

**Opinion on the proposal for a Council Directive on the Mutual Recognition of Licences and other National Authorizations to operate Telecommunications Services, including the establishment of a Single Community Telecommunications Licence and the setting up of a Community Telecommunications Committee (CTC) <sup>(1)</sup>**

(93/C 108/14)

On 21 September 1992, the Council decided to consult the Economic and Social Committee under Article 100A of the Treaty establishing the European Economic Community on the abovementioned proposal.

The Section for Transport and Communications, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 12 February 1993. The Rapporteur was Dame Jocelyn Barrow.

At its 303rd Plenary Session (meeting of 25 February 1993), the Economic and Social Committee adopted the following Opinion unanimously.

## **1. Introductory Remarks**

In general the Economic and Social Committee supports the Mutual Recognition Proposal, but this is subject to some areas of concern in the drafting of the proposal as set out herein.

## **2. The Mutual Recognition Proposal: Outline**

2.1. The main points of the Mutual Recognition Proposal are:

- (i) Chapters I and II establish the overall objective of the Directive, that is to provide a procedure to allow for a Community-wide provision of services authorised in one Member State.

Chapters III and IV deal with mutual recognition in two ways, first on a case by case basis by individual application under Chapter III and by service category under Chapter IV;

- (ii) Chapter III ensures the right to apply for mutual recognition of all National Authorizations which fall within the scope of the proposal and calls for the establishment by the Member States of procedures for the application of this right.

The provisions of this Chapter establish the procedure for the mutual recognition of licences or other authorizations for the provision of services issued by Member States. This procedure consists of the submission of the application by the telecommunications operator with supporting information. The chapter also provides for an objection procedure available to the National Regulatory Authorities ('NRAs'); in the event of an objection by a NRA the provisions set out the conciliation procedure and subsequent to this the procedure for the granting of the licence and notification to the Member States;

- (iii) Chapter IV provides for a simplified procedure wherever possible for recognition by service categories on the basis of harmonised conditions;

- (iv) Chapter V sets out the procedure for withdrawal or modification of licences where appropriate;

- (v) Chapters VI and VII provide for the setting up of a new committee—the Community Telecommunications Committee or CTC to assist the Commission in the implementation of the above procedures and set out other provisions concerning confidentiality of information, and implementation of the Directive.

2.2. It should be noted that the proposal will only apply to national authorizations relating to the provision of telecommunications services on public telecommunications networks: it will not apply to national authorizations for the provision of mobile radio services and satellite services. These are to be dealt with separately by the Commission.

## **3. The Mutual Recognition Proposal: Practical Considerations**

3.1. As set out in paragraph 2.1 above, Chapter III of the Proposal details the procedure to be followed in applications for licences and the consideration of such applications. The wording of the provisions is not entirely clear and the 'balanced and efficient procedure' which the Commission aims to achieve would be assisted by more precise wording.

3.2. Chapter VI of the Mutual Recognition Proposal provides for the establishment of the CTC which is to be made up of representatives of the National Regulatory Authorities of the Member States ('the NRAs') and

<sup>(1)</sup> OJ No C 248, 25. 9. 1992, p. 4.

chaired by a representative of the Commission. The Committee notes that the proposal foresees the CTC in a purely advisory role. This may not be appropriate in all cases.

3.3. This raises an important point. Council Decision of 13 July 1987 ('The Council Decision') sets out the Commission's powers to establish committees and the powers that may be given to those committees.

The Commission has suggested that the CTC will be constituted in the same terms as the committee established under the ONP Directive. For the purposes of this proposal, given in particular its regulatory nature, it is suggested that the CTC should be a regulatory committee, under the guidelines set out in the Council Decision, within procedure III(b).

Given that no provision is made under the proposal to deal with the issue of public accountability of the CTC, a procedure III(b) Committee would enable the Council to review the decisions of the CTC, where appropriate. Appeal to the European Court of Justice is obviously open to aggrieved parties, but this can be a cumbersome, expensive and time consuming process.

3.4. The Committee notes paragraph 7 of the Recitals to the Proposal and, in particular, that the proposal takes full account of the primary role of the national regulatory authorities 'in accordance with the principle of subsidiarity'. The area of subsidiarity is of particular concern to several of the Member States and the Committee welcomes the recognition of this concern in the provisions of the proposal.

#### 4. The Mutual Recognition Proposal

##### 4.1. Article 2

(i) This Article specifies four definitions and then provides that the definitions given in the ONP Directive shall apply, where relevant, to the Mutual Recognition Proposal. As a result of this, however, the present draft of the proposal may arguably contain some gaps. Where terms are used, and not defined, the ONP Directive definitions shall apply.

(ii) The Committee foresees some problems with this approach, which the Commission recognized in another context referred to in paragraph 4.2 below. The term 'essential requirements' is used in Article 13, in the Explanatory Memorandum and in the Recitals. Although this is defined in Article 2(6) of the ONP Directive, the definition is in rather general terms.

In Directive 91/263/EEC on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the recognition of their conformity (which is another 'mutual recognition-type Directive'), the Directive sets out in some detail what the essential requirements were for that particular Directive (Article 4). For the sake of clarity, a similar exercise should be applied to the Mutual Recognition Proposal and, indeed, the Committee believes that a broader interpretation of essential requirements should be given than those given in the ONP Directive or Directive 91/263/EEC.

##### 4.2. Article 2(1)

4.2.1. Further to paragraph 4.1 above, the Committee welcomes the definitions provided in Article 2, and particularly in Article 2(1). It is noted that this latter definition will exclude from the CTC those representatives of Member States which have not as yet implemented Council Directive 90/388/EEC on competition in the market for telecommunications services ('the Services Directive') through the establishment of a NRA.

4.2.2. The definition of 'national authorization' contained in Article 2.2 is noted and in particular the reference to class licences. This will be commented on in paragraph 4.8.

##### 4.3. Article 5(3)

(i) This provides that the implementation of the Single Community Telecommunication Licence ('The SCTL')

'shall not prevent the Member States from making the provision of services under a SCTL subject to *national legislation not specifically related to telecommunications services*' (emphasis added).

The Committee is concerned in particular about the wording emphasized above. It is understood that the aim of the proposal is to keep to a minimum the grounds under which restrictions on the right for service providers to operate can be allowed and that it is intended to apply to issues concerning consumer protection—in particular data protection—and public decency. Article 5.3 should not be used to discriminate in any way against service providers from outside the particular Member State.

##### 4.4. Article 7

(i) Article 7(2)

In the interests of efficiency and openness, the Committee believes that this Article should be amended to provide that the objecting NRA should inform the authorising NRA of its objections at the same time as it informs the Commission.

## (ii) Article 7(3)

It is submitted that this should be reworded for the sake of clarity and the following wording is suggested so that the provisions should now read:

‘National regulatory authorities which have informed the Commission that they intend to raise an objection in accordance with paragraph 2, and intend to pursue that objection, must submit their objections in writing ...’.

## 4.5. Articles 9 to 13

The Committee sees a number of concerns about the procedures set out in Articles 9 to 13 which are set out below.

## 4.5.1. Article 9

The Committee welcomes the intention of the Commission in these provisions but submits that Article 9 in particular needs more attention regarding procedural issues. In its present wording, the Commission may assume a regulatory role which, it is believed, is not intended. This requires redrafting in order to clarify the procedure.

## 4.5.2. Article 12(5)

Finally, concerning Article 12, the Committee is concerned that the application procedure will be financially onerous on the applicant and this will be unfair disincentive. It is suggested that this should be taken into consideration by this proposal and the possibility of the implementation of measures under Community policy concerning small and medium-sized enterprises should be considered.

## 4.5.3. Article 13(1)

(i) Article 13(1) should be redrafted so as to provide for initiation of the supplementary conditions under Article 13 by both parties in order to facilitate the rapid arrival at an agreement where both are willing to do so. In addition, to avoid misinterpretation, the wording of Article 13(1) should be redrafted to provide for a situation where no election has been made to follow the procedure set out in Article 12.

It is understood that the Article is intended to provide for such a situation, but, as drafted, this is not clear. In particular, it would appear that the use of the word ‘may’ in the English text should be ‘shall’. In other words, the intention is that the conciliation procedure shall proceed either under Article 12 or 13 and not under any other procedure that might be instigated between the parties.

(ii) On the face of the proposal at present, the ‘conciliatory body’ referred to in Article 12 would be

empowered to convene a working group of two members of the CTC but there is nothing to prevent these two members from coming from two of the NRAs involved in this dispute. This potentially leads to a conflict of interest.

(iii) Further, the need for public accountability of the decision makers and for openness and transparency of the conciliation process is stressed. In particular, the Committee is concerned about the election of the members of the Working Group in a particular case and the selection of experts. The need for independent experts is stressed.

The conciliatory body may invite ‘experts’ to advise it. It should be left to the members of the body to decide who should be appointed as independent experts to advise it.

## 4.6. Article 15

4.6.1. This provides the procedure for recognition by Service Category and this has potential ramifications for class licences. These licences have been introduced by some Member States, notably the United Kingdom, as a means of deregulating telecommunications services. The Committee notes that these Member States are concerned that the provisions of Article 15 could result in re-regulation. This is because service producers who operate under regimes where licences are recognized by service category or that do not require licences (e.g. the Netherlands) would not be able to take advantage of the mutual recognition in other Member States since they would have no national licence to show. This would mean, in practice, the NRA having to set up a mechanism to certify that the service provider complied with the terms of the service category as published by the Commission, in effect reintroducing a licence for that category and hence re-regulating the national regime.

4.6.2. The Commission has assured that this was not the intention of the proposal and that the procedures under Article 15 will not prevent an operator carrying on an existing service. Its aim is to harmonise licensing conditions and standardise mutual recognition of licences. It is recognized by the Commission that this may not be necessary in certain Member States with regard to certain types of services: for example, value added services or voice messaging, which can be recognized without being harmonised.

4.6.3. The proposal should be amended to make it absolutely clear that there is no intention to re-regulate services provided under any class licence. As regards

services which are not covered by any licence (e.g. certain services in the Netherlands), where it is very unclear as to how this should be dealt with, the Commission should consider this issue in further detail to ensure that regulation of unregulated services is not a consequence.

#### 4.7. Article 16

Concern was expressed that the 'reasonable fee' should not be such that (for example) small and medium sized enterprises cannot afford it. What is reasonable for some may be prohibitive for others.

#### 4.8. Article 22

This sets out the provisions to ensure security of information under the proposal. As the information involved in the procedures under the Mutual Recognition Proposal is particularly vulnerable and sensitive in economic terms for the parties involved, it is assumed that security provisions equivalent to those employed in similar circumstances for information gathered by Directorate General IV of the Commission will be employed under the proposal currently under discussion.

#### 5. Timetable

It is understood that the Commission hopes to have this Proposal adopted in the course of 1993. The Committee welcomes an early deadline for adoption of this proposal.

Done at Brussels, 25 February 1993.

*The Chairman*  
*of the Economic and Social Committee*  
Susanne TIEMANN

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### **Opinion on the draft proposal for a Council Directive laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation**

(93/C 108/15)

On 8 July 1992 the Commission decided to consult the Economic and Social Committee, under Article 31 of the Euratom Treaty, on the abovementioned draft proposal.

The Section for Energy, Nuclear Questions and Research, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 11 February 1993. The Rapporteur was Mr Beale.

At its 303rd Plenary Session (meeting of 25 February 1993) the Economic and Social Committee adopted unanimously the following Opinion.

#### **1. Introduction**

1.1. Under Chapter III (Health and Safety) of the Euratom Treaty, 'basic standards shall be laid down within the Community for the protection of the health of workers and the general public against the dangers arising from ionizing radiations' (Article 30). It is fur-

ther provided that 'the basic standards shall be worked-out by the Commission after it has obtained the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts, and in particular public health experts, in the Member States. The Commission shall obtain the Opinion of the Economic and Social Committee on these basic standards' (Article 31).