



COMMISSION OF THE EUROPEAN COMMUNITIES

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Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**on the application of open network provision (ONP) to voice telephony
and on universal service for telecommunications in a competitive environment
(replacing European Parliament and Council Directive 95/62/EC)**

**(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)**

EXPLANATORY MEMORANDUM

The Commission hereby presents a modified proposal for a European Parliament and Council Directive on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (replacing European Parliament and Council Directive 95/62/EC).

The modified proposal incorporates those amendments proposed by the European Parliament at First Reading which were accepted by the Commission.

1. Introduction

a) Background

The Commission adopted its proposal on 11.9.1996¹, and it was formally transmitted to the EP and the Council on 5.11.1996.

The Economic and Social Committee gave a favourable Opinion on 27.2.1997².

The European Parliament adopted a favourable Resolution at its First Reading on 20.2.1997, and proposed 34 amendments to the Commission proposal³.

b) Purpose of the Directive

The aim of the Commission proposal is to replace the existing European Parliament and Council Directive 95/62/EC on the application of open network provision (ONP) to voice telephony⁴.

The adaptation is being made in view of the liberalisation of public voice telephony services by 1st January 1998 (with transition periods for certain Member States), in accordance with Commission Directive 96/19/EC⁵.

The purpose of the adaptation is two-fold: firstly it is necessary to adapt the Directive to a competitive environment and, in particular, to be more specific as to whom the provisions of the Directive will apply in a market with many players; secondly the Directive is being strengthened in the area of universal service, in line with the position expressed in the Commission Communication on universal service for telecommunications⁶.

The adaptation is consistent with the Common Position adopted by the Council on the European Parliament and Council Directive 97/.../EC on interconnection in telecommunication⁷, which lays down that only the provision of a fixed public telephone network and fixed public telephone service can be financed by a universal service financing scheme.

¹ COM(96) 419, OJ C 371, 9.12.1996, p. 22

² TRA/324

³ A4-0049/97, PV 20.2.1997

⁴ OJ L 321, 30.12.1995, p. 6

⁵ OJ L 74, 22.3.1996, p.13

⁶ COM(96) 73, 13.3.1996

⁷ OJ C 220, 29.7.96, p. 13

2. EP amendments accepted by the Commission

Of the 34 amendments adopted by the European Parliament at First Reading, the Commission accepted 19 in full, in part or in principle (i.e. with some reformulation of the text).

Amendments accepted in full, in part or in principle:

2, 3, 5, 8, 10, 13, 14, 17, 19, 20, 22, 25, 29, 30, 31, 33, 35, 41, 51

The Commission accepted those amendments which:

- help to more clearly specify the scope of universal service and improve consumer protection [amendments 3, 10 (parts), 19, 20, 22 (parts), 29, 35 and 41];
- bring the text in line with Community law, in particular the data protection Directive and the interconnection Directive [amendments 17 and 33];
- improve the clarity of the text [amendments 2 (parts), 5, 8 (parts), 25 and 31].

In addition, the Commission agreed with the EP on the principles underlying the following amendments:

- *Amendment 13 (parts)*: geographic segmentation
- *Amendment 14*: reports on tariff evolution
- *Amendment 30*: number portability
- *Amendment 51*: consultation of interested parties

In its modified proposal, the Commission has taken over amendments 13, 19, 29, 35 and 51 in the relevant recitals rather than as changes to the Articles.

3. Amendments not accepted by the Commission

The reasons which led the Commission not to accept a number of the amendments (or parts of them) proposed by the European Parliament are given below, grouped into 4 categories.

Scope of universal service, financing schemes and contributors

[amendments 3 (parts), 7, 10 (parts), 22 (parts), 46 and 50]

Universal service as defined in this proposal is indeed a minimum set of services, and Member States may be allowed to set additional requirements as long as they do not increase contributions from market players to the cost of universal service. However, the Commission is not able to accept those amendments which could lead to any change of the scope of universal service as already agreed by the EP and the Council, nor to the cost of universal service becoming excessively high. Provision of terminal equipment for disabled users, or public access to the information society are an important issue, but these social needs should be met by other means, and not by including them within the scope of universal service.

The interconnection Directive also lays down principles for financing universal service, and the Commission does not accept the need to address that issue in this Directive.

Price regulation, tariff monitoring and European guidelines for affordability [amendments 2 (parts), 13 (parts), 44 and 45]

This Directive does not seek to change the existing situation, whereby Member States are free to have or not to have uniform prices throughout their territory. Therefore the first part of amendment 2 is not accepted. However unbalanced prices distort competition, and there are better methods of protecting vulnerable users, such as targetted tariff schemes.

Art. 4 of the Directive does foresee the *possibility* for implementation of price caps or other similar schemes in order to prevent any excessive price rises for residential users. But they will not be necessary in all cases and therefore should not be made obligatory (amendment 13).

Member States must publish regular reports on tariffs which the Commission will monitor, taking actions if needed. Common rules are not considered necessary (amendment 45).

In accordance with the principle of subsidiarity, the criteria to calculate affordability are also to be determined at a national level. Considering the very different national or regional conditions throughout the Union, it does not seem appropriate to aim at providing Europe-wide measures in this area (amendment 2, second part; amendment 44).

Consistency with other Directives

[amendments 8 (parts), 16, 18, 32, 37 and 47]

The issues concerning entries in directories (amendments 16, 18 and 47) are already dealt with by the Directive concerning the processing of personal data and the protection of privacy in the telecommunications sector, in particular in the integrated services digital network (ISDN) and in the public digital mobile networks.

The definition of universal service has already been agreed in the interconnection Directive (amendment 8). The restriction for NRAs to intervene only in case of failure of commercial negotiations (amendment 32) is inconsistent with the line taken in the context of the interconnection Directive.

The concept of a dispute resolution procedure the Parliament wants to introduce in amendment 37 is inconsistent with the procedures in Directives 92/44/EEC on ONP leased lines and 95/62/EC on ONP voice telephony, both approved by EP.

Other amendments

- *Amendment 12* reformulates the Commission text without improving it.
- *Amendment 24* is already covered by Art. 26.
- *Amendment 28* would be inconsistent with the aims of Art. 12(4).
- *Amendment 36* introduces some rather unclear concepts concerning the non-payment of bills, which do not seem to improve the text of Art. 21.

- *Amendment 52* foresees mandatory publication of quality of service targets which does not seem absolutely necessary.

4. Conclusion

The Commission has accepted 19 of the 34 amendments proposed by the European Parliament at First Reading either in whole, in part or in principle.

In accordance with Article 189a paragraph 2 of the EC Treaty, the Commission amends its initial proposal, incorporating these amendments.

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
on the application of open network provision (ONP) to voice telephony
and on universal service for telecommunications in a competitive environment
(replacing European Parliament and Council Directive 95/62/EC)

Original text

Amended text

Recital 4
(based on EP amendments 2 and 13)

4. Whereas the basic universal service requirement is to provide users on request with a connection to the fixed public telephone network at a fixed location, at an affordable price; whereas there should be no constraints on the technical means by which the connection is provided, allowing for wire or wireless technologies; whereas affordability is a matter to be determined at national level in the light of specific national conditions, including town and country planning aspects; whereas the affordability of telephone service is related to the information users receive about telephone usage expenses as well as the relative cost of telephone usage compared to other services;
Whereas tariff rebalancing is leading to a move away from uniformly low and non cost-oriented tariffs; whereas until competition is effectively established safeguards may be necessary to ensure that price increases in remote or rural areas are not used to compensate for losses in revenue resulting from price decreases elsewhere; whereas price caps and similar schemes may be used to ensure that the necessary rebalancing does not affect users adversely, and that the differences between prices in high cost areas and prices in low cost areas do not endanger the affordability of telephone services;

4. Whereas the basic universal service requirement is to provide users on request with a connection to the fixed public telephone network at a fixed location, at an affordable price; whereas there should be no constraints on the technical means by which the connection is provided, allowing for wire or wireless technologies; whereas affordability is a matter to be determined at national level in the light of specific national conditions, including town and country planning aspects; whereas the affordability of telephone service is related to the information users receive about telephone usage expenses as well as the relative cost of telephone usage compared to other services;
Whereas tariff rebalancing is leading to a move away from uniformly low and non cost-oriented tariffs; whereas until competition is effectively established safeguards may be necessary to ensure that price increases in remote or rural areas are not used to compensate for losses in revenue resulting from price decreases elsewhere; whereas tariff rebalancing is an essential feature of a competitive market; whereas, however, price caps and similar schemes, possibly based on geographic segmentation, may be used to ensure that the necessary rebalancing does not affect users adversely, and that the differences between prices in high cost areas and prices in low cost areas do not endanger the affordability of telephone services;

Recital 5
(based on EP amendment 3)

5. Whereas the importance of the telephone network and service is such that it should be available to anyone reasonably requesting it; whereas in accordance with the principle of subsidiarity, it is for Member States to decide which organisations have the responsibility for providing the various elements of the universal service for telecommunications as defined in this Directive; whereas corresponding obligations could be included as conditions in authorisations to provide voice telephony services; whereas only the net cost of obligations covered in this Directive should be shared under a universal service financing scheme;

5. Whereas the importance of the telephone network and service is such that it should be available to anyone reasonably requesting it; whereas in accordance with the principle of subsidiarity, it is for Member States to decide on the basis of objective and non-discriminatory criteria which organisations have the responsibility for providing the various elements of the universal service for telecommunications as defined in this Directive, taking into account the ability of organisations to provide all or part of these elements; whereas corresponding obligations could be included as conditions in authorisations to provide voice telephony services; whereas only the net cost of obligations covered in this Directive should be shared under a universal service financing scheme;

Recital 6a (new)
(based on EP amendment 41)

6a. Whereas, where telephone directories are provided free of charge to subscribers, subscribers who are blind or partially sighted should be granted free access to directory enquiry services, in order to guarantee equal access for all users to published directory information;

Recital 7a (new)
(based on EP amendments 19 and 29)

7a. Whereas the publicly available telephone service is of particular importance to blind and partially sighted people; whereas organisations providing publicly available telephone services should take into account their needs by offering the possibility of having bills in suitable alternative formats, and where appropriate provide publicly accessible text telephones for deaf and hearing-impaired people;

Recital 8
(based on EP amendment 51)

8. Whereas quality and price are key factors in a competitive market, and national regulatory authorities should be able to monitor achieved quality of service and take appropriate corrective measures where necessary; whereas these powers are without prejudice to the application of competition law by national and Community authorities;

8. Whereas quality and price are key factors in a competitive market, and national regulatory authorities should be able to monitor achieved quality of service for fixed public telephone services and take appropriate corrective measures where necessary; whereas transparency of network interface specifications is a prerequisite for a competitive market in terminal equipment; whereas the national regulatory authority should consult the interested parties, and especially terminal equipment suppliers and the representatives of the users and consumers, on the changes in existing network interface specifications; whereas these powers are without prejudice to the application of competition law by national and Community authorities;

Recital 11
(based on EP amendment 35)

11. Whereas certain prior obligations concerning tariffs and cost accounting systems will no longer be appropriate once competition is introduced, and others can be relaxed by the competent national regulatory authority as soon as competition achieves the desired objectives; whereas in all cases the non-discrimination requirements of the competition rules of the Treaty apply;

11. Whereas certain prior obligations concerning tariffs and cost accounting systems will no longer be appropriate once competition is introduced, and others can be relaxed by the competent national regulatory authority as soon as competition achieves the desired objectives; whereas in all cases the non-discrimination requirements of the competition rules of the Treaty apply; Whereas price transparency should guarantee that residential subscribers do not subsidise discounts to industrial customers; whereas Member States should ensure that there is consultation before the introduction of the different discount schemes;

Recital 14
(based on EP amendment 5)

14. Whereas in view of the forecast convergence of fixed and mobile telephone services, the applicability of the Directive with respect to mobile services should be re-examined when the Directive is reviewed; whereas the review date of 31 December 1999 will allow for a coordinated review of all the ONP Directives in the light of experience with the liberalization of public telecommunications networks and voice telephony services;

14. Whereas in view of the forecast convergence of fixed and mobile telephone services, the extent to which the Directive is applicable with respect to mobile services should be re-examined when the Directive is reviewed; whereas the review date of 31 December 1999 will allow for a coordinated review of all the ONP Directives in the light of experience with the liberalization of public telecommunications networks and voice telephony services;

Article 2(2), indent 7
(based on EP amendment 8)

- "national regulatory authority" means the body or bodies in each Member State, entrusted by that Member State, *inter alia*, with the regulatory functions addressed in this Directive;

- "national regulatory authority" means the body or bodies in each Member State, as described in Directive 97/ /EC amending Directives 90/387/EEC and 92/44/EEC ⁽¹⁾ for the purpose of adaptation to a competitive environment in telecommunications, entrusted by that Member State, *inter alia*, with the regulatory functions addressed in this Directive;

(¹) OJ L 165, 19.6.1992, p. 27

Article 3, second paragraph
(based on EP amendment 10)

Where these services cannot be commercially provided on the basis of conditions laid down by the Member State, Member States may set up universal service schemes for the shared financing of these services, in conformity with Community law.

Where these services cannot be commercially provided on the basis of conditions laid down by the Member State, Member States may set up a universal service financing scheme, in conformity with Community law.

Member States may to some extent impose additional universal service requirements. Such additional requirements may not, under any circumstances whatever, have an impact on the costing of universal service provision as laid down in Community law and may not be financed from a mandatory contribution by market players.

Article 4(2)
(based on EP amendment 14)

2. Member States shall publish regular reports on the evolution of tariffs.

2. Member States shall publish regular reports on the evolution of tariffs. The Commission shall publish regular reports on the evolution of tariffs throughout the European Community.

Article 6(1) (b)
(based on EP amendment 17)

(b) directories of all subscribers who consent to be listed, including fixed and personal numbers, are available to users in printed and where appropriate, electronic form, and updated on a regular basis;

(b) directories of all subscribers who have not expressed opposition to being listed, including fixed and personal numbers, are available to users in printed and where appropriate, electronic form, and updated on a regular basis;

Article 7(2)
(based on EP amendment 20)

2. Member States shall ensure that it is possible to make emergency calls from public payphones using the single European emergency call number '112' referred to in Decision 91/396/EEC, and other national emergency numbers, all free of charge.

2. Member States shall ensure that it is possible to make emergency calls from public payphones and where they exist public pay text telephones using the single European emergency call number '112' referred to in Decision 91/396/EEC, and other national emergency numbers, all free of charge and without having to make use of coins or cards.

Article 9 (b)
(based on EP amendment 22)

(b) access operator assistance services, and directory enquiry services in accordance with Article 6;

(b) access operator assistance services at a reasonable price, and directory enquiry services in accordance with Article 6;

Article 10(2), second subparagraph a and b (new)
(based on EP amendment 25)

Alterations may be called for insofar as they concern the protection of the rights of users and/or subscribers as foreseen by this Directive.

The Commission shall ensure that the alterations called for do not interfere with fair competition on the market.

Article 15(4) (new)
(based on EP amendment 30)

4. Where the facility of number portability, as referred to in Article 12(5) of Directive 97/ /EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision is not yet in use, national regulatory authorities shall ensure that for a reasonable period after a subscriber has changed supplier either a telephone call to his old number can be re-routed to his new number or callers are given at no additional cost to them an indication of the new number.

National regulatory authorities shall ensure that any fees for such re-routing of calls are reasonable.

Article 16(1)
(based on EP amendment 31)

1. National regulatory authorities shall ensure that the organisations with significant market power in the provision of fixed public telephone networks deal with reasonable requests from organisations providing telecommunications services for access to the fixed public telephone network at network termination points other than the commonly provided network termination points referred to in part 1 of Annex II.

1. National regulatory authorities shall ensure that the organisations with significant market power in the provision of fixed public telephone networks deal with reasonable requests from organisations providing telecommunications services for access to the fixed public telephone network at network termination points other than the commonly provided network termination points referred to in part 1 of Annex II. This obligation may only be limited if there are technically and commercially viable alternatives to the special access requested, and if the requested access is inappropriate in relation to the resources available to meet the request.

Article 16(9)
(based on EP amendment 33)

9. Details of agreements for special network access shall be made available to the national regulatory authority upon its request.

9. Details of the agreements for special network access referred to in paragraph 3 shall be made available to the national regulatory authority upon its request and may be made available on request to interested parties, with the exception of those parts which deal with the commercial strategy of the parties.

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