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Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of
adaptation to a competitive environment in telecommunications

(presented by the Commission)

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Summary

This proposal for a European Parliament and Council Directive amending Council Directives 90/387/EEC and 92/44/EEC is intended to adapt to a competitive environment the basic principles of Open Network Provision (ONP) and the specific ONP Directive for leased lines.

The basic principles set out within the ONP Framework must be adapted to provide a common approach to communications services throughout the European Union and hence ensure European-wide services, taking into account the forthcoming liberalization of all telecommunications services and infrastructures on 1 January 1998 (with transition periods for certain Member States).

This proposal will guarantee that a voluntary approach to harmonized conditions by the market players is pursued in a competitive environment, whilst recognizing the key importance of maintaining and developing universal service and the need for mandatory requirements in those areas where market forces alone may not be enough to meet European policy goals.

It will further ensure that the degree of separation between national regulatory authorities and activities associated with ownership or control of telecommunications networks, equipment or services is clear.

This proposal will provide for specific ONP measures to apply to organizations providing public telecommunications networks and/or services in a way that reflects an organization's position in the relevant market. The precise entities covered will depend on the aim being pursued, whilst guaranteeing that the principle of proportionality is observed.

It will ensure that the principle of cost orientation continues to provide an objective basis for the rebalancing of telecommunications tariffs whilst acknowledging that the need to apply the requirement for cost orientation in a competitive market diminishes.

EXPLANATORY MEMORANDUM

1. Introduction

In the telecommunications sector, the EU has since 1990 been following a policy which balances harmonization and liberalization. Open Network Provision (ONP) is the policy for harmonising conditions for access to and use of public telecommunications networks and services. The concept was introduced in the Commission's 1987 Green Paper on Telecommunications Services, and given substance in 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⁾. Subsequent specific Directives and Recommendations applied the principles of open network provision to leased lines, voice telephony, packet switched data services (PSDS) and integrated services digital networks (ISDN).

Liberalization in the telecommunications sector has been a progressive process which will culminate in the full liberalization of telecommunications services and infrastructure by 1 January 1998 (with transition periods for certain Member States). Council Resolution 93/C 213 of 22 July 1993 on the '92 review'⁽²⁾ called for "the adaptation, in the light of further liberalization, of ONP principles..." to take account of the future liberalized environment. Council Resolution of 18 September 1995 on the implementation of the future regulatory framework for telecommunications⁽³⁾ called on the Commission "to present to the Council and the European Parliament before 1 January 1996 all legislative provisions intended to establish the European regulatory framework for telecommunications accompanying the full liberalization of this sector".

This proposal for a European Parliament and Council Directive identifies amendments to existing ONP measures in order to adapt them to the post-1998 liberalized environment.

2. Background - Open Network Provision: 1990 to 1998

In 1990, the EU took the first step towards liberalising telecommunications services by liberalising the supply of value-added network services (VANS). An important element of the political agreement between the Council and the Commission was that there would be no structural separation between the VANS activities of the existing telecommunications organizations and their traditional network activities.

ONP - by harmonizing conditions for access to, and use of, the underlying public switched networks and leased lines, and implementing principles of non-discrimination - has provided a mechanism for stimulating entry into the VANS market, and at the same time ensuring fair competition between VANS suppliers and the VANS operations of the existing telecommunications organizations.

⁽¹⁾ OJ No L 192, 24.7.1990, p. 1.

⁽²⁾ OJ No C 213, 6.8.1993, p. 1.

⁽³⁾ OJ No C 258, 3.10.1995, p. 1.

In addition, existing ONP measures ensure provision throughout the European Union of a minimum harmonized offering of those public telecommunications networks and public telecommunications services identified as being in the European interest. Foremost among these is voice telephony and leased lines, for which mandatory obligations in the form of Directives have been developed.

In the areas of ISDN and PSDS, Council Recommendations have been adopted, the purpose of which is to make sure that these offerings are available to users throughout the territory of each Member State from at least one organization.

Current ONP measures apply to telecommunications organizations, defined as those organizations to whom Member States grant special or exclusive rights for the provision of public telecommunications networks and, where applicable, public telecommunications services. One exception concerns Packet Switched Data Services (PSDS) where special or exclusive rights do not exist, and Member States have discretion as to whom the ONP Recommendation on PSDS should apply.

3. Open Network Provision in the post-1998 liberalized market

The future telecommunications infrastructure in Europe (infrastructure used in the sense of the ensemble of telecommunications networks and services available to society at large) is seen as a set of interconnected networks, owned and operated by many different organizations, following a common set of conventions, seamlessly interworking and giving the appearance of a single system, and supporting a rich range of information and telecommunications services to business users and consumers alike.

This infrastructure should be "open" in the sense that:

- it should be open (i.e. accessible) to all users in the European Union;
- it should be open to any service provider to offer services over the basic infrastructure;
- it should be open to any organization to provide elements of the overall infrastructure, provided the organization conforms to published requirements.

ONP - by harmonising conditions for access to and use of public telecommunications networks and services to the extent necessary - provides a set of rules which allows the provision of such an 'open network' to become a reality.

ONP conditions applied at the user-network interface serve to harmonize users' access to telecommunications networks and services, and to ensure a minimum set of offerings where appropriate.

ONP conditions at interconnection points serve to define the rules for network operators and service providers to link their facilities in order to cooperate in providing elements of the overall infrastructure.

The role of ONP in a competitive environment is to:

- guarantee the provision of universal service in telecommunications,
- ensure the availability of a minimum set of services,
- secure access and interconnection to public telecommunications networks and public telecommunications services,
- encourage the provision of harmonized telecommunications services to the benefit of users, by identifying and promoting by voluntary means harmonized technical interfaces (including both user/network interfaces and interconnection points) and associated standards/specifications,

throughout the European Union.

The range of legislative measures employed within ONP provide the necessary flexibility with which to achieve these objectives in a manner best suited to the aim pursued :

- the ONP Directive on Leased Lines (92/44/EEC)⁽⁴⁾ and that proposed for Voice Telephony⁽⁵⁾ provide for the mandatory provision of a minimum offering for all EU users;
- the ONP Recommendations on PSDS⁽⁶⁾ and ISDN⁽⁷⁾ specify the recommended conditions under which these services should be available to all users in the EU;
- the proposed ONP Directive on Interconnection⁽⁸⁾ establishes a regulatory framework designed to ensure that service providers and network operators are able to interconnect their facilities to the networks of established operators;
- the publication in the Official Journal of the European Communities of the ONP List of Standards identifies recommended standards for technical interfaces and user facilities.

⁽⁴⁾ Council Directive (92/44/EEC) of 5 June 1992 on the application of open network provision to leased lines, OJ No L 165, 19.6.1992, p. 27.

⁽⁵⁾ Proposal for a European Parliament and Council Directive on the application of open network provision (ONP) to voice telephony (95/C 122/04), COM(94) 689 final - 95/0020 (COD), OJ No C 122, 18.5.1995, p. 4. - Council Common Position adopted on 12.7.1995.

⁽⁶⁾ Council Recommendation (92/382/EEC) 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, OJ No L 200, 18.7.1992, p. 1.

⁽⁷⁾ Council Recommendation (92/383/EEC) 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, OJ No L 200, 18.7.1992, p. 10.

⁽⁸⁾ COM(95) 379 final, 19.7.1995.

4. Need for ONP legislation

The recent Commission Communication on the Consultation on the Green Paper on the Liberalization of Telecommunications Infrastructure and Cable Television Networks⁽⁹⁾ has shown the need for two mandatory elements of the current ONP framework to remain in place after 1998.

These are, firstly, the obligation on Member States to ensure the provision throughout their territory of a basic minimum voice telephony service for the general public at an affordable price. The proposed Voice Telephony Directive constitutes the current core of universal telephone service in the Union.

Secondly, that Consultation has shown that the continued availability of a minimum set of leased lines is crucial to the take off of liberalized telecommunications services throughout the Union. There is the need, in particular, to ensure that this minimum set of leased lines is made available at lower tariffs, reflecting better the costs of their provision.

Current tariffs for leased lines in the European Union are excessive, putting the Union in a competitive disadvantage with respect to its industrialised partners⁽¹⁰⁾. Such high tariff levels in Europe are a barrier to the take off of innovative advanced services, such as the range of building block applications identified in the Bangemann Group Report on "Europe and the global information society"⁽¹¹⁾.

This concern was shared by the Bangemann Group Report, which recommended as a matter of urgency the adjustment of leased line tariffs to bring these down into line with rates charged in other advanced industrialized regions.

Experience in markets already liberalized has shown that market forces alone are not sufficient to fulfil this requirement, and therefore regulatory intervention is needed for an initial transition period.

On those grounds, the Commission has concluded in that Communication that the provision of a minimum set of leased lines should continue to be mandated until competition is effectively established and market forces can be shown to replace the need for mandatory regulations. At the same time, this mandated offering will have to evolve in line with technological development and market demand, and the need to retain it will be reexamined in the light of evolution towards an effective competitive environment.

⁽⁹⁾ COM(95) 158 final, 3.5.1995.

⁽¹⁰⁾ The Commission's Green Paper on the Liberalization of Telecommunications Infrastructure and Cable Television Networks - Part I (COM(94) 440 final, 25.10.1994) indicated that prices for 2 Mbit/s leased lines in the European Union were on average ten times more expensive than in North America.

⁽¹¹⁾ Europe and the global information society, Recommendations to the European Council, 26 May 1994.

The Communication also indicated that the future re-focusing of the existing ONP Leased Lines Directive for the post-1998 environment will require Member States to ensure that all users have access to leased lines from at least one operator, under harmonized conditions of access and use, including access to a mandatory minimum set of leased lines. This harmonized offering is likely to act as a benchmark in terms of quality, price and service levels which other operators and service providers will seek to better.

5. ONP and the competition rules

As noted in the Commission's aforementioned Communication on the Consultation on the Green Paper on the Liberalization of Telecommunications Infrastructure and Cable Television Networks, there is a consensus in the sector for a balanced approach between the application of general competition law and sector-specific regulation.

At the current stage of development of the telecommunications market, an *ex-ante* regulatory framework serves to encourage market entry by providing predictability, facilitating strategic planning and investment in the future competitive environment. A regulatory framework which harmonizes conditions for access to, and use of, networks and services limits the possibilities for discrimination and thus contributes to fair competition in the sector.

At the same time, the application of the competition rules of the Treaty to issues of interconnection and access in the telecommunications sector will become increasingly important.

6. Adaptations proposed to existing ONP measures

Given the role of ONP as outlined above, the main adaptations to the existing ONP measures concern the areas of:

- the entities covered,
- tariff principles,
- the national regulatory authorities.

Other amendments have also been proposed in order to ensure coherence with new technical developments and with other regulatory measures that will form part of the future regulatory environment for telecommunications.

Proposed amendments do not affect the specific situation of those Member States with transition periods for liberalization. The proposed amending Directive is designed in such a way as to apply also to those Member States with transition periods.

6.1 The entities covered

Open network provision concerns public telecommunications networks and public telecommunications services, and thus in general, ONP measures concern organizations providing public telecommunications networks and/or public telecommunications services. However, ONP measures do not place obligations on all such organizations. The specific entities covered depend on the objective of the particular ONP measure.

ONP measures also set out the roles and responsibilities of the national regulatory authorities responsible for implementing ONP principles at the national level.

The revised ONP Framework Directive

The ONP framework Directive does not place obligations on specific market players. It sets up a procedural framework for the development of other specific ONP measures, and these specific measures identify the entities to be covered. The entities addressed in specific ONP measures depend on the aim being pursued. Different entities may be addressed in different measures, or by different provisions within a single measure. It is also important that the principle of proportionality is observed, in order to ensure that obligations are applied in a way that reflects an organization's position in the market.

The revised Leased Lines Directive

The aim of the revised version of the Leased Lines Directive is to ensure that all users have access to leased lines from at least one operator, under harmonized conditions of access and use, including access to a mandatory minimum set of leased lines.

In respect of the subsidiarity principle, the decision as to which organization or organizations, separately or jointly, will carry this obligation-to-provide will be taken at the Member States' level, in accordance with guidelines given in the Directive.

Obligations should only be imposed on organizations with significant market power, in order not to discourage market entry through the imposition of burdens on new entrants and to encourage technological innovation by new entrants. These obligations will not constitute an unreasonable burden on the organizations chosen, as experience in telecommunications markets already liberalized has shown that the previous monopoly providers have kept significant shares of the market for a considerable period of time after liberalization.

The market power of an organization will depend on a number of factors, including its share of the relevant product or service market in the relevant geographical market, its turnover relative to the size of the market, its ability to influence market conditions, its control of the means of access to end-users, its access to financial resources, and its experience providing products and services in the market.

An organization having more than 25% of a particular leased lines market in the geographical area in a Member State within which it is authorized to operate would be presumed to enjoy significant market power, unless its national regulatory authority determined that this was not the case. The national regulatory authority may nevertheless determine that an organization falling below this threshold market share enjoys significant market power, as for example when an organization has control of essential facilities.

Member States must ensure that at every point in their territory, users have access to leased lines provided by at least one organization in accordance with the provisions of the Directive. It is for the Member States to notify to the Commission the organization or organizations subject to requirements under the Directive, the leased line types within the minimum set which they are required to provide, and the geographical area in which this requirement applies.

It is not necessary that one organization has the obligation to supply the whole of the minimum set of leased lines in a specified geographical area. Within a specific geographical area, all the leased lines types provided by a notified organization are subject to the general provisions of the Directive.

The ONP List of Standards

The ONP List of Standards, published in the Official Journal, is a list of standards for voluntary application by any organizations providing public telecommunications networks or public telecommunications services. The ONP List of Standards identifies standards recommended as suitable for implementation throughout the EU.

6.2 Tariff principles

Historically, tariffs for telecommunications services provided under special or exclusive rights have been shaped by social and political goals, with the result that tariffs were not related to the underlying costs of provision. The resulting distortions are not sustainable in a competitive environment. The principle of cost orientation provides an objective basis for the rebalancing of telecommunications tariffs, while not preventing geographical price averaging and the provision of a general service for all.

In a market where competition is fully effective, the need to apply the principle of cost orientation diminishes. Market forces provide downward pressure on prices, while supervision by the national regulatory authority and the competition rules provide the necessary safeguards against collusive behaviour that could hold prices unduly high.

One of the most competitive markets following removal of special and exclusive rights for infrastructure will be leased lines in city centres and on main inter-city routes. The proposal for revision of the Leased Lines Directive therefore provides for the principle of cost orientation to be set aside by the national regulatory authority once an organization no longer has significant market power in the relevant market (in this case, the relevant market could be a specific leased line type provided in a defined geographical area).

6.3 National regulatory authorities

The regulatory framework in the telecommunications sector relies on the national regulatory authorities for telecommunications to implement the principles set out in EU legislation. National regulatory authorities were set up under Commission Directive 90/388/EEC⁽¹²⁾ and are independent bodies entrusted by a Member State, inter alia, with regulatory functions.

Specific ONP measures assign the national regulatory authorities various tasks, including:

- supervision of tariffs and accounting systems,
- dispute resolution,
- responsibility for national numbering plans,
- ensuring the provision of specified facilities.

The 1995 Commission Communication on the Status and Implementation of Directive 90/388/EEC⁽¹³⁾ stated that "the degree of separation between these [i.e. the national regulatory authorities] and those of operator functions is still not sufficiently clear in at least five Member States".

In revising the ONP Framework Directive therefore, it is proposed to make explicit the requirement for independence of the national regulatory authority. This does not affect the right of Member States to decide the method of ownership of telecommunications organizations, but it does mean that where a Member State chooses to retain some degree of ownership or a significant degree of control of a telecommunications organization, additional safeguards are necessary to guarantee the independence of the national regulatory authority.

It is crucial for the successful development of an open and competitive market in telecommunications that national regulatory authorities are not only independent in practice and in spirit, but are also seen to be independent.

7. Summary of the contents of the proposed Directive

Article 1 contains the amendments to Directive 90/387/EEC.

Article 2 contains the amendments to Directive 92/44/EEC.

Article 3 contains standard provisions on the transposition of the Directive into Member States' national law, noting that this should be accomplished by 31 December 1997.

⁽¹²⁾ OJ No L 192, 24.7.1990, p. 10.

⁽¹³⁾ OJ No C 275, 20.10.1995, p. 2.

8. Conclusion

Light-handed regulation is appropriate in a competitive market. The regulatory environment must, however, ensure universal service for the users (including consumers), fair competition for the players, and quality, choice and value for money for all.

In a liberalized environment, the **value** of harmonized conditions for access to and use of telecommunications networks and services remains undiminished, but the **means** of achieving such harmonization must be flexible.

Voluntary application of harmonized conditions by the market players will be the norm in a competitive market, with mandatory application reserved only for those areas where market forces alone may not be sufficient to meet European policy goals. ONP is evolving to meet those needs.

The European Parliament and the Council are therefore requested to adopt the attached proposal for a Directive.

Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to
a competitive environment in telecommunications

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

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⁽³⁾ (ONP) lays down harmonized principles for open and efficient access to and use of public telecommunications networks and, where applicable, services; whereas, in accordance with that Directive, the Council adopted Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines⁽⁴⁾;
2. Whereas the 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⁽⁵⁾, combined with the Council Resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures⁽⁶⁾, call for the liberalization of telecommunications services and infrastructure by 1 January 1998 (with transition periods for certain Member States); whereas this is supported by the European Parliament Resolution of 20 April 1993 on the Commission's 1992 review of the situation in the telecommunications sector⁽⁷⁾, and European Parliament Resolution of 19 May 1995 on the Green Paper on the liberalization of telecommunications infrastructure and cable television networks (Part II)⁽⁸⁾;

⁽¹⁾ OJ No C

⁽²⁾ OJ No C

⁽³⁾ OJ No L 192, 24.7.1990, p. 1.

⁽⁴⁾ OJ No L 165, 19.6.1992, p. 27. Directive as amended by Commission Decision 94/439/EC (OJ No L 181, 15.7.1994, p. 40).

⁽⁵⁾ OJ No C 213, 6.8.1993, p. 1.

⁽⁶⁾ OJ No C 379, 31.12.1994, p. 4.

⁽⁷⁾ OJ No C 150, 31.5.1993, p. 39.

⁽⁸⁾ OJ No C

3. Whereas the Council Resolution of 22 July 1993 considered as a major goal for the Community's telecommunications policy 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; whereas the Council Resolution of 18 September 1995 on the implementation of the future regulatory framework for telecommunications⁽⁹⁾ called on the Commission, in accordance with the timetable set out in the Council Resolutions of 22 July 1993 and 22 December 1994, to present to the European Parliament and the Council before 1 January 1996 all legislative provisions intended to establish the European regulatory framework for telecommunications accompanying the full liberalization of this sector, in particular concerning the adaptation to the future competitive environment of ONP measures;
4. Whereas the European Parliament Resolution of 6 May 1994 on the Communication from the Commission accompanied by the proposal for a Council Resolution on universal service principles in the telecommunications sector⁽¹⁰⁾ emphasizes the central importance of universal service principles; whereas the Council Resolution of 7 February 1994 on universal service principles in the telecommunications sector⁽¹¹⁾ provides a basic definition of universal service and calls upon the Member States to establish and maintain an appropriate regulatory framework in order to ensure it throughout their territory; whereas, as was recognized by the Council in that Resolution, the concept of universal service must evolve to keep pace with advances in technology, market development and changes in user demand; whereas universal service in telecommunications will have a role to play in strengthening social and economic cohesion, in particular in remote, peripheral, landlocked and rural areas and islands of the Community;
5. Whereas the basic principles concerning access to and use of public telecommunications networks and services, set out within the ONP framework, must be adapted to ensure European-wide services in a liberalized environment, in order to benefit users and organizations providing public telecommunications networks and/or services; whereas a voluntary approach based on common technical standards and specifications, with consultative mechanisms undertaken where necessary to satisfy user needs, is appropriate in a liberalized environment; whereas nevertheless the provision of universal service and the availability of a minimum set of services must be guaranteed to all users in the Community through binding legislative measures; whereas a general framework for interconnection to public telecommunications networks and public telecommunications services is needed in order to provide end-to-end interoperability of services for Community users;

⁽⁹⁾ OJ No C 258, 3.10.1995, p. 1.

⁽¹⁰⁾ OJ No C 205, 25.7.1994, p. 551.

⁽¹¹⁾ OJ No C 48, 16.2.1994, p. 1.

6. Whereas the ONP framework concerns public telecommunications networks and services provided commercially but does not address the issue of content; whereas telecommunications services in this context do not include radio and television broadcast services;
7. Whereas in conformity with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities, and ensure that the national regulatory authority or authorities of each Member State will play a key role in the implementation of the regulatory framework set out in relevant Community legislation; whereas the national regulatory authorities should have the necessary means to carry out fully the tasks assigned to them;
8. Whereas the draft Commission Directive of amending Directive 90/388/EEC regarding the implementation of full competition in telecommunications markets⁽¹²⁾ proposes to provide for adequate numbers to be available for all telecommunications services, and for numbers to be allocated in an objective, non-discriminatory, proportionate and transparent manner;
9. Whereas in order to guarantee provision of leased lines throughout the Community, Member States should ensure that at every point in their territory users have access to a minimum set of leased lines from at least one organization; whereas organizations with obligations to provide leased lines should be designated by Member States on the basis of their market power in the relevant leased lines market; whereas Member States shall notify to the Commission the organizations subject to the Directive, the leased line types within the minimum set which they are required to provide, and the geographical area in which this requirement applies; whereas, within a specific geographical area, all the leased lines types provided by a notified organization are subject to the general provisions of the Directive;
10. Whereas the market power of an organization depends on a number of factors, including its share of the relevant product or service market in the relevant geographical market, its turnover relative to the size of the market, its ability to influence market conditions, its control of the means of access to end-users, its access to financial resources, its experience in providing products and services in the market; whereas, for the purpose of this Directive, an organization with a share of more than 25% of the relevant leased lines market in the geographical area in a Member State within which it is authorized to operate would be presumed to enjoy significant market power, unless its national regulatory authority determined that this was not the case; whereas an organization falling below this threshold market share should not be regarded as enjoying significant market power, unless this can clearly be demonstrated to be the case;

⁽¹²⁾ OJ No C 263, 10.10.1995, p. 6.

11. Whereas the concept of leased lines services will evolve with new technological advances and market demand, allowing users a more flexible use of the leased line bandwidth, including certain routing and management capabilities, for new types of leased lines;
12. Whereas, in order to achieve more efficient communications within the Community, it is important that Member States encourage the provision of an additional harmonized set of higher order leased lines, taking into account market demand and progress with standardization;
13. Whereas until an effective competitive environment is achieved, there is the need for regulatory supervision of tariffs for leased lines with a view to ensuring cost orientation and transparency, in accordance with the principle of proportionality; whereas it is appropriate to set aside the requirements for cost orientation and transparency in specific markets where no organization has significant market power; whereas, in a fully competitive environment, market mechanisms will ensure that tariffs for leased lines are reasonable;
14. Whereas common technical regulations (CTRs) adopted under 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⁽¹³⁾ and Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment⁽¹⁴⁾ define the conditions for connection of terminal equipment to leased lines;
15. Whereas certain amendments to existing ONP measures are appropriate in order to ensure coherence with new technical developments and with other regulatory measures that will form part of the overall regulatory framework for telecommunications;
16. Whereas all the areas identified in Annex I to Directive 90/387/EEC as possible areas for the application of open network conditions have been addressed in analysis reports subject to public consultation, in accordance with the procedure set out in Article 4 of that Directive; whereas all the priority measures identified in Annex III thereto have been adopted;
17. Whereas in order to enable the Commission to carry out the monitoring task assigned to it by the Treaty, changes in national regulatory authority or authorities and the organizations affected shall be swiftly notified to the Commission;
18. Whereas, in accordance with the principles of subsidiarity and proportionality as set out in Article 3b of the Treaty, the objective of adjusting Directives 90/387/EEC and 92/44/EEC to a competitive environment in telecommunications cannot be sufficiently

⁽¹³⁾ OJ No L 128, 23.5.1991, p. 1. Directive as last amended by Directive 93/68/EEC (OJ No L 220, 30.8.1993, p. 1.).

⁽¹⁴⁾ OJ No L 290, 24.11.1993, p. 1.

achieved by the Member States and can therefore be better achieved by the Community; whereas this Directive keeps within the minimum required for attaining that aim and does not go beyond what is necessary for the purpose;

19. Whereas the functioning of Directives 90/387/EEC and 92/44/EEC should be reviewed not later than 31 December 1999; whereas such review should take account of increasing effectiveness of competition in telecommunications markets;
20. Whereas according to Articles 52 and 59 of the Treaty, the regulatory regime in the field of telecommunications should be compatible and consistent with the principles of freedom of establishment and freedom to provide services and should take into account the need to facilitate the introduction of new services as well as the widespread application of technological improvements;
21. Whereas the European Parliament and the Council have adopted Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁵⁾,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendment of Directive 90/387/EEC

Directive 90/387/EEC is hereby amended as follows:

1. Article 1 is amended as follows:

(a) Paragraph 2 is replaced by the following:

"2. The conditions referred to in paragraph 1 are designed to facilitate the provision of 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."

(b) The following paragraph 3 is added:

"3. Open network provision conditions aim at:

- guaranteeing the provision of universal service in telecommunications,
- ensuring the availability of a minimum set of services,
- securing access and interconnection to public telecommunications networks and public telecommunications services,

⁽¹⁵⁾ OJ No L 281, 23.11.1995, p. 31.

- encouraging the provision of harmonized telecommunications services to the benefit of users, by identifying and promoting by voluntary means harmonized technical interfaces for open and efficient access and interconnection, and associated standards and/or specifications,

throughout the Community."

2. Article 2 is replaced by the following:

"Article 2

For the purposes of this Directive:

1. "users" means individuals, including consumers, or organizations who use public telecommunications services;
2. - "telecommunication network" means the transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means;

 - "public telecommunications network" means a telecommunications network used inter alia for the provision of public telecommunications services;
3. - "telecommunications services" means services whose provision consists wholly or partly in the transmission and/or routing of signals on telecommunications networks;

 - "public telecommunications service" means a telecommunications service available to the public;
4. "universal service" means a defined minimum service or set of services of specified quality which is accessible to all users everywhere and, in the light of specific national conditions, at an affordable price;
5. "network termination point" means the physical point at which a user is provided access to a public telecommunications network. It is the point at which technical interface specifications are defined;
6. "essential requirements" means the non-economic reasons in the general interest which may cause a Member State to restrict access to public telecommunications networks 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. "interconnection" means the physical and logical linking of the facilities of organizations providing telecommunications networks and/or telecommunications services, in order to allow the users of one organization to communicate with users of another organization, or to access services provided by another organization;
8. "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,
 - tariff principles,
 - access to frequencies and numbers / addresses / names, where required;
9. 'technical specifications', 'standards' and 'terminal equipment' are given the same meaning for those terms as in Article 1 of Directive 91/263/EEC*.

* OJ No L 128, 23.5.1991, p. 1."

3. Article 3 is amended as follows:

(a) Paragraph 3 is replaced by the following:

"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 restrictions which are compatible with Community law."

(b) Paragraph 4 is deleted.

(c) Paragraph 5 is replaced by the following:

"5. Without prejudice to the specific Directives adopted in the field of open network provision and in so far as the application of the essential requirements referred to in paragraph 2 may cause Member States to limit access to 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."

4. Article 4 is deleted.
5. Article 5 is replaced by the following:

"Article 5

1. Reference to standards and/or specifications drawn up as a basis for harmonized technical interfaces and/or service features for open network provision shall be published in the Official Journal of the European Communities as suitable for the requirement of open and efficient access, interconnection and interoperability in order to encourage the provision of harmonized telecommunications services to the benefit of users throughout the Community.

Where necessary, the Commission may, in consultation with the committee referred to in Article 9, request standards to be drawn up by European standardization bodies.

2. Member States shall encourage the use of the standards and/or specifications referenced in the Official Journal of the European Communities, in accordance with paragraph 1, for the provision of technical interfaces and/or network functions.

As long as such standards and/or specifications are not adopted or in the event that they are not economic, Member States shall encourage:

- standards and/or specifications adopted by European standardization bodies such as ETSI or CEN/CENELEC,

or, in the absence of such standards and/or specifications,

- international standards or recommendations adopted by the International Telecommunications Union (ITU), the International Organization for Standardization (ISO) or the International Electrotechnical Committee (IEC),

or, in the absence of such standards and/or recommendations,

- standards and/or specifications developed by international industry bodies having a wide acceptance across the sector,

or, in the absence of such standards and/or specifications,

- national standards and/or specifications having a wide acceptance across the sector.

3. If the implementation of the standards and/or specifications referred to in paragraph 1 appears inadequate to ensure the interoperability of transfrontier services in one or more Member States, the implementation of such standards and/or specifications 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, subject to Articles 85 and 86 of the Treaty.

Before the implementation of the standards and/or specifications is made compulsory in accordance with the first subparagraph, the Commission shall, by publication of a notice to that effect in the Official Journal of the European Communities, invite public comment by all parties concerned.

4. Where a Member State or the Commission considers that the harmonized standards and/or specifications mentioned under paragraph 1 do not correspond to the objective of open and efficient access, interconnection and interoperability, 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, the Commission shall inform the Member States whether or not it is necessary to withdraw references to those standards and/or specifications from the Official Journal of the European Communities."
6. The following Article 5a is inserted:

"Article 5a

1. Member States may arrange for the tasks assigned to the national regulatory authority in Community legislation to be undertaken by more than one body. In this case, the Member States shall clearly identify the tasks to be undertaken by each body.
 2. In order to guarantee the independence of national regulatory authorities:
 - national regulatory authorities shall be legally distinct from, and functionally independent of, all organizations providing telecommunications networks, equipment or services;
 - Member States who retain ownership or a significant degree of control of organizations providing telecommunications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
 3. Member States shall ensure that suitable mechanisms exist at a national level whereby a party affected by a decision of the national regulatory authority has a right of appeal to an independent body."
7. Articles 6 and 7 are deleted.

8. Article 8 is replaced by the following:

"Article 8

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 31 December 1999. 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 adapting this Directive, taking account of developments towards a fully competitive environment."

9. In the second paragraph of Article 9(1), "telecommunications organizations" is replaced by "organizations providing public telecommunications networks and/or public telecommunications services".
10. Annexes I and III are deleted.
11. Annex II is replaced by Annex I to this Directive.

Article 2

Amendment of Directive 92/44/EEC

Directive 92/44/EEC is hereby amended as follows:

1. "Telecommunications organizations" is replaced by 'organizations notified in accordance with Article 11(1a)' throughout the text.
2. In Article 1, the following paragraphs are added:

"Member States shall ensure that at every point in their territory at least one organization is subject to the provisions of this Directive.

Without prejudice to the second paragraph, Member States shall ensure that obligations resulting from this Directive are not imposed on organizations without significant market power."

3. Article 2 is replaced by the following:

"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 which provide for transparent 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),
 - "ONP Committee" means the committee referred to in Articles 9 and 10 of Directive 90/387/EEC,
 - "national regulatory" authority means the body referred to in Article 5a of Directive 90/387/EEC."
4. Article 3 is amended as follows:
 - (a) The second sentence of paragraph 1 is replaced by the following:

"Changes in existing offerings and information on new offerings shall be published as soon as possible. The national regulatory authority may lay down a suitable period of notice."
 - (b) Paragraph 3 is deleted.
5. In Article 4, second indent, the first subparagraph is replaced by the following:

"- 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 95% of all leased lines of the same type have been put through to the customers."
6. Article 6 is amended as follows:
 - (a) Paragraph 1 is replaced by the following:

"1. Member States shall ensure that when access to and use of leased lines is restricted, such 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 interconnection of leased lines among each other, nor for the interconnection of leased lines and public telecommunications networks."

- (b) The first subparagraph of paragraph 4 is replaced by the following:

"Access conditions relating 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 Directives 91/263/EEC* or 93/97/EEC**.

* OJ No L 128, 23.5.1991, p. 1.

** OJ No L 290, 24.11.1993, p. 1."

7. Article 7 is amended as follows:

- (a) The following paragraph 2a is inserted:

"2a. Member States shall encourage the provision of the additional types of leased lines identified in Annex III, taking into account market demand and progress with standardization."

- (b) Paragraph 3 is replaced by the following:

"3. The amendments necessary to adapt Annexes II and III to new technical developments and to changes in market demand, including the possible deletion of certain types of leased lines from the Annexes, 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."

8. Article 8 is amended as follows:

- (a) Paragraph 2 is replaced by the following:

"2. The national regulatory authority shall ensure that the organizations notified in accordance with Article 11(1a) adhere to the principle of non-discrimination when providing leased lines. In particular, such organizations shall provide leased lines to others under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners."

- (b) The following paragraph 4 is added:

"4. Member States shall ensure that organizations providing leased lines are obliged to supply the information necessary to determine the organizations to which this Directive shall apply."

9. Article 9 is deleted.

10. Article 10 is amended as follows:

(a) In paragraph 2(b), point (iii) is replaced by the following:

"(iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly assigned or allocated, on the one hand, to leased lines and, on the other hand, to other services."

(b) The following paragraph 4 is added:

"4. The national regulatory authority shall not apply the requirements of paragraph 1 where an organization does not have significant market power in respect of a specific leased line offering in a specific geographical area."

11. Article 11 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Member States shall notify to the Commission their national regulatory authority or authorities responsible for carrying out the tasks identified in this Directive.

They shall notify promptly to the Commission any changes in their national regulatory authorities."

(b) The following paragraph 1a is added:

"1a. National regulatory authorities shall notify to the Commission the names of those organizations providing leased lines subject to requirements under this Directive. This notification shall include, where appropriate, the types of leased lines that each organization is required to provide in each geographical area in order to fulfil the requirement of Article 1 and shall include any exceptions granted in accordance with Article 10(4)."

(c) In paragraph 2, the second subparagraph is replaced by the following:

"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, as well as details of the measures taken, including their motivation."

12. Article 14 is replaced by the following:

"Article 14

Report

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 31 December 1999. The report shall be based inter alia on the information supplied by the Member States to the Commission and to the ONP Committee. The report shall include an assessment of the need for continuation of this Directive, taking account of developments towards a fully competitive environment. Where necessary, further measures can be proposed in the report for adapting this Directive."

13. Annex I is amended as follows:

(a) Footnote 1 is replaced by the following:

"OJ No L 109, 26.4.1983, p. 8. Directive as last amended by Directive 94/10/EC of the European Parliament and the Council (OJ No L 100, 19.4.1994, p. 30)."

(b) In section D, points 1, 2, 3, 5 and 6 are deleted.

(c) Section E is replaced by the following:

"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 or 93/97/EEC."

14. Annex II to this Directive is added as Annex III.

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1997. They shall immediately 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 text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

"ANNEX

Reference framework for the application of open network provision conditions

The application of open network provision conditions as defined in Article 2(10) should be in accordance with the following reference framework, taking into account the relevant rules of the Treaty:

1. Harmonized technical interfaces and/or network functions

In drawing up open network provision conditions the following scheme should be taken into account for the definition of specifications for technical interfaces and/or network functions:

- for existing services and networks, existing interface specifications should be adopted;
- for entirely new services or the improvement of existing services, existing interface specifications should also be adopted, as far as feasible. When existing interfaces are not suitable, enhancements and/or new interface specifications 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 developing new interface and network functions specifications.

Open network provision proposals must, wherever possible, be in line with the ongoing work in the European standardization bodies, in particular the ETSI, and must also take into account work in international standardization organizations, such as the ITU-T.

2. Harmonized supply and usage conditions

Supply and usage conditions identify conditions of access and of provision of services, as far as required.

- (a) supply conditions concern conditions under which a service is offered to users. They may include:
- typical delivery period,
 - typical repair time,
 - quality of service, in particular availability and quality of transmission
 - maintenance and network management;

(b) usage conditions concern conditions which apply to users, such as:

- conditions for network access,
- conditions for shared use,
- conditions regarding protection of personal data and confidentiality of communications, where required.

3. 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 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. Where an organization no longer has significant market power in the relevant market, the requirement for cost-orientation may be set aside by the competent national regulatory authority. 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.

4. Harmonized approach to numbering/addressing/naming

Numbering/addressing constitute the single most important element of any telecommunications protocol and of any telecommunications service that provides for the selection of the destination or destinations.

Telecommunications services provided over the fixed public telephone network currently rely exclusively on numbering to identify the destination or destinations of a call. In other telecommunications services, the more general concept of addressing takes the central role. Naming plays a role in some of these telecommunications services, e.g. Message Handling Systems according to the X.400 Series Recommendations, in addition to addressing; the possibility exists that this role of naming, complementary to numbering/addressing, will appear over time in all telecommunications services.

Adherence to a harmonized approach for numbering/addressing, and where applicable naming, is therefore essential to guarantee European wide end-to-end interconnection of users and interoperability of services. Further, the allocation of numbers/addresses/ names should be fair and consistent with the requirements for equal access.

To achieve this, it is necessary to:

- ensure the provision according to harmonized principles of adequate ranges of numbers and addresses, and where applicable of adequate naming, for all public telecommunications services;
- ensure the coordination of national positions in international organizations and fora where decisions are taken on numbering/addressing/naming, taking into account possible future developments in numbering/addressing/naming at a European level;
- ensure that the relevant national telecommunications numbering/addressing/naming plans are under the supervision of the national regulatory authority, in order to guarantee independence from organizations providing public telecommunications networks or public telecommunications services;
- ensure that the procedures for allocating individual numbers/addresses/names, and/or addressing/numbering ranges are transparent, equitable and timely and that the allocation is carried out in an objective, transparent and non-discriminatory manner;
- give national regulatory authorities the possibility to lay down conditions for the use in numbering/addressing plans of certain prefixes or certain short codes, in particular where these are used for services of general public interest (e.g. directory services, emergency services), or to ensure equal access."

"ANNEX III

**DEFINITION OF LEASED LINES WHICH MAY BE PROVIDED,
IN ACCORDANCE WITH ARTICLE 7(2a)**

Leased line type	Technical characteristics	
	Interface presentation specifications	Connection characteristics and performance specifications
34 368 kbit/s digital structured	ETS 300 686 ⁽¹⁾	ETS 300 687 ⁽¹⁾
34 368 kbit/s digital unstructured	ETS 300 686 ⁽¹⁾	ETS 300 687 ⁽¹⁾
139 264 kbit/s digital structured	ETS 300 686 ⁽¹⁾	ETS 300 688 ⁽¹⁾
139 264 kbit/s digital unstructured	ETS 300 686 ⁽¹⁾	ETS 300 688 ⁽¹⁾
155 Mbit/s digital (STM-1) ⁽²⁾	based on ITU-T G.708	based on ITU-T G.708

⁽¹⁾ These standards are still under development in ETSI.

⁽²⁾ ETSI has been requested to carry out further work on standards for SDH VC-based leased digital bandwidth."

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