

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DIRECTIVE

on the application of open network provision
to leased lines

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

The creation of an open, common market for telecommunications services, particularly for value-added services was established as a major policy goal by the Council of Ministers for Telecommunications in its Resolution of 30 June 1988⁽¹⁾.

The Council requested the preparation of proposals for Council Directives for the rapid definition of technical conditions, usage conditions and tariff principles for Open Network Provision, starting with harmonized conditions for the use of leased lines.

The Telecommunications Council of December 1989 decided that the Community's telecommunications policy should combine in a balanced way harmonization and liberalization.

Consequently, on 28 June 1990 the Commission adopted the Directive on competition in the markets for telecommunications services and the Council of Ministers for Telecommunications adopted a Council Directive on the establishment of the internal market for telecommunications services through the implementation of open network provision.

The latter Directive, generally referred to as the ONP framework Directive, foresees as a first priority the adoption of a Council Directive which specifies open network provision conditions for leased lines. The Directive received broad support both in the European Parliament and in the Economic and Social Committee.

It is in this context that the Commission presents this proposal for a Directive to the Council of Ministers.

II. THE ROLE OF LEASED LINES IN THE PROVISION OF TELECOMMUNICATIONS SERVICES

Leased lines have become an essential part of the public telecommunications infrastructure. They are now a major building block in the communications networks which companies operate for their own use and for the provision of services to others, in particular value added or competitive services.

The Commission Directive of 28 June 1990 on competition in the markets of telecommunications services states that exclusive or special rights for telecommunications services are in general incompatible with the Treaty and stresses the importance of competition in this market. Harmonization resulting in open and efficient access to and use of a fundamental part of telecommunications, namely leased lines, is essential for viable competition in this market.

In order to fully exploit the forces of competition, the economies of scope which are inherent in the telecommunications organizations' provision of transmission channels must be passed on to all users of these transmission channels in a non-discriminatory, harmonized manner. These users include service providers and telecommunications organizations providing competitive services, as well as end users.

(1) OJ No C 257, 4.10.1988, p. 1

Currently, the users of leased lines in the Community are faced with varying conditions with respect to technical specifications, usage conditions - governing for example the interconnection between leased lines and between leased lines and public networks - and tariff principles.

The Community-wide harmonisation of usage conditions, tariff principles, standards, and ordering procedures for leased lines will facilitate the provision of telecommunications network based services, will improve access to all potential European users by service providers and will offer the possibility of significant cost savings in the provision of competitive services.

Since telecommunications services serve ever more as the nervous system of modern economies, the conditions for access to and use of leased lines have implications not only on the market of telecommunications services but on the economy as a whole. Thus, they must be seen as a key factor for the success of the single market of 1992.

For these reasons the definition of open network conditions for leased lines must be pursued with highest priority.

III. THE CONSULTATIVE PROCESS

The concept of ONP conditions for open provision of leased lines was introduced by the Commission in the Communication on the Implementation of the Green Paper⁽²⁾. In its Council resolution of 30 June 1988 the Council urged for the "rapid definition" of ONP conditions for leased lines.

Since the Commission deemed it necessary that the analytical work on leased lines was taken up as soon as possible, given the importance of leased lines for European telecommunications, the Commission started to analyse the subject in parallel with its work on the ONP framework Directive. Preparatory work on the application of ONP principles to leased lines was therefore undertaken by the SOG-T (Senior Officials Group - Telecommunications) and its sub-group GAP (Groupe d'Analyse et de Prévision) as early as 1988.

In the spirit of the pending framework Directive, the SOG-T arranged for the participation of representatives of European industrial organizations, trade associations, services providers, large telecommunications users, and telecommunications in general. To that end, public comments on the proposals⁽³⁾ of GAP were invited by notice in the Official Journal dated 7 March 1989⁽⁴⁾ and two fora were organized in June and November 1988 for public discussion of the proposals.

The comments received supported the need for harmonization of open and efficient access and usage conditions for leased lines in general. There were substantial concerns with respect to unjustified constraints on the use of leased lines e.g. for interoperability reasons, the potential for discriminatory treatment between the TOs and

(2) COM (88) 48 : Implementing the Green Paper on the Development of the Common Market for Telecommunications Services and Equipment

(3) Proposal by the "Analysis and Forecasting Group" (GAP) on Open Network Provision (ONP) for Leased Lines in the Community of 11 January 1989

(4) OJ No C 58, 7.3.1989, p.5, Notice No 89/C58/04

their competitors, insufficient emphasis on cost orientation in tariff principles and the future availability of state of the art leased lines.

Subsequently, a draft of the proposal for a directive was discussed with the ONP Committee.

The present proposal for a Council Directive takes into account the results of a) the GAP analysis report, b) the comments received from interested parties in the course of the public comment process, and c) the comments received from the ONP Committee. At the same time it takes account of the general principles which have been laid down in the Directives on competition in the market of telecommunications services and implements the ONP framework Directive.

IV. THE APPROACH ADOPTED

The proposal implements a concept of harmonization in the areas of standards, usage conditions, provision conditions and tariff principles. In order to achieve a maximum harmonization for the user without at the same time introducing too many constraints on TOs and users, the proposal follows a dual approach:

- The leased lines which are provided in the context of the establishment, development, and operation of the public telecommunications network shall be offered under Community-wide harmonized usage conditions and tariff principles. This will greatly facilitate the use of the present and future telecommunications infrastructure.
- Certain types of leased lines shall be provided by the TOs in accordance with harmonized technical standards. The TOs shall be obliged to provide these leased lines, since these are needed and requested by the wide majority of European users of leased lines. The proposed Directive identifies four types of leased lines which have to be offered in all Member States by certain dates.

Progress of technology will enable the telecommunications organizations to develop, install and offer new types of transmission channels with greatly improved capacity, quality and other features. The proposal foresees a mechanism to modify the list of leased lines for which universal availability is deemed necessary. The Commission will closely cooperate with the Member States in this respect in accordance with the provisions laid down in the framework Directive. The term "leased line" has been defined flexibly enough to include possible future technical development.

In the public comments received on the GAP report the representatives of users, in particular service providers, were concerned about the potential for TOs, as users of their own leased lines, to discriminate in situations where they are competing with others.

The proposed Directive refers in its recitals to some of the general principles resulting from Community law. The operative part then specifies in detail how the Open Network Provision conditions are to be harmonized for the provision of leased lines in accordance with these principles.

The proposed Directive does not request the Member States to establish structural separation between entities which carry out tasks under special or exclusive rights and entities which are engaged in competitive activities. The joint production and marketing of competitive and reserved services within one organization may however have serious negative implications on the viability of competition in telecommunications.

In order to avoid such problems, the Commission proposal foresees the application of sufficiently transparent cost accounting systems which allow the enforcement of the basic principles of transparency and cost orientation. The application of appropriate cost accounting systems is aimed at by the introduction of the principle of fully distributed costing which is qualified as a prominent example of a suitable cost accounting principle. In conformity with the principle of subsidiarity, the provisions leave sufficient room for application along the lines of national perspectives.

The articles of the Directive are briefly explained hereunder :

Article 1 sets out that this specific ONP Directive applies to leased lines provided on public telecommunications networks to end users and service providers, including telecommunications organizations, where applicable. It also points out that a minimum set of leased lines with harmonized technical characteristics must be available throughout the Community..

Article 2 refers to the definitions given in the ONP framework Directive, and provides additional definitions where necessary. The concept of a leased line is defined in a sense, which ensures that beside the mandatory provision of a limited set of leased lines with harmonized conditions, the basic principles of ONP with respect to usage and supply conditions and tariff principles apply to all leased line offerings, including those resulting from the application of new technologies.

Article 3 establishes the format in which the information is to be published in order to comply with the requirement that ONP conditions must be transparent and published in an appropriate manner.

The supply conditions for leased lines are addressed in Article 4. It requires that telecommunications organizations use a set of general supply conditions which contains at least a number of parameters which are of vital importance to users, e.g. the delivery period for a type of leased line, the duration of the contractual period, and the repair time.

In order to enable the user to plan ahead, the TOs are obliged to inform users about changes in the general supply conditions well in advance. When leased line offerings can no longer be continued, users which are affected need to be consulted before the service is terminated.

In accordance with the general supply conditions, specific supply conditions must be laid down in an individual contract between the TO and the user, where requested by the user. They may only be altered if agreed so by both the user and the TO.

In combination with recitals (6, 7, and 8), Article 5 limits the scope of restrictions which could be imposed through the usage conditions. It provides in particular guidance on the Community-wide interpretation of the essential requirements when applied to leased line provision and usage and thus harmonizes the respective national regulations in this respect.

Another aim of Article 5 is to point out that legitimate restrictions derived from essential requirements may only be implemented through regulatory means. It does not refer to restrictions which may be derived from the exclusive or special rights or from the prohibition of simple resale of capacity as Directive 90/388/EEC has already excluded the possibility of technical restrictions for the enforcement of the exclusive or special rights or the prohibition of simple resale.

Article 6 defines the minimum set of leased lines which must be made available throughout the Community. The four types of leased lines identified represent the large majority of leased lines which are currently in use and in demand. The provision of three of the four types of leased lines is tied to the date when the Directive enters into force. The fourth type, the 2 Mbit leased line must be offered throughout the Community by July 1, 1992.

This article also provides for the mechanism to update the list of leased lines in Annex 2 on the basis of changes in market demand and in technology. Changes in Annex 2 can be made by the Commission, in cooperation with the ONP-Committee. Such changes may incorporate the updating of references to standards, the removal of leased lines from or the addition of leased lines to the list.

This article points out that the provision of other leased lines beyond the minimum set listed in Annex 2 must not impede the provision of this minimum set. Such other leased lines are also subject to the general principles for the provision of leased lines as set out in this Directive.

Article 7 requests the Member State to fully implement the important role of the national regulatory authority for the implementation of the directive. The national regulatory authorities will have to lay down its procedures for the rapid, transparent and duly motivated decision on measures foreseen by the telecommunications organization for reasons of alleged infringements of the usage conditions. Unless specified measures in order to remedy defined infringements are authorized a priori, no measure can be enforced before it has been approved by the national regulatory authority, duly motivated and notified to the user and the telecommunications organization.

The Article also provides that the national regulatory authority takes the responsibility for the surveillance of the proper application of the usage conditions in cases when telecommunications organizations use equivalent transmission capacity for the provision of competitive services.

Article 8 expresses the requirement of users to be able to order leased lines in a common fashion, and where requested, to be able to communicate with a single TO for ordering leased lines and for billing purposes.

Article 9 refers to the basic principles of cost orientation and transparency which are to be applied for tariffs of leased lines and identifies separate tariff elements which will normally be contained in the tariffs.

The article obliges the telecommunications organizations to use transparent cost accounting systems which are suitable for the enforcement of the basic principles mentioned above. The application of the fully distributed costing principle is indicated as fulfilling this requirement.

Article 10 deals with the information which the national regulatory authority has to provide to enable the Commission to monitor the implementation of this Directive.

Article 11 sets out a procedure for cases when users issue complaints on grounds of non-compliance with this Directive. The national regulatory authority or the Commission can refer such cases to the ONP Committee. The article outlines the involvement of a working group of the ONP Committee to facilitate the achievement of an agreement between the parties.

Article 12 deals with the situation where a Member State argues that it cannot fully implement the requirements of Art. 6, 9(2), or 9(3) in time. In such case the Commission will examine the circumstances which lead or might lead to non-compliance. The article points out that the activities of TO's in the competitive areas must not impede the compliance with Articles 6, 9(2), or 9(3).

V. CONCLUSIONS

The present Commission proposal for a Council Directive on the application of Open Network Provision Conditions to leased lines implements harmonized general principles for the provision of leased lines as laid down in the ONP framework Directive and specifies which leased lines which shall be provided in all Member States in a harmonized way. It is flexible and open for future adaptation in line with market demand and technology progress. Thus, the proposal harmonizes the conditions for the provision of the most essential elements of telecommunications infrastructure which are needed for the provision of telecommunications services and in effect significantly improves the competitive conditions in the European telecommunications market.

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

Proposal for a
COUNCIL DIRECTIVE

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 co-operation with the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽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⁽⁴⁾ provides that the Council shall adopt specific open network provision conditions for leased lines.

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 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 to publish them. It is necessary to harmonise 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.

Whereas in application of the principle of non-discrimination, leased lines shall be offered and provided on request without discrimination to all users. Therefore, the terms and conditions which apply to telecommunications organizations when using leased lines or equivalent transmission capacity for the provision of competitive services must be equivalent to the terms and conditions which apply to other users.

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(4) OJ No L 192, 24.7.1990, p.1.

(5) OJ No L 192, 24.7.1990, p. 10.

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 the Council Directive 91/.../EEC of 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⁽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. Such restrictions, which hinder the use of leased lines for the provision of competitive services, are not justified as they can be replaced by less restrictive regulatory measures.

Whereas in accordance with Directive 90/387/EEC, the conditions of Open Network Provision may not restrict access to and use of leased lines except in application of essential requirements as defined in the said Directive. Those restrictions must be objectively justified, must follow the principle of proportionality and must not be excessive in relation to the aim pursued. It is necessary to specify these essential requirements in respect of leased lines.

Whereas in accordance with Directive 90/388/EEC, Member States shall withdraw all special or exclusive rights for the supply of telecommunications services other than 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.

Whereas in accordance with Directive 90/388/EEC, Member States may, until 31 December 1992, prohibit, as regards packet- or circuit-switched data services, economic operators from offering leased lines capacity for simple resale to the public, which 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. 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

(6) OJ L ..., 1991, p. ...

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.

Whereas in accordance with Directive 90/387/EEC, the Community-wide definition of harmonised technical interfaces and access conditions must be based on the definition of common technical specifications based on international standards and specifications.

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 users who so request can obtain leased lines within a reasonable period. It is necessary to determine which type of leased lines should be implemented and within which time limit if they are not yet available. It results from the application of Community law that the provision of a service may not be tied-in with the provision of another service; the provision of leased lines may therefore not include additional service features unless they can be contracted separately and carry a separate tariff.

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 harmonised set of leased lines services with defined network termination points is made available in all Member States both for communications within a Member State and between Member States. Given the dynamic technological development in this sector, it is necessary to establish a procedure for adjusting or enlarging such a set.

Whereas other leased lines, in addition to the harmonised minimum set will also be provided subject to market demand, and the other provisions of this directive apply to these leased lines. However it should be ensured that the provision of these other leased lines shall not impede the provision of the minimum set of leased lines.

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 shall play an important role for the implementation of this directive. In particular, it is necessary to provide for adequate safeguards to be implemented by national regulatory authorities in order to ensure that telecommunications organizations cannot discriminate against service providers with whom they are in competition.

Whereas common ordering procedures, as well as one-stop ordering and one-stop billing are essential in order to promote the use of leased lines throughout the Community; any cooperation of the telecommunications organizations in that respect is subject to compliance with Community competition law. In particular, such procedures should respect the principle of cost orientation and should not result in any price fixing or market sharing.

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 be in principle cost-oriented, 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. Tariffs for leased lines provided by either one or by more than one telecommunications organizations shall be based on the same principles. 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.

Whereas any charge for access to and use of 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 which is required for the further development of the telecommunications infrastructure.

Whereas in order to enable the Commission to examine the application of the tariff principles set out in the two preceding recitals, telecommunications organizations shall use an appropriate transparent cost accounting system ensuring the production of recorded figures which could be verified by accounting experts. Such requirement can be fulfilled in particular by the implementation of the principle of fully distributed costing.

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.

Whereas Directive 90/387/EEC provides that the Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission. It is appropriate that in case of non-compliance by Member States with this Directive the Commission consult this committee before taking adequate measures. This does not prejudice the normal application of the proceedings of Articles 169 and 170 and the competition rules of the Treaty.

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.

whereas this Directive does not apply to leased lines of which one network termination point is located outside the Community. These will be dealt with at a later stage.

HAS ADOPTED THIS DIRECTIVE:

Article 1
Scope

This Directive concerns the harmonisation 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 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 transmission capacity between network termination points and which do not include on-demand switching (switching functions which the user can control as part of the leased line provision);
 - 'equivalent transmission capacity' means transmission capacity equivalent to leased lines which a telecommunications organization uses for the provision of competitive services, and which is not provided to other users ;
 - 'competitive services' means services for which no special or exclusive rights have been or may be granted in accordance with Community law;
 - '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 these organizations are engaged in providing competitive services;

- 'national regulatory authority' means the body or bodies in each Member State, statutorily 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, can be completed 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
Disclosure of Information

1. Member States shall ensure that information in respect of leased lines on technical characteristics, tariffs, general supply conditions, licensing requirements, and the conditions for the attachment of terminal equipment is published in accordance with the format given in Annex 1.
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 to the publication shall be made in the national Official Journal of the Member State.

Member States shall notify to the Commission by 1 January 1992 - and thereafter in case of any change - in which manner the information is made available; the Commission will publish a corresponding reference.

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 2 months before the implementation of the offering.
4. Member States shall ensure that they have access to the information referred to in paragraph 1 and Annex 1, concerning equivalent transmission capacity which the telecommunications organizations use for the provision of their competitive services. Member States shall make such information available to the Commission on request.

Article 4
Supply conditions

1. The general supply conditions to be published under Article 3 shall include at least:

- the typical delivery period, which is the period, counted from the date of concluding a contract, in which 80 percent 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 percent of all leased lines of the same type have been repaired and notified back in operation to the user. 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 ;
- the refund policy.

2. When there is a change in the general supply conditions, the national regulatory authority and users will be informed at least 2 months in advance.

Member States shall ensure that existing offerings continue for a reasonable period of time, and termination of an offering can be done only after consultation with users which are 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 in cases where the users do not agree with the termination date as envisaged by the telecommunications organization.

3. In the framework of the general supply conditions, specific supply conditions shall be laid down as part of the contract for a leased line, if required.
4. The specific supply conditions shall remain unchanged until the end of the specific contract period unless otherwise agreed by the subscriber of the service and the telecommunications organization.

Article 5

Usage conditions and essential requirements

1. Member States shall ensure that the usage conditions for leased lines derived from essential requirements, compatible with Community law, are imposed through regulatory means, and not through technical restrictions.

No technical restrictions shall be introduced or maintained for the interconnection of leased lines among each other nor for the interconnection of leased lines and public telecommunications networks.

2. Where access to and use of leased lines is restricted on the basis of essential requirements, Member States shall ensure that reference is made to the provisions of this Article.
3. For the purposes of this Directive, the notion of essential requirements shall be limited to the following elements:

a) Security of network operations

In an emergency situation the telecommunications organization shall make every endeavour to ensure that service is maintained to all users. However, it may take the following measures in order to safeguard the security of network operations during the period when the emergency situation prevails:

- the interruption of the service,
- the limitation of service features, or
- the denial of access to the service.

An emergency situation in this context means the exceptional case of force majeure, such as extreme weather, flood, lightning or fire, industrial action or lockouts, war, military operations, or civil disorder.

The Member States shall ensure that the telecommunications organizations 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.

For terminal equipment which complies with the approval conditions set out for its use with the leased line it is assumed that the security of the network operator's staff is guaranteed.

b) Maintenance of network integrity

In the case where a user's terminal equipment, which does not or no longer comply with the approval conditions set out for its use with the leased line, adversely affects operation of the public telecommunications network, the service 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 informed the telecommunications organization that the terminal equipment is disconnected from the Network Termination Point, the provision of the service will be continued.

The maintenance of network integrity shall not be invoked to restrict access to or use of leased lines when the user's terminal equipment complies with the approval conditions set out for its use with leased lines. In particular, there shall be no restrictions on the use of the capacity or the bandwidth of the service on these grounds and the user should be provided with a fully transparent service which he can use in an unstructured manner as he wants, e.g. where no channel allocations are forbidden or prescribed.

c) Interoperability of services

Without prejudice to the application of Article 5(3) of Directive 90/387/EEC, the access to and the use of a leased line shall not be restricted on the grounds of the interoperability of services, if the terminal equipment used complies with the approval conditions set out for the leased line concerned.

d) Protection of data

In respect of data protection, Member States may restrict the access to and the use of leased lines only 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 and in particular with Directive 91/.../EEC 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.

Article 6

Provision of a minimum set of leased lines in accordance with harmonised 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 2, in order to guarantee a minimum offering throughout the Community.
2. Where leased lines which implement the standards listed in Annex 2 are not yet available, Member States shall ensure that these leased lines will be implemented by the dates which are given in the time table in Annex 2.

3. The modifications necessary to adapt Annex 2 to new technical developments and to changes in market demand shall be determined by the Commission in accordance with Article 9 of Directive 90/387/EEC.
4. The provision of other leased lines beyond the minimum set of leased lines referred to in paragraph 1 shall not impede the provision of this minimum set of leased lines.

Article 7

Control by national regulatory authority

1. Member States shall ensure that the national regulatory authority lays down its procedures in order to decide, on a case by case basis and in the shortest time period, to allow or not telecommunications organizations to take measures such as the interruption of the provision of leased lines or the reduction of the availability of leased line features for reasons of alleged infringements of 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 such as the non payment of subscription fees despite a warning.

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 defendants. The decision shall be taken after having given the opportunity to both parties to state their case. The decision shall be duly motivated and notified to the parties within one week after its adoption; it shall not be enforced before its notification.

2. Member States shall ensure that in cases where telecommunications organizations use equivalent transmission capacity for providing competitive services and such equivalent transmission capacity is not made available to other users on request in the form of a leased line offering, their national regulatory authority:
 - a) is fully informed on those cases,
 - b) examines the justification of those cases and,
 - c) ensures that relevant leased lines are made available to users under equivalent conditions within a reasonable period of time, if it finds that such cases are not compatible with Community law.

Article 8
Common ordering and billing procedures

1. Member States shall promote the establishment, before 31 December 1992, 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 by 1 April 1993 the measures taken and the results achieved with respect to paragraph 1.

Article 9
Tariffing principles and cost accounting

1. Member States shall ensure that tariffs for leased lines follow the basic principles of cost orientation and transparency and comply with the provisions of this paragraph:
 - a) Tariffs for leased lines shall be independent of the type of service applications which the users of the leased lines implement.
 - b) Tariffs for leased lines shall normally contain the following elements :
 - an initial connection charge, based on the average cost in making the leased line connection;
 - 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 1992, a cost accounting system suitable for the enforcement of paragraph 1.

Such a system shall normally include the following elements:

- a) The tariffs for leased lines shall in particular include the direct costs incurred by the telecommunications organizations for setting up, operating, maintaining leased lines and for marketing and billing of leased lines.
- b) Common costs which cannot be directly assigned to leased lines are allocated in accordance with the following hierarchy which represents the principle of fully distributed costs:
 - 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 underlying 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 competitive services and to services which are provided under special or exclusive rights.
- 3. After 31 December 1992, other cost accounting systems may be applied only if they are suitable for the enforcement of paragraph 1 and have as such been approved by the national regulatory authority for application by the telecommunications organization, subject to approval by the Commission prior to their application.

Once such systems have been approved, other systems may be used only after the Commission has given a further approval.

Article 10
Notification

1. Member States shall notify before 1 January 1992 to the Commission their national regulatory authority as defined in Article 2.
2. The national regulatory authority shall make available statistical reports showing the performance in relation to the general supply conditions published under Article 3 at least for each calendar year. The reports shall be sent to the Commission no later than 3 months after the end of the annual reporting period.
3. The national regulatory authority shall make available at least for each calendar year a summary report on the cases and the measures undertaken, including their motivation, 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. The summary reports shall be sent to the Commission within 3 months after the end of the annual reporting period. Full reports shall be made available for the Commission on request.

Article 11
Recourse

1. Any user complaining that he has been or may be injured by the infringement of the provisions of this Directive, may invoke the procedure provided for in this Article, by way of a written notification to its national regulatory authority or to the Commission.
2. Where the national regulatory authority or the Commission finds that there has been an infringement of the provisions of this Directive, following a notification based on paragraph 1, it can refer it to the ONP Committee.
3. The chairman of the ONP Committee convenes as soon as possible a working group including at least two members of the Committee and himself or another official of the Commission appointed by him. The working group normally meets within ten days. 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.
4. The working group gives the user invoking this procedure, the Member States, the regulatory authorities of the Member States, and the telecommunications organizations involved the opportunity to present their opinions in oral or written form.

5. The working group shall endeavour to reach agreement between the user, the telecommunications organizations and the Member States involved.
6. The persons invoking the procedure referred to in this Article shall bear their own costs of participating therein.
7. Action taken pursuant to this Article shall be 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, 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.

Article 12

Deferment of certain obligations

1. When a Member State is not able to or can already foresee that it will not be able to fulfil the requirements Articles 6, 9(2) or 9(3), it shall notify the Commission of the reasons.
2. Deferment of the obligations under Article 6 can only be accepted in cases where the Member State concerned can prove that the actual state of development of its public telecommunications network and the conditions of demand are such that the obligations under Article 6 would impose an excessive burden on that Member State.
3. Deferment of the obligations under Article 9(2) or 9(3) can only be accepted in cases where the Member State concerned can prove that the fulfilment of the requirement before the date given in Article 9(2) or 9(3) would impose an excessive burden.
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 decides whether the particular situation of the Member State concerned justifies on the basis of criteria in paragraph 2 or 3 a deferment for this Member State of the application of Articles 6, 9(2) or 9(3) and until which date.

6. No deferment can be granted in application of paragraph 2 where the non-compliance with Article 6 results from activities of telecommunications organizations of the Member State concerned in the field of terminal equipment and competitive services.

Article 13

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these 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.

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 14

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

ANNEX 1

**PUBLICATION FORMAT FOR THE INFORMATION TO BE PROVIDED IN RESPECT
OF LEASED LINES IN ACCORDANCE WITH ARTICLE 3**

The information referred to in Article 3 shall follow the format 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 the Council Directive of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (83/189/EEC)⁽¹⁾. Clear reference shall be made to the standards implemented.

B. TARIFFS

The tariffs include the initial connection charges, the periodic rental charges, other charges, e.g. charges related to quality of service, or bulk provision.

C. GENERAL SUPPLY CONDITIONS

The general 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;

(1) OJ No L 109, 26.4.1983, p. 8

2. information on the character of the licensing conditions, in particular whether such license 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 license, including a review date, where applicable;
4. the conditions resulting from the application of the essential requirements in conformity with Article 5;
5. other obligations which the Member States may impose on the users of leased lines in accordance with Directive 90/388 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

ANNEX 2

**DEFINITION OF A MINIMUM SET OF LEASED LINES WITH COMMON
TECHNICAL CHARACTERISTICS IN ACCORDANCE WITH ART. 6
AND TIMETABLE FOR THEIR AVAILABILITY**

ONP LEASED LINE TYPE	TECHNICAL CHARACTERISTICS		TIMETABLE
	INTERFACE SPECIFICATIONS	PERFORMANCE SPECIFICATIONS	
Ordinary quality voice bandwidth	2 or 4 wire analogue	M.1040(analogue) G.712 or G.713 (digital) modified by local line characteristics	1 January 1992
Special quality voice	2 or 4 wire analogue	M.1020/M.1025	1 January 1992
64 kbit/s digital	(1) G.703	Relevant G.800 series recommendations	1 January 1992
2 Mbit/s digital	(1) G.703	Relevant G.800 series recommendations	1 July 1992

For the four 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 the Directive 90/387/EEC

(1) The majority of applications are converging towards the G.703 specifications. For an interim period, leased lines may be provided using other interfaces, based on X.21 or X.21 (bis), instead of G.703.

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