

Proposal for a Council Directive on the establishment of the internal market for telecommunications services through the implementation of open network provision (ONP)

COM(88) 825 final — SYN 187

(Submitted by the Commission on 5 January 1989)

(89/C 39/08)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

1. Whereas Article 8a of the Treaty stipulates that the internal market shall comprise an area without internal frontiers in which the free movement of services is ensured, in accordance with the other provisions of the Treaty;
2. Whereas the Commission has submitted a Green Paper on the Development of the Common Market for Telecommunications Services and Equipment (COM(87) 290), dated 30 June 1987, and a communication on the implementation of the Green Paper up to 1992 (COM(88) 48), dated 9 February 1988;
3. Whereas the Council adopted on 30 June 1988 a resolution on the development of the common market for telecommunications services and equipment up to 1992 (1);
4. Whereas the Commission has issued a directive on competition in the markets in telecommunications services;
5. Whereas, given the obstacles resulting from diverging laws, regulations, or administrative actions in the Member States, the full establishment of a Community-wide market in telecommunications services can only be achieved by the rapid introduction of harmonized principles and conditions for open network provision (ONP), in order to avoid a series of contentious cases and lengthy conflict, in particular for transfrontier provision of services;
6. Whereas, since situations differ, and technical and administrative constraints exist in the Member States, progress towards this objective should be made in stages;
7. Whereas the conditions of open network provision must be consistent with certain principles and should not restrict access to networks and services except for reasons of general public interest, hereinafter referred to as 'essential requirements';
8. Whereas the definition and interpretation of such principles and essential requirements must take full account of the fact that any restrictions of the right to provide services within and between Member States must be objectively justified, must follow the principle of proportionality and must not be excessive in relation to the aim pursued;
9. Whereas the working-out in detail of harmonized conditions of open network provision must be a progressive process and should be prepared in consultation with the Member States, the telecommunications administrations and the other parties concerned, and in particular with the assistance of the Senior Officials Group on Telecommunications (SOG-T);
10. Whereas the definition of harmonized conditions for open network provision must be a process open to all parties concerned and therefore sufficient time should be given for public comment;
11. Whereas the Community-wide definition of harmonized technical interfaces and access conditions must be based on the definition of common technical specifications based on international standards and specifications;
12. Whereas work in this area must take full account, *inter alia*, of the framework provided by Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, Council Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment and Council Decision 87/95/EEC on standardization in the field of information technology and telecommunications;
13. Whereas for formal adoption of the statutes of the European Telecommunications Standards Institute (ETSI) on 12 February 1988, and of the associated internal rules, has created a new mechanism for producing European telecommunications standards;

(1) OJ No C 257, 4. 10. 1988, p. 1.

14. Whereas the general guidelines agreed with the Joint European Standards Institution CEN-Cenelec henceforth make it possible to entrust specialized technical harmonization work to this body;
15. Whereas the Community-wide definition and implementation of clear harmonized network termination points establishing the physical interface between the network infrastructure and users' and other service providers' equipment will be an essential element of the overall concept of open network provision;
16. Whereas Commission Directive 88/301/EEC on competition in the markets in telecommunications terminal equipment⁽¹⁾ requires Member States to ensure that users who so request shall be given access to public network termination points within a reasonable time period;
17. Whereas the principal aim of the establishment of an internal market in telecommunications services must be the freedom to provide services in the whole of the Community once authorized or legally provided in a Member State;
18. Whereas this will require the mutual recognition of licensing procedures for services provision where such authorization may be required;
19. Whereas such mutual recognition of licensing procedures required must depend on progress on the harmonization of the conditions for service provision, by the progressive implementation of open network provision;
20. Whereas in its resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 the Council considered the taking fully into account of the external aspects of Community measures on telecommunications to be a major policy goal;
21. Whereas in accordance with the Council Decision of 28 November 1988, the Member States have accompanied their signature of the Final Acts of the World Administrative Telegraph and Telephone Conference (WATTC-88) by a joint declaration stating that they will apply the International Telecommunications Regulations in accordance with their obligations under the EEC Treaty;
22. Whereas the Community attaches major importance to the continued growth of cross-border telecommunications services, to the contribution of telecommunications services provided by companies, firms or natural persons established in a Member State of the Community to the growth of the Community market, and to the increased participation of Community service providers in third country

markets; whereas it will therefore be necessary, as detailed directives are elaborated, to ensure that these objectives are taken into account with a view to reaching a situation where the realization of the more open Community market for telecommunications services will, where appropriate, be accompanied by reciprocal market opening elsewhere;

Whereas this can be achieved either in the framework of multilateral negotiations, in particular in the GATT, or through bilateral negotiations;

23. Whereas this Directive should not address the problems of mass media, meaning broadcasting and distribution of television programmes via telecommunications means, in particular cable television networks, which need special consideration;
24. Whereas this Directive should not address communication via satellite for which, according to the Council resolution of 30 June 1988, a common position should be worked out;
25. Whereas the establishment of harmonized technical conditions, usage conditions and tariff principles under open network provision according to this Directive addresses with priority public telecommunications networks and public telecommunications services for which telecommunications administrations are in law or in fact the sole or main providers;
26. Whereas the effects on the working of the internal market of any remaining conditions for access to telecommunications services which have not been harmonized should be reviewed by the Council and the Commission during 1992, taking account of technological development,

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive provides for the harmonization of conditions for open access to, and open use of, the public telecommunications network infrastructure and public telecommunications services.

These conditions will apply in particular also for the provision of services via these telecommunications means within and between Member States, including in particular the provision of services by companies, firms or natural persons established in a Member State of the Community other than that of the company, firm or natural person for whom the services are intended, in order to establish a common market for telecommunications services.

⁽¹⁾ OJ No L 131, 27. 5. 1988, p. 73.

Article 2

For the purposes of this Directive:

1. 'Telecommunications organizations' means the administrations or private operating agencies recognized in the Community, providing public telecommunications networks and/or public telecommunications services.

The bodies listed in Annex 1 fulfil these criteria.

2. 'Public network' means a public telecommunications infrastructure which provides for the transmission of services between and including defined termination points, be it by wire, radio link, or any other electromagnetic or optical means.
3. 'Public network termination point' means the physical connection and technical access specifications required to gain access to, and to communicate efficiently via, a public network.
4. 'Open network provision conditions' means the conditions harmonized according to the provisions set forth in this Directive which may be imposed on users and/or providers of services for access to and use of the public network and/or public telecommunications services (hereinafter referred to as 'ONP conditions').

ONP can include in particular harmonized conditions with regard to:

- technical interfaces, including the definition and implementation of public network termination points, where required,
- usage conditions, including access to frequencies where required,
- tariff principles.

ONP conditions will apply to the areas defined according to Article 4. ONP conditions will apply to access or use of those public telecommunications networks and public telecommunications services for which the telecommunications organizations defined under 1 are in law or in fact the sole or main providers either singly or jointly.

For specific areas, where other service providers are of comparable importance, the Council, acting by a qualified majority on a proposal from the Commission, shall supplement as necessary the bodies listed under 1.

5. 'Essential requirements' means requirements of a non-economic nature which, for reasons of general public interest, can be considered of such importance as to necessitate compliance as a matter of legal obli-

gation for gaining access to, and using public telecommunications networks and services, within the framework of Community law.

6. 'Technical specifications', 'standards' and 'terminal equipment' are given the same meaning as in Article 2 of Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment.

Article 3

1. ONP conditions must comply with a number of basic principles. These principles are that:

- conditions must be based on objective criteria,
- conditions must be transparent, and published in an appropriate manner,
- conditions must guarantee equality of access, and must be nondiscriminatory, in accordance with Community law.

2. ONP conditions must be based on essential requirements, within the framework of Community law. These essential requirements are:

- security of network operations,
- maintenance of network integrity,
- interoperability of services, in justified cases,
- protection of data, in justified cases,
- the essential requirements in general applicable to the connection of terminal equipment to the network.

3. ONP conditions must not allow for any additional restrictions on the use of the public network and/or public services except those which may be derived from the exercise of exclusive or special rights granted by Member States, and are compatible with Community law.

4. The Council, acting by a qualified majority on a proposal from the Commission shall supplement as necessary the lists drawn up under 1 and 2.

Article 4

1. ONP conditions shall be defined in stages, in accordance with the procedure set out hereafter.

2. ONP conditions shall concern the areas listed in Annex 2.

The Council, acting by a qualified majority on a proposal from the Commission, shall supplement as necessary this list.

3. The priority areas for which ONP conditions shall be drawn up initially are listed in Annex 3.

The Commission shall draw up each year, after consulting the Committee referred in Article 9, an updated list of priority areas.

4. For the priority areas chosen, the Commission shall:

- (1) carry out a detailed analysis, in consultation with the Committee referred to in Article 9, according to defined time schedules, and establish reports on the results of this analysis;
- (2) request, on the basis of the reports on this analysis, taking into consideration the comments received during the public comment period according to Article 5 (1), and with due regard to the general programme of standardization in the information technology sector, the European Telecommunications Standards Institute (ETSI) to draw up European standards, taking account, as appropriate, of international standardization as a basis for harmonized technical interfaces and/or service features where required, within specified time limits; in so doing, it shall coordinate, in particular, with the Joint European Standards Institution CEN—Cenelec;
- (3) draw up ONP conditions in accordance with the elements listed in the ONP reference framework in Annex 4, based on the general principles and requirements set out in Article 3.

Article 5

1. The Commission shall invite, by publication in the *Official Journal of the European Communities*, public comment by all parties concerned on the reports established according to Article 4 (4) (1). The period for public comment will be no less than three months from the date of publication.

2. Reference to European standards drawn up as a basis for harmonized technical interfaces and/or service features for ONP according to Article 4 (4) (2) shall be published in the *Official Journal of the European Communities*.

Article 6

Following the completion of the procedures set forth in Articles 4 and 5, and acting by a qualified majority on the proposal from the Commission, the Council shall adopt detailed directives for the establishment of ONP conditions for each area which shall include:

- a time schedule for the implementation of harmonized technical interfaces and/or service features where required, including the implementation of harmonized public network termination points, as appropriate,
- details of harmonized usage conditions,

— details of harmonized tariff principles,

and any other aspects of relevance.

Article 7

1. Depending on the progress of harmonization of conditions through the establishment of ONP according to the procedures set out under Articles 4, 5 and 6, the Council acting by qualified majority on a proposal from the Commission shall adopt measures specifying the conditions under which the mutual recognition of declaration and/or licensing procedures for the provision of services via public networks shall be ensured where such declaration or licence is required by Member States.

The measures shall eliminate any requirement for additional declaration or licensing in other Member States, once a service is legally produced in a Member State.

2. Towards this end, the Council acting by a qualified majority on a proposal by the Commission shall adopt measures for harmonizing declaration and/or licensing procedures, where required.

3. In accordance with Article 8c of the Treaty, these proposals may take into account, to the extent required up to the end of 1992, the effort that certain economies, showing differences in development of these services, will have to sustain during the establishment of the harmonized conditions and declaration and/or licensing schemes referred to under 1 and 2.

Article 8

During 1992, the Council, on the basis of a report by the Commission, shall review the effect on the working of the internal market of any remaining conditions for access to telecommunications services which have not been harmonized, taking account of technological development and in accordance with the general procedure foreseen under Article 100b of the Treaty.

Article 9

1. The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission. This committee shall be the Senior Officials Group on Telecommunications (SOG-T).

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft,

within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

4. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 10

1. Member States shall bring into force the laws regulations and administrative provisions necessary in order to comply with this Directive by ... at the latest. They shall forthwith inform the Commission thereof.

2. Member States shall ensure that the texts of the provisions of national law which they adopt in the field governed by this Directive are communicated to the Commission.

Article 11

This Directive is addressed to the Member States.

ANNEX 1

Bodies fulfilling the criteria of Article 2 (1)

Belgium

Régie des Télégraphes et des Téléphones / Regie van Telegrafie en Telefonie

Denmark

Københavns Telefon Aktieselskab
Jydsk Telefon
Fyns Kommunale Telefonselskab
Post- og Telegrafvæsenet
Statens Teletjeneste

Federal Republic of Germany

Deutsche Bundespost

France

Direction Générale des Télécommunications (France Télécom) and Transpac

Greece

Ote / Hellenic Telecommunications Organization

Ireland

Telecom Eireann

Italy

Amministrazione delle Poste e delle Telecomunicazioni
Azienda di Stato per i Servizi Telefonici
Società Italiana per l'Esercizio Telefonico SpA
Italcable
Telespazio SpA

Luxembourg

Administration des Postes et des Télécommunications

The Netherlands

Post, Telegraaf en Telefoon

Portugal

Correios e Telecomunicações de Portugal
Telefones de Lisboa e Porto
Companhia Portuguesa Radio Marconi

Spain

Compañía Telefónica Nacional de España

United Kingdom

British Telecommunications plc
Mercury Communications Ltd
City of Kingston-Upon-Hull

*ANNEX 2***Areas for which open network conditions are to be drawn up in accordance with Article 4 (2)**

ONP conditions shall be drawn up progressively for the following areas:

Access to network resources:

- leased lines,
- new types of access to the local network infrastructure, such as access, under certain conditions, to the circuits connecting subscriber premises to the public network exchange, without disruption to the basic service for which this connection may be provided (e.g. telephony, telex),
- ISDN (Integrated Services Digital Network) network resources,
- broadband network resources, according to progress on definition and technological development.

Access to basic switched services intended for general public use:

- voice telephony service,
- telex service,
- circuit switched public data services,
- packet switched public data services,
- ISDN (Integrated Services Digital Network) services, as applicable,
- mobile services, as applicable,
- broadband services, as applicable and according to progress on definition and technological development.

*ANNEX 3***Priority areas for which ONP conditions shall be drawn up initially in accordance with Article 4 (3)***Access to:*

- leased lines,
- packet switched public data services,
- ISDN network resources and services, as applicable.

*ANNEX 4***Reference framework for the elaboration of ONP conditions in accordance with Article 4 (4) (3)**

The elaboration of ONP conditions should proceed according to the following reference framework:

1. Definition of harmonized technical interfaces and service features

For ONP conditions the following scheme should be taken into account for the definition of technical interfaces at appropriate termination points:

- for existing services, existing interfaces should be adopted. Enhancement of such interfaces may be considered for additional capabilities,

- for entirely new services existing interfaces should also be adopted, as far as applicable. When existing interfaces are not suitable, enhancements, or new interfaces, will have to be specified,
- for services and networks that are yet to be introduced, but for which the standardization programme has already commenced, ONP requirements should be taken into account when specifying new interfaces.

ONP requirements must be, wherever possible, in line with the on-going work on CCITT and CEPT recommendations.

Work in this area shall take full account of the framework given by Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulations, Council Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment and Council Decision 87/95/EEC on standardization in the field of information technology and telecommunications.

Work shall include the full definition of network termination points where required and not covered under appropriate procedures elsewhere.

ONP offerings shall in general present increased versatility compared with existing offerings. Correspondingly, additional features should be identified where required.

Under ONP such additional features may be classified as:

- inclusive if they are provided in association with a specific interface and included in the standard offering,
- optional if they can be requested as an option with regard to a specific ONP offering, subject to an additional tariff.

Work shall include the elaboration of proposals for time schedules for introduction of interfaces and service features, taking account of the environment of telecommunications networks and services in the Community.

2. *Definition of harmonized usage conditions*

Usage conditions shall identify conditions of access and of supply, as far as required.

They may include in particular the following attributes as applicable:

- maximum provision time (delivery period),
- minimum contractual period,
- quality of service, including, as applicable:
 - availability,
 - mean time to repair,
 - transmission quality,
- maintenance and fault reporting, including, as applicable:
 - access to network maintenance facilities,
 - access to network diagnostic facilities,
 - access to network fault reporting facilities,
- conditions for resale of capacity,
- conditions for shared use,
- conditions for third party use,
- conditions for interconnection with public and private networks.

Usage conditions may include conditions regarding access to frequencies, as applicable, and measures concerning protection of personal data and confidentiality of transactions, where required.

3. *Definition of harmonized tariff principles*

Fair and open access of users and competitive service providers to network resources and services requires a clear definition of tariff principles. Tariff principles must be guided by the general principles applying to ONP:

- tariffs must be based on objective criteria and must not impose directly or indirectly unfair purchase or selling prices. They must be, in particular, cost-oriented,
- tariffs must be transparent and must be properly published. With regard to service elements, tariffs must be sufficiently unbundled, in order to avoid obligations and charges for users, which have no connection with the subject of the uses sought. In particular, specific network or service features should be charged independently of the charge for transmission via the network (bearer capability),
- tariffs must be non-discriminatory and guarantee equality of treatment.

Specific charges for access to network resources or services must be justified on the basis of objective criteria, based on, *inter alia*, fair sharing in the global cost of the resources used.

4. *Common principles*

The definition of harmonized usage conditions and tariff principles under 2 and 3 will take due account of the applicable competition rules of the Treaty.
