estimated as necessary to achieve the objective of the action plan;

Whereas the funding of this amount should come from Community funds and from other sources, with the Community contribution amounting to ECU 228 million;

Whereas those economic operators who co-finance the action plan shall be given due recognition under Community R&D and standardization activities, always in accordance with the general rules for participation in these activities;

⁽¹⁾ OJ No C 139, 2. 6. 1992, p. 4.

⁽²⁾ OJ No C 337, 21. 12. 1992, p. 93.

⁽³⁾ OJ No C 332, 16. 12. 1992, p. 39.

⁽⁴⁾ OJ No L 142, 25. 5. 1989, p. 1.

⁽⁵⁾ OJ No L 363, 13. 12. 1989, p. 30.

Whereas, in relation to the Community funding, it is necessary to hold in reserve an amount of ECU 68 million for the markets not being fully served in the early stages of the implementation of the action plan ;

Whereas it is appropriate to specify certain basic principles which must underlie the implementation of the action plan, including criteria to be used in the selection of projects ;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

HAS DECIDED AS FOLLOWS :

Article 1

An action plan to ensure the accelerated development of the market for advanced television services in the 16 : 9 format and using 625 or 1 250 scanning lines is hereby adopted for a period beginning on the date on which this Decision is adopted and ending on 30 June 1997.

The objectives which the action plan must achieve during the abovementioned period shall be as follows :

- (i) a critical mass of advanced television services in the 16 : 9 format ;
- (ii) a sufficient and increasing volume of programming in the 16 : 9 format, with high technical quality both in picture and sound and of such a nature as to facilitate optimum audience ratings, such programming to be broadcast in the abovementioned services.

Community funding, together with funds from other sources, will be directed toward the achievement of these objectives by means of financial incentives covering parts of the additional cost incurred by broadcasters and programme makers in the provision of the abovementioned services.

The implementation procedures for the action plan are set out in the Annex, which forms an integral part of this Decision.

The action plan will contribute to market penetration by receiver equipment in the 16 : 9 format. However, no funding will be devoted to support manufacturers of receiver equipment for consumers.

Article 2

1. The programme shall cover the period from the date on which this Decision is adopted to 30 June 1997.
2. The funds estimated to be required for the achievement of the objectives of the action plan amount to ECU 405 million.

3. This sum shall be made up of Community funds and of funds from other sources. The Community funding shall amount to ECU 228 million.

4. In relation to the Community funds, the budgetary authority shall determine the appropriations available for each financial year with reference to the principles of sound management referred to in Article 2 of the Financial Regulation applicable to the general budget of the European Communities.

5. Within the indicated amount of Community funds referred to in paragraph 3, a quantity of ECU 68 million shall be placed in reserve and shall not be allocated before 1 January 1995. This amount should ensure implementation of the provisions of paragraphs 5.2 (ii) and 5.4 of the Annex.

6. No Community funding shall be committed to a project until the level of financing from other sources required in paragraphs 5.1 (i), 5.3 and 5.4 of the Annex has been committed to that project.

7. Funds shall be available to facilitate the uptake of all the technologies mentioned in paragraph 5.1 (iv) of the Annex, including fully digital technology.

Article 3

1. The Commission shall be responsible for implementing the action plan. 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.

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 4

1. Notwithstanding Article 3, the following procedure shall apply in implementing those points of the Annex that concern the breakdown of the relevant budgetary expenditure and the assessment of projects and actions provided for in the Annex of a total value of above ECU 1 million, with the exception of those covered under Article 5.

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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 5

1. Notwithstanding Articles 3 and 4, the following procedure shall apply in implementing the review and possible revision of the figures contained in Tables I and II of paragraph 4 (vi) of the Annex.

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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States

within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, upon expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

Article 6

An annual report shall be submitted by the Commission to the European Parliament, the Council and the Economic and Social Committee, on progress in implementing the action plan and the allocation of Community funds.

A final report, in the same terms, will be submitted to the abovementioned institutions at the conclusion of the action plan.

Article 7

As television technologies and markets are developing rapidly, the Commission will keep these developments and related market changes under review and, where required, propose any necessary changes to the Council concerning the implementation of this action plan.

Done at Brussels, 22 July 1993.

For the Council

The President

M. OFFECIERS-VAN DE WIELE

ANNEX

IMPLEMENTATION PROCEDURES FOR THE ACTION PLAN

1. OBJECTIVE

In order to contribute to market penetration by receiver equipment in the 16:9 format, the objective of the action plan is to ensure the accelerated development on the market for advanced television services in Europe in the 16:9 format using 625 or 1250 scanning lines.

2. APPROACH ADOPTED

Accelerated development of the market for advanced television services requires all the elements necessary to bring those services into consumers' or viewers' homes to be in place. Television is a complicated medium, encompassing and merging many technical and creative functions, with both cultural and commercial outcomes. Its functions are controlled by different sectors within the audio-visual, telecommunications or electronics industries. Their endeavours form a service chain stretching from origination to the receiver in the home.

The approach for accelerating the development of the market for advanced television services must therefore have a service focus.

3. TARGETS TO BE ACHIEVED

In the context of the objective stated in paragraph 1, it is appropriate to set indicative targets for the impact of the Community funding which will be used to accelerate the market development, as follows:

the achievement during the life of the action plan of:

- (i) a critical mass of advanced television services in the 16:9 format;
- (ii) a sufficient and increasing volume of programming in the 16:9 format and with high technical quality both in picture and sound and of such a nature as to facilitate an optimum audience rating, such programming to be broadcast in the abovementioned services.

4. THE FUNDING APPROACH TO BE ADOPTED

- (i) The action plan will fund part of the additional costs of introducing wide-screen television services. The necessary financial resources involved will be drawn from Community funds and from other sources including: own funds, national funds, equipment makers, satellite operators and others with an interest in the business.

Before being eligible for Community funds, each project must secure a firm commitment of funds from one or more of the other sources indicated above. This prior commitment of funds will be seen as an essential validation of the value of the project. The combined funding system is intended to ensure a market-oriented approach and the Community dimension simultaneously.

- (ii) Funding will go to broadcasters providing wide-screen television services who satisfy the criteria set out in paragraph 5.1, and to programme producers who make programmes for such services according to the criteria set out in paragraph 5.3.
- (iii) Depending on circumstances, the additional costs incurred by a broadcaster in providing a 16:9 service, as against a 4:3 service may have a variety of sources, such as: the capital costs associated with upgrading studios from 4:3 to 16:9; the capital costs associated with broadcasting 16:9 as against 4:3 services; the current costs of making individual 16:9 programmes over those for making 4:3 programmes.
- (iv) Notwithstanding the origin of additional costs of broadcasters, the mechanism for calculating the contribution from Community funds to broadcasters who provide widescreen services will be based on the number of hours per year the broadcast in the 16:9 format.
- (v) The Community contribution per hour to such services shall consist of two elements: one relating to the costs of broadcasting and the other to the costs of programme production.

Broadcasters will receive a flat rate payment towards the broadcasting cost of each hour of the 16:9/625 line or 1250 line HDTV service transmitted, in accordance with Table I in subparagraph (vi). In relation to programme making, the Community will make a further flat rate payment towards programme production costs. This will vary by programme type, as set out in Table II in subparagraph (vi). Both broadcasters and independent producers will qualify for programme production payments, depending upon which is the source of a particular programme.

- (vi) The numbers in Tables I and II will be used for the first call for proposals referred to in paragraph 5. They will be reviewed and, if necessary, revised in the light of experience by the Commission according to the procedure provided for under Article 5 of the Decision, including the desirability of funding 16/9 video studio production through support for the capital costs incurred.

TABLE I (°)

Broadcasting costs

	Flat rate (ecus per hour)
First 50 hours	6 000
From the 50 first hours	2 500

(°) The actual amount to be paid will be 50 % or 80 % of the figures given above, depending on whether early starting or later starting markets are involved (see paragraphs 5.1 (i), 5.3 and 5.4).

TABLE II (°)

Programme making costs

Programme type	Flat rate (ecus per hour)
Programmes remastered from existing material, suitable for broadcasting in 16:9 and in 625 lines	3 000
Programmes remastered from existing material, suitable for broadcasting in 16:9 and in 1 250 lines	5 000
Super 16 mm and 16/9 video production	12 000
35 mm and HD - video (1 250 lines) production	25 000

(°) The actual amount to be paid will be 50 % or 80 % of the figures given above, depending on whether early starting or later starting markets are involved (see paragraphs 5.1 (i), 5.3 and 5.4).

- (vii) Programme producers, who are independent of the broadcasters providing the services, but who provide programmes to such a broadcaster for inclusion in a wide-screen service, shall receive Community funds at the level per hour and per category of programme indicated in Table II of subparagraph (vi).
- (viii) In relation to programme making in 1 250 lines, the facilities of the EEIG Vision 1250, which in its earlier years has developed substantial experience in assisting broadcasters in 1250/50 production, will be made available for the purposes of implementing the action plan. In addition, other such facilities may be used by broadcasters and producers.

5. PRINCIPLES AND CRITERIA FOR IMPLEMENTATION

The Commission will implement the action plan through annual calls for proposals covering projects for services. These shall be organized on the basis of first a combined call for transmission (in accordance with the criteria set out in paragraphs 5.1 and 5.2) and programme production (in accordance with the criteria set out in paragraphs 5.2 and 5.3) followed by two further calls later within the 12 month period for programme production only. As an indicative figure, at least 50 % of the funds shall be allocated to programme production. These calls for proposals will be organized and evaluated according to the procedure provided for under Article 3 or Article 4 of the Decision as appropriate.

Preference will be given for projects where the matching funds come from the economic actors.

5.1. Criteria relating to the quality of the project

Each project must satisfy the following criteria :

- (i) before being eligible for Community funds, it must have received a firm commitment of funds from other sources for 50 % of the costs falling within the scope of the action plan. At least 50 % of the non-Community funding must come from the economic operators. Having met these requirements, the project would then become eligible for Community funding in respect of the remainder of such costs ;
- (ii) it must be submitted by a recognized service provider having a proven track record in the field of television service provision and having the necessary financial strength required for the new venture or by a group of organizations led by such a service provider ;
- (iii) it must propose to provide a service involving at least 50 hours of broadcasting per year in the 16:9 format and using 625 or 1 250 scanning lines ;
- (iv) it must be based on transmission systems of high quality featuring the 16:9 format including, *inter alia*, MAC/HDMAC, further developments of existing European TV standards such as PALPLUS and fully digital technology standardized by the appropriate European standards bodies ;
- (v) it must propose to provide a service targeted towards a sufficiently large market in order to contribute to the development of the broader market for advanced television services ;
- (vi) it must comply with Community competition rules.

In addition to the above, the following criteria, while not essential, would be an advantage :

- (vii) the project proposes to provide a transfrontier and/or multilingual service ;
- (viii) it facilitates optimal audience ratings.

5.2. Criteria relating to spread and balance

The set of projects funded under this action plan must satisfy the following criteria :

- (i) it must show a fair spread of projects between the entities to avoid undue concentration or the creation of monopolies or cartels ;
- (ii) it must have a wide distribution across Member States' markets in order to ensure the Community dimension taking account of the specific situation of Member States with a low production capacity or whose language covers a limited area ;
- (iii) it must involve, to a reasonable degree, programme producers independent of the broadcasters participating in the projects.

5.3. Criteria for programme support

Criteria for selection of projects under this procedure will be reviewed on an annual basis according to the procedure provided for under Article 4 of the Decision.

The Commission will inform the committee of the projects selected under this procedure.

Both in-house production by broadcasters and external production are within the scope of the action plan.

Community support for programme production and conversion will be closely linked to the 16:9 services, but will be able to benefit the whole sector.

To qualify for Community support on a programme-by-programme basis, producers of new programmes, and rights holders of certain existing programmes exploitable in 16:9 but requiring re-mastering, must have an agreement to broadcast from at least one of the broadcasters based in the Community who undertakes to broadcast the programme in 16:9. The technical quality of these programmes must be such as to allow their exploitation in 16:9 format in standard also in the medium term.

Before being eligible for Community funding, the project must have received a firm commitment of the funds from other sources for 50 % of the costs falling within the scope of the action plan. At least 50 % of non-Community funding must come from the economic operators. Having met these requirements, the project would then become eligible for Community funding in respect of the remainder of such costs.

Support will be based on the ceilings identified in Table II in paragraph 4 (vi).

(i) Criteria for supporting the technical upgrading of new long-life ('stock') programmes

New programmes supported must be of sufficient technical quality and have an order for their effective transmission in 16:9 from at least one of the broadcasters based in the Community. They must be of European origin.

Priority will be awarded for programmes produced by producers independent of the broadcasters.

(ii) Criteria for supporting the re-mastering of existing programmes

The basic condition is that the first transmission is in 16:9 in the framework of a service support under the action plan. Priority will be awarded to programmes of European origin.

(iii) The Commission may present proposals to the committee, which shall act according to the procedure provided for under Article 3 or Article 4 of the Decision as appropriate, for a common multi-lingual re-mastering scheme.

5.4. Timing considerations

Sufficient Community funding will be held in reserve in order to ensure that Member States' markets that are not fully served in the early stages of the implementation of the action plan can be served towards the end of the period.

In order to serve these markets, a quantity of ECU 68 million is held in reserve for allocation after 1 January 1995. In this category, before being eligible for Community funds, the broadcaster and programme producer must have received a firm commitment of funds from other sources for 20 % of the support falling within the scope of the action plan. The criteria set out in paragraphs 5.1 and 5.3, relating to the 50 % of the non-Community funding having to come from the economic operators, shall not apply in this case.

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 22 July 1993

on the review of the situation in the telecommunications sector and the need for further development in that market

(93/C 213/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Whereas both Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision⁽¹⁾ and Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services⁽²⁾ call for a review during 1992 of the conditions under which the telecommunications sector operates in the Community;

Whereas, on 21 October 1992, the Commission submitted to the Council a communication on the situation in the market for telecommunications services, which assessed, in particular, the competitive situation, progress on harmonization and restrictions concerning access to telecommunications networks, the effects of those restrictions on the operation of the internal market and the measures that could be taken to remove those restrictions; whereas the Commission requested the Member States and interested parties to give their opinions concerning the communication and the proposals contained in it;

Whereas, on 15 July 1992, the Commission also submitted to the Council a communication entitled: 'Towards cost orientation and the adjustment of pricing structures', assessing progress towards cost orientation and adjustment of pricing structures for telecommunications within the Community;

Whereas the European Parliament gave its opinion on both communications on 20 April 1993;

Whereas the resolution of 17 December 1992⁽³⁾ called upon the Commission to consider, in consultation with interested parties, the political, economic, commercial and social implications of the options set out in the Commission communication for the future of the Community telecommunications services market; whereas the Council requested the Commission, on the basis of the consultation, to set out a transparent approach and timetable for a future regulatory framework for the Community telecommunications market, so as to allow regulators and operators to plan the necessary adjustments at national level;

Whereas the Council established an *ad hoc* high level Committee of National Regulators to assist the Commission in this task whereas, in the aforementioned resolution, the Council welcomed the Commission's intention to report to it before the next meeting of the Council (Telecommunications Ministers);

Whereas the Commission has carried out a wide-ranging consultation with all those involved in the European telecommunications industry and, in particular, has received the opinion of the users of telecommunications services, telecommunications operators, equipment manufacturers, service providers and the trade unions;

Whereas, on the basis of this wide-ranging consultation, the Commission has submitted a further communication to the Council on the outcome of the consultation on the 1992 telecommunications services review,

NOTES, as general consensus resulting from the consultation, that:

1. there is a general acceptance that liberalization of telecommunications services markets is the inevitable result of technological and market developments;

(¹) OJ No L 192, 24. 7. 1990, p. 1.

(²) OJ No L 192, 24. 7. 1990, p. 10.

(³) OJ No C 2, 6. 1. 1993, p. 5.

2. a general requirement exists for maintaining the financial stability of the sector and safeguarding universal service, while proceeding with the necessary adjustment of tariff structures;
3. it is imperative to have a clear timetable for regulatory changes with defined milestones, in order to give the sector the necessary stability;
4. a realistic approach to further liberalization must be followed, taking into account the need for adjustment in peripheral regions with less developed networks;
5. there is a need for rapid and effective implementation of the current regulatory environment, in particular Directive 90/388/EEC;
6. there is general recognition of the value to users, industry and the whole of the European economy of a well-developed telecommunications infrastructure and of advanced and efficient telecommunications services;
7. the opening of the Community telecommunications market for third countries should be linked to comparable access to such countries' markets;
4. the independence of telecommunications organizations for the determination of their commercial policy, subject to appropriate regulation by national authorities and the need for telecommunications organizations to be able to meet the increasing competition in the global market;
5. the need to take into account the objectives of Community cohesion in the light of the specific circumstances of peripheral regions;
6. the impact of the development of trans-European networks in the field of telecommunications;
7. the need to take account of changes in the overall employment situation within as well as outside the telecommunications sector;
8. the definition of a coherent policy concerning telecommunications infrastructure;
9. the establishment of a fair international trade environment allowing access to third country telecommunications markets comparable to that existing in the Community;
10. the development of a clear and stable regulatory framework based on the principle of subsidiarity;

RECOGNIZES as key factors in the development of future regulatory policy for telecommunications in the Community:

1. the application of open network provision (ONP) measures, which constitute the basis for the definition of universal service and provide an appropriate framework for interconnection, the implementation of the principle of mutual recognition of national licences and authorizations based on harmonized conditions and with an interim solution based on one-stop-shopping procedure, as well as the development of the policy established in the Council resolution of 19 December 1991 (*) in respect of satellite communications, in particular the adoption of measures envisaged in that framework;
2. the importance, for the individual consumer, and for the competitiveness of Community industry and commercial users, of a Community telecommunications system offering to all users, including specific social groups, reasonable and affordable charges for access and use, high quality of service and technological innovation;
3. the application, where appropriate, of access charge principles by national regulatory authorities, taking into account, in particular, the need for tariff rebalancing and the provision of universal service;

11. the importance of competition rules in the new regulatory environment, taking into account the need for cooperation, *inter alia* for trans-European services, and the situation of operators in European and non-European telecommunications markets;
12. the continuing need for a harmonized and open market for telecommunications equipment and the need for comparable and effective access to third countries;

CONSIDERS as major goals for the Community's telecommunications policy in the short term:

1. the adoption of legislative proposals in the field of ONP and satellites, together with rapid and effective implementation of existing Community legislation in the field of telecommunications services and ONP;
2. the application throughout the Community and, where necessary, the adaptation, in the light of further liberalization, of ONP principles in respect of the entities covered and of such issues as universal service, interconnection and access charges as well as the consequent questions connected with licensing conditions;
3. the development of future Community policy in the field of mobile and personal communications, to which the announced publication of a Green Paper on mobile communications will contribute;

(*) OJ No C 8, 14. 1. 1992, p. 1.

4. the development of future Community policy in the field of telecommunications infrastructure and cable TV networks, to which the announced publication of a Green Paper in this area will contribute;
5. the working-out of arrangements for suitable measures in relation to specific difficulties encountered by the peripheral regions with less developed networks. Such measures, as a complement to national funding, should where appropriate, and taking into account the priorities set at national level, make full use of appropriate Community support frameworks to assist network development and universal service in peripheral regions;
6. the taking into account by the Commission, in the preparation of the steps to implement the goals of this Resolution, of the specific situation of small networks;

CONSIDERS as major goals for the Community's telecommunications policy in the longer term:

1. the liberalization of all public voice telephony services, whilst maintaining universal service;
2. ensuring the balance between liberalization and harmonization in an evolving market;
3. the examination, prior to full liberalization of all public voice telephony services, of progress on structural adjustment, in particular of tariffs, in those countries experiencing specific difficulties, in order to take account of the situation of the peripheral regions with less developed networks and of very small networks, including the fixing of additional transition periods, where justified;
4. the working out of a future policy for telecommunications infrastructure, on the basis of the result of a broad consultation process following the publication of the Green Paper on infrastructure;

INVITES the Commission and the Member States:

to continue consultation, in particular within the framework of the *ad hoc* high level Committee of National Regulators referred to in the resolution of 17 December 1992, with a view, *inter alia*, to the definition of a global and coherent framework for Community telecommunications policy, taking into account the regulatory changes envisaged by this resolution and aimed at strengthening the competitiveness of European operators;

URGES the Member States:

- (a) to promote the progressive rebalancing of tariffs towards cost-orientation together with the continuing development of universal service to all users at reasonable charges;
- (b) to provide for the necessary financial, organizational and management independence of telecommunications organizations, in order to allow them to prepare for the competitive environment;

GIVES ITS SUPPORT to the Commission's intention:

- (a) to publish, before 1 January 1994, a Green Paper on mobile/personal communications;
- (b) to publish, before 1 January 1995, a Green Paper on the future policy for telecommunications infrastructure and cable TV networks;
- (c) to prepare, before 1 January 1996 the necessary amendments to the Community regulatory framework in order to achieve liberalization of all public voice telephony services by 1 January 1998. In order to allow Member States with less developed networks, i.e. Spain, Ireland, Greece and Portugal, to achieve the necessary structural adjustments, in particular of tariffs, these Member States are granted an additional transition period of up to five years. The Council notes the intention of the Commission to work closely with these Member States in order to achieve such adjustments as soon as possible and in the best possible way within the period. Very small networks can, where justified, be granted a period of up to two years;

REAFFIRMS

the necessity that conditions governing the liberalization of all public voice telephony services by 1 January 1998, as well as the definition of a future Community policy on infrastructure, should be the result of a political agreement building on the compromise of December 1989, and notes the Commission support for this approach;

REQUESTS the Commission to report to the European Parliament and the Council:

- (a) on the progress made with regard to the implementation and effects of the measures referred to in this resolution before the end of 1994;
- (b) with preliminary reflections on a global and coherent framework for a Community telecommunications policy before the end of 1993.

Telecommunications: open network provision ONP list of standards (third issue)

(93/C 219/02)

EXPLANATORY NOTE CONCERNING THE THIRD ISSUE OF THE ONP LIST OF STANDARDS

In accordance with the Council Directive 90/387/EEC ⁽¹⁾, the Commission publishes on a regular basis a list of standards suitable for open network provision.

This publication, third issue, follows previous publications of 8 April 1993 and 29 December 1990. The previous publications were purely indicative lists, since standards published under Article 5 (1) of the ONP Directive have to fulfil certain conditions and at the time no standards were available which fulfilled all the required conditions.

Appropriate standards are now available or will shortly become available in some areas, and therefore Chapters I and IV of this publication constitute a formal reference pursuant to Article 5 (1) of the ONP Directive; Chapters II, III and V remain as indicative lists.

The current list revises the previous publications of 8 April 1993 and 29 December 1990.

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 1: Council Directive of 28 June 1990 on the establishment of the internal market for the telecommunication services through the implementation of open network provision.

ONP LIST OF STANDARDS

Third issue

1. General

Pursuant to Article 5 (1) of Directive 90/387/EEC the Commission publishes a list of standards for technical interfaces and/or service features in the context of open network provision.

The standards listed in this publication are divided into two categories: those which constitute a formal reference pursuant to Article 5 (1) of Directive 90/387/EEC and contained in the 'reference lists', and those which are for information only and contained in the 'indicative lists'.

In accordance with Directive 90/387/EEC the ONP list of standards will be revised on a regular basis to take account of requirements resulting from new developments.

2. Structure of the list of standards

The list in this publication contains the following chapters:

- Chapter I: Reference list for leased lines listed in Annex II of Directive 92/44/EEC

- Chapter II: Indicative list for other leased lines

- Chapter III: Indicative list for packet-switched data services listed in recommendation 92/382/EEC ⁽²⁾

- Chapter IV: Reference list for ISDN offerings listed in recommendation 92/383/EEC ⁽³⁾

- Chapter V: Indicative list for switched broadband networks (candidate interfaces)

Each chapter contains a list of technical interfaces and/or services features of relevance to ONP.

⁽²⁾ OJ No L 200, 18. 7. 1992, p. 1: Council recommendation of 5 June 1992 on the harmonized provision of a minimum set of packet-switched data services (PSDS) in accordance with open network provision (ONP) principles.

⁽³⁾ OJ No L 200, 18. 7. 1992, p. 1: Council recommendation of the 5 June 1992 on the provision of harmonized integrated services digital network (ISDN) access arrangements and a minimum set of ISDN offerings in accordance with open network provision (ONP) principles.

3. Status of the standards in the list

3.1. General

Publication of standards in this list carries no obligation to implement the standards so listed. Obligations to implement specific standards may, however, be imposed via other legislative measures.

The purpose of including standards in this list is to support implementation of Community policy on ONP. This should be borne in mind when implementing standards which contain alternatives or optional clauses.

Where flexibility of implementation is permitted, implementations which best support the Community ONP policy as described in the relevant ONP directive or recommendation are to be preferred.

Any standards or parts of standards which are found not to support Community ONP policy may be removed from future editions of this list, in accordance with the procedure in Article 5 (4) and (5) of Directive 90/387/EEC.

The inclusion of an offering in the ONP list of standards should not be construed as an obligation to provide that offering. However certain telecommunications organizations are obliged to provide some of the leased-line types included in Chapter I as a result of the Directive on the application of ONP to leased lines.

3.2. Status of standards in Chapters I and IV

Chapters I and IV contain formal references under Article 5 (1) of Directive 90/387/EEC. For each interface and/or service feature, the formal reference is given by the entry in the reference and notes columns. The reference column identifies the relevant standards(s), while the notes column indicates additional conditions also necessary for the presumption of compliance with the ONP essential requirements or the requirement to provide open and efficient access.

Pursuant to Article 5 (2) of Directive 90/387/EEC compliance with these standards will carry the presumption of compliance with the ONP essential requirements or the requirement to provide open and efficient access for the technical interface and/or service feature concerned, as far as covered by these standards and without prejudice to

requirements resulting from Directives 90/387/EEC, 90/388/EEC ⁽¹⁾ and 92/44/EEC ⁽²⁾.

Where a standard contains requirements applicable to both the network and attached terminal equipment, only the network aspects are relevant.

The *comments box* is provided for information only and *does not form part of the reference*. These comments are of a general nature and may for example indicate the direction of future standards' development in the area concerned. In addition, standards are given which may be considered for formal reference in future publications of the ONP list of standards. These standards do not carry the presumption of Article 5 (2) of Directive 90/387/EEC.

3.3. Status of standards in Chapter II, III and V

Standards in Chapters II, III and V constitute an indicative list and are not a formal reference under Article 5 (1) of Directive 90/387/EEC.

For each interface and/or service feature, appropriate specifications are given by the entry in the document and notes columns. The document column identifies the relevant standard(s) or specification(s), while the notes column indicates additional conditions.

Where a standard contains requirements applicable to both the network and attached terminal equipment, only the network aspects are relevant.

The *comments box* is provided for information. These comments are of a general nature and may for example indicate the direction of future standards development in the area concerned. In addition, standards are given which may be considered for formal reference in future publications of the ONP list of standards.

Taking account of the early stage of development of switched broadband networks, a candidate list of technical interfaces and/or service features for these networks is published in Chapter V. Formal reference to standards appropriate to the candidate technical interfaces and/or services features, will be considered for a future publication of the ONP list of standards.

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 10: Commission Directive of 28 June 1990 on competition in the markets for telecommunications services.

⁽²⁾ OJ No L 165, 19. 6. 1992, p. 27: Council Directive of 5 June 1992 on the application of open network provision to leased lines.

4. Presumption carried by standards in Chapter I and IV formally referenced under Article 5 (1) of the ONP Directive

A standard formally referenced in the ONP list of standards (i. e. in Chapter I or IV of this publication) carries the presumption of compliance with ONP essential requirements or the requirement to provide open and efficient access. In case of dispute regarding compliance with these requirements, the rule of presumption determines which party bears the burden of proof.

If it is established that there is no open and efficient access to the network or service or insufficient respect of essential requirements in spite of compliance with referenced standards, the presumption of compliance would no longer apply.

The presumption that an offering based on a referenced standard fulfils the requirement of open and efficient access or the essential requirements can only be given in as far as such requirements are covered by the standard. The presumption is applicable to each technical interface and/or service feature individually.

When an offering based on a technical interface and/or service feature referenced in the ONP list of standards implements technical specifications additional to those contained in the list, such additional specifications do not carry the presumption of compliance to ONP requirements.

5. Technical Specifications

Given below is a key to abbreviations used in the list.

- EN: CEN/Cenelec European standard.
- ENV: CEN/Cenelec European prestandard.
- CEPT: CEPT recommendation.
- ITU-T: ITU telecommunications recommendations — previously CCITT recommendations (Blue Book version unless otherwise stated).
- ETS: A European telecommunication standard (ETS) is referenced by a 300 000 number, preceded by a lettered code which indicates the document's status.
- ETS signifies that the document has been approved as a European telecommunication standard by its ETSI Technical Committee (TC), has been submitted for public enquiry, and has been approved by ETSI's national weighted voting procedure. An ETS is an officially published document and is available from the ETSI secretariat or from participating national standards organizations (NSOs).
- I-ETS: An interim European telecommunication standard (I-ETS) is also referenced by a

300 000 number, preceded by a lettered code which indicates the document's status.

An I-ETS has been approved by the relevant Technical Committee as an interim European telecommunication standard (I-ETS), has been submitted for public enquiry and has been approved by the ETSI national weighted voting procedure. This document will remain an interim European telecommunication standard for a period of two to five years, before being discarded, or converted to a European telecommunication standard.

prETS: A prETS is a European telecommunication standard (ETS) that is still in the course of its development. It has been approved by the relevant ETSI Technical Committee, but has not yet completed the ETSI standards approval process.

prI-ETS: A prI-ETS is an interim European telecommunication standard (I-ETS) that is still in the course of its development. It has been approved by the relevant ETSI Technical Committee, but has not yet completed the ETSI standards approval process.

ETR: An ETSI technical report (ETR) is numbered from 001 onwards. It does not contain technical specifications but rather gives complementary information about the technical environment relating to standardization issues. An ETR does not undergo the same approval procedures as an ETSI standard and is published once it has been approved by the Technical Committee concerned.

6. Standards using ETSI's three stage methodology

In the list stage 1, 2 and 3a standards are included where appropriate. These refer to the three stage specification methodology used by ETSI (see ETR-010). Stage 1 is an overall description from the user's standpoint. Stage 2 is an overall description of the organization of the network function to map service requirements into network capabilities. Stage 3a is the definition of switching and signalling capabilities needed to support services at the access protocol.

Compliance with stage 1 and stage 2 standards included in the list is established by compliance with the corresponding stage 3a standards, where the requirements of stages 1 and 2 are included in the stage 3a standard.

CHAPTER I

Reference list for leased lines listed in Annex II to Directive 92/44/EEC

In accordance with Article 7 of Directive 92/44/EEC certain telecommunications organizations shall provide a minimum set of leased lines conforming to the technical specifications given in Annex II of the Directive. The relevant specifications are given in the comments sections.

In conformity with the procedures identified in Article 7 of Directive 92/44/EEC, revisions may occur to Annex II of the Directive. In such cases those revisions will be included in a subsequent publication of the ONP list of standards.

A mandate to develop European telecommunication standards for the leased line types included in this chapter, has been forwarded to ETSI under Article 4 (4) (c) of Directive 90/387/EEC.

The standards referenced in this Chapter constitute a formal reference under Article 5 (1) of Directive 90/387/EEC.

ANALOGUE

Technical interfaces and/or service features	Reference	Notes
Ordinary quality voice bandwidth (2-wire)		
<p><i>Comments:</i> Technical specifications relevant to this technical interface and/or service feature: CCITT M.1040, performance specification. See ETR 038 (ETSI technical report on standardization requirements for ONP leased lines) for details of developing ETSI standard specifications for this type of leased line.</p>		
Ordinary quality voice bandwidth (4-wire)		
<p><i>Comments:</i> Technical specifications relevant to this technical interface and/or service feature: CCITT M.1040, performance specification. See ETR 038 (ETSI technical report on standardization requirements for ONP leased lines) for details of developing ETSI standard specifications for this type of leased line.</p>		
Special quality voice bandwidth (2-wire)		
<p><i>Comments:</i> Technical specifications relevant to this technical interface and/or service feature: CCITT M.1020/M.1025, performance specification. See ETR 038 (ETSI technical report on standardization requirements for ONP leased lines) for details of developing ETSI standard specifications for this type of leased line.</p>		
Special quality voice bandwidth (4-wire)		
<p><i>Comments:</i> Technical specifications relevant to this technical interface and/or service feature: CCITT M.1020/M.1025, performance specification. See ETR 038 (ETSI technical report on standardization requirements for ONP leased lines) for details of developing ETSI standard specifications for this type of leased line.</p>		

DIGITAL

Technical interfaces and/or service features	Reference	Notes
64 kbit/s		

Comments: Technical specifications relevant to this technical interface and/or service feature: CCITT G.703, interface specification; relevant CCITT G.800 series, performance specification.
See ETR 038 (ETSI technical report on standardization requirements for ONP leased lines) for details of developing ETSI standard specifications for this type of leased line.

2 048 kbit/s — E1 (unstructured)	<ul style="list-style-type: none"> — ETS 300 046 — ETS 300 047 — ETS 300 048 	Interface presentation Connection characteristics Terminal equipment interface
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Comments: E1 is the market denomination for this type of leased line.

2 048 kbit/s — E1 (structured)		
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Comments: Technical specification relevant to this technical interface and/or service feature: CCITT G.703, interface specification; CCITT G.704, interface specification, section 5 is excluded; CCITT G.706, interface specification, only cyclic redundancy checking part is relevant. Relevant CCITT G.800 series, performance specification.
E1 is the market denomination for this type of leased line.
See ETR 038 (ETSI technical report on standardization requirements for ONP leased lines) for details of developing ETSI standard specifications for this type of leased line.

CHAPTER II

Indicative list for other leased lines

The technical interfaces and/or service features included in this Chapter are not subject to the obligation under Article 7 and Annex II to Directive 92/44/EEC, concerning the provision of a minimum set of leased lines.

A mandate to develop European telecommunication standards suitable for reference under Article 5 (1) of Directive 90/387/EEC for the leased line types included in this Chapter, has been forwarded to ETSI under Article 4 (4) (c) of Directive 90/387/EEC.

The documents listed in this Chapter do not constitute a formal reference under Article 5 (1) of Directive 90/387/EEC.

Technical interfaces and/or service features	Document	Notes
34 368 kbit/s — E3		
<p><i>Comments:</i> Technical specifications relevant to this technical interface and/or service feature: CCITT G.703, interface specification, additional CCITT G.700 series recommendation(s) defining a structured offering may also be relevant. Relevant CCITT G.800 series, performance specification.</p> <p>E3 is the market denomination for this type of leased line.</p>		
139 264 kbit/s — E4		
<p><i>Comments:</i> Technical specifications relevant to this technical interface and/or service feature: CCITT G.703, interface specification, additional CCITT G.700 series recommendation(s) defining a structured offering may also be relevant. Relevant CCITT G.800 series, performance specification.</p> <p>E4 is the market denomination for this type of leased line.</p>		

CHAPTER III

Indicative list for packet-switched data services listed in recommendation 92/382/EEC

The technical interfaces and/or services features given in this Chapter are those required to implement PSDS offerings in accordance with recommendation 92/382/EEC. In conformity with the procedures provided in point 2 of the recommendation, revisions may occur to these technical interfaces and/or service features. In such cases those revisions will be included in a subsequent publication of the ONP list of standards.

The documents listed in this Chapter do not constitute a formal reference under Article 5 (1) of Directive 90/387/EEC.

DIRECT ACCESS

Technical interfaces and/or service features	Document	Notes
X.25 service	<ul style="list-style-type: none"> — ENV 41104 (FS T/31) — CEPT T/CD 08-02 — CEPT T/CDR 08-03 — CEPT T/CAC 2 — CEPT T/CAC 3 — CEPT T/CAC 4 	Network aspects only

Comments: CEPT T/CAC 2, 3 and 4 define indicators and monitoring techniques for the network performance aspects of quality of service for international packet switched services. CCITT X.137 contains a definition of the availability parameter which may be used in this context. See Annex III to recommendation 92/382/EEC. CEPT recommendations T/CD 08-01/02/03 were previously titled T/TE 08-01/02/03.

INDIRECT ACCESS

Technical interfaces and/or service features	Document	Notes
X.28 service	<ul style="list-style-type: none"> — CEP T/CD 08-02 — CEPT T/CD 08-03 — ENV 41901 	Network aspects only
<i>Comments:</i> ETSI are currently developing an ETR covering ONP technical requirements for indirect access to packet switched data networks. CEPT recommendations T/CD 08-02/03 were previously titled T/TE 08-02/03.		
X.32 service	<ul style="list-style-type: none"> — CEPT T/CD 08-02 — CEPT T/CD 08-03 — ENV 41105 (FS T/32) 	Network aspects only
<i>Comments:</i> ETSI are currently developing an ETR covering ONP technical requirements for indirect access to packet switched data networks. CEPT recommendations T/CD 08-02/03 were previously titled T/TE 08-02/03.		

CHAPTER IV

Reference list for ISDN offerings listed in recommendation 92/383/EEC

The technical interfaces and/or services features given in this Chapter are those required to implement ISDN offerings in accordance with recommendation 92/383/EEC. In conformity with the procedures provided in point 2 of the recommendation, revisions may occur to these technical interfaces and/or service features. In such cases those revisions will be included in a subsequent publication of the ONP list of standards.

The standards referenced in this Chapter constitute a formal reference under Article 5 (1) of Directive.

USER/NETWORK INTERFACE

Technical interfaces and/or service features	Reference	Notes
Basic rate access (S/T interface)	<ul style="list-style-type: none"> — ETS 300 012 — ETS 300 125 — ETS 300 102-1 — ETS 300 102-2 	Layer 1 Layer 2 Layer 3 Layer 3
Primary rate access (T interface)	<ul style="list-style-type: none"> — ETS 300 011 — ETS 300 125 — ETS 300 102-1 — ETS 300 102-2 	Layer 1 Layer 2 Layer 3 Layer 3
Terminal selection and compatibility checking principles		

Comments: See CCITT I.333 for details of compatibility checking procedures carried out between ISDN and terminals attached at the S/T interface.

Technical interfaces and/or service features	Reference	Notes
Safety and protection (basic access)	— ETS 300 047-1 to 5	Layer 1
Safety and protection (primary access)	— ETS 300 046-1 to 5	Layer 1
Support of packet mode terminal equipment by an ISDN (S/T interface)	— ETS 300 007	
Mechanical interface (S/T interface)		

Comments: Technical specifications relevant to this technical interface and/or service feature: EN 28 877; ENV 41 001.

ISDN BEARER SERVICES

Technical interfaces and/or service features	Reference	Notes
Circuit-mode 64 kbit/s unrestricted bearer service	— ETS 300 108 — ETS 300 102-2 — ETS 300 102-1	Stage 1 Stage 3a Stage 3a

Comments: See ETR 018 for additional information on how bearer services can be used to support various user applications (sub-clause 7.1 is relevant).

Circuit-mode speech bearer service	— ETS 300 109 — ETS 300 102-2 — ETS 300 102-1	Stage 1 Stage 3a Stage 3a
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Comments: A standard specification for the end-to-end protocol for speech information transfer is currently being developed, see pr ETS 300 083.

Circuit-mode speech bearer service may be used as a support for 3,1 kHz teleservice.

Circuit-mode 3,1 kHz audio bearer service	— ETS 300 110 — ETS 300 102-2 — ETS 300 102-1	Stage 1 Stage 3a Stage 3a
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Comments: A standard specification for the end-to-end protocol for speech information transfer has been developed, see ETS 300 084.

See ETR 018 for additional information on how bearer services can be used to support various user applications (sub-clause 7.2 is relevant).

Packet-mode bearer service (D channel)		
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Comments: Standard specifications for stages 1 and 3a have been drawn up, see ETS 300 049 and 300 007. These are currently under scrutiny.

Packet mode bearer service (B channel)		
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Comments: Standard specifications for stages 1 and 3a have been drawn up, see ETS 300 048 and 300 007. These are currently under scrutiny.

Technical interfaces and/or service features	Reference	Notes
Circuit-mode 64 kbit/s unrestricted bearer service on reserved or permanent mode		

Comments: Reserved and permanent modes of establishing a communication are referred to in ETS 300 108 information transfer attributes.

ISDN SUPPLEMENTARY SERVICES

Technical interfaces and/or service features	Reference	Notes
Calling line identification, presentation	— ETS 300 089 — ETS 300 091 — ETS 300 092	Stage 1: paragraph 7 (Note and subparagraph 7.1) is under scrutiny. Stage 2 Stage 3a

Comments: Options relating to intercommunications considerations contained in paragraph 7 (Note and 7.1) of ETS 300 089, and their consequences reflected in ETS 300 091 and ETS 300 092, depend on national regulations, and consultation with the relevant regulatory body will be required prior to implementation of these standards.

Calling line identification, restriction	— ETS 300 090 — ETS 300 091 — ETS 300 093	Stage 1: paragraph 7 (Note and subparagraph 7.1) is under scrutiny. Stage 2 Stage 3a
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Comments: Options relating to intercommunication considerations with the PSTN contained in paragraph 7 (Note and 7.1) of ETS 300 090, and their consequences reflected in ETS 300 091 and ETS 300 093, depend on national regulations, and consultation with the relevant regulatory body will be required prior to implementation of these standards.

Direct dialling-in	— ETS 300 062 — ETS 300 063 — ETS 300 064	Stage 1 Stage 2 Stage 3a
Multiple subscriber number	— ETS 300 050 — ETS 300 051 — ETS 300 052	Stage 1 Stage 2 Stage 3a
Terminal portability	— ETS 300 053 — ETS 300 054 — ETS 300 055	Stage 1 Stage 2 Stage 3a
Freephone		

Comments: Standard specifications for stages 1, 2 and 3a are being developed, see pr ETSs 300 208/209/210.

Closed user group	— ETS 300 136 — ETS 300 137 — ETS 300 138	Stage 1 Stage 2 Stage 3a
Call transfer		

Comments: See CCITT I.252.1, Q.82.1 and draft CCITT Q.952.1 recommendations for details of stages 1, 2 and 3a of the explicit and single-step call transfer services.

Technical interfaces and/or service features	Reference	Notes
Call forwarding		
<i>Comments:</i> Standard specifications for the stages 1, 2 and 3a for call forwarding on busy, no reply, unconditional and call deflection services are currently being developed, see pr ETSs 300 199 to 300 207.		
Automatic reverse charging		
<i>Comments:</i> See draft CCITT 1.256.3 for details of stage 1 specification of the service.		
User-to-user signalling	— ETS 300 102-1	Stage 3a; only section 7.1 is relevant.
<i>Comments:</i> Standard specifications for stages 1 and 2 are being developed, see pr ETS 300 284/285. A pr ETS 286 is also being developed for stage 3a.		
Malicious call identification	— ETS 300 128 — ETS 300 129 — ETS 300 130	Stage 1 Stage 2 Stage 3a
Meet-me conference	— ETS 300 164 — ETS 300 165	Stage 1 Stage 2
<i>Comments:</i> There is no specific stage 3a specification for this service.		
Add-on conference call	— ETS 300 183 — ETS 300 184 — ETS 300 185	Stage 1 Stage 2 Stage 3a
Connected line identification, presentation	— ETS 300 094 — ETS 300 096 — ETS 300 097	Stage 1; paragraph 7 (Note and subparagraph 7.1) is under scrutiny. Stage 2 Stage 3a
<i>Comments:</i> Options relating to intercommunication considerations contained in paragraph 7 (Note and subparagraph 7.1) of ETS 300 094, and their consequences reflected in ETS 300 096 and ETS 300 097, depend on national regulations, and consultation with the relevant regulatory body will be required prior to implementation of these standards.		
Connected line identification restriction	— ETS 300 095 — ETS 300 096 — ETS 300 098	Stage 1; paragraph 7 (Note and subparagraph 7.1) is under scrutiny. Stage 2 Stage 3a
<i>Comments:</i> Options relating to intercommunication considerations contained in paragraph 7 (Note and subparagraph 7.1) of ETS 300 095, and their consequences reflected in ETS 300 096 and ETS 300 098, depend on national regulations, and consultation with the relevant regulatory body will be required prior to implementation of these standards.		
Subaddressing	— ETS 300 059 — ETS 300 060 — ETS 300 061	Stage 1 Stage 2 Stage 3a

Technical interfaces and/or service features	Reference	Notes
Call waiting	— ETS 300 056 — ETS 300 057 — ETS 300 058	Stage 1 Stage 2 Stage 3a
Completion of calls to a busy subscriber		
<i>Comments:</i> See draft CCITT I.253.3, Q.83.3 and Q.953.3 for details of stages 1, 2 and 3a specifications of the service.		
Three-party service		
<i>Comments:</i> Standard specifications for the stages 1, 2 and 3a are currently being developed, see pr ETSs 300 186/187/188.		
Advice of charge	— ETS 300 178/179/180 — ETS 300 181 — ETS 300 182	Stage 1 Stage 2 Stage 3a
<i>Comments:</i> Advice of charge encompasses advice at call set up time, during the call and at the end of the call, respectively ETS 300 178/179/180.		
Association of supplementary services to bearer services		
<i>Comments:</i> See Table 1 of CCITT I.250 for details of the association of supplementary services to bearer services.		

TELESERVICES

Technical interfaces and/or service features	Reference	Notes
Telephony 3.1 kHz teleservice	— ETS 300 111 — ETS 300 102-1 — ETS 300 102-2 — ETS 300 082	Stage 1 Stage 3a Stage 3a End-to-end protocol; only network aspects are relevant.
<i>Comments:</i> See ETR 018 for additional information.		
Teleservice interworking		
<i>Comments:</i> See CCITT I.500 series for details of service interworking, specifically for ISDN/PSTN inter-networking issues.		

OTHER FEATURES

Technical interfaces and/or service features	Reference	Notes
Network management services		
<i>Comments:</i> This item refers to possible technical specifications for ISDN facilities provided at the user network interface for network management services.		
Kiosk billing		
<i>Comments:</i> This item refers to technical specifications for ISDN facilities provided at the user network interface for kiosk billing.		
Indicators for the quality of service of ISDN bearer services		
<i>Comments:</i> This item refers to the network performance aspects of the quality of service. Specifications shall cover common definition and measurement methods. For all bearer services the following indicators are applicable: availability of access, mean time between interruptions and bit error ratio. For circuit-mode switched bearer services the following indicators are applicable: connection processing delay (as defined in CCITT recommendation I.352), network transit delay and unsuccessful calls ratio. For packet mode bearer services the applicable indicators are those defined in CEPT T/CAC 2, 3 and 4 for X.25 services, where appropriate.		

CHAPTER V

Indicative list for switched broadband networks

Taking account of the early stage of standards development for switched broadband networks and the work of ETSI in this area, the contents of this Chapter will be published as a candidate list of broadband technical interfaces and/or service features.

The inclusion of appropriate standards for the candidate interfaces and/or service features, will be considered for a future publication of the ONP reference list of standards.

Technical interfaces and/or service features	Document	Notes
2 048 kbit/s user network interface		
34 368 kbit/s user network interface		
139 264 kbit/s user network interface		

Telecommunications: open network provision for leased lines

(93/C 277/04)

Publication of information in respect of leased lines

Pursuant to Article 3 (2) of Council Directive 92/44/EEC on the application of open network provision to leased lines, Member States have to ensure the publication in an appropriate manner of the following information in respect of leased lines:

- technical characteristics,
- tariffs,
- supply conditions,
- licensing requirements,
- conditions for the attachment of terminal equipment.

Reference must be made in the national Official Journal of the Member State concerned to the publication of this information.

In addition, the Directive requires that the Commission publish regularly a reference to the way Member States make available that information. This publication fulfils the requirement.

BELGIUM

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Institut belge des services postaux et des télécommunications (IBPT)	Avenue de l'Astronomie 14 Boîte postale 21 B-1030 Bruxelles Numéros provisoires: Tel.: + 322/207 77 91 Fax: + 322/207 78 88	Exigences en matière d'octroi de licences	Licensing requirements
		Conditions relatives à la connexion des équipements terminaux	Conditions for the attachment of terminal equipment
Belgacom	Boulevard E. Jacqmain 151 B-1210 Bruxelles Tel.: + 322/202 81 11 Fax: + 322/218 82 09	Caractéristiques techniques Tarifs Conditions de fourniture	Technical characteristics Tariffs Supply conditions

DENMARK

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Telestyrelsen (National Telecom Agency Denmark)	Holsteinsgade 63 DK-2100 København Ø Tel.: + 45/35 43 03 33 Fax: + 45/35 43 14 34	Executive Order on Telecommunications Terminal Equipment No 882 issued on 29 October 1992 (conditions for attachment of terminal equipment) Technical regulations (for different types of terminal equipment)	Conditions for the attachment of terminal equipment

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
KTAS	Nørregade 21 DK-1199 København K Tel.: + 45/33 99 33 99 Fax: + 45/33 11 80 50	Product-sheets (technical characteristics, supply conditions etc.)	Technical characteristics
Jydsk Telefon	Sletvej 30 DK-8310 Tranbjerg J Tel.: + 45/89 45 45 45 Fax: + 45/89 45 48 95	Subscriber conditions for leased lines	Tariffs
Fyns Telefon	Telehøjen 1 DK-5220 Odense SØ Tel.: + 45/65 90 90 90 Fax: + 45/65 65 25 25	General subscriber conditions	Supply conditions
Tele Sønderjylland	H. P. Hanssensgade 21 DK-6200 Åbenrå Tel.: + 45/74 62 24 11 Fax: + 45/74 62 01 45	Tariff-sheet	Licensing requirements
Telecom Denmark	Telegade 2 DK-2630 Tåstrup Tel.: + 45/42 52 91 11 Fax: + 45/42 52 93 31	List on technical regulations (for terminal equipment)	

FRANCE

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Ministère des Postes et Télécommunications Direction de la réglementation générale	20, avenue de Ségur F-75700 Paris Cedex 07 Tél.: + 33/1 45 64 22 22 Fax: + 33/1 47 83 47 13	—	Licensing requirements Conditions for the attachment of terminal equipment
<i>Pour les lignes louées nationales</i> France Télécom	6, place d'Alleray F-75505 Paris Cedex 15 Tél.: + 33/1 44 44 37 72 Fax: + 33/1 43 22 88 14	Recueil des prescriptions Catalogue des prix Conditions générales et spécifiques du contrat d'abonnement	Technical characteristics Tariffs Supply conditions
<i>Pour les lignes louées internationales</i> France Câbles et Radio	124, rue Réaumur F-75091 Paris Cedex 02 Tél.: + 33/1 42 21 71 71	Conditions générales de service Catalogue des prix Conditions générales de service	Technical characteristics Tariffs Supply conditions

GERMANY

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Bundesminister für Post und Telekommunikation	Postfach 80 01 D-53105 Bonn Tel.: + 49/228 14-0 Fax: + 49/228 14-88 72	Amtsblatt der Bundesminister für Post und Telekommunikation	Licensing requirements Conditions for the attachment of terminal equipment
<i>Responsible</i> Deutsche Bundespost Telekom	Postfach 20 00 D-53105 Bonn Tel.: + 49/228 181-0 Fax: + 49/228 181-88 72	Amtsblatt der DBP Telekom 1. 1. 1993 Telekom Offiziell	Technical characteristics Tariffs Supply conditions
<i>Distribution</i> Vertrieb amtlicher Blätter, Postamt 1	Postfach 5 04 82 D-50666 Köln Tel.: + 49/221 140-0 Fax: + 49/221 140 1087		

GREECE

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Ministry of Transport	Sygroi 49 GR-Athens Tel.: + 30/1-921 52 79 Fax: + 30/1-923 71 33	To be notified	To be notified

IRELAND

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Department of Transport, Energy & Communications	Scotch House Hawkins Street IRL-Dublin 2 Tel.: + 353/1 671 82 11 Fax: + 353/1 679 88 34	Value added service licence TTE (0 - 6)	Licensing requirements Conditions for the attachment of terminal equipment
Government Publications Sales Office	Molesworth Street IRL-Dublin 2 Tel.: + 353/1 661 31 11	Statutory Instrument S.I.33 of 1993 Telecommunications schemes	Tariffs Supply conditions
Telecom Éireann	St Stephen's Green West IRL-Dublin 2 Tel.: + 353 1 671 44 44 Fax: + 353/1 671 69 16	Literature on technical characteristics	Technical characteristics

ITALY

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Ispettorato generale delle telecomunicazioni	Viale Europa 190 I-00144 Roma Tel.: + 39/6-59 58 29 94 Fax: + 39/6-541 45 12	D.M. 23. 5. 1992, n. 314 Supplemento ordinario GU n. 140 del 16. 6. 1992 D.M. 23. 4. 1993, GU n. 99 del 29. 4. 1993	Technical characteristics Conditions for the attachment of terminal equipment Tariffs

LUXEMBOURG

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Ministère des Communications	18, montée de la Pétrusse L-2945 Luxembourg Tél.: + 352/478 67 10 Fax: + 352/40 89 40	—	—

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
P & T Luxembourg	Direction générale des P & T L-2020 Luxembourg Tél.: + 352/47 65-1 Fax: + 352 /47 51 10	Conditions générales applicables aux services de télécommunications Liste des prix des services de télécommunications	Supply conditions Tariffs

THE NETHERLANDS

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Hoofddirectie Telecommunicatie en Post Directie Operationale Zaken	Postbus 450 NL-9700 Al Groningen Tel.: + 31/50-22 21 11 Fax: + 31/50-13 56 45	Nederlandse Staatscourant	Conditions for the attachment of terminal equipment
PTT Telecom Primafoon Winkels en Postkantoren	Postbus 30150 NL-2500 GD Den Haag Tel.: + 31/70-343 64 00 Fax: + 31/70-343 20 40	Specifieke produktfolders Algemene voorwaarden	Technical characteristics Tariffs Supply conditions

PORTUGAL

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Instituto das Comunicações de Portugal (ICP)	Av. José Malhoa, Lote 1683 - 8º P-1000 Lisboa Tel.: + 351/1-726 92 23 Fax: + 351/1-726 34 95, 726 37 49, 726 91 17, 726 22 82	—	—
Imprensa Nacional Casa da Moeda, EP	Rua Francisco Manuel de Melo, 5º D P-1000 Lisboa Tel.: + 351/1-69 34 14 Fax: + 351/1-69 31 66	Diário da República — II Série — 15. 6. 1993 & 26. 4. 1993 Decretos-Lei 346/90, 147/91 & 329/90 (published at Diário da República — I série on 3. 11. 1990, 12. 4. 1991 & 23. 10. 1990 respectively) Decreto-Lei 228/93 (published at Diário da República — I série on 22. 6. 1993)	Tariffs Licensing requirements Conditions for the attachment of terminal equipment

SPAIN

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
Dirección General de Telecomunicaciones Subdirección General de Redes y Sistemas de Telecomunicación A la atención de: Área del PNT	Palacio de Comunicaciones, 5ª planta Plaza de Cibeles s/n E-28701 Madrid Tel.: + 341/346 15 80 Fax: + 341/346 15 20	Líneas alquiladas—Información al público	Technical characteristics Tariffs Supply conditions Licensing requirements Conditions for the attachment of terminal equipment

UNITED KINGDOM

Organizations responsible for publication	Address, telephone, fax	Title of document	Categories of information in accordance with Annex I to Directive 92/44/EEC
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OFTEL The Office of Telecommunications	Export House 50 Ludgate Hill UK-London EC4M 7JJ Tel.: + 44/71-634 87 00 Fax: + 44/71-634 89 43	To be notified	To be notified

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DIRECTIVE 93/97/EEC

of 29 October 1993

supplementing Directive 91/263/EEC in respect of satellite earth station equipment

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

- (1) Whereas the Commission has issued a Green Paper on a common approach in the field of satellite communications in the Community proposing the introduction of mutual recognition of type approval for satellite earth station equipment as one of the major preconditions for, *inter alia*, a Community-wide market for satellite earth station equipment;
- (2) Whereas the Council resolution of 19 December 1991 on the development of a common market for satellite communications services and equipment ⁽⁴⁾ considers as one of the major goals in satellite telecommunications policy the harmonization and liberalization of appropriate satellite earth station equipment, subject, in particular, to conditions necessary for compliance with essential requirements;
- (3) Whereas that resolution notes with interest the intention of the Commission to propose measures

for the approximation of the laws of the Member States concerning the appropriate satellite earth station equipment, including the mutual recognition of their conformity, in line with the principles already established in Directive 91/263/EEC ⁽⁵⁾;

- (4) Whereas the goal of an advanced, open Community-wide market for satellite earth station equipment requires effective and efficient harmonized procedures for certification, testing, marking, quality assurance and product surveillance; whereas the alternative to Community legislation is an analogous system of provisions negotiated between Member States, which would involve obvious difficulties because of the number of organisms which would be involved in multiple bilateral negotiations; whereas this is not practicable, rapid or efficient; whereas therefore the objectives of the proposed action cannot be sufficiently achieved by the Member States; whereas on the contrary the form of a Community directive has repeatedly shown itself, in the sector of telecommunications among others, as a practicable, rapid and efficient means; whereas the objective of the action under consideration can therefore be better achieved at Community level;
- (5) Whereas Community law in its present form provides, notwithstanding one of the fundamental rules of the Community, namely the free movement of goods, that obstacles to movement within the Community, resulting from disparities in national legislations relating to the marketing of products, must be accepted in so far as such requirements can be recognized as being necessary to satisfy essential requirements; whereas, therefore, the harmonization of laws in this case must be limited only to

⁽¹⁾ OJ No C 4, 8. 1. 1993, p. 3.

⁽²⁾ OJ No C 176, 28. 6. 1993, p. 74 and Decision of 27 October 1993 (not yet published in the Official Journal).

⁽³⁾ OJ No C 161, 14. 6. 1993, p. 11.

⁽⁴⁾ OJ No C 8, 14. 1. 1992, p. 1.

⁽⁵⁾ OJ No L 128, 23. 5. 1991, p. 1.

- those requirements necessary to satisfy the essential requirements relating to satellite earth station equipment; whereas these requirements must replace the relevant national requirements because they are essential;
- (6) Whereas Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of the Member States relating to electrical equipment designed for use within certain voltage limits ⁽¹⁾ and Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations ⁽²⁾, are applicable, *inter alia*, to the fields of telecommunications and information technology;
- (7) Whereas Directive 73/23/EEC in general also covers safety of persons;
- (8) Whereas Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility ⁽³⁾ sets out harmonized procedures for the protection of apparatus by electromagnetic disturbances and defines the protection requirements and inspection procedures relating thereto; whereas the general requirements of that Directive also apply to satellite earth station equipment; whereas electromagnetic compatibility requirements are covered by this Directive in so far as they are specific to satellite earth station equipment;
- (9) Whereas Decision 87/95/EEC ⁽⁴⁾ sets out the measures to be implemented for the promotion of standardization in Europe and the preparation and implementation of standards in the field of information technology and telecommunications;
- (10) Whereas bearing in mind the essential requirements, it is desirable in order to help manufacturers to prove conformity with these essential requirements, to have standards harmonized at European level to safeguard the general interest in the design and manufacture of satellite earth station equipment and allow checks on conformity with these essential requirements; whereas these standards harmonized at European level are drawn up by private-law bodies and must retain their non-binding status; whereas for this purpose the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (Cenelec) and the European Telecommunications Standards Institute (ETSI) are the bodies recognized as competent to adopt harmonized standards;
- (11) Whereas the proposals for common technical regulations are, as a general rule, drawn up on the basis of harmonized standards, and, in order to ensure appropriate technical coordination on a broad European basis, of additional consultations, in particular with the Telecommunications Regulations Application Committee (TRAC);
- (12) Whereas Directive 91/263/EEC introduced the full mutual recognition of type approval for telecommunications terminal equipment and established the Approvals Committee for Terminal Equipment (ACTE) composed of representatives of the Member States and chaired by the representative of the Commission to assist the Commission in executing the tasks entrusted to it by that Directive;
- (13) Whereas Directive 91/263/EEC does not explicitly apply to satellite earth station equipment;
- (14) Whereas it is therefore necessary to extend to satellite earth station equipment the principles already established in that Directive in relation to telecommunications terminal equipment;
- (15) Whereas the scope of this Directive must be based on a general definition of the term 'satellite earth station equipment' so as to allow the technical development of products; whereas the scope excludes purpose-built satellite earth station equipment intended for use as part of the public terrestrial telecommunications network; whereas this is intended to exclude, *inter alia*, gateway satellite earth stations for major trunking applications within the context of the infrastructure provision (such as large size diameter stations) and satellite tracking and control earth stations;
- (16) Whereas this Directive does not affect current special or exclusive rights concerning satellite communications which may in accordance with Community law, be retained by the Member States;
- (17) Whereas satellite earth station equipment is configured, as far as its interface to the space-based system is concerned, either for the transmission of radio communications signals or for both the transmission and reception of radio-communications signals, or for the reception-only of radio-communications signals;

⁽¹⁾ OJ No L 77, 26. 3. 1973, p. 29.

⁽²⁾ OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Commission Decision 92/400/EEC (OJ No L 221, 6. 8. 1992, p. 55).

⁽³⁾ OJ No L 139, 23. 5. 1989, p. 19. Directive as last amended by Directive 92/31/EEC (OJ No L 126, 12. 5. 1992, p. 11).

⁽⁴⁾ OJ No L 36, 7. 2. 1987, p. 31.

- (18) Whereas satellite earth station equipment is, as far as the terrestrial interface is concerned, either intended for, or not intended for terrestrial connection to the public telecommunications network;
- (19) Whereas orbits (such as the geo-stationary orbit, low earth orbits and elliptical orbits) are paths in space described by satellites or other space-based systems, and are limited, nature-given resources;
- (20) Whereas orbital resources are used in conjunction with the radio frequency spectrum which is also a limited, nature-given resource; whereas transmitting satellite earth station equipment makes use of both these resources;
- (21) Whereas the effective use of orbital resources in conjunction with the radio frequency spectrum and avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems is of importance for the development of European satellite communications; whereas the International Telecommunications Union (ITU) establishes criteria for effective use of orbital resources as well as for radio-coordination to enable space and terrestrial systems to co-exist without undue interference;
- (22) Whereas harmonizing conditions for the placing on the market of satellite earth station equipment will create the conditions for an open and unified market and further will achieve an effective use of orbital resources and the radio frequency spectrum and facilitate avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems;
- (23) Whereas in respect of the essential requirements related to effective use of orbital resources and the radio frequency spectrum, and avoiding harmful interference with space-based and terrestrial communications systems and other technical systems, it is in general not possible to comply with such requirements other than by the application of special technical solutions; whereas common technical regulations are therefore necessary;
- (24) Whereas the parameters for the use of the frequency spectrum by transmitters are covered by the essential requirements in Article 4 (c) and (e) of Directive 91/263/EEC, with the test methods and the limit values being specified in conjunction with the technical features of the specific equipment;
- (25) Whereas satellite earth station equipment, capable of being used for transmission or for reception of radio-communications signals, may be subject to licensing terms, in addition to the provisions of this Directive;
- (26) Whereas satellite earth station equipment, only capable of being used for reception of radio-communications signals, shall not be subject to licensing terms but only to the provisions of this Directive unless they are intended for terrestrial connection to the public telecommunications network, as proposed in the Green Paper on satellite communications in the European Community; whereas the use of such satellite earth station equipment must be in conformity with national regulations, compatible with Community law;
- (27) Whereas real, comparable access to third country markets, in particular the United States of America and Japan, for European manufacturers should preferably be achieved through multilateral negotiations within the GATT, although bilateral talks between the Community and third countries may also contribute to this process;
- (28) Whereas representatives of the telecommunication organizations, users, consumers, manufacturers, service providers and the trade unions should have the right to be consulted;
- (29) Whereas the addressees of any decision taken under this Directive must be informed of the reasons for such a decision and the means of appeal open to them;
- (30) Whereas transitional arrangements are required in order that the manufacturers have the necessary time to adapt the design and production of satellite earth station equipment to the common technical regulations; whereas in order to have the necessary flexibility the transition arrangements must be worked out on a case-by-case basis; whereas the common technical regulations shall lay down the necessary transition arrangements;
- (31) Whereas ACTE has to play an important role in the application of this Directive; whereas it should work in close cooperation with relevant committees dealing with licence procedures for satellite network and services,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope, placing on the market and free circulation

Article 1

1. This Directive shall apply to satellite earth station equipment as defined in paragraph 2.
2. For the purpose of this Directive:
 - the definitions given in Directive 91/263/EEC shall apply, where relevant,

— *satellite earth station equipment* means equipment which is capable of being used either for transmission only, or for transmission and reception (transmit-receive), or for reception only (receive-only), of radio-communication signals by means of satellites or other space-based systems, but excluding purpose-built satellite earth station equipment intended for use as part of the public telecommunications network of a Member State,

— *terrestrial connection to the public telecommunications network* means any connection to the public telecommunications network which does not include a space segment.

3. The manufacturer or supplier of satellite earth station equipment shall declare if the equipment is either intended for, or not intended for terrestrial connection to the public telecommunications network.

Article 2

1. Member States shall take all appropriate measures to ensure that receive-only satellite earth station equipment not intended for terrestrial connection to the public telecommunications network may be placed on the market and put into service and used on their territory, in conformity with national law compatible with Community law, only if it complies with the requirements of this Directive when it is properly installed and maintained and used for its intended purposes.

Such use must be in conformity with any national law, compatible with Community law, which restricts the use to the reception of services intended for that user.

2. Member States shall take all appropriate measures to ensure that other satellite earth station equipment may be placed on the market only if it complies with the requirements of this Directive when it is properly installed and maintained and used for its intended purposes. The use of such equipment may be subject to licensing terms in conformity with Community law.

3. Member States shall also take all appropriate measures to ensure that satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network is not permitted to be connected to the public telecommunications network.

4. Member States shall also take all appropriate measures to ensure that satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network is disconnected from the public telecommunications network.

Member States shall moreover take all appropriate measures, according to their national laws, to prevent

terrestrial connection to the public telecommunications network of such equipment.

Article 3

Member States shall not impede the free circulation and the placing on the market of satellite earth station equipment conforming to the provisions of this Directive.

Article 4

1. Satellite earth station equipment shall satisfy the same essential requirements as those set out in Article 4 of Directive 91/263/EEC.

2. For the purpose of this Directive, as well as Directive 91/263/EEC, the essential requirements of Article 4 (a) of Directive 91/263/EEC shall imply the safety of persons in the same way as in Directive 73/23/EEC.

3. In the context of transmit or transmit-receive satellite earth station equipment, the essential requirement set out in Article 4 (e) of Directive 91/263/EEC concerning effective use of the radio frequency spectrum shall include the effective use of orbital resources and the avoidance of harmful interference between space-based and terrestrial communications systems and other technical systems.

4. In the context of satellite earth station equipment, electromagnetic compatibility requirements in so far as they are specific to satellite earth station equipment shall be subject to the essential requirement set out in Article 4 (c) of Directive 91/263/EEC.

5. Satellite earth station equipment shall satisfy the essential requirement set out in Article 4 (f) of Directive 91/263/EEC, regarding the interworking of satellite earth station equipment with the public telecommunications network.

6. Satellite earth station equipment shall satisfy the essential requirement set out in Article 4 (g) of Directive 91/263/EEC regarding the interworking of satellite earth station equipment via the public telecommunications network in justified cases.

Cases where satellite earth station equipment is capable of supporting and intended to support a service for which the Council has decided that there should be Community-wide availability are considered as justified cases and the requirements concerning this interworking shall be determined in accordance with the procedure laid down in Article 16 of this Directive.

7. Notwithstanding paragraphs 1, 5 and 6 of this Article, satellite earth station equipment which is not intended for connection to the public telecommunications network shall not be required to satisfy the essential requirements set out in Article 4 (b), (d), (f) and (g) of Directive 91/263/EEC.

Article 5

1. Member States shall presume compliance with the essential requirements referred to in Article 4 (a) and (b) of Directive 91/263/EEC in respect of satellite earth station equipment which is in conformity with the national standards implementing the relevant harmonized standards, the references of which have been published in the *Official Journal of the European Communities*. Member States shall publish the references of such national standards.

2. The Commission shall, in accordance with the procedure laid down in Article 16 of this Directive, adopt:

- as a first step, the measures identifying the type of satellite earth station equipment for which a common technical regulation is required, as well as the associated scope statement for that regulation, with a view to its transmission to the relevant standardization bodies,
- as a second step, once they have been prepared by the relevant standardization bodies, the corresponding harmonized standards, or parts thereof, implementing the essential requirements referred to in Article 4 (2) to (5), which shall be transformed into common technical regulations, compliance with which shall be mandatory and the reference of which shall be published in the *Official Journal of the European Communities*.

Article 6

Where a Member State or the Commission considers that the harmonized standards referred to in Article 5 of this Directive exceed or do not entirely meet the relevant essential requirements referred to in Article 4 of this Directive, the same enquiry and notification procedures shall apply as those set out in Article 7 of Directive 91/263/EEC.

Article 7

1. Where a Member State finds that satellite earth station equipment bearing the marking under the provisions laid down in Chapter III does not comply with the relevant essential requirements when properly used in accordance with the purpose intended by the manufacturer, the same measures, information and consultation procedures shall apply as those set out in Article 8 (1) (2) and (4) of Directive 91/263/EEC.

2. Where satellite earth station equipment which does not comply with the relevant essential requirements bears the CE marking, the competent Member State shall take appropriate action against whomsoever has affixed the marking. The same notification procedures shall apply as those set out in Article 8 (3) and (4) of Directive 91/263/EEC.

CHAPTER II

Conformity assessment*Article 8*

1. All transmit or transmit receive satellite earth station equipment shall, according to the choice of the manufacturer or his authorized representative established within the Community, be subject to all the provisions of Article 9 (1) and (2) of Directive 91/263/EEC concerning conformity assessment.

2. The same procedures regarding language requirements shall apply as those set out in Article 9 (3) of Directive 91/263/EEC.

3. Article 10 (5) of Directive 89/336/EEC shall not apply to equipment falling within the scope of this Directive or of Directive 91/263/EEC.

Article 9

Receive-only satellite earth station equipment, which is intended for terrestrial connection to the public telecommunications network, shall, as far as its terrestrial interface is concerned, be subject to the provisions of Article 8 (1) concerning conformity assessment while, as far as other elements are concerned, they shall be subject either to the provisions of Article 8 (1) or to the Community internal production control procedures set out in the Annex, as far as the requirements of this Directive are concerned.

Article 10

Receive-only satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network shall be subject either to the provisions of Article 8 (1) or to the Community internal production control procedures set out in the Annex as far as the requirements of this Directive are concerned.

Article 11

In addition to the provisions of Articles 8, 9 and 10 of this Directive satellite earth station equipment which is not intended for connection to the public telecommunications network shall be accompanied by a manufacturer's or supplier's declaration made and transmitted in accordance with the same procedures as those set out in Article 2 and Annex VIII to Directive 91/263/EEC, except that the declaration shall make a reference to this Directive instead of Directive 91/263/EEC.

Article 12

In relation to satellite earth station equipment, the same procedures for notified bodies and test laboratories shall apply as those set out in Article 10 and Annex V to Directive 91/263/EEC.

CHAPTER III

CE marking of conformity and inscriptions

Article 13

1. The marking of satellite earth station equipment complying with this Directive shall consist of the CE marking consisting of the symbol 'CE', followed by the identifying symbol of the notified body responsible and, where relevant, a symbol indicating that the equipment is intended and is suitable to be connected through a terrestrial connection to the public telecommunications network. The 'CE' symbol and these two other symbols shall be the same as those shown in Annex VI to Directive 91/263/EEC.

2. The affixing of marks which are likely to be confused with the CE marking referred to in paragraph 1 above shall be prohibited.

3. Satellite earth station equipment shall be identified by the manufacturer by means of type, batch and/or serial numbers and by the name of the manufacturer and/or supplier responsible for placing it on the market.

4. Notwithstanding paragraph 1, the marking of receive-only satellite earth station equipment which is not intended for terrestrial connection to the public telecommunications network and which has been subject to the Community internal production control procedure set out in the Annex as far as the requirements of this Directive are concerned, shall consist of the CE marking, consisting of the symbol 'CE'.

Article 14

Where it is established that the marking referred to in Article 13 (1) of this Directive has been affixed to satellite earth station equipment which:

- does not conform to an approved type, or
- conforms to an approved type which does not meet the essential requirements applicable to it, or

or where the manufacturer has failed to fulfil his obligations under the relevant Community declaration of conformity, the same procedures shall apply as those set out in Article 12 of Directive 91/263/EEC.

CHAPTER IV

Committee Procedures

Article 15

1. The Approvals Committee for Terminal Equipment (hereinafter referred to as 'the Committee') set up under Article 13 (1) of Directive 91/263/EEC shall assist the Commission in implementing this Directive.

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.

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.

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

3. The Commission will periodically consult the representatives of the telecommunications organizations, users, consumers, manufacturers, service providers and trade unions and will inform the Committee of the outcome of such consultations, with a view to taking due account of the outcome.

Article 16

1. Notwithstanding Article 15 (1) and (2), the procedure laid down in the following paragraphs shall apply for matters covered by Articles 4 (6) and 5 (2).

2. The representative of the Commission shall submit to the Committee set up under Article 14 a draft of the measures to be taken as referred to in Articles 4 (6) and 5 (2). 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. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

4. If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority. If, within three months from the date referred to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

CHAPTER V

Final and transitional provisions*Article 17*

1. The Commission shall report on the implementation of this Directive at the same time and in the same manner as provided for in Article 15 of Directive 91/263/EEC.

2. The Commission shall, when submitting those draft measures referred to in Article 5 (2) of this Directive dealing with common technical regulations, ensure that transition arrangements, where appropriate, form part of the draft measures.

Article 18

1. Member States shall take the measures necessary to comply with this Directive no later than 1 May 1995. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall inform the Commission of the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 29 October 1993.

For the Council

The President

R. URBAIN

ANNEX

Community internal production control procedure

1. This Annex describes the procedure whereby the manufacturer or his authorized representative established within the Community, who carries out the obligations laid down in 2, ensures and declares that the products concerned satisfy the requirements of this Directive that apply to them.

The manufacturer must affix the CE marking to each product and draw up a written declaration of conformity.

2. The manufacturer must establish the technical documentation described in 3 and he or his authorized representative established within the Community must keep it, for a period ending at least 10 years after the last product has been manufactured, at the disposal of the relevant national authorities for inspection purposes.

Where neither the manufacturer nor his authorized representative is established within the Community, the obligation to keep the technical documentation available is the responsibility of the person who places the product on the Community market.

3. Technical documentation must enable the conformity of the products to be assessed against the requirements of this Directive that apply to them. It must contain, so far as relevant for assessment:
 - a general description of the product,
 - conceptual design and manufacturing drawings and lists of components, sub-assemblies, circuits, etc.,
 - descriptions and explanations necessary for the understanding of the said drawings and lists and the operation of the product,
 - a list of the standards mentioned in Article 5 of this Directive applied in full or as far as is relevant or, in the absence of such standards, the technical construction file, and descriptions of the solutions adopted to meet those requirements of this Directive that apply to the products,
 - results of design calculations made, examinations carried out, etc.,
 - test reports.
4. The manufacturer or his authorized representative must keep a copy of the declaration of conformity with the technical documentation.
5. The manufacturer must take all measures necessary to ensure that the manufacturing process ensures compliance by the manufactured products with the technical documentation referred to in 2 and with those requirements of this Directive that apply to them.

I

(Information)

COUNCIL

COUNCIL RESOLUTION

of 7 December 1993

on the introduction of satellite personal communication services in the Community

(93/C 339/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Green Paper of 30 June 1987 on the development of the common market for telecommunications services and equipment,

Having regard to the Green Paper of 29 November 1990 on a common approach in the field of satellite communications in the European Community,

Whereas the Green Paper on a common approach proposed a future-oriented structure for the development of satellite communications in the European Community by outlining a framework of Community legal measures and actions; whereas, the Council resolution of 19 December 1991 on the development of the common market for satellite communications services and equipment (*) gave support to the general goals set out in the Commission's Green Paper;

Whereas based on further Commission proposals, the Council has adopted Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC concerning satellite earth station equipment (2);

Whereas the Commission communication of 25 September 1992 on the European Community and space underlines the importance of a Community contribution to the European space effort by helping to establish the appropriate conditions for the development of space applications markets and a competitive European space industry; whereas that communication emphasizes the need for appropriate regulatory conditions allowing the

development of new markets for satellite communications services and the need to encourage a competitive European space industry and promote its interests at international level;

Whereas the planned introduction of satellite personal communications networks and services on a global scale will play a role in the development of telecommunications services in the Community in general and in that of satellite and mobile services in particular, as well as in the development of the Community's space and telecommunications equipment and services industries;

Whereas it is becoming increasingly evident that the types of service which are envisaged give rise to a range of policy issues relating to the Community's telecommunications, trade, regional development and space policies; whereas, therefore, the introduction of these services merits early consideration;

Whereas the Community's telecommunications policy in general and the satellite communications policy in particular underline the need for competitive provision of services, in line with the rules on competition laid down in the Treaty; whereas the dichotomy of competitive service provision and limited availability of frequency resources will need careful consideration in any proposed introduction scenario;

Whereas the global dimension of these systems and their role in providing personal mobile telecommunications services as well as the related global regulatory structure under which they are provided should play an important part in the political considerations for the establishment of a Community policy; whereas the global regulatory framework under which these systems will have to operate is strategically and politically one of the most crucial aspects to be considered,

(*) OJ No C 8, 14. 1. 1992, p. 1.

(2) OJ No L 290, 24. 11. 1993, p. 1.

RECOGNIZES:

1. the importance of the planned use of satellites for personal communications, and of the opportunities this may offer for European industry, service providers, and users;
2. the global characteristics of satellite personal communications services, in particular if provided through non-geostationary satellite systems, and the need to clarify their particular characteristics as they affect the European and international regulatory regimes;
3. the challenge for the Community to develop a forward-looking regulatory framework which allows the introduction of satellite personal communications services, taking full account of the global nature of these systems, and the desirability of coordinated action;

NOTING:

- that the advantages of satellite personal communications may be extended to a vast range of potential users, in particular to those who do not have access to established services, including users in regions with a less-developed telecommunications infrastructure,
- noting also that any policy in this area may concern all the European conference of postal and telecommunications administrations (CEPT) authorities, including those of central and eastern Europe;

THEREFORE STRESSES:

the importance of developing a Community policy with regard to satellite personal communications that will build on existing policies regarding telecommunications, in particular satellite communications, and on future policy on mobile communications based on the Green Paper on the subject and, if necessary, on regional development and trade policies in general;

INVITES THE MEMBER STATES:

to make efforts towards developing as soon as possible a Community policy concerning satellite personal communications, and a coordinated position, in

particular within the context of international organizations, such as the International Telecommunications Union (ITU), and in relation to third countries;

AND INVITES THE COMMISSION:

1. to investigate the significance of satellite personal communications in the formulation of Community policies for telecommunications, space, trade, industry and regional development;
2. to define, in collaboration with Member States, an effective joint policy on those systems, with the cooperation, where appropriate, of the European Space Agency (ESA) in order to improve the competitive position of the European space and related telecommunications industries so as to enable operators, service providers, industry and users to participate in a global, open market in satellite personal communications, in accordance with Community law and the general guidelines laid down in the said Council resolution of 19 December 1991;
3. to continue to monitor closely international developments, particularly in this respect the regulatory proceedings outside the Community and to consult, where appropriate, with non-Community countries on the coordinated introduction of these systems at a global level;
4. to reinforce its cooperation with European Telecommunications Standards Institute (ETSI), European Radiocommunications Committee (ERC) and European Committee for Telecommunications Regulatory Matters (Ectra) in examining the related standardization, radio frequency and licensing issues respectively;
5. to set up as part of the consultation process a platform for strategic discussions among all interested parties;
6. to report regularly on developments in this area, in particular the granting of licences and any other matters affecting trade in services, and, where necessary, propose appropriate measures and/or actions.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 December 1993

on a common technical regulation for the general attachment requirements for public pan-European cellular digital land-based mobile communications

(94/11/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity⁽¹⁾, as amended by Directive 93/68/EEC⁽²⁾, and in particular Article 6 (2) thereof,

Whereas the Commission, in accordance with the procedure laid down in Article 14 of Directive 91/263/EEC and in particular in accordance with the opinion delivered on 23 April 1992 by the Approvals Committee for Technical Equipment (ACTE), has adopted the measure identifying the type of terminal equipment for which a common technical regulation is required as well as the associated scope statement;

Whereas the relevant standardization body has prepared the harmonized standards implementing the essential requirements applicable;

Whereas the Commission has submitted the draft measure for an opinion of ACTE in accordance with the second indent of Article 6 (2) of Directive 91/263/EEC;

Whereas the Commission under the terms of the second indent of Article 6 (2) of Directive 91/263/EEC is responsible for adopting the corresponding harmonized

standards implementing the essential requirements which shall be transformed into common technical regulations;

Whereas the common technical regulation adopted in this Decision is in accordance with the opinion of ACTE delivered on 28 September 1993,

HAS ADOPTED THIS DECISION:

Article 1

1. This Decision shall apply to terminal equipment intended to be connected to the public pan-European cellular digital land-based mobile telecommunications network in accordance with the provisions of Article 2 (2).

2. For the purpose of this Decision this common technical regulation covers the general attachment requirements for mobile station terminal equipment for Phase 1 of the pan-European cellular digital land-based mobile telecommunications network comprising constant envelope modulation and operating in the 900 MHz band with a channel separation of 200 kHz and carrying eight full rate traffic channels per carrier according to the TDMA principle.

Article 2

1. The common technical regulation shall include the harmonized standard having been prepared by the relevant standardization body implementing the essential requirements referred to in points (c) to (f) of Article 4 of Directive 91/263/EEC. The reference to this standard is set out in the Annex.

⁽¹⁾ OJ No L 128, 23. 5. 1991, p. 1.

⁽²⁾ OJ No L 220, 31. 8. 1993, p. 1.

2. Terminal equipment falling within this Decision shall comply with the common technical regulation referred to in paragraph 1, shall meet the essential requirements referred to in points (a) and (b) of Article 4 of Directive 91/263/EEC, and shall meet the requirements of any other applicable directives, in particular Council Directives 73/23/EEC⁽¹⁾ and 89/336/EEC⁽²⁾.

Article 3

Notified bodies designated for carrying out the procedures referred to in Article 9 of Directive 91/263/EEC shall, as regards terminal equipment covered by Articles 1 (1) and 4 of this Decision, use or ensure the use of the harmonized standard referred to in the Annex by 1 January 1994 at the latest.

Article 4

This Decision shall not apply, until 1 January 1995, to terminal equipment approved on an interim basis by notified bodies before 1 January 1994.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 21 December 1993.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ No L 77, 26. 3. 1973, p. 29.

⁽²⁾ OJ No L 139, 23. 5. 1989, p. 19.

*ANNEX***Reference to the harmonized standard applicable**

The harmonized standard referred to in Article 2 of the Decision is :

European digital cellular telecommunications system

Attachment requirements for global system for mobile communications (GSM) mobile stations

Access

ETSI

European Telecommunications Standards Institute

ETSI Secretariat

TBR 5 November 1993

(excluding the foreword)

Additional information

The European Telecommunications Standards Institute is recognized according to Council Directive 83/189/EEC (¹).

The harmonized standard referred to above has been produced according to a mandate issued in accordance with relevant procedures of Directive 83/189/EEC.

The full text of the harmonized standard referenced above can be obtained from :

European Telecommunications Standards Institute,
F-06921 Sophia Antipolis Cedex.

(¹) OJ No L 109, 26. 4. 1983, p. 8.

*ANNEX***Reference to the harmonized standard applicable**

The harmonized standard referred to in Article 2 of the Decision is :

European digital cellular telecommunications system

Attachment requirements for global system for mobile communications (GSM) mobile stations

Telephony

ETSI

European Telecommunications Standards Institute

ETSI Secretariat

TBR 9 November 1993

(excluding the foreword)

Additional information

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The harmonized standard referred to above has been produced according to a mandate issued in accordance with relevant procedures of Directive 83/189/EEC.

The full text of the harmonized standard referenced above can be obtained from :

European Telecommunications Standards Institute,
F-06921 Sophia Antipolis Cedex.

(1) OJ No L 109, 26. 4. 1983, p. 8.

COMMISSION DECISION

of 21 December 1993

on a common technical regulation for the telephony application requirements for public pan-European cellular digital land-based mobile communications

(94/12/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity⁽¹⁾, as amended by Directive 93/68/EEC⁽²⁾, and in particular Article 6 (2) thereof,

Whereas the Commission, in accordance with the procedure laid down in Article 14 of Directive 91/263/EEC and in particular in accordance with the opinion delivered on 23 April 1992 by the Approvals Committee for Terminal Equipment (ACTE), has adopted the measure identifying the type of terminal equipment for which a common technical regulation is required as well as the associated scope statement;

Whereas the relevant standardization body has prepared the harmonized standards implementing the essential requirements applicable;

Whereas the Commission has submitted the draft measure for an opinion of ACTE in accordance with the second indent of Article 6 (2) of Directive 91/263/EEC;

Whereas the Commission under the terms of the second indent of Article 6 (2) of Directive 91/263/EEC is responsible for adopting the corresponding harmonized standards implementing the essential requirements which shall be transformed into common technical regulations;

Whereas the common technical regulation adopted in this Decision is in accordance with the opinion of ACTE delivered on 28 September 1993,

HAS ADOPTED THIS DECISION:

Article 1

1. This Decision shall apply to terminal equipment intended to be connected to the public pan-European cellular digital land-based mobile telecommunications network in accordance with the provisions of Article 2 (2).
2. For the purpose of this Decision this common technical regulation covers the telephony applications requirements for mobile station terminal equipment for Phase 1

of the pan-European cellular digital land-based mobile telecommunications network comprising constant envelope modulation and operating in the 900 MHz band with a channel separation of 200 kHz and carrying eight full rate traffic channels per carrier according to the TDMA principle.

Article 2

1. The common technical regulation shall include the harmonized standard having been prepared by the relevant standardization body implementing the essential requirements referred to in point (g) of Article 4 of Directive 91/263/EEC. The reference to this standard is set out in the Annex.

2. Terminal equipment falling within this Decision shall comply with the common technical regulation referred to in paragraph 1, shall meet the essential requirements referred to in points (a) and (b) of Article 4 of Directive 91/263/EEC, and shall meet the requirements of any other applicable directives, in particular Council Directives 73/23/EEC⁽³⁾ and 89/336/EEC⁽⁴⁾.

Article 3

Notified bodies designated for carrying out the procedures referred to in Article 9 of Directive 91/263/EEC shall, as regards terminal equipment covered by Articles 1 (1) and 4 of this Decision, use or ensure the use of the harmonized standard referred to in the Annex by 1 January 1994 at the latest.

Article 4

This Decision shall not apply, until 1 January 1995, to terminal equipment approved on an interim basis by notified bodies before 1 January 1994.

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This Decision is addressed to the Member States.

Done at Brussels, 21 December 1993.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ No L 128, 23. 5. 1991, p. 1.

⁽²⁾ OJ No L 220, 31. 8. 1993, p. 1.

⁽³⁾ OJ No L 77, 26. 3. 1973, p. 29.

⁽⁴⁾ OJ No L 139, 23. 5. 1989, p. 19.