



COMMISSION OF THE EUROPEAN COMMUNITIES

**Brussels, 03.03.1997
COM(97) 100 final**

95/0282 (COD)

OPINION OF THE COMMISSION

**pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the**

**proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE**

**on a common framework for general authorisations and individual licences
in the field of telecommunications services**

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

1. BACKGROUND

On 14 November 1995 the Commission adopted a proposal for a European Parliament and Council Directive on a common framework for general authorisations and individual licences in the field of telecommunications services (COM (95) 545).

The Economic and Social Committee gave a favourable Opinion on the Commission's proposal on 24 April 1996.

The European Parliament gave its opinion in first reading on 22 May 1996, and proposed 37 amendments to this proposal.

On 31 July 1996 the Commission adopted a modified proposal in conformity with Article 189A, paragraph 2 of the Treaty, incorporating most of the EP amendments (COM (96) 342).

On 9 December 1996 the Council, acting in accordance with Article 189 B, paragraph 2 of the Treaty, adopted a common position on the proposed Directive.

In second reading, the European Parliament adopted on 20 February 1997 six amendments to the common position.

2. PURPOSE OF THE COMMISSION PROPOSAL

By 1 January 1998 full competition is to be introduced in most Member States in the provision of telecommunications services and network infrastructures. The proposed Directive will harmonise national conditions and procedures for general authorisations and individual licences for telecommunications services and is an important part of the new regulatory environment supporting telecommunications liberalisation.

While more competition is to be introduced in the telecommunications sector, authorisations regimes remain necessary in order to ensure that certain public interest objectives are attained, including the provision of universal service. At the same time, national regulatory frameworks must be competition-friendly, and priority must be given to light authorisations schemes. In that context, the proposed Directive lays down a common framework for national authorisations regimes and provides for mechanisms aimed at facilitating the provision of cross-border networks and services.

3. Opinion of the Commission on the amendments of the european parliament

The Commission can accept, without changes, the six amendments adopted by the Parliament in second reading.

- Amendment 1 contributes to clarify Art. 10.1 of the common position.
- Amendments 2 and 5 indicate important concerns and principles, to be taken into account in the context of possible future Community initiatives when the Directive will be reviewed by 1 January 2000.

- Amendment 3 introduces two useful clarifications with regard to the scope of individual licences.
- Amendment 4 will, in the key area of new services, bring additional guarantees to undertakings applying for a licence.
- Amendment 6 adds a useful clarification to the Annex.

4. MODIFIED PROPOSAL

On 9 December 1996 the Commission has adopted its opinion on the common position regarding the proposed Directive for a European Parliament and Council Directive on a common framework for general authorisations and individual licences in the field of telecommunications services, by which it accepted the revised text for the proposed Directive.

Following the second reading of the draft Directive by the European Parliament, the Commission herewith modifies its proposal for a Directive including all the amendments which were adopted by the European Parliament on 20 February 1997.

AMENDED PROPOSAL FOR
A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL
ON A COMMON FRAMEWORK
FOR GENERAL AUTHORISATIONS AND INDIVIDUAL LICENCES
IN THE FIELD OF TELECOMMUNICATIONS SERVICES

Recital 3
(following amendment 1)

Whereas a common framework should be established for general authorizations and individual licences granted by Member States in the field of telecommunications services; whereas under Community law and in particular under Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, market entry should be restricted on the basis only of objective, non-discriminatory, proportionate and transparent selection criteria relating to the availability of scarce resources or on the basis of the implementation by national regulatory authorities of objective, non-discriminatory and transparent award procedures; whereas Directive 90/388/EEC also sets out principles regarding, inter alia, fees and rights of way; whereas these rules should be supplemented and enlarged by this Directive to determine this common framework;

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Recital 18a (new)
(following amendment 2)

Whereas a certain harmonization of the procedures is already foreseen in this directive; whereas further harmonization may be desirable in order to come to a more integrated telecommunications market; whereas this possibility should be assessed in the report to be elaborated by the Commission;

Article 7
(following amendment 2)

1. Member States may issue individual

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licences for the following purposes only:

- (a) to allow the licensee access to radio frequencies or numbers;
- (b) to give the licensee particular rights with regard to access to public or private land;
- (c) to impose obligations and requirements on the licensee relating to the mandatory provision of publicly available telecommunications services and/or public telecommunications networks, including obligations under ONP legislation and/or which require the licensee to provide universal service;
- (d) to impose specific obligations, in accordance with Community competition rules, where the licensee has significant market power, as defined in Article 4(3) of the Interconnection Directive in relation to the provision of public telecommunications networks and publicly available telecommunications services.

2. Notwithstanding paragraph 1, the provision of voice telephony services, the establishment and provision of public telecommunications networks as well as other networks involving the use of radio frequencies may be subject to individual licences.

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- (d) to impose specific obligations, in accordance with Community competition rules, where the licensee has significant market power, as defined in Article 4(3) of the Interconnection Directive in relation to the provision of public telecommunications networks and publicly available telecommunications services.

2. Notwithstanding paragraph 1, the provision of publicly available voice telephony services, the establishment and provision of public telecommunications networks as well as other networks involving the use of radio frequencies may be subject to individual licences.

Article 19 (following amendment 4)

Without prejudice to sections II and III, where the provision of a telecommunications service is not yet covered by a general authorization and where such a service and/or network cannot be provided without

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authorization, Member States shall, not later than six weeks after they have received an application, adopt provisional conditions or reject the application and inform the undertaking concerned of the reasons therefor. As soon as possible thereafter, Member States shall adopt definitive conditions or consent to the provision of the service concerned without authorization or provide reasons for any refusal to do so.

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Article 23 (following amendment 5)

Before 1 January 2000, the Commission shall prepare a report to be submitted to the European Parliament and Council. The report shall include an assessment, on the basis of the experience gained, of the need for further development of the regulatory structures as regards authorizations, in particular in relation to the scope of individual licences, to harmonization and to trans-European services and networks. Any amendments necessary to adapt the content of the Annex to new technological developments and appropriate practical procedures, together with Article 7(2), shall also be considered in this report.

Before 1 January 2000, the Commission shall prepare a report to be submitted to the European Parliament and Council and to be accompanied, where appropriate, by new legislative proposals. The report shall include an assessment, on the basis of the experience gained, of the need for further development of the regulatory structures as regards authorizations, in particular in relation to the harmonization of the procedures and the scope of individual licences, to other aspects of harmonization and to trans-European services and networks. The report shall also include proposals with a view to consolidating the various committees existing in Community telecommunications legislation. Any amendments necessary to adapt the content of the Annex to new technological developments and appropriate practical procedures, together with Article 7(2), shall also be

considered in this report.

Annex
(following amendment 6)

This list of conditions shall be without prejudice to:

any other conditions which are not specific to the telecommunications sector;

— measures taken by Member States in accordance with public interest requirements recognized by the Treaty, in particular Articles 36 and 56, specifically in relation to public morality, public security, including the investigation of criminal activities, and public policy.

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