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# Information and Notices

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I

*(Information)*

# COMMISSION

## Ecu (1)

**19 October 1995**

(95/C 275/01)

Currency amount for one unit:

| | | | |
|---|---|---|---|
| Belgian and Luxembourg franc | 38,4321 | Finnish markka | 5,61303 |
| Danish krone | 7,25748 | Swedish krona | 8,95340 |
| German mark | 1,86815 | Pound sterling | 0,840090 |
| Greek drachma | 306,849 | United States dollar | 1,31978 |
| Spanish peseta | 161,555 | Canadian dollar | 1,76613 |
| French franc | 6,56196 | Japanese yen | 132,968 |
| Irish pound | 0,822089 | Swiss franc | 1,52118 |
| Italian lira | 2108,72 | Norwegian krone | 8,22422 |
| Dutch guilder | 2,09238 | Icelandic krona | 85,4295 |
| Austrian schilling | 13,1477 | Australian dollar | 1,75270 |
| Portuguese escudo | 196,872 | New Zealand dollar | 2,00422 |
| | | South African rand | 4,81753 |

The Commission has installed a telex with an automatic answering device which gives the conversion rates in a number of currencies. This service is available every day from 3.30 p.m. until 1 p.m. the following day.

Users of the service should do as follows:

— call telex number Brussels 23789;

— give their own telex code;

— type the code 'cccc' which puts the automatic system into operation resulting in the transmission of the conversion rates of the ecu;

— the transmission should not be interrupted until the end of the message, which is marked by the code 'ffff'.

*Note:* The Commission also has an automatic telex answering service (No 21791) and an automatic fax answering service (No 296 10 97) providing daily data concerning calculation of the conversion rates applicable for the purposes of the common agricultural policy.

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(1) Council Regulation (EEC) No 3180/78 of 18 December 1978 (OJ No L 379, 30. 12. 1978, p. 1), as last amended by Regulation (EEC) No 1971/89 (OJ No L 189, 4. 7. 1989, p. 1).

Council Decision 80/1184/EEC of 18 December 1980 (Convention of Lomé) (OJ No L 349, 23. 12. 1980, p. 34).

Commission Decision No 3334/80/ECSC of 19 December 1980 (OJ No L 349, 23. 12. 1980, p. 27).

Financial Regulation of 16 December 1980 concerning the general budget of the European Communities (OJ No L 345, 20. 12. 1980, p. 23).

Council Regulation (EEC) No 3308/80 of 16 December 1980 (OJ No L 345, 20. 12. 1980, p. 1).

Decision of the Council of Governors of the European Investment Bank of 13 May 1981 (OJ No L 311, 30. 10. 1981, p. 1).

# Communication by the Commission to the European Parliament and the Council on the status and implementation of Directive 90/388/EEC on competition in the markets for telecommunications services

(95/C 275/02)

**(Text with EEA relevance)**

## I. INTRODUCTION

### The purpose

Commission Directive 90/388/EEC was published on 28 June 1990 (hereafter referred to as either 'the Services Directive' or 'the Directive'). It has come to be identified as a cornerstone of the EU framework for liberalizing the European telecommunications market. The Council, in its resolution of 22 July 1993 [1] emphasized the importance of rapid implementation. The resolution noted that 'there is a need for rapid and effective implementation of the current regulatory environment, in particular Directive 90/388/EEC'.

It is within this context that the Commission submits this communication on the status and implementation of the Directive [2].

The communication has three related purposes [3]:

(i) description and explanation of the current state of implementation;

(ii) identification and clarification of central issues;

(iii) placing the Directive in the context of the package of reforms focused on the 1998 deadline, according to the 1993 Council resolution which 'supports the Commission's intention to prepare, before 1 January 1996, the necessary amendments to the Community regulatory framework in order to achieve liberalization of all public voice telephony services by 1 January 1998'.

### The context

The Services Directive set down four dates by which specific provisions had to be implemented:

— 31 December 1990, for the opening up to competition of telecommunications services other than voice telephony and the simple resale of capacity,

— 1 July 1991, for putting in place an independant body responsible for the granting of licences and the surveillance of usage conditions,

— 30 June 1992, for the notification of any licensing or declaration procedures for the provision of packet or circuit-switched data services for the public,

— 31 December 1992, for the opening up to competition of the simple resale of capacity [4].

Parliament resolution A3-0113/93 of 20 April 1993 called on the Commission to prepare the liberalization of both intra-Community as well as domestic voice telephony and to adopt as soon as possible the necessary measures to take full advantage of the potential of the existing infrastructure of cable networks for telecommunications services and to abolish without delay the existing restrictions on the use of cable networks for non-reserved services as well as to adopt measures to obtain optimum utilization of the cross-border telecommunications networks of railway operators and electricity producers [5].

Council resolution 93/C 213/01 set out a timetable for the development of telecommunications and confirmed the date of

— 1 January 1998 for the liberalization of voice telephony services for the general public [6].

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(1) Council resolution 93/C231/01.

(2) This communications does not cover related subjects of EU telecommunication policy such as the application of open network provision to leased lines. These subjects are covered extensively in other recent communications. See Green Paper on the Liberalization of telecommunications infrastructure and cable television networks, Part I/II, COM(94) 440; COM(94) 682 and communication on Present status and future approach for open access to telecommunications networks and services (open network provision), COM(94) 513.

(3) It should be noted that this communication does not replace in any way the formal procedures foreseen under the Treaty to ensure the full implementation of Community Law.

(4) The Directive also foresaw the possibility of granting deferment, until 1 January 1996, of the date for prohibition on the simple resale of capacity in those Member States in which the network for the provision of the packet or circuit switched services was not yet sufficiently developed.

(5) OJ No C 150, 31. 5. 1993, p. 42.

(6) Although some Member States with less developed networks (i.e. Spain, Ireland, Greece and Portugal) are granted an additional transition period of up to five years. Very small networks (Luxembourg) can also, where justified, be granted a period of up to two years.

On 17 November 1994 the Council adopted a further resolution confirming the date of

— 1 January 1998 also for the liberalization of telecommunications infrastructure (7).

Following the Commission's action plan of 19 July 1994, published under the title 'Europe's way to the information society, an action plan' (8), the Union is now profoundly engaged in the policy of implementing the information society. These resolutions, the conclusions of the European Council at Corfu (9) as well as the communication by the Commission on the consultation on the Green Paper on Mobile and personal communications (10) and the results of the ongoing consultation on the Green Papers on Infrastructure (part I/II) (11) will set a framework for carrying forward the further amendments to the services Directive towards the full liberalization of the telecommunications sector. In this context, ongoing review of the actual situation in the Member States will be increasingly important in the years leading up to the deadline.

## II. CURRENT STATUS OF IMPLEMENTATION

### (a) General comment

Member States were required to implement the provisions of the Directive and to communicate to the Commission the relevant measures adopted, by 31 December 1990, 1 July 1991 and 31 December 1992 (12). All Member States, but two, complied with the notification requirements (13). In order to assess effective implementation of Directive 90/388/EEC in the various Member States however, a checklist identifying the essential constituent elements was established. Although this does not represent an exhaustive list, progress in effective implementation can best be measured against the following issues (14):

— definition of 'voice telephony' for which currently exclusive and special rights can still be maintained according to the provisions of the Directive (15),

— continuation of any other exclusive rights;

access by service providers to transmission/routing on PSTN and leased lines;

conditions imposed via any licensing or declaration scheme in existence;

transparency and openness of procedure for granting authorization,

— conditions for simple resale of leased capacity for data communications;

notification (within deadline) of any special licensing regime regarding such resale;

justification of any special regime (16),

— conditions of open access to public networks (formal and effective);

availability of leased lines within a reasonable time;

justification for usage restrictions (if any) on leased lines,

— justification for any restrictions on the processing of data (before or after public network transmission (17);

ensurance by the Member States of non-discrimination in usage conditions and charges between service providers (including the TO),

— separateness and independence of effective and operational regulatory body;

inclusion within its tasks of: granting licences, surveying usage conditions; control of type ap-

(7) With derogations as above, see Council resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures, (94/C 379/03); OJ No C 379, 31. 12. 1994, p. 4.

(8) COM(94) 347.

(9) Conclusions of the European Council, Corfu, 24-25 June 1994.

(10) Towards the personal communications environment: Green Paper on a Common approach in the field of mobile and personal communications in the European Union (COM(94) 145 final).

(11) Op. cit.

(12) As mentioned, the exceptions to the 31. 12. 1990 deadline relate to (a) specifications regarding simple resale of data services, 31. 12. 1992; and (b) the setting up of an independent regulator, 1. 7. 1991.

(13) Italy (provisions only included in the *Legge Comunitaria* 1994 are incomplete), and Greece (measures necessary to render the independent regulatory authority operational have still not been notified).

(14) For the issues listed see in particular Articles 1, 2, 3, 4, 5, 6 and 7 of the Directive.

(15) Subject to the time deadlines set by the Council resolution of 22 July 1993.

(16) i.e. by the provisions set down in Articles 2 and 3.

(17) They must be demonstrated as necessary for essential requirements or public policy.

proval and mandatory specifications, and allocation of frequencies.

On the basis of these points the Commission has found that the extent to which the Directive has been effectively implemented ([18]) throughout the Union still varies significantly between the Member States. Various Member States will need to undertake further measures before the Commission may consider the Directive correctly implemented ([19]).

(b) **Formal procedures**

As far as is possible the Commission has sought to deal with remaining implementation issues via bilateral communication and negotiation with the Member States concerned. This has proved particularly efficient (for both parties) where information requested is prompt and transparent, and where the will to find a workable solution rapidly is evident.

Where implementation problems cannot be solved by informal negotiation within a reasonable timeframe, the Commission is obliged to commence with the formal procedure for non-implementation of a Directive, as provided for by Article 169 of the Treaty ([20]).

Currently, a number of formal procedures are underway. Two concern Member States' failure to notify all required national implementing legislation ([21]). A further two concern incorrect application of the Directive in Member States ([22]).

([18]) Official notification does not necessarily mean effective implementation.

([19]) Section III of this communication goes into this in more detail. Comments on the individual Member States' progress is provided in the Annex.

([20]) Article 169 of the EC Treaty deals with failure to fulfil an obligation under the rules of the Treaty, including the implementation of Directives.

Under Article 169 of the Treaty, the procedure is as follows:

(i) The Commission sets out the points at issue by letter of 'formal notice' and invites the relevant Member State to submit its observations.

(ii) If the Member State does not put an end to the infringement, the Commission gives a (non-binding) reasoned opinion explaining its views and inviting the Member States to take the appropriate measures within a fixed period.

(iii) If the Member State does not comply with the reasoned opinion within the given period, the Commission may bring the matter before the European Court of Justice.

([21]) Italy and Greece.

([22]) Germany and Spain.

(c) **Extension to the European Economic Area and central and eastern European States**

In accordance with the EEA Agreement, the Services Directive (including amendments) also applies to the EEA Member States as of 1 July 1994 ([23]).

Since the Services Directive only specifies the application of Article 90 in conjunction with Articles 59 and 86 of the Treaty and the Europe Agreements and Interim Agreements which the Union has signed with six central and eastern European countries contain similar provision, the general principles of this Directive (and any amendments) are also of relevance to these countries.

## III. SPECIFIC IMPLEMENTATION ISSUES

Five main areas have emerged during the implementation of the Directive as requiring specific attention:

(a) general issues related to voice services;

(b) enforcement of the voice telephony monopoly;

(c) corporate networks and closed user groups (GUGs);

(d) data services for the public;

(e) the separation of operation and regulation.

(a) **General issues related to voice services**

Although the Directive defines in detail the concept of 'voice telephony' ([24]), various issues have arisen ([25]) over just what is considered to be 'voice telephony' in the

([23]) Under the Competition Annex (XIV) of the Agreement, Article 90 (3) Directives in the telecommunications field i. e. the Services Directive and the Terminals Directive (88/301/EEC) became applicable to the EEA Member States on 1 July 1994, as well as subsequent amending Directives, e. g. amending Directive 94/46/EEC with regard to satellite communications.

([24]) According to Article 1 of the Directive 'voice telephony means the commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point'.

([25]) See also European Court decision ECR-I 5833 which has guided the Commission in the elaboration of the definition of exclusive and special rights (see below).

individual Member States and, hence, the degree to which special or exclusive rights ([26]) on voice services had to be abolished ([27]).

According to the Services Directive, the Member States ensure the abolition of special and exclusive rights for the provision of telecommunication services other than the voice telephony service. In each case it has to be examined on the basis of the criteria set out below whether a given service is a voice telephony service. In order to allow the relevant national regulatory authorities to assess the envisaged service, the service providers may be required to provide all the necessary information ([28]).

A regulatory approach that identifies only a limited set of permissible, non-reserved services does not conform to the requirements of the Directive.

A voice service may be reserved under national legislation only if it includes all of the elements of the Community voice telephony definition, i. e. it must be provided on a commercial basis to the public for the purpose of direct transport and switching of speech in real time between public switched network termination points.

It is useful to consider the significance of each of these elements:

*'Commercial'*

This requires that the simple technical non-commercial provision of a telephone connection between two users should be authorized. 'Commercial' should be understood in the common sense of the word, i. e. provided against payment and with the intention of making a profit (or at least of covering all variable costs and making a contribution to existing fixed costs). A leased line, for example, made available on a cost-sharing basis between one or more users would only be considered a commercial activity if additional capacity were leased specifically to allow resale.

It also means that companies should be free to pool resources, i. e. to rent leased lines and benefit from the flat rate rental. This permits a more efficient use of the telephone network and, in particular, benefits small and medium-sized enterprises (SMEs) ([29]).

*'for the public'*

The term 'for the public' is not defined in the Directive and must be understood in its common sense: a service for the public is a service available to all members of the public on the same basis.

Particular examples of services which should not be considered 'for the public', and thus should not be made subject to special or exclusive rights, are those provided over corporate networks and/or to closed user groups. Corporate networks and closed user groups (CUGs) cover a number of telecommunications services, both voice and data. They are fundamental to the Services Directive particularly because they fall outside the scope of the voice service which Member States may reserve to their telecommunications organizations.

The particular issues associated with liberalization of these services are discussed in more detail below (IIIc).

([26]) According to Article 2 of amending Directive 94/46/EC (see Section IV):

'exclusive rights' means the rights that are granted by a Member State to one undertaking through any legislative, regulatory or administrative instrument, reserving it the right to provide a telecommunications service or undertake an activity within a given geographical area,

'special rights' means the rights that are granted by a Member State to a limited number of undertakings through any legislative, regulatory or administrative instrument which, within a given geographical area:

— limits to two or more the number of undertakings authorized to provide a service or undertake an activity, otherwise than according to objective, proportional and non-discriminatory criteria, or

— designates, otherwise than according to such criteria, several competing undertakings as being authorized to provide a service or undertake an activity, or

— confers on any undertaking(s), otherwise than according to such criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same telecommunications service or to undertake the same activity in the same geographical area under substantially equivalent conditions.

([27]) According to Article 2 of the Directive, 'Member States shall withdraw all special or exclusive rights for the supply of telecommunications services other than voice telephony ...'

([28]) This will in particular be the case concerning the provision of voice services to closed user groups on leased lines networks connected at different ends to the public switched network. In this case some national regulatory authorities request detailed information, such as clients targeted, draft advertisements, envisaged tariffs ..., to assess the nature of the envisaged service.

([29]) A disadvantage for SMEs existed previously because they do not generally use the switched telephone service sufficiently intensively to make it worthwhile for them to pay the (high) flat rate rentals for leased lines. As a consequence, leased lines were, in practice, reserved to larger companies.

*'from and to public switched network termination points'*

'From and to public switched network termination points' means that, to be reserved, the voice service has not only to be offered commercially and to the public, but also to connect two network termination points of the switched network ([30]) at the same time. As long as each customer of the service provider is connected via a dedicated leased line, it is possible to offer a commercial service which terminates on the public network ([31]). The aim is, again, to ease technical restrictions on the use of leased lines. In this way lines may be used for voice telephony offered to non-CUGs, as long as there is no commercial offer of 'simple resale' of the switched telephone service ([32]). On the other hand, 'simple resale' may be legitimate when the service is not offered to the public, but, for instance, is provided to a closed user group ([33]).

*'direct transport and switching of speech in real time'*

This part of the definition excludes any store and forward or voice mail applications from being reserved. Least cost routing of telephone calls by a service provider on the public switched network or credit card telephony, whereby access is given to the voice telephony service of a TO in the framework of a financial transaction service, are further examples of liberalized voice services as these do not constitute 'direct transport'.

Since the reservation of voice services is an exception to the general rule of competition, it must be interpreted narrowly. When new voice services and features are introduced and meet demand which is not satisfied by the current telephone service, they should normally be considered non-reserved. If they are defined as reserved, the burden of proof, as always should fall to the Member State to justify such a restriction ([34]).

Calling card services offer a specific example of services, which can, from the point of view of the users, be considered to be different from the reserved voice telephony service. They fall outside the definition in as much as the calling card service matches important needs which the (normal) voice telephony does not meet, for example as a result of additional features such as payment via credit or debit card, least cost routing, destination speed dialling etc. Where additional features such as these, rather than possible lower tariffs, are decisive in prompting users to use the calling card service instead of voice telephony, the service should be considered liberalized. The fact that a calling card market is emerging, although tariffs are in most cases higher than those of voice telephony ([35]), is evidence that there is a calling card market which is distinct from the voice telephony one. Calling card providers have developed this new market tailoring the services to the customers and billing them accordingly. This evolution creates new opportunities for the users in the Union and should not be delayed by restrictions aimed at preserving the traditional voice telephony market.

The prohibition of leased line routing for the provision of calling card services would put providers of calling card services at a competitive disadvantage in this market relative to calling card providers with own facilities. In the absence of the routing facility they are merely resellers of voice telephony and would have no

([30]) The public switched network is not formally defined in the Directive. It must be given its common meaning, i. e., the public switched telephone network (PSTN) which is the collection of switching and transmission facilities used by the telecommunications organization to provide the normal telephony service.

([31]) i. e. as long as they are connected via a dedicated leased line, customers of a liberalized voice service do not necessarily need to demonstrate a pre-existing legal or economic relationship with the recipients of their calls. This is often referred to as 'dial-out' service or 'one-ended' service.

([32]) 'Simple resale' refers to the situation where the call is both originated and terminated on the public switched network. It is, in this sense, offered to the general public since the local call may originate from any user of the public switched network and the customer itself is not connected by the service provider via a dedicated leased line.

([33]) Such a service may, indeed, include features requiring bypass such as teleworking, out of office hours calls diversion, paging, Centrex services or when small business units, whose call volume does not justify use of leased lines, need to communicate with each other.

([34]) To allow the relevant national regulatory authorities to assess the envisaged service, the applicants may be required to provide them with all the necessary information, including draft advertisements and envisaged tariffs lists, if any.

([35]) 'contrary to widespread belief, cost saving is not the main driver (for the development of calling card services). Indeed, calling card and international direct dial (IDD) tariff comparisons for calls originating from the EC reveal that convenience is the main driving factor for a service essentially targeted at business users'. See: New forms of competition in voice telephony services in the European Community, BIS Strategic Decisions, October 1993, study carried out for the European Commission.

Additional features, such as billing and usage convenience (no local currency required, operator speaking the same language) seem to be the main driving factor for this service.

control over their main costs. They could therefore hardly compete with the telecommunications operators (TOs). TOs have a further advantage in that they can offer their customers both voice telephony and calling card services and develop their card service by building on their database of high volume users.

Such a state of affairs would promote possible scenarios whereby national TO's offering calling card services would limit their offer to residents of their national territory without entering neighbouring geographic markets.

An individual assessment of the envisaged calling card service may, however, be necessary, in particular of the additional features offered, in order to determine the nature of the service and upon which market it will be offered. The criteria used should be the degree of functional interchangeability between the services and the possible barriers to substitution. Such assessment must take into account the specific circumstances of the markets concerned.

(b) **Enforcement of the voice telephony monopoly in a liberalized environment**

Since certain categories of voice services have been opened up to competition, and since such categories may not be defined in a rigidly technical sense, certain Member States feared that service providers would offer what is in effect 'voice telephony' and thereby by-pass the monopoly. In fact, experience has shown that such fears were not founded. The main reason is that such 'unofficial' by-pass will not occur to any significant extent without being noticed by the relevant Member State. A service which is offered to the public must be, *ipso facto*, public knowledge.

In particular, given that any commercial offer would normally involve advertising (of the services available) or, at the very least, issuing price lists, contracts and invoices, such by-pass should be evident from an early stage. Furthermore, any breach leading to a substantial diversion of traffic on to a competitor's network is rapidly detected by the public operator providing the competitor's leased line capacity. The TO would clearly have an interest in bringing the situation to the attention of the appropriate national regulatory authority.

In the framework of the licensing or declaration procedures, various Member States, however, still request the applicant to provide a description of the intended service. Where networks are connected to the public switched telephony network (PSTN), for example in the case of voice services provided on leased lines, Member States often require evidence of how the applicant will prevent dial-in and dial-out facilities being available at the same time. It should be noted that, under Article 4 of the Directive, technical restrictions may not be imposed on the service provider. It suffices that the service provider clearly sets out in the contracts, signed with its clients, the extent of services authorized.

New operators generally have shown that they will respect the voice telephony monopoly. Service providers do not want to take the risk of having their authorization revoked or having the national regulatory authority requesting the disconnection of the relevant leased lines and not being able to fulfil their obligations towards their clients. Many service providers did therefore, before starting their services, investigate first the matter with the national regulatory authorities or with the Commission services.

(c) **Corporate networks and closed user groups**

As mentioned, the special issue of corporate networks and/or closed user groups (CUGs) has been of particular importance amongst the issues encountered in the course of implementation of the Directive.

Effective liberalization of corporate networks and CUG services is, without doubt, critical for the development of advanced business communications and therefore the competitiveness of EU industry *vis-à-vis* its conterparts in Japan and the United States. It is, thus, a central goal of the Directive. The economics of competition, and markets themselves are becoming increasingly global. Where business is denied the clear benefits of lower cost, and increased quality and choice which competition ensures, it will ultimately either suffer from the competitive disadvantage this implies, or, where possible, will seek to relocate to a less restrictive environment.

In this context, the goals of the Directive have still not been achieved in a number of Member States. Two reasons for this are:

(i) disputes as to the extent of allowed 'membership' of CUGs, which are broader than strict corporate networks. This has led to lack of full or effective implementation of the Directive;

(ii) bottlenecks in the supply of capacity of the new service providers caused by restrictions on use of alternative infrastructure (this will addressed more fully in Section V).

The Commission has considered the cases where Member States have issued provisions under the Directive for authorizing the provision of voice to CUGs. Various definitions have emerged ([36]). On the basis of experience gained, the Commission will use the following definitions ([37]).

*'corporate networks'*

those networks generally established by a single organization encompassing distinct legal entities, such as a company and its subsidiaries or its branches in other Member States incorporated under the relevant domestic company law,

*'closed user groups':*

those entities, not necessarily bound by economic links, but which can be identified as being part of a group on the basis of a lasting professional relationship among themselves, or with another entity of the group, and whose internal communications needs result from the common interest underlying this relationship. In general, the link between the members of the group is a common business activity.

Examples of activities likely to fall into this category are fund transfers for the banking industry, reservation systems for airlines, information transfers between universities involved in a common research project, re-insurance for the insurance industry, inter-library activities, common design projects, and different institutions or services of intergovernmental or international organizations.

Services provided concerning such categories of networks or entities are fully liberalized according to the definition of 'voice telephony' in Article 1 of the Directive. Some Member States did, however, only authorize such services after further discussions with the Commission.

([36]) For country by country information, see Annex.

([37]) The Commission has acknowledged these definitions in its 'Green Paper on the liberalization of telecommunications infrastructure and cable television networks, Part I, Principles and Timetable', COM(94) 440 final, Brussels, 25. 10. 1994, p. 27.

(d) **Data services for the public** ([38])

Article 10 of the Services Directive provides that the Commission shall assess the effects of the measures adopted by the Member States regarding simple packet or circuit-switched data services under Article 3 of the Directive in 1994, to see whether any amendments need to be made to the provisions of that Article, particularly in the light of technological evolution and the development of trade within the Community.

During the consultation on the 1987 Green Paper, various Member States stressed the need for a special regime for basic switched data network services such as X.25 ([39]). No justification could be found for the maintenance of exclusive rights as regards the provision of such services *per se*. The Commission, however, acknowledged that developed data switching networks might have a structural effect on investments and regional planning, and could therefore qualify for a specific regime, set out in Article 3 of the Directive, in particular the application of public service specifications in the form of trade regulations relating to conditions of permanence, availability, and permanence of service.

Moreover, given the substantial difference between charges for use of the data transmission service on the switched network and charges for use of leased lines at the time of adoption of the Directive, Article 3 allowed that exclusive rights for data services which represented 'simple resale of capacity' ([40]) could be maintained until 31 December 1992, with possible additional deferments until 1 January 1996 for those countries where the relevant network for the provision of the packet or circuit switched services were not yet sufficiently developed ([41]). The aim was to allow that equilibrium in such charges would be achieved gradually. Two Member States ([42]) initially requested such an extension of deadline, although in neither case the request was maintained.

([38]) Article 1 defines 'packet and circuit-switched data services' as 'the commercial provision for the public of direct transport of data between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point'.

([39]) X.25 is a standard protocol for packet switched networks. Another advanced protocol for high speed data transfer is frame-relay.

([40]) The Directive defines the latter as 'the commercial provision on leased lines for the public of data transmission as a separate service, including only such switching, processing, data storage or protocol conversion as is necessary for the transmission in real time to and from the public switched network'.

([41]) Recital 11 of the Directive.

([42]) Greece and Spain.

As regards the special regime, only three Member States ([43]) notified draft specifications to the Commission before the deadline provided in the Directive, i.e. 30 June 1992. The Commission has assessed with the Member States concerned, whether the planned specifications were objective, non-discriminatory, transparent and proportionate to the aim pursued. These bilateral discussions were very useful and provided a basic experience of how a liberalized service can be regulated to guarantee certain public service objectives, without restricting competition. It appeared in particular that, given the different starting positions of incumbent operators and potential new entrants, special attention should be given to avoid burdening the latter in a way which could constitute a barrier to entry and which would confirm the market power of the dominant operator. In such cases Member States should not necessarily impose the same conditions on new entrants as imposed on the dominant public operator.

Over the last years, rapid technological evolution and, in particular, the development alongside the traditional X.25 of ATM ([44]), has undermined the traditional justifications for the current specific regime for basic data services. One can assume that in the near future X.25 public backbone networks will continue to co-exist with frame-relay-networks and the new emerging ATM-backbones. Applying the same service-specific regulation to such different technologies will prove difficult. It could delay new offers of virtual private networks and value-added services and thus limit technical progress in the area. Moreover the rationale behind quality or coverage obligations decreases with the increasing differentiation of the offer. The emergence of new services requires a degree of flexibility which cannot be steered by regulation.

The current specific schemes in force in three Member States also have an impact on trade between Member States. The limited number of applicants for authorizations under the current schemes in the three Member States can, in part, be explained by the fact that many providers of the relevant service prefer to limit their offer to CUG's instead of having to apply for a licence under these circumstances.

On the basis of its assessment, given that most of the Member States have not deemed it necessary to adopt specific schemes for data services, without noticeable negative effect as regards the public interest objectives pursued by these schemes, the Commission considers, that the requirement for applying specific public service specifications with regard to data services should be reviewed in the framework of the general adjustment of the telecommunications regulatory framework to be presented before 1 January 1996 according to Council Resolution 93/C 213/01, and that the termination of the current specific schemes for data services should be considered ([45]).

### (e) The separation of operation and regulation

The separation of the regulation of the telecommunications sector from the operation of the national telecommunications oganization was, without doubt, the most fundamental condition for achieving reform and liberalization of the EU telecommunications markets. Whatever institutional, legal or structural means may be used to achieve it, Article 7 ([46]) of the Directive requires that the Member States must separate telecommunications regulatory and operational functions.

([43]) Three Member States (Belgium, France and Spain) have adopted additional licensing conditions for the provision of simple resale for packet or circuit-switched services. In Spain, for example, there is a scheme regulating the granting of concessions for the provision of packet or circuit switched data services which does not tie in completely with the Commission's comments concerning this area. The scope of the Spanish scheme is too broad, since it applies to data services between 'network termination points' instead of 'termination points of the public switched network'.

Italy was also considering the adoption of additional conditions, but failed to implement the Directive within an appropriate timescale. Given that under the direct effect of Articles 2 and 3 of the Directive simple resale of capacity was liberalized in Italy without any further restrictions, the Italian government shall have to provide appropriate justifications for the reintroduction of any additional restrictions in that respect.

([44]) ATM: 'Asynchronous Transfer Mode', advanced high speed communications. See also Green Paper on the Liberalization of telecommunications infrastructure and cable television networks, *op. cit.*

([45]) However, such schemes may be required as regards the provision of voice telephony for the public, once liberalized. See licensing criteria proposed for licensing mobile and personal communications networks, as well as for fixed networks (Green Paper for Mobile and personal communications, Green Paper on the Liberalization of telecommunications infrastructure and cable television networks, *op. cit.*).

([46]) Article 7 requires Member States to ensure that 'from 1 July 1991 the grant of operating licences, the control of type approval and mandatory specifications, the allocation of frequencies and surveillance of usage conditions are carried out by a body independent of the telecommunications organizations'.

Whilst National Regulatory Authorities (NRAs) now formally exist in most Member States, the Commission considers that the degree of separation between these and those of the operator functions is still not sufficiently clear in at least five Member States ([47]).

This issue of the independence of the national regulatory authorities was raised in a number of preliminary referrals to the Court of Justice relating to Article 6 of Directive 88/301/EEC (the 'Terminals Directive'), which required Member States, as of 1 July 1989, to ensure that the fixing of technical standards as well as supervision of type approval, were carried out by bodies independent from public or private undertakings involved in the marketing of telecommunications equipment. In its judgments of 27 October 1993 ([48]), the Court found that this requirement had been infringed in France where, at that time, departments in the same Ministry were responsible for the commercial exploitation of the public network, and the fixing of technical standards, the supervision of conformity and the approval of terminal equipment.

Article 7 of the Services Directive to a large extent mirrors the wording of Article 6 of the Terminals Directive. The implementation by the Member States of the former must be considered in view of this past judgment. A mere legal or administrative separation between the functions — such as that between two services of a Ministry — would only be sufficient to comply with Article 7 under the following conditions:

— it must be shown that there is a 'real' separation,

— in particular, there must be financial independence of one from the other,

— any movement of personnel from the regulatory body to the operational body should be subject to special supervision.

Forms of structural separation offering a reasonable guarantee that such conditions would be upheld, include:

(i) the granting of the regulatory functions to a department of the relevant Ministry when the telecommunications undertaking is itself controlled by private shareholders; or

(ii) the granting of the relevant regulatory functions to a body, which is independent from the relevant Ministry (except for the contol of its accounts and the legality of its decisions) when the latter is also acting as sole or dominant shareholder of the operator or where a considerable State shareholding in the operator remains.

Alongside the legal guarantees and general rules implied by the Directive, actual practice and spirit are an important test of compatibility with Article 7. How 'independence' is actually achieved institutionally will therefore vary, to a certain degree, according to the legal tradition and experience in each Member State.

## IV. INCLUSION OF SATELLITE NETWORKS AND SERVICES DIRECTIVE 94/46/EC

On 13 October 1994, the Commission adopted Directive 94/46/EC. This Directive extends the Terminal Directive ([49]) to include satellite earth station equipment and extends the Services Directive to include satellite communications services ([50]).

([47]) For example, in the Netherlands, the regulation is carried out by the Ministry for Transport and Public Works through the Directorate-General for Post and Telecommunications. The Ministry is, however, also the majority shareholder of KPN which has still the exclusive right to install, maintain and operate the telecommunications infrastructure, and provides the mandatory services to each applicant.

Some questions have also been raised about how distinct a separation of powers exists between regulator and operator in Belgium, Spain and Greece. The Belgian Government has, however, stated its intention to respect the complete autonomy of the public operator Belgacom in the area of non-reserved services in response to Commission concerns. In Spain, the Director-General for Telecommunications (responsible for regulation) is also the Government Delegate on the Board of directors of Telefónica, although such a delegate could legally come from another Ministry.

In Greece, while functions have been fomally separated, the continuous movement of personnel from the operational body to the regulatory body makes the practical separation of these bodies unclear.

([48]) The cases Decoster et al (C-69/91) and Taillandier (C-46/90).

([49]) Commission Directive of 16 May 1988 on competition on the markets in telecommunications terminal equipment 88/301/EEC (OJ No L 131, 27. 5. 1988, p. 73).

([50]) Directive 94/46/EC constitutes the central measure for implementing the liberalization objectives for the satellite sector, set forth by Council resolution 92/C 8/01 (based on the Green Paper on Satellite communications, COM(90) 490).

Other measures in this field are Council Directive 93/97/EEC of 29 October 1993, relating to mutual recognition of type approval for satellite terminals and the proposal for a European Parliament and Council Directive on a policy for the mutual recognition of licences and other national authorizations for the provision of satellite network services and/or satellite communications services, COM(93) 652, 4. 1. 1994.

(a) **The significance of the amending Directive**

The aim of the Union's policy in the area of satellite communications, shared by the Council and the Commission, is to stimulate without delay greater use of satellite communications in the EU. This is particularly important given the widening gap between the delay in development of EU business satellite communications compared to that which its major competitors enjoy.

The Directive requires the abolition of all exclusive rights granted for the provision of satellite services, and the abolition of all special rights ([51]) to provide any telecommunications service covered by the Directive.

(b) **Voice telephony**

The amended Directive does not affect restrictions on offering voice telephony for the public via satellite network. However, this must not lead to technical restrictions. While recital 16 states that 'in the case of direct transport and switching of speech via satellite earth station networks, commercial provision for the public in general can take place only when the satellite earth station network is connected to the public switched network', this is merely a guide as to what is normally the case. It should not be understood as allowing technical restrictions to protect the voice telephony monopoly. The burden of proof that the new service actually constitutes 'voice telephony' rests with the regulator.

In fact, the provision of voice for closed user groups will often involve such connections with the public switched network, since some members of such groups will not be connected to the network via satellite stations ([52]).

(c) **Broadcasting services**

The status of broadcasting services are also unaffected by Directive 94/46/EC. One has, however, to distinguish between the content and the technical provision of broadcasting services. As mentioned in recital 17, the provision of satellite network services for the conveyance of radio and television programmes is, by its very nature, also a telecommunications service and there is therefore no justification for treating it differently from any other telecommunications service. The Directive, thus, makes a distinction between:

— the services provided by the carrier (transmission, switching and other activities) necessary for the conveyance of the signals, which are telecommunications services liberalized under the Directive, and

— the activities of those bodies which control the contents of the messages to be broadcasted, which are broadcasting activities falling outside the scope of this Directive.

Satellite broadcasting services wich should now be liberalized under this Directive therefore include services provided over telecommunications operator's feeder links from studios/events to uplink sites, as well as uplink services for point to point, point to multipoint, direct-to-home (DTH) satellite broadcast services and services to cable-head ends.

(d) **Access to space segment**

Member States are required by the Directive to abolish all restrictions on the offer of space-segment capacity on their territory.

This means that the Member States now must ensure that:

— any regulatory prohibition or restrictions on the offer of space segment capacity to any authorized satellite earth station network operator are abolished,

— any space segment supplier is authorized to verify within its territory that the satellite earth station network for use in connection with the space segment of the supplier in question, is in conformity with the published conditions for access to his space segment capacity.

([51]) Special rights is defined in the Directive as 'limiting the number of undertakings authorized to provide telecommunications services otherwise than according to objective, proportional and non-discriminatory criteria or designating otherwise than to such criteria several competing undertakings to provide such services'.

([52]) According to the definition given, closed user groups are indeed not to be defined technically, by the network to which their members are connected and which should not be accessible by third parties, but sociologically by the economic or professional relationship among their members.

In its communication of 10 June 1994 on satellite communications relating to the provision of — and access to — space segment capacity ([53]), the Commission announced its intention to use the competition rules to remove all national restrictions within the European Union on access to space segment. The discovery procedures set out in Article 3 of the Directive will, in particular, be implemented to gather the necessary information to achieve this purpose.

(e) **International satellite organizations**

The new obligations related to space segment do not directly affect the position of the telecommunications organizations as signatory of international organizations. However, Member States are obliged to ensure that there are no restrictive provisions in their national regulations which would have the effect of preventing the offer of space segment capacity in their territory by either another signatory of the relevant organizations or by independent systems. Similarly Member States are obliged to ensure that there are no regulatory or non-regulatory restrictions preventing space segment capacity already leased by a licensed operator in one Member State from being freely accessed from any other Member State. Such restrictions include those preventing parties other than the signatory in the Member State(s) concerned from verifying the technical and operations specifications of satellite earth stations.

Article 3 of Directive 94/46/EC requires Member States to communicate to the Commission, at its request, the information relating to international satellite organizations they possess on any measure that could prejudice in particular compliance with the competition rules of the EC Treaty. Recital 21 explains that this provision aims amongst others to monitor the review which is underway within these international organizations to improve access.

Article 3 of Directive 94/46/EC does therefore also not directly affect the position of the signatories. However, if it appeared that signatories continue to maintain mechanisms dissuading multiple access and thus favouring market sharing for the provision of space segment, the Commission would have to assess whether action should be taken under the competition rules of the Treaty against the relevant signatories.

The coupling of investment obligations and utilization could constitute such a dissuasive mechanism, where it dissuades signatories to market space segment by the threat of having to bear an increased investment share. Which international organizations, and in particular Eutelsat, operating in increasingly competitive markets, the current investment requirements will therefore, if they are not amended, have to be thoroughly assessed under the Competition rules.

(f) **Time table for implementation**

The Directive gives Member States nine months to inform the Commission of the measures taken to transpose the Directive into national law. The Member States should thus communicate to the Commission before 8 August 1995, a copy of the measures taken to abolish the current restrictions on the provision of satellite services, and of any licensing or delcaration procedure which is currently in force or is being drafted for the operation of satellite networks. The aim is to allow the Commission to assess whether these conditions are necessary with a view to satisfying essential requirements. The information provided to the Commission should include possible fees imposed as part of these authorization procedures as well as the criteria upon which these fees are based.

Recital 22 which mentions that the Commission will also take into account the situation of those Member States in which the terrestrial network is not yet sufficiently developed must be seen in the framework of this notification requirement. Member States which would deem necessary a deferment of the date of full application of the abovementioned provisions ([54]) should request it formally and with the necessary justification within the time period provided for the communication of the implementation measures of the Directive, i.e. before 8 August 1995. The Commission will then assess whether it should refrain from insisting on the immediate liberalization of the relevant satellite services. This would, however, not prevent possible actions in national courts brought by third parties in these Member States.

Given the wide variety of satellite services, the motivation given should, in the first place, include the list of satellite network services for which the deferment is requested, accompanied by estimates of the markets concerned.

It should further explain which services of the national telecommunications organizations would be affected, and on the basis of the turnover of these services and their contribution to the financing of the public network, a potential negative impact on the future development of the public network should be demonstrated.

The Commission will apply to the proportionality principle. The Commission will in any case insist on, for example, the liberalization of services which are economically insignificant.

([53]) COM(94) 210 final.

([54]) This derogation can apply up to 1 January 1966 at the latest.

## V. FUTURE EVOLUTION IN THE CONTEXT OF SERVICES AND INFRASTRUCTURE LIBERALIZATION

While major attention will have to continue to be paid to the full effective implementation of the Services Directive, the future development of the Directive must be considered within the overall context, which was determined by the review carried out according to the provisions of the Directive during 1992, leading to Council resolution 93/C 213/01 of 22 July 1993 on full service liberalization by 1 January 1998, now supplemented by Council resolution 94/C 379/03 of 22 December 1994, integrating infrastructure liberalization into this time schedule.

According to Council resolution 93/C 213/01 the Commission should

'... prepare, before 1 January 1996, the necessary amendments to the Community regulatory framework in order to achieve liberalization of all public voice telephony services by 1 January 1998.'

Given its central role in lifting the restrictions to competition and ensuring fair market conditions, amendments to the Services Directive will represent a focal point of these measures.

As set forth in the Green Paper (Part I) on telecommunications infrastructure liberalization ([55]):

under the Directive 90/388/EEC on competition in the markets for telecommunications services, the provision of all telecommunications services was opened to competition, subject to four significant exceptions:

— satellite services,

— mobile telephony and paging services,

— radio and TV broadcasting services to the public, and

— voice telephony services to the general public.

Directive 90/388/EEC in its original form did not address the use of alternative infrastructures and cable TV networks for the provision of liberalized services. Directive 90/388/EEC only required the removal of restrictions on the use of a single source of infrastructure, namely leased lines provided by the TOs, for the provision of liberalized services.

As regards the exceptions set out above, the following applies:

— Commission Directive 94/46/EC ([56]), amending Directive 88/301/EEC (telecommunications terminal equipment) and 90/388/EEC (telecommunications services) in particular with regard to satellite communications, adopted on 13 October 1994 has lifted the exception with regard to satellite services. As set out under IV, Member States are given nine months to communicate implementation measures taken.

— On 21 December 1994, the Commission adopted, for consultation, a draft amending Directive concerning the liberalization of the use of cable TV networks for the services already liberalized according to the Services Directive, providing for substantial opening of the further development of these networks, particularly with regard to multi-media.

— The Commission communication on the consultations following the Green Paper on Mobile and personal communications was published on 23 November 1994 ([57]). It proposed the lifting of all special and exclusive rights with regard to mobile services by 1 January 1996. The corresponding amendments to the Services Directive will have to be considered.

Finally, a major issue will be the adjustment of the telecommunications regulatory framework to the objectives of the Council resolutions of 22 July 1993 and 22 December 1994, integrating the date of 1 January 1998 for full liberalization (with additional transition periods for certain Member States), to be proposed before 1 January 1996. As set forth in the Infrastructure Green Paper (Part II) ([58]), such an approach must aim at creating the optimal environment for the future development of the European Union's telecommunications sector by combination of both competition policy and sector specific regulation.

([55]) Op. cit.

([56]) See Section IV.

([57]) COM(94) 492 final: communication to the European Parliament and the Council on the Consultation on the Green Paper on Mobile and personal communications.

([58]) Op. cit.

Besides the adjustment of the existing harmonization Directives in the telecommunications sector (such as ONP Directives) and the working out of proposals for maintaining universal service and ensuring interconnection, as well as the review of the institutional arrangements for regulating the sector, this will in particular require further adjustment of the Services Directive.

At the Council of 17 November, the Commission has welcomed the agreement on the date of 1998 as the deadline for the liberalization of infrastructure for all telecommunication services. It has also taken note of the concerns of a number of Member States expressed at this Council, to undertake early measures for the liberalization of alternative infrastructures for services already liberalized according to the Services Directive. This aspect will need further consideration.

## VI. CONCLUSION

Commission Directive 90/388/EEC represents the most significant legislative measure for liberalizing EU telecommunications to date. The Commission will ensure that maximum effort and resources are directed towards solving identified problems and filling gaps in implementation.

The 1992 Review revealed that the effectiveness of the measures liberalizing the telecommunications sector (concerning at that stage, in particular the liberalization of data communications, value-added services and the provision of data and voice services to corporate users and closed user groups) was questioned by many service providers and users of such services. It has also been understood that implementation of the Services Directive is hampered by the non-availability of infrastructure under reasonable conditions.

In particular, high tariffs for and lack of availability of the basic infrastructure over which liberalized services are operated or provided to third parties have delayed the widespread development of high speed corporate networks in Europe, remote accessing of databases by both business and residential users and the deployment of innovative services such as telebanking and distance learning. Additionally, the regulatory restrictions in many Member States still prevent the use of alternative infrastructure operated by third parties, such as cable TV-networks and networks owned by energy companies, railways, or motorways to meet their internal communications needs. Many user associations and companies have stressed that European business is less competitive, that innovative services are more slowly deployed and that the creation and development of pan-European networks and services is being delayed as a result.

The importance of effective and affordable infrastructure is increasingly recognized in political debate within the Member States themselves. The European Parliament has called on the Commission to adopt, as soon as possible, the necessary measures.

The continued bottleneck situation has been emphasized as a key obstacle to the development of the European information infrastructure in the report on Europe and the global information society. The action plan towards the European information society adopted by the Commission in response has set a general framework.

Further emphasis on effective implementation of the telecommunications Services Directive and its future evolution will take account of these general objectives. It is with this intention in mind, that the Commission transmits this communication to the European Parliament and to the Council.

*ANNEX I*

## MEMBER STATE IMPLEMENTATION OF DIRECTIVE 90/388/EEC

The following represents a short overview of the state of implementation of the Directive in individual Member States. Given the rapid development in this field, reference should be made to national regulatory authorities for more detailed information.

The overview does not include information with regard to implementation in the European Economic Area.

### BELGIUM

The Directive is implemented in Belgium by the law of 21 March 1991 (*). With regard to telecommunications it transforms the *Régie des Télégraphes et des Téléphones/Regie van Telegraaf en Telefoon* (RTT) into the public autonomous company Belgacom.

As regards the definition of the reserved service in the Belgian law, Article 68 defines the 'Telephone Service' as the telecommunications service intended for the direct carrying and real time switching of vocal signals at the start and at the destination of the connection points, including the services necessary for its operation. In letters of July 1991 and June 1993 the Belgian Government confirmed that it interprets the law in the way intended by the Directive.

Where a provider wishes to supply liberalized services, a list of non-reserved services can be established by Royal Decree which, by derogation, would automatically be authorized providing that the applicant informs the IBPT of the service. Thus far, however, the Commission is not aware of such a list. In its absence, the applicant must give the IBPT two months prior notice of its intention during which time the IBPT can oppose the provision of the service if it deems it contrary to the 1991 law. Article 89 (5) states that the IBPT must provide a reasoned decision if it refuses to authorize the provision of a service.

Belgium is one of three Member States to have adopted additional licensing conditions for the provision of packet or circuit-switched data services for the public. This is allowed under Article 3 of the Directive as long as the Commission approves the conditions, which it did in July 1993.

Under Article 85 of the 1991 Belgian Law, Belgacom can only refuse a user access to a leased line on the basis of the essential requirements recognized by Community Law. Further, as defined in the management contract (Article 21(3)), Belgacom must satisfy at least 90 % of the registered applications for ONP-leased lines within three months unless otherwise agreed with the customer.

With respect to the issue of the independence of Belgacom from the regulatory authority as required by Article 7 of the Directive, under the 1991 law regulatory powers are assigned to the Minister responsible (assisted by the national regulatory authority, *Institut Belge des Services Postaux et des Télécommunications*, IBPT). The Belgian Government has stated that it will respect the complete autonomy of Belgacom in the area of non-reserved services.

### DENMARK

The Directive has been implemented in Denmark by Law No 743 of 14 November 1990 and the Consolidating Order No 398 of 13 May 1992.

Under the Act, the Minister of Communications can grant a concession to TeleDanmark on the establishment and operation in relation to public radio and fixed services as well as of voice telephony, text and data communication, provision of leased lines, mobile communications and satellite services, and transmission of radio and TV programmes.

(*) *Moniteur Belge*, 27 March 1991, p. 6155 and corrigendum in *Moniteur Belge* 20 July 1991. The same law also implements the Directive on competition in the markets for telecommunications terminal equipment, Commission Directive 88/301/EEC.

An area of concern, and indeed the issue which led to the commencement of infringement proceedings against Denmark, was the definition of 'voice telephony' which is reserved to TeleDanmark. The initial law reserved all of the non-public transmission of traffic to TeleDanmark with the sole exception of voice telephony over leased lines between different legal entities (i.e. shared use). This clearly left too many restrictions on the usage conditions of leased lines in place, in contravention of the Directive.

The Commission closed its proceedings after the adoption by the Danish Government of Order No 905 of 2 November 1994 which allows anyone to provide domestic public voice telephony without requiring any form of authorization or declaration. As regards international calls, a license is required where calls originating from the PSTN are carried via leased lines and then returned back to the PSTN. Such licence is only granted for traffic to countries which have liberalized voice telephony.

The Order was adopted under Article 3 of the 1990 Danish Act, which entitles the Minister to issue regulations for the establishment and operation of services which are not covered by TeleDanmark's concession or special rights.

The rules to be applied to packet and circuit-switched data services after 31 December 1992 were stated in the Danish Order of December 1992. There is a slight discrepancy between the scope of these rules, and that intended by Article 3 of the Directive since the Order covers all data communications services.

## GERMANY

Two German laws adopted on 8 June 1989 define the legal framework for the provision of telecommunications services: the *Postverfassungsgesetz* (PVG), which delimits the organization and tasks of the Ministry for Post and Telecommunications and of *Deutsche Bundespost Telekom*; and an amendment of the *Fernmeldeanlagegesetz* (FAG), defining among other things, the monopoly retained by the State. The legal framework was substantially amended by the Law of 14 September 1994 *(Postneuordnungsgesetz — PTNeuOG)*, which came into force on 1 January 1995.

The new Act did not however alter the definition of the 'voice telephony' reserved to the DBP Telekom, although the Commission had in April 1994 drawn the attention of the German Government to the fact that it is broader than that in the Directive. Essentially three issues arise. Firstly, the definition uses the wording 'for third parties' as opposed to 'for the public'. As a consequence, the switching of voice for closed user groups is part of the monopoly. Secondly, the terms 'switching of voice' in the Law are interpreted in practice as including also mixed telecommunications (voice combined with data or images) in the monopoly, when the exchange of speech can technically be dissociated from data communication as is the case as regards videophony on ISDN. Finally, the definition covers all switching of voice, without distinguishing whether the voice both originates in and is switched to the public switched network. According to the Directive the switching of voice originating in a leased line network or switched to such a leased line network should not be reserved.

Following bilateral contacts, the first issue was provisionally settled to a large extent. The German Law (FAG) reserves voice telephony for third parties, which is more than voice telephony 'for the public' as allowed according to the Directive. To restore conformity between German and Community Law, the German Ministry for Post and Telecommunications, instead of changing the Law, used its licensing powers to allow by order *(Verfügung)* No 1/1993, of 6 January 1993 and 8/1993 of 13 January 1993, private companies to provide telephony to closed user groups. The order established a class license *(Allgemeingenehmigung)* for the provision of the service to entities which are economically integrated.

As regards Article 6 of the Directive, Section 29 TKV provides that a connection licence *(Anschalteerlaubnis)* is required for terminal equipment for connection to the network termination of transmission lines. The Commission views such a restriction as contrary to Article 6 of the Directive since it delays the use of equipment, already type approved, used in the switching and processing of signals (such as concentrators) to connect leased lines networks with the public switched telecommunications network. The issue has been raised with the German authorities which will abolish the relevant provision. In the meantime, the Ministry has granted a class connection licence (Vfg 269/1994).

The powers referred to in Article 7 of the Directive were until 31 December 1994 exercised by The Minister for Posts and Telecommunications. Under the new regime, the Ministry will be assisted by a Regulation Council *(Regulierungsrat)*, including representatives of the *Länder* and the Federal Parliament *(Bundestag)*. On the other hand, the government share in DBP Telekom, which was transformed into a joint stock company, will now be managed by a distinct office: the *Bundesanstalt für Post und Telekommunikation (BAnst PT)*.

## GREECE

Greece implemented the Directive by means of Law No 2075/92 of 21 July 1992, which has never been brought fully into effect as the Greek government failed to adopt the order setting out the internal working rules of the independent regulatory body set up by the Act. On 20 October 1994, this law was replaced by Law No 2246/94. The legislation does also not provide a complete regulatory framework and will necessitate further secondary legislation which has not yet been adopted.

Given the failure of the Greek Government to adopt timely implementation measures of the Services Directive the Commission has started proceedings before the Court of Justice under Article 169 of the Treaty.

Article 2 (15) of Law No 2246/94 defines 'voice telephony' using the same wording as the Directive. However, Article 3 (2) of the Law states as principle that voice telephony is reserved and acknowledges only in a second stage that all other services are liberalized. Consequently, there is a threat of a broader definition of the reserved voice telephony in Greece. Moreover, this Article makes the liberalization of these services subject to the condition that their provision is compatible with the proper fulfilment of the mission assigned to the public operator OTE.

Liberalized services are, according to this Article 3 (2), subject to either an individual licence or to a declaration, depending on the limit of the capacity of leased lines used. The threshold has not yet been established.

As regards simple resale of packet — and circuit — switched data transmission, Greece applied by letter of 7 February 1992 for the derogation until 1 January 1996 under Recital 11 of the Directive. After the adoption of Law No 2075/92, which did not distinguish packet and cricuit-switched data transmission from other liberalized telecommunications services, Greece confirmed by letter of 27 May 1993, that it did no longer seek such a derogation and that packet and circuit-switched data transmission was liberalized.

According to Law No 2246/94, the independent regulatory authority referred to in Article 7 of the Directive, is the National Telecommunications Commission (EET), under the supervision of the Minister of Transport and Communications. The EET is the relevant authority for frequency allocation, numbering, licensing and type approval, as well as for ensuring compliance with national and EEC Treaty competition rules. It is not yet operational. In the mean time, the Ministry exercises its competence.

## SPAIN

The *Ley de Ordenación de las Telecomunicaciones,* Law No 31/1987 of 18 December 1987, ('LOT') is the legislation in force relating to telecommunications activities in Spain. In light of the Directive, the LOT has been amended by Law No 32/1992 of 3 December 1992, which limited the reserved services to the basic telephone service, telex and telegrams, and a Royal Decree 804/1993 of 28 May 1993 implementing Article 3 of the Directive as regards basic data switching services.

As has been the case in some other Member States, the major issue in the Directive's implementation has concerned the definition of voice telephony and, hence, the reserved area. The LOT defines 'basic voice telephony', in paragraph 15 of its Annex, in terms identical to the definition of 'voice telephony' in the Directive. However, following a complaint to the Commission, it seems that the Spanish authorities' understanding of this definition was not so clear and that, although defined in the Law, an administrative order would be required to define further Telefónica's basic voice telephony monopoly. This definition is not yet adopted.

Spain originally requested an extension period for exclusive rights for simple resale, as allowed under Recital 11 of the Directive, although such a request was not maintained. As regards the grant of concessions for the provision of packet or circuit switched data services, a scheme for its regulation was created by the Royal Decree of 28 May 1993. The draft had been notified to the Commission, but the text adopted did not take account of all the Commission's remarks. Issues relevant to this, particularly regarding the scope of the scheme, are being further discussed with the Spanish authorities.

The regulatory powers referred to in Article 7 of the Directive are the responsibility of the Directorate-General for Telecommunications (DGT). The DGT was created by Royal Decree of 19 June 1985. It grants concessions, authorizations and administrative licences for equipment and services. The Director-General for telecommunications is, however, also the Government Delegate on the Board of Directors of Telefónica. He has the right to veto decisions of the Board on grounds of public policy. Moreover, Article 15 of the LOT allows for the appointment by the Government of five other members of the Board.

## FRANCE

The French government has implemented the Directive mainly through the adoption of Law No 90-1170 of 29 December 1990 on the regulation of telecommunications. This Law is a modification of the *Code des Postes et Télécommunications* (the Code) which gives France Telecom an exclusive right to establish telecommunications network infrastructures open to the general public.

Article L.34 specifies that only services provided to the public are covered by the Law. Article L.32-7 of the Code defines reserved voice telephony as the commercial provision of a system of direct, real-time voice transmissions between users connected to termination points of a telecommunications network. All other services provided to the public are liberalized subject to a declaration procedure or, for services of 5 mbits/second or more, to a licensing procedure (60).

According to Article L.34-2, France Telecom is authorized to supply any bearer service (this is how the French regulation qualifies the provision of simple resale of packet or circuit-switched services). Other providers need a licence. France has adopted additional licensing conditions for the provision of such bearer-service. A final draft Decree for the application of Article L.34.2 relating to bearer services was transmitted to the Commission which decided, on 26 November 1992, not to object to its entry into force. The Decree was formally adopted on 30 December 1993 and published in the French Official Journal of 31 December 1993 (p. 18276). This decree sets out a number of conditions relating to:

— the essential requirements,

— the measurement and the publication of the characteristics and the area of coverage of the service (Article 2),

— the respect of technical constraints concerning access to the service (Article 3),

— the interconnection with other bearer services (Article 4),

— national defence and public security as regards the encryption of data (Article 5),

— fair competition.

The authorization of France Telecom to provide this service, cannot be transferred to its subsidiaries. Transpac, which is a subsidiary of the Compagnie Générale des Communications (Cogecom), itself a 100 % subsidiary of France Telecom, had therefore to request a licence which was granted by order of 15 July 1993 (French Official Journal of 8 August 1993, p. 11224).

As regards the separation of regulation and operation (Article 7), the Minister for Industry, Posts and Telecommunications and Foreign Trade ensures that the regulations are respected by the public operators and, furthermore, that the regulation of the telecommunications sector on the one hand, and the operation of networks and the provision of telecommunications services on the other hand, are performed independently. He exercises his rights through the 'Direction Générale des Postes et Télécommunications' (DGPT).

## IRELAND

Ireland has adopted specific regulations to give effect to the Directive. These are contained in 'Statutory Instrument S.I. No 45 of 1992, European Communities (Telecommunications Services) Regulations 1992' which have amended the Postal and Telecommunications Services Act, 1983.

(60) The following companies were granted a licence: SITA, BT, Sprint, Sligos, GSI, EDT and Esprit Telecom.

In the area of voice telephony, the definition of 'public voice telephony' expressed in S.I. No 45 mirrors that in the Directive. The exclusive right granted to Telecom Eireann under Section 87 of the 1983 Act is restricted to offering, providing and maintaining the public telecommunications network and offering, providing and maintaining voice telephony services under Regulation 3 (1) of S.I. No 45. Value-added licences can be obtained under Article 111 of the Act of 1983 for provision of any other service, including voice for closed user groups or voice services making use of only one connection point between leased lines and the public switched network. By end 1994, 20 such licences were granted.

Statutory Instrument No 45 of 1992 sets out the rights of these licensees as regards access to and use of the public telecommunications network. The conditions applied must be objective, non-discriminatory and published. Similarly, under Regulation 4 (3) of the S.I., requests for leased lines have to be met within a reasonable period, and there should be no restrictions on their use other than to ensure non-provision of telephone services, the security of network operations, the maintenance of network integrity and, in justified cases, the interoperability of services and data protection.

With respect to Article 7 of the Services Directive, The Minister for Transport, Energy and Communications is responsible for surveillance of Telecom Eireann according to Regulation 5 of S.I. No 45.

## ITALY

The Directive has been included in Law No 142 of 19 February 1992, *Legge Comunitaria* for 1991 (LC 1991), which delegated to the Government the power to issue, within one year after its coming into force (i.e. by 5 March 1993), a number of legislative decress for the implementation of the EEC Directives listed in Annexes A and B, including the Services Directive. The legislative decree implementing the Services Directive was, however, not adopted within this deadline. Subsequently, the Italian Government included the Services Directive in Article 54 of Law No 146 of 22 February 1994 (*Legge Comunitaria* 1993).

This Article repeats the specific principles and criteria to be followed in the preparation of the legislative decree implementing the Directive, which were mentioned in LC 1991. Consequently it still provides for a specific licensing procedure for the supply of packet or circuit-switched data services although the deadline set out in Article 3 of the Service Directive for the introduction of such scheme had already elapsed. Given that under the direct effect of Articles 2 and 3 of the Directive simple resale of capacity was liberalized in Italy without any further restrictions, the Italian government shall have to provide appropriate justifications for the reintroduction of any additional restrictions in that respect.

The legislative decrees have not been adopted yet, and the Commission is considering taking Italy to the Court of Justice for failure to notify the implementation measures of the Services Directive.

In the meantime, Article 1 of the Italian Postal Code of 1973, stating that 'telecommunication services ... exclusively pertain to the State' remains applicable although Article 2 of the Directive implies that this Article, as well as all other provisions setting out the state monopoly for telecommunications services, should be changed to allow private operators the right to provide all telecommunications services excluding well defined areas reserved to the State. According to the Italian legal framework, only value added services listed in Article 3 (paragraph 2) of the National Regulatory Plan for Telecommunications, enacted by a Ministerial Decree of 6 April 1990, may be provided.

However, in a decision of 10 January 1995, the Italian Antitrust Authority *(Autorità Garante)* stated, disregarding the mentioned Italian regulation, that a refusal of Telecom Italia to provide leased lines to a private company wanting to offer voice services liberalized under the Directive is an abuse of dominant position and requested Telecom Italia (*1) to present, within 90 days, the actions taken in order to remove the restrictions to competition in the market for voice services for corporate networks/closed user groups, including virtual private networks. The Antitrust Authority bases this decision on the direct effect of Articles 1 and 2 of the Services Directive in Italy. Telecom Italia has appealed against the decision.

(*1) Telecom Italia was created on 18 August 1994 out of a merger between SIP, Italcable, IRITel, Telespazio and SIRM.

With the implementation of Act 58/92 on the reorganization of the telecommunications sector, regulatory and operational functions were, in principle, separated by transferring the operating bodies of the Ministry, namely ASST, to Iritel, a company of the IRI Group. A bill on 'Public Utility Services Regulatory Authorities' (No 359) is currently pending at the Italian Parliament, which will, if adopted, create, *inter alia*, a regulatory body for post and telecommunications. However, no date is yet anticipated for its adoption.

## LUXEMBOURG

Two legislative acts were adopted in 1990 in order to implement the Directive, the Regulation *(Règlement grand-ducal)* of 3 August 1990 establishing the general rules applicable to public telecommunications services and the regulations of 8 October 1990 concerning public telephone service, telecommunications leased lines, public 'luxpac' service, public alarm transmission service and public automatic telephone service — Serviphone.

The Luxembourg authorities have, by letter of 22 October 1991, declared their intention to amend the definition of 'basic telephonic service' in the Regulation and add the term 'to the public'.

The Law of 20 February 1992 transformed the former *Administration des P&T* into a public undertaking with a separate legal identity, to comply with the requirement of Article 7 of the Directive to separate regulatory and operational functions. The Minister for Posts and Telecommunications exercises all regulatory responsibility in respect of the establishment and operation of the telecommunications networks.

## NETHERLANDS

The basic telecommunications legislation in the Netherlands (Act No 520 on the telecommunications facilities *(Wet op de Telecommunicatievoorzieningen)* ('WTV') of 26 October 1988, which came into force on 1 January 1989, was drafted before the publication of the Commission Green Paper of 1987. It therefore uses a terminology which is substantially different from the terminology used in the Directive.

Reserved voice telephony is defined in Article 2 of Decree No 551 of 1 December 1988 which lists the mandatory services of KPN (Koninklijke PTT Netherlands). According to the definition, the reserved service is not limited to a service which is provided on a commercial basis. Secondly, it does not limit the monopoly to voice telephony 'for the public'. Thirdly, it does not take into account whether the provision of the service implies the use of two connection points of the relevant leased lines. These issues have been discussed in bilateral contacts between the Dutch authorities and the Commission services. The Dutch authorities have subsequently published a notice on 30 May 1994 allowing voice services to closed user groups. However, the issue of voice services provided on leased lines and using only one connection with the public switched network is still under discussion.

The Ministry for Transport and Public Works *(Verkeer en Waterstaat)* is the body entrusted with regulatory responsibilities for telecommunications and it may give detailed instructions to KPN concerning the execution of the general Directives (BART) and the obligations relating to mandatory services. This ministerial responsibility includes general tariff policy for public telecommunications services (which, in application, is similar to 'price capping' in the UK).

## AUSTRIA

Austria implemented the Directive mainly through its Telecommunications Act *(Fernmeldegesetz)* Nr 908/1993, which entered into force on 1 April 1994. Austria has however not yet notified the implementing decrees of this law, nor the general usage conditions of the public network.

The reserved telephone service is defined in Articles 44(2) and 2(6) of the Act. This definition does not fully correspond to the definition in the Directive. However, no licenses are required for the provision of liberalized services. Conditions for access to the public network and use of leased lines will, under Article 44(6) of the Act be laid down in the general usage conditions *(Geschäftsbedingungen)*.

The public telecommunications operator is the *Post und Telegraphenverwaltung* (PTV). The law entrusts the regulatory tasks to the Ministry of Public Economy and Communications.

## PORTUGAL

As in the case of the Netherlands, the regulatory framework for telecommunications in Portugal predates the adoption of the Directive. The 'Basic Law on the Establishment, the Management and the Exploitation of Telecommunications Infrastructures and Services', Law 88/89, ('Basic Law') was adopted on 11 September 1989 before the adoption of the Directive. This explains in part why the terminology used often differs markedly from that of the Directive. This explains in part why the terminology used often differs markedly from that of the Directive. The Basic Law, and in particular the distinction between complementary and value added services, is technology-based rather than services-based.

On the issue of reserved services, the Portuguese legislation does not define services whose provision is reserved to public carriers as narrowly as the Commission Directive. Firstly, Article 2 (2) of the Basic Law defines 'telecommunications for public use' as all services which are designed to meet the generic collective requirements for transmitting and receiving messages and information. This is a broader definition than the concept of public in the Directive. It is true that the Basic Law lists telecommunications for private use in Article 2 (3) and that this list encompasses at point (h) 'other communications reserved for the use of specific public or private entities by means of an authorization granted by the government under the terms of treaties or international agreements or special legislation'. However, since the entry into force of the law, the Portuguese government has not adopted the necessary legislation to liberalize voice telephony or telex services provided for closed user groups. In September 1991, the Portuguese government announced the adoption of a ministerial order (diploma) on private networks to resolve this issue. By letter of 18 November 1993, the Portuguese authorities confirmed that they were still studying the issue and, in a subsequent bilateral meeting on 31 January 1994, no more precise undertaking on timing could be given.

Secondly, under Portuguese legislation voice telephony is defined more broadly than in the Directive. The Basic Law does not define voice telephony. The definition is included in Article 1 of the former Regulation of the Public Telephone Service annexed to the Decree *(Decreto-Lei)* 199/87 of 30 April 1987. The Basic Law refers to the technical operation of a fixed subscriber access system (which it defines as the set of transmission means located between a termination point and the first concentration, switching or processing node) without distinguishing between the situation, where this 'access system' is a leased line or the PSTN; nor does it take into consideration the number of connections to the leased line which may be used.

A third issue is the licensing conditions. According to the Directive, Member States may make the supply of telecommunications services subject to a licensing scheme, but only to warrant compliance with the essential requirements listed in the Directive. However, the Portuguese licensing scheme encompasses other obligations.

The liberalized services are divided in two categories: 'complementary telecommunications services' and 'value added services' according to a technical criterion: the use of own infrastructure, and in particular, concentration, processing and switching nodes. Therefore, most liberalized services come within the fixed complementary services category. The two types of services each have their own licensing conditions.

Article 4 (2) of the Directive require Member States to ensure that there are no restrictions on the use of leased lines except those justified by essential requirements or the existence of the voice telephony monopoly. Article 14 of the Basic Law appears more restrictive as it allows only the use of leased lines voice traffic to the suscriber's own use or to the provision of complementary and value added services, and even requires a licence for the shared use of leased circuits.

Portugal claims that its complementary services scheme (*Portaria* 930/92) is in accordance with Article 3 of the Directive. This issue is however not settled.

Portugal separated regulatory and operational functions in 1989. According to the Basic Law, the Ministry is responsible for supervising and monitoring telecommunications. This includes the planning and coordination of the national public infrastructure and services which are considered essential.

In practice the regulatory functions are delegated to the Institute for Communications of Portugal (ICP), leaving the Ministry to supervise the ICP and approve directives proposed by the ICP.

## FINLAND

The basic regulatory framework of telecommunications is the Telecommunications Act 87/183 *(Teletoimintalaki)*, which was amended in 1988, 1990 and 1992.

Under this framework, there are no more special or exclusive rights for the provision of telecommunications services, including voice telephony, in Finland. The whole telecommunications sector has been opened to competition. Public telecommunications networks are operated by organizations with an operating licence granted by the Government.

Article 10 of the Act sets out the rights and duties of subscribers and in particular the right to lease lines as well as to use them to provide telecommunications services or to sub-lease them to others.

Public switched data communications are subject to notification only (Article 5 (2) of the Act). In 1994, there were 63 organizations with operating licences and 13 notified organizations operating public switched data communications.

Articles 18 to 23 of the Act entrust the Ministry of Transport and Communications with the general supervision and promotion of telecommunications. The day to day enforcement of the Telecommunications Act is, however, entrusted to the Telecommunications Administration Centre, which is an agency under the Ministry of Transport and Communications. In principle the costs of the centre are covered by licence and inspection fees.

Telecom Finland is 100 % state-owned but operates at arms length from the Ministry of Transport and Communications, although the members of its board as well as the top executives are appointed by the Government.

## SWEDEN

There has never been a legal telecommunications monopoly in Sweden. The *de facto* monopoly of Telia ('Televerket' at the time) was the result of a commercial process.

The current regulatory framework of telecommunications is set out in the Telecommunications Act (Telelagen) of 1993. Under this Act there are no exclusive rights to provide telecommunication services (Article 2.1 and 4). Any operator has the right to obtain a licence and to supply telecommunications services. Reasons are given in case of refusals and Article 37 of the Act states that appeals against such refusals may be lodged with the administrative court of Appeal.

Licences are required only for the operation of public networks and the provision of leased lines. Other services are subject only to a registration procedure.

There are no restrictions on the processing of signals before or after transmission via the public network (Article 6.1), nor is there any discrimination in the conditions of use or in the charges payable (Article 6.2).

As regards the separation of regulation and operation (Article 7 of the Directive), the *Telestyrelsen* (telecom agency) is responsible for ensuring that regulations are respected by all operators. The agency was set up on 1 July 1992. Its functioning is laid down in Förording 1992:895. The agency may adopt sanctions, including the revocation of licences, against operators which do not comply with their obligation.

The agency is headed by a Director-General, under the supervision of a board, which is appointed by the Government. *Telestyrelsen* has responsibilities also in the defence area. The agency is financed through fees levied on the basis of gross turnover of licencees and parties which registered.

The main telecommunication operator in Sweden is Telia, which was incorporated as a private limited liability company on 1 January 1993 according to Law 1992:100. It is a 100 % publicly owned company, supervised by the Ministry of Transport and Communications.

UNITED KINGDOM

The legislation in force applying to telecommunications services is the 1984 Telecommunications Act which predates the Commission's Green Paper and Directive. The Act has been extended by a new policy building on the 1991 White Paper comprising amendments to existing licences, extensions of cable licences to include the provision of voice telephony services and the issuing of new licences.

UK legislation has generally preceded the Commission's Directive. For example, the exclusive rights of BT to provide the telecommunications services covered by Article 2 of the Directive were abolished in the UK by Section 2 of the Telecommunications Act of 1984. Section 5 requires all persons who run telecommunications systems to have a licence (which may be an individual or class licence).

As regards the provisions of Article 4 of the Directive, no precise definition of infrastructure, such as exists in Germany or the Netherlands has been set down. Section 4 of the TA instead defines a 'telecommunications system' as: a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electromechanical energy, of

— speech, music and other sounds,

— visual images,

— signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images, or

— signals serving for the actuation or control of machinery or apparatus.

The Secretary of State designates certain of these systems as 'public telecommunications systems'. Operators of public telecommunications systems are authorized by individual licences and are generally granted PTO status. Around twenty public fixed link operators have been granted such licences, as well as 126 cable TV franchisees.

The 1984 Telecommunications Act, in conjunction with the Wireless Telegraphy Act 1949 also ensures that the regulatory functions specified in Article 7 are carried out independently of the Telecommunications Operators. This is largely through the work of Oftel, a non-ministerial government department under the Director General of Telecommunications who, for the duration of his appointment, is independent of ministerial control.

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*ANNEX II*

## LIST OF NATIONAL REGULATORY AUTHORITIES IN THE FIELD OF TELECOMMUNICATIONS

The survey of the national regulatory framework of the Member States in Annex I has been drafted on the basis of the information officially notified to the Commission.

For more detailed information, interested persons should contact directly the national regulatory authorities of the Member States. The full address of these authorities were published in the *Official Journal of the European Communities* No C 277/9 of 15 October 1993.

| | |
|---|---|
| België/Belgique | Belgisch Instituut voor Postdiensten en Telecommunicatie (BIPT)/<br>Institut belge des services postaux et des télécommunications (IBPT)<br>Astronomielaan/Avenue de l'Astronomie 14<br>B-1000 Brussel/Bruxelles |
| Danmark | Telestyrelsen<br>Holsteingade 63<br>DK-2100 Kopenhagen Ø |

| | |
|---|---|
| Deutschland | Bundesministerium für Post und Telekommunikation<br>Postfach 80 01<br>D-53005 Bonn |
| Ελλάδα | Ministry of Transport<br>Sygrou 49<br>GR-Athen |
| España | Dirección General de Telecomunicaciones<br>5a. planta<br>Plaza de Cibeles S/N<br>E-28701 Madrid |
| France | Direction générale des postes et télécommunications<br>20, avenue de Ségur<br>F-75700 Paris |
| Ireland | Department of Transport, Energy and Communications<br>Scotch Hause,<br>Hawkins Street<br>IRL-Dublin 2 |
| Italia | Ispettorato generale delle telecomunicazioni<br>Viale Europa 190<br>I-00144 Roma |
| Luxembourg | Ministère des communications<br>18, montée de la Pétrusse<br>L-2945 Luxembourg |
| Nederland | Ministerie van Verkeer en Waterstaat<br>Hoofddirectie telecommunicatie en Post<br>Postbus 20901<br>NL-2500 EX 's-Gravenhage |
| Österreich | Bundesministerium für öffentliche Wirtschaft und Verkehr<br>Kelsenstraße 7<br>A-1030 Wien |
| Portugal | ICP<br>Av. José Malhoa, Lote 1683<br>P-1000 Lisboa |
| Suomi | Telehallintokeskus<br>Vattuniemenkatu 8 A<br>PL 53<br>FIN-00211 Helsinki |
| Sverige | Telestyrelsen (Telecom Agency)<br>Box 5398<br>S-10249 Stockholm |
| United Kingdom | DTI<br>151 Buckingham Palace Road<br>UK-London SW1 9SS |

III

*(Notices)*

# COMMISSION

## TACIS — computerized information system

## Notice of invitation to tender issued by the Commission of the European Communities financed in the framework of the TACIS programme

(95/C 275/03)

**Project title**

TACIS 94-nuclear safety programme - Rovno NPP - Tender No PA/NSP/ROV 94A

1. **Participation and origin**

Participation is open on equal terms to all natural and legal persons of the Member States of the European Community and of the beneficiary countries of the TACIS programme and who offer to supply goods and/or services from such countries.

2. **Subject**

Computerized information system for ROVNO NPP.

(Replacement of the existing monitoring system for 2 VVER 440 MW (V-213) NPP located in Kouznetsovsk near Rovno, in the Ukraine.)

3. **Invitation to tender dossier**

The complete tender dossier may be obtained, free of charge, from:

a) Fichtner GmbH & Co. KG, Sarweystrasse 3, D-70191 Stuttgart, for the attention of Mr B.-D. Tydecks, tel. (49) 711 89 95-254, facsimile (49) 711 89 95-459.

b) Offices of the Community:

A-1040 Wien, Hoyosgasse 5, Mr. Bernhard Kühr [Tel. (43-1) 505 33 79/505 34 91; Telefax (43-1) 50 53 37 97],

B-1040 Bruxelles, rue Archimède 73, Mr. J. van den Broeck [tél. (32-2) 295 38 44; télécopieur (32-2) 295 01 66],

D-53113 Bonn, Zitelmannstraße 22, Mrs. Streich [Tel. (49-228) 53 00 90; Telefax (49-228) 530 09 50],

DK-1004 København K, Højbrohus, Østergade 61, Mr. Bodil Stubbe, [tlf. (45) 33 14 41 40; telefax (45) 33 11 12 03],

E-28001 Madrid, calle Serrano 41, 5a planta, Mrs. Monica Moliner [tel. (34-1) 431 47 11; telefax (34-1) 577 29 23],

GR-10674 Athens, Vassilissis Sofias 2, Mrs. Yanna Theodorou [τηλ. (30-1) 725 10 00; τελεφάξ (30-1) 724 46 20],

F-75007 Paris Cedex 16, 288, boulevard Saint-Germain, Mrs Vesa Makkonen, [tél. (33-1) 40 63 38 38; télécopieur (33-1) 45 56 94 17/19],

FIN-00131 Helsinki, Pohoisesplanadi 31, Mr. De Rijk [tel. (358-0) 65 64 20; telefax (358-0) 65 67 28],

I-00187 Roma, via Poli 29, Mrs. Maffi [tel. (39-6) 69 99 91; telefax (39-6) 679 16 58/679 36 52],

IRL-Dublin 2, 39 Molesworth Street, Mr. Tim Kelly [tel. (353-1) 671 22 44; facsimile (353-1) 671 26 57],

L-2920 Luxembourg, bâtiment Jean Monnet, Mrs. Probst, [tél. (352) 43 03 23 84; télécopieur (352) 43 03 21 43],

NL-2595 AG Den Haag, E.V.D., afdeling PPA, Bezuidenhoutseweg 151, Mrs. Linda Madna [tel. (31-70) 379 75 84; telefax (31-70) 379 78 78],

P-1250 Lisboa, Centro Europeu Jean Monnet, Largo Jean Monnet 1-10º, Mrs. Sandra Ribeiro (Documentation Center) [tel. (351-1) 350 98 00; telefax (351-1) 350 98 90],

S-10390 Stockholm, Hamngatan 6, Mrs. Kerstin Lindkvist [tel. (46-8) 611 11 72; telefax (46-8) 611 44 35],

UK-London SW1P 3AT, Jean Monnet House, 8 Storey's Gate, Mrs Maureen Newman [tel. (44-171) 973 19 92; facsimile (44-71) 973 19 00/973 19 10].

4. **Tenders**

Tenders should arrive, at the latest, on 15. 12. 1995 (16.00), local time, at the following address:

Fichtner GmbH & Co. KG, Sarweystrasse 3, D-70191 Stuttgart, for the attention of Mr H. Wenzel/Mr B.-D. Tydecks.

Tenders will be opened in closed session. Tenderers must tender for the complete scope of supply. Tenders for single lots or sub-lots will not be considered.

## Phare — equipment for geothermal project

**Notice of invitation to tender issued by the National Fund for Environmental Protection and Water Management representing the Minister of Environmental Protection, Natural Resources and Forestry, on behalf of the Government of Poland for a project financed in the framework of the Phare programme**

(95/C 275/04)

***Project title and number:*** Supply of equipment for Zakopane geothermal project.

Project No EC/EPP/92/201.

1. ***Participation and origin:*** Participation is open on equal terms to all natural and legal persons of the Member States of the European Union or of the Phare beneficiary countries.

Supplies offered must originate in the above states.

2. ***Subject:*** Supply in 6 lots of the equipment for Zakopane geothermal project.

Lot 1: equipment for the geothermal base load plant.

Lot 2: preinsulated piping for geothermal water and district heating.

Lot 3: heat exchanger units for connection of single family houses.

Lot 4: heat exchanger units for conversion of medium-size users.

Lot 5: equipment for conversion of boiler plants to district heating.

Lot 6: casing tubulars for 2 geothermal wells.

3. ***Invitation to tender:*** The complete tender dossier may be obtained from:

a) Polimex-Cekop SA, Division HO, 7/9 Czackiego Street, PL-00-950 Warsaw, tel. (48-22) 62 37-550/548, (48-22) 26 75 09, facsimile (48-22) 26 55 27, (48 22) 26 04 93.

Against a written application and payment of a non-refundable charge of 400 PLN.

b) Commission of the European Communities, Directorate-General for External Relations, Operational Service Phare, Mrs Sonja Van den Nest (AN88-4/55), rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel, facsimile (32-2) 295 75 02.

c) Offices in the Community:

D-53113 Bonn, Zitelmannstraße 22 [Tel. (49-228) 53 00 90; Telefax (49-228) 530 09 50],

NL-2594 AG Den Haag, E.V.D., afdeling PPA, Bezuidenhoutseweg 151 [tel. (31-70) 379 88 11; telefax (31-70) 379 78 78],

L-2920 Luxembourg, bâtiment Jean Monnet, rue Alcide de Gasperi [tél. (352) 430 11; télécopieur (352) 43 01 44 33],

F-75007 Paris Cedex 16, 288, boulevard Saint-Germain [tél. (33-1) 40 63 38 38; télécopieur (33-1) 45 56 94 17],

I-00187 Roma, via Poli 29 [tel. (39-6) 678 97 22; telefax (39-6) 679 16 58],

DK-1004 København K, Højbrohus, Østergade 61 [tlf. (45) 33 14 41 40; telefax (45) 33 11 12 03],

UK-London SW1P 3AT, Jean Monnet House, 8 Storey's Gate [tel. (44-71) 973 19 92; facsimile (44-71) 973 19 00],

IRL-Dublin 2, 39 Molesworth Street [tel. (353-1) 671 22 44; facsimile (353-1) 671 26 57],

GR-10674 Athens, Vassilissis Sofias 2 [τηλ. (30-1) 725 10 00, τελεφάξ (30-1) 724 46 20],

E-28046 Madrid, paseo de la Castellana, 46 [tel. (34-1) 431 57 11; telefax (34-1) 576 03 87],

P-1200 Lisboa, Centro Europeu Jean Monnet, Largo Jean Monnet 1-10º [tel. (351-1) 54 11 44; telefax (351-1) 55 43 97],

S-10390 Stockholm, Post Box 7323 [tel. (46-8) 611 11 72; telefax (46-8) 611 44 35],

A-1040 Wien, Hoyogasse 5 [Tel. (43-1) 303 33 79/505 34 91; Telefax (43-1) 50 53 37 97],

FIN-00131 Helsinki, Pohjoisesplanadi 31, Post Box 234 [tel. (358-0) 65 6420, telefax (358-0) 62 68 71].

4. A clarification meeting will be held in public session on 13. 11. 1995 (10.00), local time, at the following address:

Geothemia Podhalanska SA, Olcza-Stachonie 2A, PL-34-502 Zakopane.

5. ***Tenders:*** Should arrive, at the latest, by 19. 12. 1995 (11.00), local time, at:

Polimex-Cekop S.A., Division HO, 7/9 Czackiego Street, PL-00-950 Warsaw.

They will be opened in public session on 19. 12. 1995 (12.00), local time, at:

Polimex-Cekop S.A., Division HO, 7/9 Czackiego Street, PL-00-950 Warsaw.

## Phare — computer and audiovisual equipment

## Notice of invitation to tender issued by the Ministry of Labour and Social Affairs of the Czech Republic and by the Commission of the European Communities within the framework of the Phare Programme

(95/C 275/05)

**Project title**

Labour Market Development CZ 9406-03-01-02

Supply of equipment to occupational-counselling and career-guidance departments of employment offices

1. **Participation and origin**

Participation is open on equal terms to all natural and legal persons of the Member States of the European Community or of Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic and Slovenia.

Supplies and services offered must originate in the above states.

2. **Subject**

The supply of computer and audiovisual equipment to occupational-counselling and career-guidance departments of employment offices in up to 80 districts of the Czech Republic. The supplier will be responsible for delivery, installation and basic 1-day training in the use of the equipment.

3. **Invitation to tender**

The complete tender documents may be obtained from:

a) Mr Petr Chudej, Director of Labour Market Programmes, Agency for Labour Market and Social Policy, Phare, Palackédo námesti 4, CZ-128 01 Prague 2, tel. (42-2) 24 97-25 70, facsimile (42-2) 24 97-23 20

b) European Commission, DGI/A/B3, Operational Service Phare, Ms Barbara Wolf, (AN88-4/21), rue de Loi/Wetstraat 200, B-1049 Brussels, facsimile (32-2) 295 16 05

c) Information offices of the European Union in all Member States:

D-5300 Bonn, Zitelmannstraße 22 [Tel. (49-228) 53 00 90; Telefax (49-228) 530 09 50]

NL-2594 AG Den Haag, EVD, afdeling PPA, Bezuidenhoutseweg 151, [tel. (31-70) 379 88 11; telefax (31-70) 379 78 78]

L-2920 Luxembourg, bâtiment Jean Monnet, rue Alcide de Gasperi [tél. (352) 43 03-1; télécopieur (352) 43 01-337 89]

F-75007 Paris Cedex 16, 288, boulevard Saint-Germain [tél. (33-1) 40 63 38 38; télécopieur (33-1) 45 56 94 17]

B-1040 Bruxelles, rue Archimède 73 [(32-2) 235 38 44; télécopieur (32-2) 235 01 66]

I-00187 Roma, via Poli 29 [tel. (39-6) 678 97 22; telefax (39-6) 679 16 58]

UK-London SW1P 3AT, Jean Monnet House, 8 Storey's Gate [tel. (44-171) 973 19 92; facsimile (44-171) 973 19 00]

DK-1004 København K, Højbrohus, Østergade 61, [tlf. (45) 33 14 41 40; telefax (45) 33 11 12 03]

IRL-Dublin 2, 39 Molesworth Street [tel. (353-1) 671 22 44; facsimile (353-1) 671 26 57]

GR-10674 Athina, Vassilissis Sofias 2 [τηλ. (30-1) 724 39 82, τελεφάξ (30-1) 724 46 20]

E-28046 Madrid, paseo de la Castellana 46, [tel. (34-1) 435 17 00/577 29 23; telefax (34-1) 576 03 87]

P-1200 Lisboa, Centro Europeu Jean Monnet, Largo Jean Monnet 1-10º [tel. (351-1) 154 11 44; telefax (351-1) 155 43 97]

A-Wien 1040, Hoyosgasse 5 [Tel. (43-1) 505 33 79; Telefax (43-1) 50 53 37 97]

FIN-00131 Helsinki, Pohjoisesplanadi 31, PO Box 234 [puh. (358-0) 65 64 20; telekopio (358-0) 65 67 28]

S-11147 Stockholm, PO Box 7323, Hammgatan 6 [tel. (46-8) 611 11 72; telefax (46-8) 611 44 35]

The tender documents will be made accessible from 30. 10. 1995 at the abovementioned addresses. A clarification meeting will be held on 8. 11. 1995 (14.00) local time, at Meeting Room B, Third Floor, Palackého námesti 4, CZ-Prague 2.

4. **Tender**

Tenders should arrive at the latest 4. 12. 1995 (11.00), local time, addressed as follows:

Mr Petr Chudej, Director of Labour Market Programmes, Agency for Labour Market and Social Policy, Phare, Palackédo námesti 4, CZ-128 01 Prague 2.

Envelopes with offers will be opened in the presence of a representative of the Delegation of the European Commission in the Czech Republic on 4. 12. 1995 (14.00) local time, at Meeting Room B, Third Floor, Palackého námesti 4, CZ-Prague 2.

The Ministry of Labour and Social Affairs of the Czech Republic reserves the right to cancel the tender at any time or not to accept any of the bids.

# Study of the balance between the respective rights and obligations and financial resources of public and private television in Austria, Finland, Sweden, Norway, Liechtenstein and Iceland

## Invitation to submit tenders from Member States and EFTA States participating in the EEA

(95/C 275/06)

**(Text with EEA relevance)**

***Awarding authority:*** The European Commission and specifically the State Aid Directorate (IV G 1) of Directorate-General IV Competition, and Directorate-General X Information, Communication, Culture and Audiovisual Media and also the EFTA Surveillance Authority wish to call for tenders from consultants to provide a study on the abovementioned subject.

***Purpose of the tender:*** The purpose of the study is to provide background material that will assist the Commission in considering the role of public financing and public service obligations in television broadcasting.

***Procedure for submission of tenders:***

a) Written tenders are to be submitted either:

by registered post,

or by hand to the following address:

European Commission, Directorate-General for Competition (DG IV), Unit IV G 1 (attention of Mrs E. Slaets, C 158-6/15), rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel.

The postmark or the receipt dated and signed by the official in the abovementioned department will be accepted as proof of the date of submission.

Tenders must be placed inside 1 sealed envelope enclosed in a second envelope. The inner envelope, addressed to the department indicated above should be marked 'Tender TV/DGIV/95/ETD09 - À ne pas ouvrir par le service courrier'. Self-adhesive envelopes which can be opened and resealed without trace may not be used.

b) To be considered as valid, all proposals must be submitted by .... (17.00) in the event of delivery by hand as specified under a).

c) The following documentation must be enclosed with the letter:

1. details of the consultant: name, legal status, address, telephone, telex and facsimile numbers and name of the person to contact;

2. a description of the consultant and of the consultant's activities demonstrating competence in the service offered;

3. a document certifying the legal status of the consultant;

4. evidence of the consultant's financial and economic capacity in the form of annual accounts or extracts from the accounts or a declaraction of total annual turnover.

***Conditions for tenders:***

— prices must be given in ecu;

— tenders must state the time, grade and rate of the staff that will be used for the assignment;

— since the European Commission is exempted from all duties and taxes, in pursuance of the Protocol on the Privileges and Immunities of the European Communities attached to the Treaty of 6. 4. 1965, establishing a single Council and a single Commission of the European Communities, prices proposed must be given free of taxes and duties; tenderers who are liable to and required to pay VAT must indicate separately the VAT payable and the price net of tax;

— submission of a tender shall imply acceptance of the Commission's general terms and conditions for all matters not governed by this invitation to tender;

— jurisdiction for any dispute is exclusively vested in the Brussels courts;

— tenders must be drawn up in triplicate.

***Requirements of consultants***

a) **Task of the consultant:** The task of the consultant will involve reading the extant literature, studies and reports on the subject, examining the relevant national legislation, gathering basic financial data on the public and private broadcasting organizations concerned, analysing the financing sources of, and the obligations and restrictions on, the public and private broadcasters, and interviewing both the public and private broadcasters concerned to obtain their views of their financial and regulatory environment, market situation and competitive conditions.

b) **Areas to be covered by the study:** The study should cover public and private television in Austria, Finland, Sweden, Norway, Liechtenstein and Iceland.

In each country the following areas should be investigated:

— the present market situation (number of television stations broadcasting in or into the country, their ownership, distribution mode - terrestrial, cable, satellite - and the share of each in the broadcasting market in terms of viewing figures;

— brief history of each television station;

— anticipated future developments in the market (new channels, mergers, legislative changes);

— analysis of legislation governing television, public and private, marking the main developments that have occurred in recent years;

— thorough analysis of the sources and amounts of financing received by all the broadcasters (advertising and sponsorship, subscriptions or 'pay-per-view', revenue from the supply of other services, public funding in the form of licence-fee revenue, direct subsidy, provision of capital, loans, debt relief, state guarantees of debts, etc.). For public funding an attempt should be made to identify all irregular or occasional provisions of new funding to the stations that have occurred in recent years;

— analysis of the perceptions public and private broadcasters have of their own and their competitors' roles and performance in serving the public;

— thorough analysis and comparison of all those obligations resting on the public and private channels that have or could have financial implications in terms of higher costs or lower revenue and, if possible, a quantification, at least approximate, of the actual or opportunity costs resulting from those obligations, so as to arrive, as far as possible, at a comparative table of the extra costs deriving from public service obligations for public and private channels respectively. The analysis of the financial implications should be based on actual performance in meeting the obligations concerned;

— thorough analysis and comparison of the restrictions on public or private television channels, especially restrictions on their revenue-raising activities such as advertising and, if possible, a quantification, at least approximate, of the revenue implications of those restrictions;

— thorough analysis and comparison of the special rights and privileges of the various public and private television channels, including exclusive franchises or monopolies and, if possible, a quantification, at least approximate, of the financial value of such special rights and privileges. The analysis of the financial implications of obligations, restrictions and privileges should include the penalties for breaches of the regulations.

***Selection criteria:*** The consultant's capacity to provide the required services will be assessed on the basis of, in particular:

a) the consultant's knowledge and experience of this type of work;

b) the quality of the firm's personnel.

***Award criteria:***

a) the price for the work;

b) the time required to perform the tasks indicated;

c) the methodology proposed for this study.

***General information:*** All tenderers will be informed of the result of their proposals. Tenders shall be valid for 6 months from date published in point b).

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## Preliminary opinion on a call for proposals for the specific research and training programme in the field of nuclear fission safety (reactor safety, waste management and radiation protection, 1994-98)

(95/C 275/07)

On the basis of the assessment of the proposals received as at 20. 3. 1995, as a result of the call for proposals for the specific research and training programme in the field of nuclear fission safety (reactor safety, waste management and radiation protection), 1994-98, the Commission intends to draw up the list of research fields and topics to be covered by the second phase of the call for proposals (ending 28. 2. 1996).

This list will be published in the Official Journal of the European Communities on 15. 12. 1995.

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## CORRIGENDA

**Phare — multi-country sectorial framework contracts**

*(Official Journal of the European Communities No C 252, 28. 9. 1995, p. 9)*

(95/C 275/08)

**European Commission, Directorate-General for External Relations: Europe and the New Independent States, Common Foreign and Security Policy and External Missions, rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel.**

*instead of:*

Expressions of interest specifying the sector chosen, the name of the lead partner and the composition of each consortium, together with the respective CCR registration numbers (when already attributed, otherwise a copy of the request for the registration form should be attached), nationality and number of permanent staff of each constructor must be submitted, by facsimile on 1 page maximum, by 20. 10. 1995 (12.00) local time, to the following address:

*read:*

Expressions of interest specifying the sector chosen, the name of the lead partner and the composition of each consortium, together with the respective CCR registration numbers (when already attributed, otherwise a copy of the request for the registration form should be attached), nationality and number of permanent staff of each constructor must be submitted, by facsimile on 1 page maximum, by 6. 11. 1995 (12.00) local time, to the following address: