ISSN 0378-6986

Official Journal of the European Communities

C 315

Volume 39

24 October 1996

English edition

Information and Notices

Notice No | Contents | Page

(Continued overleaf)

I

(Information)

COUNCIL

COMMON POSITION (EC) No 52/96

adopted by the Council on 18 June 1996

with a view to adopting Directive 96/. . ./EC of the European Parliament and of the Council, of . . ., amending Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses

(96/C 315/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

Whereas Article 4 of Council Directive 89/398/EEC [4] provides that specific provisions applicable to the groups of foodstuffs appearing in Annex I thereto must be laid down by means of specific Commission directives;

Whereas a *modus vivendi* was concluded on 20 December 1994 between the European Parliament, the Council and the Commission on the measures for implementing acts adopted in accordance with the procedure referred to in Article 189b of the EC Treaty [5];

Whereas the specific directives reflect the state of knowledge at the time of their adoption; whereas, therefore, any amendment to include innovations based on scientific and technical progress must, after consultation of the Scientific Committee for Food set up by Decision 95/273/EC [6], be approved in accordance with the procedure laid down in Article 13 of Directive 89/398/EEC;

Whereas a procedure must be laid down which allows the foods resulting from these technological innovations to be placed on the market on a temporary basis in order that proper benefit may be derived from the fruits of industry research pending the amendment of the specific directive concerned;

Whereas, however, on the grounds of consumer health protection, marketing authorization may be granted only after consultation of the Scientific Committee for Food;

Whereas authorization may be granted only if the product poses no danger to human health,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

In Article 4 of Directive 89/398/EEC, the following paragraph shall be added:

'1a. To enable foodstuffs intended for particular nutritional uses and resulting from scientific and

(1) OJ No C 389, 31. 12. 1994, p. 27.
(2) OJ No C 256, 2. 10. 1995, p. 1.
(3) Opinion of the European Parliament of 11 October 1995 (OJ No C 287, 30. 10. 1995, p. 109). Council common position of 18 June 1996 (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).
(4) OJ No L 186, 30. 6. 1989, p. 27.
(5) OJ No C 102, 4. 4. 1996, p. 1.
(6) OJ No L 167, 18. 7. 1995, p. 22.

technological progress to be placed on the market rapidly, the Commission may, after consulting the Scientific Committee for Food and in accordance with the procedure laid down in Article 13, authorize, for a two-year period, the placing on the market of food which does not comply with the rules as to composition laid down by the specific directives referred to in Annex I.

If necessary, the Commission may add in the authorization decision labelling rules relating to the change in composition.'.

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 September 1997. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

Article 3

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities.*

Article 4

This Directive is addressed to the Member States.

Done at . . .

For the European Parliament	*For the Council*
The President	*The President*

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 20 December 1994 the Commission submitted a proposal for a Directive [1] based on Article 100a of the EC Treaty on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses.

2. The European Parliament and the Economic and Social Committee delivered their opinions on 11 October 1995 [2] and 5 July 1995 [3] respectively.

3. In the light of the opinion of the European Parliament, the Commission submitted an amended proposal on 5 December 1995 [4].

4. On 18 June 1996, the Council adopted its common position in accordance with Article 189b of the Treaty.

II. AIM

The proposal envisages a special procedure making it possible to issue temporary authorizations (for a two-year period) for the placing on the market of foodstuffs intended for dieting purposes which result from research. The introduction of such temporary authorizations will represent an advantage for the industry compared with the procedures in force, which are regarded as too cumbersome for the rapid marketing of a product resulting from technological innovations.

III. ANALYSIS OF THE COMMON POSITION

1. The European Parliament suggested four amendments, namely:

   — a reference in the Directive amending Directive 89/398/EEC to the Agreement on a *modus vivendi* between the European Parliament, the Council and the Commission concerning measures implementing acts (amendment 1),

   — a new recital in Directive 89/398/EEC referring to the *modus vivendi* (amendment 7),

   — the introduction of the type-IIIa committee procedure for granting temporary authorizations (amendments 5 and 6).

2. The Commission did not reproduce amendment 1 in its amended proposal. However, the Council, departing from the Commission's position, reproduced amendments 1, 5 and 6 in its common position, adopted unanimously.

3. In general, the Council's common position takes account, to a very considerable degree, of the European Parliament amendments. In some instances, though, the Council made drafting clarifications in line with the European Parliament's general approach.

4. For legal reasons the Council was unable to incorporate amendment 7, as Directive 89/398/EEC pre-dates the adoption of the Treaty on European Union.

5. The Council considers that on the whole, having incorporated three out of four European Parliament amendments, it has struck a balanced compromise enabling the rapid marketing of products resulting from technological innovations.

---

(1) OJ No C 389, 31. 12. 1994, p. 27.
(2) OJ No C 287, 30. 10. 1995, p. 108.
(3) OJ No C 256, 2. 10. 1995, p. 1.
(4) OJ No C 41, 13. 2. 1996, p. 13.

COMMON POSITION (EC) No 53/96

adopted by the Council on 18 June 1996

with a view to adopting a Decision No .../96/EC of the European Parliament and of the Council, of ..., on the maintenance of national laws prohibiting the use of certain additives in the production of certain specific foodstuffs

(96/C 315/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption [1], and in particular Article 3 (a) thereof,

Having regard to the proposal from the Commission [2],

Having regard to the opinion of the Economic and Social Committee [3],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [4],

Whereas the rules on additive harmonization should not affect the application of provisions in force in the Member States on 1 January 1992 which prohibit the use of certain additives in certain specific foodstuffs considered as traditional and produced on their territory;

Whereas the list of foodstuffs considered as traditional must be drawn up on the basis of notifications made by the Member States to the Commission before 1 July 1994; whereas, however, notifications from the new Member States sent after that date must be considered;

Whereas, however, the general purpose of this Decision is not to define the traditional character of foodstuffs; whereas, in particular, traditional character is not determined simply by a prohibition on the use of additives in such products;

Whereas, nevertheless, account must be taken of how significant the national legal prohibition in force on 1 January 1992 on the use of certain categories of additives is in foodstuff production practices as a whole; whereas the particular features of such a method of production should be retained; whereas account should be taken of fair practice in commercial transactions involving these products and of consumers' interests before authorization can be given to maintain the prohibition on the use of certain categories of additives;

Whereas designation of a product as a traditional product for which a Member State might maintain its national legislation must be without prejudice to the provisions of Regulations (EEC) No 2081/92 [5] and (EEC) No 2082/92 [6] on designation of origin and certificates of specific character respectively;

Whereas Directive 89/107/EEC and the specific directives authorize only additives which do not harm human health; whereas protection of public health cannot therefore be a criterion warranting prohibition of the use of certain additives in certain specific foodstuffs considered traditional;

Whereas, in principle, prohibition of the use of certain additives must not lead to discrimination with regard to other additives belonging to the same category as mentioned in Annex I to Directive 89/107/EEC and so must not affect Community harmonization;

Whereas, in the interests of transparency, bans on the use of certain categories of additive in certain categories of foodstuff which Member States may maintain in derogation from the provisions of Directive 89/107/EEC and the specific Directives 94/35/EC [7], 94/36/EC [8] and 95/2/EC [9] should be identified;

Whereas freedom of establishment and the free movement of goods must not be jeopardized either by the

(1) OJ No L 40, 11. 2. 1989, p. 27. Directive as last amended by Directive 94/34/EC (OJ No L 237, 10. 9. 1994, p. 1).
(2) OJ No C 134, 1. 6. 1995, p. 20.
(3) OJ No C 301, 13. 11. 1995, p. 43.
(4) Opinion of the European Parliament of 16 January 1996 (OJ No C 32, 5. 2. 1996, p. 22), Council common position of 18 June 1996 (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).
(5) OJ No L 208, 24. 7. 1992, p. 1. Regulation as amended by the 1994 Act of Accession.
(6) OJ No L 208, 24. 7. 1992, p. 9. Regulation as amended by the 1994 Act of Accession.
(7) OJ No L 237, 10. 9. 1994, p. 3.
(8) OJ No L 237, 10. 9. 1994, p. 13.
(9) OJ No L 61, 18. 3. 1995, p. 1.

authorization to maintain national laws or by any regulations on labelling to distinguish these products from similar foodstuffs; whereas the free movement, placing on the market and manufacture in all Member States of similar foodstuffs considered as traditional or non-traditional must therefore be maintained in accordance with the provisions of the Treaty,

HAVE ADOPTED THIS DECISION:

Article 1

Pursuant to Article 3 (a) of Directive 89/107/EEC and under the conditions specified therein, the Member States listed in the Annex are hereby authorized to maintain in their legislation the prohibition on the use of categories of additives in the production of the foodstuffs listed in that Annex.

This Decision shall be applied without prejudice to Regulations (EEC) No 2081/92 and (EEC) No 2082/92.

Article 2

This Decision is addressed to the Member States.

Done at . . .

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

PRODUCTS FOR WHICH THE MEMBER STATES CONCERNED MAY MAINTAIN THE PROHIBITION OF CERTAIN CATEGORIES OF ADDITIVES

Member State	Foodstuffs	Categories of additives which may continue to be banned
Germany	Traditional German beer ('Bier nach deutschem Reinheitsgebot gebraut')	All except propellant gases
Greece	'Feta' cheese	All
France	Traditional French bread	All
France	Traditional French preserved truffles	All
France	Traditional French preserved snails	All
France	Traditional French goose and duck preserves ('confit')	All
Austria	Traditional Austrian 'Bergkäse'	All except preservatives
Finland	Traditional Finnish 'Mämmi'	All except preservatives
Sweden/Finland	Traditional Swedish and Finnish fruit syrups	Colours
Denmark	Traditional Danish 'Kødboller'	Preservatives and colours
Denmark	Traditional Danish 'Leverpostej'	Preservatives (other than sorbic acid) and colours
Spain	Traditional Spanish 'Lomo embuchado'	All except preservatives and antioxidants
Italy	Traditional Italian 'Salame cacciatore'	All except preservatives, antioxidants, flavour enhancers and packaging gas
Italy	Traditional Italian 'Mortadella'	All except preservatives, antioxidants, pH-adjusting agents, flavour enhancers, stabilizers and packaging gas
Italy	Traditional Italian 'Cotechino e zampone'	All except preservatives, antioxidants, pH-adjusting agents, flavour enhancers, stabilizers and packaging gas

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 19 April 1995 the Commission submitted a proposal for a decision([1]), based on Article 100a of the EC Treaty, on the maintenance of national laws prohibiting the use of certain additives in the production of certain specific foodstuffs.

2. The European Parliament and the Economic and Social Committee delivered their opinions on 16 January 1996([2]) and 13 September 1995([3]) respectively. In the light of the European Parliament's opinion, the Commission submitted an amended proposal on 6 May 1996([4]).

3. On 18 June 1996, the Council adopted its common position in accordance with Article 189b of the Treaty.

II. AIM

The aim of the proposal is to establish a list of foodstuffs considered as traditional, so as to safeguard the Community food heritage. In order to attain that objective the Member States concerned may maintain their national legislation prohibiting the use of certain additives in the production of certain foodstuffs.

III. ANALYSIS OF THE COMMON POSITION

1. The European Parliament suggested three amendments, namely:

   — precise details of the description of foodstuffs considered as traditional (amendment 2),

   — the addition of two Danish foodstuffs and one Swedish (amendment 3),

   — provisions requiring it to be stated on the label that the traditional method of production has been used (amendment 1).

2. After examining the proposal the Council generally recast, specified and enlarged the scope of the proposal, on the one hand to take greater account of national legislation and on the other hand to take account of the European Parliament amendments, especially amendments 2 and 3.

   The Commission agreed to all the amendments to the amended proposal as adopted by the Council.

3. In line with amendment 2 (accepted by the Commission in its amended proposal), the Council agreed to the amendments to the definitions of foodstuffs in respect of which Member States may retain the relevant legislation. However, the Council could not agree to the term 'traditional Greek' being applied to 'feta' cheese, stressing that the latter is in principle produced only in Greece and therefore does not require such specification.

4. Next, as 'pain de tradition française' can be translated into all the official languages, the Council decided not to place the expression in inverted commas.

([1]) OJ No C 134, 1. 6. 1995, p. 20.
([2]) OJ No C 32, 5. 2. 1996, p. 21.
([3]) OJ No C 301, 13. 11. 1995, p. 43.
([4]) OJ No C 186, 26. 6. 1996, p. 7.

5. As regards 'traditional French goose, duck and turkey preserves ("confit")', taking into account the method of production, the Council stated that France may maintain the prohibition on all categories of additives.

6. The Council incorporated all the foodstuffs in amendment 3 (the Commission rejected this amendment). However, the Council specified the categories of additives for which a ban may be maintained in respect of the Danish products 'leverpostej' and 'kødboller'. The Council also added Finland to the category 'Traditional Swedish fruit syrups', as Finland also produces such foodstuffs.

7. Lastly, the Council added a Spanish product, 'lomo embuchado' to the list, as well as three Italian products, 'salame cacciatore', 'mortadella' and 'cotechino e zampone'.

   The four products in question are regarded as traditional, and the legislation prohibiting the use of certain additives in those foodstuffs has existed for many years.

8. The Council did not adopt amendment 1, under which the label must state that the foodstuff has been produced using the traditional method of the Member State. The Council felt that manufacturers themselves should decide whether such particulars were necessary (the amendment was also rejected by the Commission).

9. Having retained two out of three amendments proposed by the European Parliament and taken into account the criteria for establishing the list of traditional products, the Council feels that overall it has struck a balanced compromise.

COMMON POSITION (EC) No 54/96

adopted by the Council on 25 June 1996

with a view to adopting Directive 96/. . ./EC of the European Parliament and of the Council, of . . ., amending Directive 95/2/EC on food additives other than colours and sweeteners

(96/C 315/03)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption [1], and in particular Article 3 (2) thereof,

Having regard to the proposal from the Commission [2],

Having regard to the opinion of the Economic and Social Committee [3],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [4],

Whereas processed *Eucheuma* seaweed constitutes a new food additive for which the technological need for use in foodstuffs is demonstrated;

Whereas it is necessary to adapt the list of permitted food additives contained in European Parliament and Council Directive 95/2/EC of 20 February 1995 on food additives other than colours and sweeteners [5] in order to permit the use of this additive;

Whereas the Scientific Committee for Food has been consulted;

Whereas purity criteria will be adopted in accordance with the procedure laid down in Article 11 of Directive 89/107/EEC,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The following food additive is hereby inserted after E No 407 in the table in Annex I to Directive 95/2/EC:

E-No	Name
E 407 a	Processed *Eucheuma* seaweed

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 25 September 1996 in order to allow trade in, and use of, products conforming to this Directive.

They shall forthwith inform the Commission thereof.

When these measures are adopted by Member States, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 3

This Directive shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at . . .

For the European Parliament
The President

For the Council
The President

---

[1] OJ No L 40, 11. 2. 1989, p. 27. Directive as last amended by Directive 94/34/EC (OJ No L 237, 10. 9. 1994, p. 1).
[2] OJ No C 163, 29. 6. 1995, p. 12.
[3] OJ No C 18, 22. 1. 1996, p. 20.
[4] Opinion of the European Parliament of 28 March 1996 (OJ No C 117, 22. 4. 1996, p. 36), Council common position of 25 June 1996 (not yet published in the Official Journal) and Decision of the European Parliament of ... (not yet published in the Official Journal).
[5] OJ No L 61, 18. 3. 1995, p. 1.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 18 May 1995, the Commission submitted a proposal for a Directive [1] based on Article 100a of the EC Treaty, on food additives other than colours and sweeteners.

2. The European Parliament and the Economic and Social Committee delivered their respective opinions on 28 March 1996 [2] and 25 October 1995 [3].

3. In the light of the opinion of the European Parliament, the Commission submitted an amended proposal on 21 May 1996 [4].

4. The Council adopted its common position in accordance with Article 189b of the Treaty on 25 June 1996.

II. OBJECTIVE

The objective of the proposal is to add the name 'processed *Eucheuma* seaweed', reference No E 407 a, to the list of authorized food additives.

III. ANALYSIS OF THE COMMON POSITION

1. The European Parliament suggested an amendment containing the following points:

   — an additive is hereby authorized under the name of 'processed *Eucheuma* seaweed',

   — the reference number for this additive is E 408,

   — the additive in question is not authorized in food products intended for children under 18 months old.

   The common position takes into account the European Parliament's wishes regarding two of these three points and is in line with the Commission's amended proposal.

2. With regard to the name of the additive (amendment 1), the name adopted by the Council was 'processed *Eucheuma* seaweed', as suggested by the European Parliament and also chosen by the *Codex Alimentarius* (this part of the amendment was accepted by the Commission in the amended proposal).

3. While mindful of the *Codex alimentarius* regulations, the Council nevertheless opted for the reference number E 407 a and was thus unable to adopt that part of amendment 1 which was concerned with that number (and was also not accepted by the Commission).

4. The Council agreed in principle that the additive should not be authorized in food products intended for children under 18 months old (amendment 1). However, it did not incorporate the amendment in its common position since the additive name 'processed *Eucheuma* seaweed' was not included in the positive list containing the food

(1) OJ No C 163, 29. 6. 1995, p. 12.
(2) OJ No C 117, 22. 4. 1996, p. 36.
(3) OJ No C 18, 22. 1. 1996, p. 20.
(4) OJ No C 208, 19. 7. 1996, p. 15.

additives authorized in food for that age category (Annex VI to Directive 95/2/EC). The Commission was also unable to accept this part of amendment 1.

5. Having accepted that part of the European Parliament's amendment 1 with the name of the additive and having agreed to the principle in respect of another part referring to the protection of children under 18 months old, the Council considers that overall it has struck the right balance between the differing initial positions.

COMMON POSITION (EC) No 55/96

adopted by the Council on 25 June 1996

with a view to adopting Directive 96/. . ./EC of the European Parliament and of the Council, of . . ., amending Directive 94/35/EC on sweeteners for use in foodstuffs

(96/C 315/04)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee [1],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [2],

Having regard to Council Directive 89/107/EEC of 21 December 1988 on the approximation of the laws of the Member States concerning food additives authorized for use in foodstuffs intended for human consumption [3], and in particular Article 3 (2) thereof,

Whereas since the adoption of Directive 94/35/EC [4] there have been many technical developments in the field of sweeteners;

Whereas the Directive should be adapted to take account of these developments;

Whereas the Scientific Committee for Food set up by Commission Decision 95/273/EC [5] was consulted before the adoption of provisions liable to have an effect on public health,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 94/35/EC is hereby amended as follows:

1. the following paragraph shall be added to Article 1:

   '5. This Directive shall also apply to the corresponding foodstuffs intended for particular nutritional uses in accordance with Directive 89/398/EEC.'

2. Article 2 shall be amended as follows:

   (a) paragraph 3 shall be replaced by the following:

   '3. Sweeteners may not be used in food for infants and young children as referred to in Directive 89/398/EEC, including food for infants and young children who are not in good health, unless so laid down in specific provisions.'

   (b) the following paragraph shall be added:

   '5. In the Annex *quantum satis* means that no maximum level is specified. However, sweeteners shall be used in accordance with good manufacturing practice, at a dose level not higher than is necessary to achieve the intended purpose and provided that they do not mislead the consumer.'.

3. The following Article shall be added:

   '*Article 2 (a)*

   Without prejudice to other Community provisions, the presence of a sweetener in a foodstuff is permissible:

   — in compound foodstuffs with no added sugar or energy-reduced, in compound dietary foodstuffs intended for a low-calorie diet and in compound foodstuffs with a long shelf-life, other than those mentioned in Article 2 (3), to the extent that the sweetener is permitted in one of the ingredients of the compound foodstuff,

   or

   — if the foodstuff is destined to be used solely in the preparation of a compound foodstuff which conforms to this Directive.'

4. The category 'Vitamins and dietary preparations' in the Annex shall be renamed 'Food supplements/diet

(1) OJ No C 174, 17. 6. 1996, p. 1.
(2) Opinion of the European Parliament of 12 March 1996 (OJ No C 96, 1. 4. 1996, p. 24), Council common position of 25 June 1996 (not yet published in the Official Journal) and Decision of the European Parliament of . . . (not yet published in the Official Journal).
(3) OJ No L 40, 11. 2. 1989, p. 27. Directive as last amended by Directive 94/34/EC (OJ No L 237, 10. 9. 1994, p. 1).
(4) OJ No L 237, 10. 9. 1994, p. 3.
(5) OJ No L 167, 18. 7. 1995, p. 22.

integrators based on vitamins and/or mineral elements, syrup-type or chewable'.

5. The table in the Annex shall be supplemented by the table in the Annex to this Directive.

Article 2

Member States shall, where necessary, amend their laws, regulations and administrative provisions in order to:

— authorize trade in products not conforming to this Directive, by [. . .](*) at the latest,

— prohibit trade in products not conforming to this Directive from [. . .](**). However, products placed on the market or labelled before that date which do not comply with this Directive may be marketed until stocks are exhausted.

They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods for making such reference shall be laid down by Member States.

Article 3

This Directive shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at . . .

For the European Parliament	*For the Council*
The President	*The President*

(*) 12 months after the date of adoption of this Directive.
(**) 18 months after the date of adoption of this Directive.

ANNEX

Note:

1. For the substance E 952, cyclamic acid and its Na and Ca salts, maximum usable doses are expressed in free acid.

2. For the substance E 954, saccharin and its Na, K and Ca salts, maximum usable doses are expressed in free imide.

EC No	Name	Foodstuffs	Maximum usable dose
E 950	Acesulfame K	— Breakfast cereals with a fibre content of more than 15 %, and containing at least 20 % bran, energy-reduced or with no added sugar	1 200 mg/kg
		— Energy-reduced soups	110 mg/l
		— Breath-freshening microsweets, with no added sugar	2 500 mg/kg
		— Energy-reduced beer	25 mg/l
		— Drinks consisting of a mixture of a non-alcoholic drink and beer, cider, perry, spirits or wine	350 mg/l
		— Spirit drinks containing less than 15 % alcohol by volume	350 mg/kg
		— Cornets and wafers with no added sugar for ice-cream	2 000 mg/kg
		— Energy reduced tablet-form confectionery	500 mg/kg
		— *Feinkostsalat*	350 mg/kg
		— *Essoblaten*	2 000 mg/kg
E 951	Aspartame	— Breakfast cereals with a fibre content of more than 15 %, and containing at least 20 % bran, energy-reduced or with no added sugar	1 000 mg/kg
		— Energy-reduced soups	110 mg/l
		— Breath-freshening microsweets, with no added sugar	6 000 mg/kg
		— Strongly flavoured freshening throat pastilles with no added sugar	2 000 mg/kg
		— Energy-reduced beer	25 mg/l
		— Drinks consisting of a mixture of a non-alcoholic drink and beer, cider, perry, spirits or wine	600 mg/l
		— Spirit drinks containing less than 15 % alcohol by volume	600 mg/kg
		— *Feinkostsalat*	350 mg/kg
E 952	Cyclamic acid and its Na and Ca salts	— Drinks consisting of a mixture of a non-alcoholic drink and beer, cider, perry, spirits or wine	250 mg/l
		— Breath-freshening microsweets, with no added sugar	2 500 mg/kg
		— Food supplements/diet integrators based on vitamins and/or mineral elements, syrup-type or chewable	1 250 mg/kg

EC No	Name	Foodstuffs	Maximum usable dose
E 954	Saccharin and its Na, K and Ca salts	— Breakfast cereals with a fibre content of more than 15 %, and containing at least 20 % bran, energy-reduced or with no added sugar	100 mg/kg
		— Energy-reduced soups	110 mg/l
		— Breath-freshening microsweets, with no added sugar	3 000 mg/kg
		— Drinks consisting of a mixture of a non-alcoholic drink and beer, cider, perry, spirits or wine	80 mg/l
		— Spirit drinks containing less than 15 % alcohol by volume	80 mg/kg
		— Cornets and wafers with no added sugar for ice-cream	800 mg/kg
		— *Feinkostsalat*	160 mg/kg
E 957	Thaumatin	— Edible ices, energy-reduced or with no added sugar	50 mg/kg
E 959	Neohesperidine DC	— Breakfast cereals with a fibre content of more than 15 %, and containing at least 20 % bran, energy-reduced or with no added sugar	50 mg/kg
		— Energy-reduced soups	50 mg/l
		— Breath-freshening microsweets, with no added sugar	400 mg/kg
		— Food supplements/diet integrators based on vitamins and/or mineral elements, syrup-type or chewable	400 mg/kg
		— Drinks consisting of a mixture of a non-alcoholic drink and beer, cider, perry, spirits or wine	30 mg/l
		— Spirit drinks containing less than 15 % alcohol by volume	30 mg/kg
		— Cornets and wafers with no added sugar for ice-cream	50 mg/kg
		— *Feinkostsalat*	50 mg/kg
		— Energy reduced beer	10 mg/kg
		— Complete formulae and nutritional supplements for use under medical supervision	100 mg/kg
		— Snacks: certain flavours of ready-to-eat, prepacked, dry, savoury starch products and coated nuts	50 mg/kg

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 20 October 1995 the Commission submitted a proposal for a Directive, based on Article 100a of the EC Treaty, on sweeteners for use in foodstuffs.

2. The European Parliament, the Economic and Social Committee and the Committee of the Regions delivered their opinions on 12 March 1996 [1] and 27 March 1996 [2] respectively. The European Parliament approved the Commission proposal with no amendments.

3. The Council adopted its common position in accordance with Article 189b of the Treaty on 25 June 1996.

II. OBJECTIVE

Directive 94/35/EC was adopted on 21 June 1994. It has its origins in Directive 89/107/EEC providing for the adoption of specific directives to harmonize the use of various categories of additives in foodstuffs. The objective of the proposal is to adapt Directive 94/35/EC to technical and scientific developments.

III. ANALYSIS OF THE COMMON POSITION

1. Generally speaking, the common position corresponds to the Commission proposal. However, the Council has recast the text so as to achieve concordance between the Directive on sweeteners and the Directives on the other additives and also to take into account technical and scientific developments in the European Community.

   All the amendments to the proposal were accepted by the Commission.

2. The Council has broadened the scope of the Directive to include foodstuffs intended for particular nutritional uses in accordance with Directive 89/398/EEC (Article 1 (5)).

3. Nevertheless, taking into account the need to protect infants and young children as referred to in Directive 89/398/EEC, the Council has stipulated that sweeteners may not be used in food intended for these groups of persons (Article 2 (3)).

4. As regards compound foodstuffs in which the presence of a sweetener is permissible (Article 2 (a)), the Council has emphasized that this provision would apply without prejudice to other Community provisions. In order to reduce as far as possible the use of sweeteners in the products concerned, the Council has also restricted the scope of the provision by stipulating that the presence of a sweetener is permissible only in:

   — compound foodstuffs with no added sugar or energy-reduced,

   — compound dietary foodstuffs intended for a low-calorie diet,

   — compound foodstuffs with a long shelf-life.

---

[1] OJ No C 96, 1. 4. 1996, p. 24.
[2] OJ No C 174, 17. 6. 1996, p. 1.

5. In the case of the additives acesulfame K (E 950), aspartame (E 951), saccharin and its Na, K and Ca salts (E 954) and neohesperidine DC (E 959), the Council has stipulated that breakfast cereals must have a fibre content of more than 15 % and contain at least 20 % bran. The Council has included some clarification, bearing in mind production methods and the desire to reduce the significance of certain categories of foodstuffs, and has amended the definitions of the terms 'energy-reduced beer', 'cornets and wafers with no added sugar for ice-cream' and 'Feinkostsalat'.

   The Council has added to the list 'spirit drinks containing less than 15 % alcohol by volume'. This product has existed on the market for a long time.

   Finally, the Council has not included 'energy-reduced fruit wine' drinks as these drinks are not produced within the European Union.

6. Concerning acesulfame (E 950), the Council added to the list 'energy-reduced tablet-form confectionery'. This product has existed on the market for a long time.

7. With regard to the additive 'aspartame' (E 951), the Council added the phrase 'strongly flavoured freshening throat pastilles with no added sugar'. This product has existed on the European Union market for a long time.

8. As regards the additive 'cyclamic acid and its Na and Ca salts' (E 952), the Council preferred to reduce its use to three categories of foodstuffs. At the same time, the Council decided to reduce the usable doses for these three categories.

9. Finally, as regards the additive 'neohesperidine DC', the Council wanted to lay down the same rules for the use of this additive as for other similar additives, and accordingly added the following foodstuffs:

   — spirit drinks containing less than 15 % alcohol by volume,

   — cornets and wafers with no added sugar for ice-cream,

   — energy-reduced beer,

   — complete formulae and nutritional supplements for use under medical supervision,

   — snacks: certain flavours of ready-to-eat, prepacked, dry, savoury starch products and coated nuts.

10. On the whole, the Council took into account the main thrust of the proposal approved by the European Parliament and clarified the text in order to take account of present and future production, and considers that it has reached a balanced compromise.

COMMON POSITION (EC) No 56/96

adopted by the Council on 25 July 1996

with a view to adopting Directive 96/. . ./EC of the European Parliament and of the Council, of . . ., concerning common rules for the internal market in electricity

(96/C 315/05)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57 (2), Article 66 and Article 100a thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) Whereas it is important to adopt measures to ensure the smooth running of the internal market; whereas the internal market is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured;

(2) Whereas the completion of a competitive electricity market is an important step towards completion of the internal energy market;

(3) Whereas the provisions of this Directive should not affect the full application of the Treaty, in particular the provisions concerning the internal market and competition;

(4) Whereas establishment of the internal market in electricity is particularly important in order to increase efficiency in the production, transmission and distribution of this product, while reinforcing security of supply and the competitiveness of the European economy and respecting environmental protection;

(5) Whereas the internal market in electricity needs to be established gradually, in order to enable the industry to adjust in a flexible and ordered manner to its new environment and to take account of the different ways in which electricity systems are organized at present;

(6) Whereas the establishment of the internal market in the electricity sector must favour the interconnection and interoperability of systems;

(7) Whereas Council Directive 90/547/EEC of 29 October 1990 on the transit of electricity through transmission grids [4] and Council Directive 90/377/EEC of 29 June 1990 concerning a Community procedure to improve the transparency of gas and electricity prices charged to industrial end-users [5], provide for a first phase for the completion of the internal electricity market;

(8) Whereas it is now necessary to take further measures with a view to establishing the internal market in electricity;

(9) Whereas, in the internal market, electricity undertakings must be able to operate, without prejudice to compliance with public service obligations, with a view to achieving a competitive market in electricity;

(10) Whereas Member States, because of the structural differences in the Member States, currently have different systems for regulating the electricity sector;

(11) Whereas, in accordance with the principle of subsidiarity, general principles providing for a framework must be established at Community level, but their detailed implementation should be left to Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation;

(12) Whereas, whatever the nature of the prevailing market organization, access to the system must be open in accordance with this Directive and must lead to equivalent economic results in the Member States and hence to a directly comparable level of opening-up of markets and to a directly comparable degree of access to electricity markets;

[1] OJ No C 65, 14. 3. 1992, p. 4.
[2] OJ No C 73, 15. 3. 1993, p. 31.
[3] Opinion of the European Parliament of 17 November 1993 (OJ No C 329, 6. 12. 1993, p. 150), Council common position of 25 July 1996 (not yet published in the Official Journal) and Decision of the European Parliament of . . . (not yet published in the Official Journal).
[4] OJ No L 313, 13. 11. 1990, p. 30. Directive as last amended by Commission Decision 95/162/EC (OJ No L 107, 12. 5. 1995, p. 53).
[5] OJ No L 185, 17. 7. 1990, p. 16. Directive as last amended by Commission Directive 93/87/EEC (OJ No L 277, 10. 11. 1993, p. 32).

(13) Whereas for some Member States the imposition of public service obligations may be necessary to ensure security of supply and consumer and environmental protection, which, in their view, free competition, left to itself, cannot necessarily guarantee;

(14) Whereas long-term planning may be one means of carrying out those public service obligations;

(15) Whereas the Treaty lays down specific rules with regard to restrictions on the free movement of goods and on competition;

(16) Whereas Article 90 (1) of the Treaty, in particular, obliges the Member States to respect these rules with regard to public undertakings and undertakings which have been granted special or exclusive rights;

(17) Whereas Article 90 (2) of the Treaty subjects undertakings entrusted with the operation of services of general economic interest to these rules, under specific conditions;

(18) Whereas the implementation of this Directive will have an impact on the activities of such undertakings;

(19) Whereas the Member States, when imposing public service obligations on the enterprises of the electricity sector, must therefore respect the relevant rules of the Treaty as interpreted by the Court of Justice;

(20) Whereas, in establishing the internal market in electricity, full account should be taken of the Community objective of economic and social cohesion, particularly in sectors such as the infrastructures, national or intra-Community, which are used for the transmission of electricity;

(21) Whereas Decision No 1254/96/EC of the European Parliament and of the Council of 5 June 1996, adopting a series of guidelines on trans-European energy networks[1] has contributed to the development of integrated infrastructures for the transmission of electricity;

(22) Whereas it is therefore necessary to establish common rules for the production of electricity and the operation of electricity transmission and distribution systems;

(23) Whereas there are two systems which may be applied for opening up the production market, an authorization procedure or a tendering procedure, and these must operate in accordance with objective, transparent and non-discriminatory criteria;

(24) Whereas the position of autoproducers and independent producers needs to be taken into consideration within this framework;

(25) Whereas each transmission system must be subject to central management and control in order to ensure the security, reliability and efficiency of the system in the interests of producers and their customers; whereas a transmission system operator should therefore be designated and entrusted with the operation, maintenance, and, if necessary, development of the system; whereas the transmission system operator must behave in an objective, transparent and non-discriminatory manner;

(26) Whereas the technical rules for the operation of transmission systems and direct lines must be transparent and must ensure interoperability;

(27) Whereas objective and non-discriminatory criteria must be established for the dispatching of power stations;

(28) Whereas, for reasons of environmental protection, priority may be given to the production of electricity from renewable sources;

(29) Whereas, at the distribution level, customers located in a given area may be granted supply rights and a manager must be designated to manage, maintain and, if necessary, develop each distribution system;

(30) Whereas, in order to ensure transparency and non-discrimination the transmission function of vertically integrated undertakings should be operated independently from the other activities;

(31) Whereas a single buyer must operate separately from the generation and distribution activities of vertically integrated undertakings; whereas the flow of information between the single buyer activities and these generation and distribution activities needs to be restricted;

(32) Whereas the accounts of all integrated electricity undertakings should provide for maximum transparency, in particular to identify possible abuses of a dominant position, consisting, for example, in abnormally high or low tariffs or in discriminatory practices relating to equivalent transactions; whereas, to this end, the accounts must be separate for each activity;

(33) Whereas it is also necessary to provide for access by the competent authorities to the internal accounts of undertakings with due regard for confidentiality;

[1] OJ No L 161, 29. 6. 1996, p. 147.

(34) Whereas, owing to the diversity of structures and the special characteristics of systems in Member States, there should be different options for system access operating in accordance with objective, transparent and non-discriminatory criteria;

(35) Whereas provision should be made for authorizing the construction and use of direct lines;

(36) Whereas provision must be made for safeguards and dispute settlement procedures;

(37) Whereas any abuse of a dominant position or any predatory behaviour should be avoided;

(38) Whereas, as some Member States are liable to experience special difficulties in adjusting their systems, provision should be made for recourse to transitional regimes or derogations, especially for the operation of small isolated systems;

(39) Whereas this Directive constitutes a further phase of liberalization; whereas, once it has been put into effect, some obstacles to trade in electricity between Member States will nevertheless remain in place; whereas, therefore, proposals for improving the operation of the internal market in electricity may be made in the light of experience; whereas the Commission should therefore report to the Council and the European Parliament on the application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope and definitions

Article 1

This Directive establishes common rules for the production, transmission and distribution of electricity. It lays down the rules relating to the organization and functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tender and the granting of authorizations and the operations of systems.

Article 2

For the purposes of this Directive:

1. *Generation* shall mean the production of electricity;

2. *Producer* shall mean a legal or natural person generating electricity;

3. *Autoproducer* shall mean a legal or natural person generating electricity essentially for his own use;

4. (a) *Independent producer* shall mean a producer who does not carry out electricity transmission or distribution functions in the territory covered by the system where he is established;

   (b) in Member States in which vertically integrated undertakings do not exist and where a tendering procedure is used, independent producers are those, corresponding to the definition of point (a), who may not be exclusively subject to the economic precedence of the interconnected system;

5. *Transmission* shall mean the transport of electricity on the high-voltage interconnected system with a view to its delivery to final customers or to distributors;

6. *Distribution* shall mean the transport of electricity on medium-voltage and low-voltage distribution systems with a view to its delivery to customers;

7. *Customers* shall mean wholesale or final customers of electricity and distribution companies;

8. *Wholesale customers* shall mean any natural or legal persons, if the Member States recognize their existence, who purchase or sell electricity and who do not carry out transmission, generation or distribution functions inside or outside the system where they are established;

9. *Final customer* shall mean a customer buying electricity for his own use;

10. *Interconnectors* shall mean equipment used to link electricity systems;

11. *Interconnected system* shall mean a number of transmission and distribution systems linked together by means of one or more interconnectors;

12. *Direct line* shall mean an electricity line complementary to the interconnected system;

13. *Economic precedence* shall mean the ranking of sources of electricity supply in accordance with economic criteria;

14. *Ancillary services* shall mean all services necessary for the operation of a transmission or distribution system;

15. *System user* shall mean any legal or natural person supplying to, or being supplied by, a transmission or distribution system;

16. *Supply* shall mean the delivery and/or sale of electricity to customers;

17. *Integrated electricity undertaking* shall mean a vertically or horizontally integrated undertaking;

18. *Vertically integrated undertaking* shall mean an undertaking performing two or more of the functions of generation, transmission and distribution of electricity;

19. *Horizontally integrated undertaking* shall mean an undertaking performing at least one of the functions of generation for sale, or transmission or distribution of electricity, and another non-electricity activity;

20. *Tendering procedure* shall mean the procedure through which planned additional requirements and replacement capacity are covered by supplies from new or existing generating capacity;

21. *Long-term planning* shall mean the planning of the need for investment in generation and transmission capacity on a long-term basis, with a view to meeting the demand for electricity of the system and securing supplies to customers;

22. *Single buyer* shall mean any legal person who, within the system where he is established, is responsible for the unified management of the transmission system and/or for centralized electricity purchasing and selling;

23. *Small isolated system* shall mean any system with consumption of less than 2 500 GWh in the year 1996, where less than 5 % of annual consumption is obtained through interconnection with other systems.

CHAPTER II

General rules for the organization of the sector

Article 3

1. Member States shall ensure, on the basis of their institutional organization and with due regard for the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive, with a view to achieving a competitive market in electricity, and shall not discriminate between these undertakings as regards either rights or obligations. The two approaches to system access referred to in Articles 17 and 18 must lead to equivalent economic results and hence to a directly comparable level of opening up of markets and to a directly comparable degree of access to electricity markets.

2. Having full regard to the relevant provisions of the Treaty, in particular Article 90 Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and to environmental protection. Such obligations must be clearly defined, transparent, non-discriminatory and verifiable; they, and any revision thereof, shall be published and notified to the Commission by Member States without delay. As a means of carrying out the abovementioned public service obligations, Member States which so wish may introduce the implementation of long-term planning.

3. Member States may decide not to apply the provisions in Articles 5, 6, 17, 18 and 21 in so far as the application of these provisions would obstruct the performance, in law or in fact, of the obligations imposed on electricity utilities in the general economic interest and in so far as the development of trade would not be affected to such an extent as would be contrary to the interest of the Community. The interest of the Community includes, *inter alia*, the competition with regard to eligible customers according to this Directive and Article 90 of the Treaty.

CHAPTER III

Generation

Article 4

For the construction of new generating capacity, Member States may choose between an authorization procedure and/or a tendering procedure. Authorization and tendering must be conducted in accordance with objective, transparent and non-discriminatory criteria.

Article 5

1. Where they opt for the authorization procedure, Member States shall lay down the criteria for the grant of authorizations for the construction of generating capacity in their territory. These criteria may relate to:

(a) the safety and security of the electricity system, installations and associated equipment;

(b) protection of the environment;

(c) land use and siting;

(d) use of public ground;

(e) energy efficiency;

(f) the nature of the primary sources;

(g) characteristics particular to the applicant, such as technical, economic and financial capabilities;

(h) the provisions of Article 3.

2. The detailed criteria and procedures shall be made public.

3. Applicants shall be informed of the reasons, which must be objective and non-discriminatory, for any refusal to grant an authorization; the reasons must be well founded and duly substantiated; they shall be forwarded to the Commission for information. Appeal procedures must be made available to the applicant.

Article 6

1. Where they opt for the tendering procedure, Member States or any other competent body designated by the Member State concerned shall draw up an inventory of new means of production, including replacement capacity, on the basis of the regular estimate referred to in paragraph 2. The inventory shall take account of the need for interconnection of systems. The requisite capacity shall be allocated by means of a tendering procedure in accordance with the procedure laid down in this Article.

2. The transmission system operator or any other competent authority designated by the Member State concerned shall draw up and publish under State supervision, at least every two years, a regular estimate of the generating and transmission capacity which is likely to be connected to the system, of the need for interconnectors with other systems, of potential transmission capacity and of the demand for electricity. The estimate shall cover a period defined by each Member State.

3. Details of the tendering procedure for means of production shall be published in the *Official Journal of the European Communities* at least six months prior to the closing date for tenders.

The tender specifications shall be made available to any interested undertaking established in the territory of a Member State so that it has sufficient time in which to submit a tender.

The tender specifications shall contain a detailed description of the contract specifications and of the procedure to be followed by all tenderers and an exhaustive list of criteria governing the selection of tenderers and the award of the contract. These specifications may also relate to the fields referred to in Article 5 (1).

4. In invitations to tender for the requisite generating capacity, consideration must also be given to electricity supply offers with long-term guarantees from existing generating units, provided that additional requirements can be met in this way.

5. Member States shall designate an authority or a public body or a private body independent of electricity generation, transmission and distribution activities responsible for the organization, monitoring and control of the tendering procedure. This authority or body shall take all necessary steps to ensure confidentiality of the information contained in the tenders.

6. However, it must be possible for autoproducers and independent producers to obtain authorization, on the basis of objective, transparent and non-discriminatory criteria as laid down in Articles 4 and 5, in Member States which have opted for the tendering procedure.

CHAPTER IV

Transmission system operation

Article 7

1. Member States shall designate or shall require the undertakings which own transmission systems to designate, for a period of time to be determined by Member States having regard to considerations of efficiency and economic balance, a system operator, responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and its interconnectors with other systems, in order to guarantee security of supply.

2. Member States shall ensure that technical rules establishing the minimum technical design and operational requirements for the connection to the system of generating installations, distribution systems, directly connected consumers' equipment, interconnector circuits and direct lines are developed and published. These requirements shall ensure the interoperability of systems and shall be objective and non-discriminatory. They shall be notified to the Commission in accordance with Article 8 of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1].

3. The system operator shall be responsible for managing energy flows on the system, taking into account exchanges with other interconnected systems. To that end, the system operator shall be responsible for ensuring a secure, reliable and efficient electricity system and, in that context, for ensuring the availability of all necessary ancillary services.

4. The system operator shall provide to the operator of any other system with which its system is interconnected sufficient information to ensure the secure and efficient operation, coordinated development and interoperability of the interconnected system.

5. The system operator shall not discriminate between system users or classes of system users, particularly in favour of its subsidiaries or shareholders.

[1] OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by the 1994 Act of Accession.

6. Unless the transmission system is already independent from generation and distribution activities, the system operator shall be independent, at least in management terms, from other activities not relating to the transmission system.

Article 8

1. The transmission system operator shall be responsible for dispatching the generating installations in its area and for determining the use of interconnectors with other systems.

2. Without prejudice to the supply of electricity on the basis of contractual obligations, including those which derive from the tendering specifications, the dispatching of generating installations and the use of interconnectors shall be determined on the basis of criteria which may be approved by the Member State and which must be objective, published and applied in a non-discriminatory manner which ensures the proper functioning of the internal market in electricity. They shall take into account the economic precedence of electricity from available generating installations or interconnector transfers and the technical constraints on the system.

3. A Member State may require the system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power.

4. A Member State may, for reasons of security of supply, direct that priority be given to the dispatch of generating installations using indigenous primary energy fuel sources, to an extent not exceeding in any calendar year 15 % of the overall primary energy necessary to produce the electricity consumed in the Member State concerned.

Article 9

The transmission system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.

CHAPTER V

Distribution system operation

Article 10

1. Member States may impose on distribution companies an obligation to supply customers located in a given area. The tariff for such supplies may be regulated, for instance to ensure equal treatment of the customers concerned.

2. Member States shall designate or shall require undertakings which own or are responsible for distribution systems to designate a system operator responsible for operating, ensuring the maintenance and, if necessary, developing the distribution system in a given area and its interconnectors with other systems.

3. Member States shall ensure that the system operator acts in accordance with Articles 11 and 12.

Article 11

1. The distribution system operator shall maintain a secure, reliable and efficient electricity distribution system in its area, with due regard for the environment.

2. In any event it must not discriminate between system users or classes of system users, particularly in favour of its subsidiaries or shareholders.

3. A Member State may require the distribution system operator, when dispatching generating installations, to give priority to generating installations using renewable energy sources or waste or producing combined heat and power.

Article 12

The distribution system operator must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business.

CHAPTER VI

Unbundling and transparency of accounts

Article 13

Member States or any competent authority they designate as well as the dispute settlement authorities referred to in Article 20 (3) shall have right of access to the accounts of generation, transmission or distribution undertakings which they need to consult in carrying out their checks.

Article 14

1. Member States shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with paragraphs 2 to 5.

2. Electricity undertakings, whatever their system of ownership or legal form, shall draw up, submit to audit

and publish their annual accounts in accordance with the rules of national law concerning the annual accounts of limited liability companies adopted pursuant to the fourth Council Directive, 78/660/EEC, of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies [1]. Undertakings which are not legally obliged to publish their annual accounts shall keep a copy of these at the disposal of the public in their head office.

3. Integrated electricity undertakings shall, in their internal accounting, keep separate accounts for their generation, transmission and distribution activities, and, where appropriate, consolidated accounts for other non-electricity activities, as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidization and distortion of competition. They shall have included a balance sheet and a profit and loss account for each activity in notes to their accounts.

4. Undertakings shall specify in notes to the annual accounts the rules for the allocation of assets and liabilities and expenditure and income which they follow in drawing up the separate accounts referred to in paragraph 3. These rules may be amended only in exceptional cases. Such amendments must be mentioned in the notes and must be duly substantiated.

5. The annual accounts shall indicate in notes any transaction of a certain size conducted with affiliated undertakings, within the meaning of Article 41 of the seventh Council Directive, 83/349/EEC, of 13 June 1983 based on Article 54 (3) (g) of the Treaty on consolidated accounts [2], or with associated undertakings, within the meaning of Article 33 (1) thereof, or, with undertakings which belong to the same shareholders.

Article 15

1. Member States which designate as a single buyer a vertically integrated electricity undertaking or part of a vertically integrated electricity undertaking shall lay down provisions requiring the single buyer to operate separately from the generation and distribution activities of the integrated undertaking.

2. Member States shall ensure that there is no flow of information between the single buyer activities of vertically integrated electricity undertakings and their generation and distribution activities, except for the information necessary to conduct the single buyer responsibilities.

[1] OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by the 1994 Act of Accession.

[2] OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by the 1994 Act of Accession.

CHAPTER VII

Organization of access to the system

Article 16

For the organization of access to the system Member States may choose between the procedures referred to in Article 17 and/or in Article 18. Both sets of procedure shall operate in accordance with objective, transparent and non-discriminatory criteria.

Article 17

1. In the case of negotiated access to the system Member States shall take the necessary measures for electricity producers and, where Member States authorize their existence, supply undertakings and eligible customers either inside or outside the territory covered by the system to be able to negotiate access to the system so as to conclude supply contracts with each other on the basis of voluntary commercial agreements.

2. Where an eligible customer is connected to the distribution system, access to the system must be the subject of negotiation with the relevant distribution system operator and, if necessary, with the transmission system operator concerned.

3. To promote transparency and facilitate negotiations for access to the system, system operators must publish an indicative range of prices for use of the transmission and distribution systems in the first year following implementation of this Directive. As far as possible, the indicative prices published for subsequent years should be based on the average price agreed in negotiations in the previous 12-month period.

4. Member States may also opt for a regulated system of access procedure, giving eligible customers a right of access, on the basis of published tariffs for use of transmission and distribution systems, that is at least equivalent, in terms of access to the system, to the other procedures for access referred to in this Chapter.

5. The operator of the transmission or distribution system concerned may refuse access where he lacks the necessary capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3.

Article 18

1. In the case of the single buyer procedure, Member States shall designate a legal person to be the single buyer within the territory covered by the system operator. Member States shall take the necessary measures for:

(i) the publication of a non-discriminatory tariff for the use of the transmission and distribution system;

(ii) eligible customers to be free to conclude supply contracts to cover their own needs with producers and, where Member States authorize their existence, with supply undertakings outside the territory covered by the system;

(iii) eligible customers to be free to conclude supply contracts to cover their own needs with producers inside the territory covered by the system;

(iv) independent producers to negotiate access to the system with the transmission and distribution systems operators so as to conclude supply contracts with eligible customers outside the system, on the basis of a voluntary commercial agreement.

2. The single buyer may be obliged to purchase the electricity contracted by an eligible customer from a producer inside or outside the territory covered by the system at a price which is equal to the sale price offered by the single buyer to eligible customers minus the price of the published tariff referred to in paragraph 1 (i).

3. If the purchase obligation under paragraph 2 is not imposed on the single buyer, Member States shall take the necessary measures to ensure that the supply contracts referred to in paragraph 1 (ii) and 1 (iii) are either implemented via access to the system on the basis of the published tariff referred to in paragraph 1 (i) or via negotiated access to the system according to the conditions of Article 17. In the latter case there would be no obligation for the single buyer to publish a non-discriminatory tariff for the use of the transmission and distribution system.

4. The single buyer may refuse access to the system and may refuse to purchase electricity from eligible customers where he lacks the necessary transmission or distribution capacity. Duly substantiated reasons must be given for such refusal, in particular having regard to Article 3.

Article 19

1. Member States shall take the necessary measures to ensure an opening of their electricity markets, so that contracts under the conditions stated in Article 17 and 18 can be concluded at least up to a significant level, to be notified to the Commission on an annual basis.

The share of the national market shall be calculated on the basis of the Community share of electricity consumed by final consumers consuming more than 40 GWh per year (on a consumption site basis and including autoproduction).

The average Community share shall be calculated by the Commission on the basis of information regularly provided by Member States to the Commission. The Commission shall publish this average Community share defining the degree of market opening in the *Official Journal of the European Communities* before 1 November each year will all appropriate information clarifying the calculation.

2. The share of the national market, as referred to in paragraph 1, will be progressively increased over a period of six years. This increase will be calculated by reducing the Community consumption threshold of 40 GWh, as mentioned in paragraph 1, from 40 GWh to a level of 20 GWh annual electricity consumption three years after the entry into force of this Directive and to a level of 9 GWh annual electricity consumption six years after the entry into force of this Directive.

3. Member States shall specify those customers inside their territory representing the shares as specified under paragraphs 1 and 2 which have the legal capacity to contract electricity in accordance with Articles 17 and 18, given that all final consumers consuming more than 100 GWh per year (on a consumption site basis and including autoproduction) must be included in the above category.

Distribution companies, if not already specified as eligible customers under this paragraph, will have the legal capacity to contract under the conditions of Articles 17 and 18 for the volume of electricity being consumed by their customers designated as eligible within their distribution system, to supply those customers.

4. Member States shall publish by 30 January each year the criteria for the definition of eligible customers, which are able to conclude contracts under the conditions stated in Articles 17 and 18. This information, together with all other appropriate information to justify the fulfilment of market opening under paragraph 1, will be sent to the Commission to be published in the *Official Journal of the European Communities*. The Commission may request a Member State to modify its specifications, as mentioned in paragraph 3, if they create obstacles to the correct application of this Directive as regards the good functioning of the internal electricity market. If the Member State concerned does not follow this request within a period of three months, a final decision will be taken in accordance with procedure I of Article 2 of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission[1].

5. To avoid imbalance in the opening of electricity markets during the period referred to in Article 26:

[1] OJ No L 197, 18. 7. 1987, p. 33.

(a) contracts for the supply of electricity under the provisions of Articles 17 and 18 with an eligible customer in the system of another Member State shall not be prohibited if the customer is considered as eligible in both systems involved;

(b) in cases where transactions as described in subparagraph (a) are refused because of the customer being eligible only in one of the two systems, the Commission may oblige, taking into account the situation in the market and the common interest, the refusing party to execute the requested electricity supply at the request of the Member State where the eligible customer is located.

In parallel with the procedure and the timetable provided for in Article 26, and not later than after half of the period provided for in the same Article, the Commission will review the application of subparagraph (b) of the first subparagraph on the basis of market developments taking into account the common interest. In the light of experience gained, the Commission will evaluate this situation and report on possible imbalance in the opening of electricity markets with regard to this paragraph.

Article 20

1. Member States shall take the necessary measures to enable:

(i) independent producers and autoproducers to negotiate access to the system so as to supply their own premises and subsidiaries in the same Member State or in another Member State by means of the interconnected system;

(ii) producers located outside the territory covered by the system to conclude a supply contract following a call for tender for new generating capacity, and to have access to the system to perform the contract.

2. Member States shall ensure that the parties negotiate in good faith and that none of them abuses its negotiating position by preventing the successful outcome of negotiations.

3. Member States shall designate a competent authority, which must be independent of the parties, to settle disputes relating to the contracts and negotiations in question. In particular, this authority must settle disputes concerning contracts, negotiations and refusal of access or refusal to purchase.

4. In the event of cross-border disputes, the dispute settlement authority shall be the dispute settlement authority covering the system of the single buyer or the system operator which refuses use of, or access to, the system.

5. Recourse to this authority shall be without prejudice to the exercise of rights of appeal under Community law.

Article 21

1. Member States shall take measures under the procedures and rights referred to in Article 17 and 18 to enable:

— all electricity producers and electricity supply undertakings, where Member States authorize their existence, established within their territory to supply their own premises, subsidiaries and eligible customers through a direct line,

— any eligible customer within their territory to be supplied through a direct line by a producer and supply undertakings, where such suppliers are authorized by Member States.

2. Member States shall lay down the criteria for the grant of authorizations for the construction of direct lines in their territory. These criteria must be objective and non-discriminatory.

3. The supply possibilities through a direct line as referred to in paragraph 1 do not modify the possibilities to contract electricity in accordance with Articles 17 and 18.

4. Member States may make authorization to construct a direct line subject either to the refusal of system access on the basis, as appropriate, of Article 17 (5) or Article 18 (4) or to the opening of a dispute settlement procedure under Article 20.

5. Member States may refuse to authorize a direct line if the granting of such an authorization would obstruct the provisions of Article 3. Duly substantiated reasons must be given for such refusal.

Article 22

Member States shall create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of dominant position, in particular to the detriment of consumers, and any predatory behaviour. These mechanisms shall take account of the provisions of the Treaty, and in particular Article 86 thereof.

CHAPTER VIII

Final provisions

Article 23

In the event of a sudden crisis in the energy market and where the physical safety or security of persons, apparatus or installations or system integrity is threatened, a Member State may temporarily take the necessary safeguard measures.

Such measures must cause the least possible disturbance in the functioning of the internal market and must not be

wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

The Member State concerned shall without delay notify these measures to the other Member States, and to the Commission, which may decide that the Member State concerned must amend or abolish such measures, in so far as they distort competition and adversely affect trade in a manner which is at variance with the common interest.

Article 24

1. Those Member States in which commitments or guarantees of operation given before the entry into force of this Directive may not be honoured on account of the provisions of this Directive may apply for a transitional regime which may be granted to them by the Commission, taking into account, among other things, the size of the system concerned, the level of interconnection of the system and the structure of its electricity industry. The Commission shall inform the Member States of those applications before it takes a decision, taking into account the respect of confidentiality. This decision shall be published in the *Official Journal of the European Communities*.

2. The transitional regime shall be of limited duration and shall be linked to expiry of the commitments or guarantees referred to in paragraph 1. The transitional regime may cover derogations from Chapters IV, VI and VII of this Directive. Applications for a transitional regime must be notified to the Commission no later than one year after the entry into force of this Directive.

3. Member States which can demonstrate, after the Directive has been brought into force, that there are substantial problems for the operation of their small isolated systems, may apply for derogations from the relevant provisions of Chapters IV, V, VI, VII, which may be granted to them by the Commission. The latter shall inform the Member States of those applications prior to taking a decision, taking into account the respect of confidentiality. This decision shall be published in the *Official Journal of the European Communities*. This paragraph shall also be applicable to Luxembourg.

Article 25

1. The Commission shall submit a report to the Council and the European Parliament, before the end of the first year following entry into force of this Directive, on harmonization requirements which are not linked to the provisions of this Directive. If necessary, the Commission shall attach to the report any harmonization proposals necessary for the effective operation of the internal electricity market.

2. The Council and the European Parliament shall give their views on such proposals within two years of their submission.

Article 26

The Commission shall review the application of this Directive and submit a report on the experience gained on the functioning of the internal electricity market and the implementation of the general rules mentioned in Article 3 in order to allow the European Parliament and the Council, in the light of experience gained, to consider, in due time, the possibility of a further opening of the market which would be effective nine years after the entry into force of the Directive taking into account the coexistence of systems referred to in Articles 17 and 18.

Article 27

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ...[1]. They shall forthwith inform the Commission thereof.

2. Belgium, Greece and Ireland may, due to the technical specificities of their electricity systems, dispose of an additional period of respectively one year, two years and one year to apply the obligations ensuing from this Directive. These Member States, when making use of this option, shall inform the Commission thereof.

3. When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 28

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 29

This Directive is addressed to the Member States.

Done at ...

For the European Parliament	*For the Council*
The President	*The President*

[1] Two years after the date of entry into force of this Directive.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 24 February 1992 the Commission forwarded to the Council a proposal concerning common rules for the internal market in electricity based on Article 100a of the EC Treaty.

2. The opinions of the Economic and Social Committee and the European Parliament were delivered on 27 January and 17 November 1993, respectively.

3. On 11 February 1994 the Commission forwarded an amended proposal to the Council and the European Parliament.

4. At its meeting on 25 July 1996, the Council adopted its common position pursuant to Article 189b of the Treaty.

II. OBJECTIVES

5. The purpose of the proposal for a Directive is to take a further step towards the completion of the internal market in electricity by establishing common rules for the production, transmission and distribution of electricity. It lays down the rules relating to the organization and functioning of the electricity sector, access to the market, the criteria and procedures applicable to calls for tender and the granting of authorizations and the operation of systems.

III. ANALYSIS OF THE COMMON POSITION

6. The Council reached an agreement on the text of the common position on the basis of the following general outline:

   (a) it has been agreed to pursue a Directive for the internal market in electricity separated from the internal market in gas;

   (b) the internal market in electricity shall initially be subject to a gradual market opening over nine years;

   (c) Member States may invoke either a tendering procedure or an authorization procedure when granting licences to construct new generation capacity;

   (d) Member States may invoke either the 'negotiated third party access' or the 'single buyer' systems to grant access to the grids;

   (e) all issues related to public service obligations have been referred to Article 3;

   (f) with due regard to the principle of subsidiarity, Member States have been given a larger role in the implementation provisions.

7. The Council has been able to adopt a large part of the amendments requested by the European Parliament.

   (a) The Council has, verbatim or in substance, adopted amendments 3, 7, 11, 13, 14, 15, 16, 22, 24, 25, 28, 33, 34, 40, 41, 48, 51, 60, 62, 63, 64, 66, 76, 77, 79, 83, 85, 88, 89, 91, 92, 97, 236, 237 and 238 which were taken up by the Commission.

(b) The Council has, furthermore, been able to adopt verbatim or in substance, amendments 9, 10, 17, 20, 26, 45, 46, 55, 65, 68, 80, 81, 86, 96, 101, 222 and 231 which were not taken up by the Commission.

(c) The Council has not been able to adopt amendments 35, 43, 58, 61, 69, 71, 75, 78, 87, 90, 107 and 108 which were taken up by the Commission.

(d) The Council has finally followed the Commission's amended proposal by not adopting the other amendments proposed by the European Parliament.

COMMON POSITION (EC) No 57/96

adopted by the Council on 12 September 1996

with a view to adopting Directive 96/. . ./EC of the European Parliament and of the Council, of . . ., concerning the processing of personal data and the protection of privacy in the telecommunications sector, in particular in the integrated services digital network (ISDN) and in the public digital mobile networks

(96/C 315/06)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty [3],

(1) Whereas Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [4] requires Member States to ensure the rights and freedoms of natural persons with regard to the processing of personal data, and in particular their right to privacy, in order to ensure the free flow of personal data in the Community;

(2) Whereas currently in the Community new advanced digital technologies are introduced in public telecommunications networks, which give rise to specific requirements concerning the protection of personal data and privacy of the user; whereas the development of the information society is characterized by the introduction of new telecommunications services; whereas the successful cross-border development of these services, such as video-on-demand, interactive television, is partly dependent on the confidence of the users that their privacy will not be at risk;

(3) Whereas this is the case, in particular, with the introduction of the integrated services digital network (ISDN) and digital mobile networks;

(4) Whereas the Council, in its resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 [5], called for steps to be taken to protect personal data, in order to create an appropriate environment for the future development of telecommunications in the Community; whereas the Council re-emphasized the importance of the protection of personal data and privacy in its resolution of 18 July 1989 on the strengthening of the coordination for the introduction of the integrated services digital network (ISDN) in the European Community up to 1992 [6];

(5) Whereas the European Parliament has underlined the importance of the protection of personal data and privacy in the telecommunications networks, in particular with regard to the introduction of the integrated services digital network (ISDN);

(6) Whereas, in the case of public telecommunications networks, specific legal, regulatory, and technical provisions must be made in order to protect fundamental rights and freedoms of natural persons and legitimate interests of legal persons, in particular with regard to the increasing risk connected with automated storage and processing of data relating to subscribers and users;

(7) Whereas legal, regulatory, and technical provisions adopted by the Member States concerning the protection of personal data, privacy and the legitimate interests of legal persons, in the telecommunications sector, must be harmonized in order to avoid obstacles to the internal market for telecommunications in conformity with the objective set out in Article 8a of the Treaty; whereas the harmonization pursuant to the principle of subsidiarity is limited to requirements

[1] OJ No C 200, 22. 7. 1994, p. 4.
[2] OJ No C 159, 17. 6. 1991, p. 38.
[3] Opinion of the European Parliament of 11 March 1992 (OJ No C 94, 13. 4. 1992, p. 198), Council common position of 12 September 1996 (not yet published in the Official Journal) and Decision of the European Parliament of . . . (not yet published in the Official Journal).
[4] OJ No L 281, 23. 11. 1995, p. 31.
[5] OJ No C 257, 4. 10. 1988, p. 1.
[6] OJ No C 196, 1. 8. 1989, p. 4.

that are strictly necessary to guarantee that the promotion and development of new telecommunications services and networks between Member States will not be hindered;

(8) Whereas these new services include interactive television and video-on-demand;

(9) Whereas, in the telecommunications sector, in particular for all matters concerning protection of fundamental rights and freedoms, which are not specifically covered by the provisions of this Directive, including the obligations on the controller and the rights of individuals, Directive 95/46/EC applies; whereas Directive 95/46/EC applies to non-publicly available telecommunication services;

(10) Whereas this Directive, similarly to what is provided for by Article 3 of Directive 95/46/EC, does not address issues of protection of fundamental rights and freedoms related to activities which are not governed by Community law; whereas it is for Member States to take such measures as they consider necessary for the protection of public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the enforcement of criminal law; whereas this Directive shall not affect the ability of Member States to carry out lawful interception of telecommunications, for any of these purposes;

(11) Whereas subscribers of a publicly available telecommunications service may be natural or legal persons; whereas the provisions of this Directive are aimed to protect, by supplementing Directive 95/46/EC, the fundamental rights of natural persons and particularly their right to privacy, as well as the legitimate interests of legal persons; whereas these provisions may in no case entail an obligation for Member States to extend the application of Directive 95/46/EC to the protection of the legitimate interests of legal persons; whereas this protection is ensured within the framework of the applicable Community and national legislation;

(12) Whereas the application of certain requirements relating to presentation and restriction of calling and connected line identification and to automatic call forwarding to subscriber lines connected to analogue exchanges must not be made mandatory in specific cases where such application would prove to be technically impossible or would require a disproportionate economic effort; whereas it is important for interested parties to be informed of such cases and the Member States should therefore notify them to the Commission;

(13) Whereas service-providers must take appropriate measures to safeguard the security of their services, if necessary in conjunction with the provider of the network, and inform subscribers of any special risks of a breach of the security of the network; whereas security is appraised in the light of the provision of Article 17 of Directive 95/46/EC;

(14) Whereas measures must be taken to prevent the unauthorized access to communications in order to protect the confidentiality of communications by means of public telecommunications networks and publicly available telecommunications services; whereas national legislation in some Member States only prohibits intentional unauthorized access to communications;

(15) Whereas the data relating to subscribers processed to establish calls contain information on the private life of natural persons and concern the right to respect for their correspondence or concern the legitimate interests of legal persons; whereas such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time; whereas any further processing which the provider of the publicly available telecommunications services may want to perform for the marketing of its own telecommunications services may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available telecommunications services about the types of further processing he intends to perform;

(16) Whereas the introduction of itemized bills has improved the possibilities for the subscriber to verify the correctness of the fees charged by the service-provider; whereas, at the same time, it may jeopardize the privacy of the users of publicly available telecommunications services; whereas therefore, in order to preserve the privacy of the user, Member States must encourage the development of telecommunications service options such as alternative payment facilities which allow anonymous or strictly private access to publicly available telecommunications services, for example calling cards and facilities for payment by credit card; whereas, alternatively, Member States may, for the same purpose, require the deletion of a certain number of digits from the called numbers mentioned in itemized bills;

(17) Whereas it is necessary, as regards calling line identification, to protect the right of the calling party to withhold the presentation of the identification of the line from which the call is

being made and the right of the called party to reject calls from unidentified lines; whereas it is justified to override the elimination of calling line identification presentation in specific cases; whereas certain subscribers, in particular helplines and similar organizations, have an interest in guaranteeing the anonymity of their callers; whereas it is necessary, as regards connected line identification, to protect the right and the legitimate interest of the called party to withhold the presentation of the identification of the line to which the calling party is actually connected, in particular in the case of forwarded calls; whereas the providers of publicly available telecommunications services must inform their subscribers of the existence of calling and connected line identification in the network and of all services which are offered on the basis of calling and connected line identification and about the privacy options which are available; whereas this will allow the subscribers to make an informed choice about the privacy facilities they may want to use; whereas the privacy options which are offered on a per-line basis do not necessarily have to be available as an automatic network service but may be obtainable through a simple request to the provider of the publicly available telecommunications service;

(18) Whereas safeguards must be provided for subscribers against the nuisance which may be caused by automatic call-forwarding by others; whereas, in such cases, it must be possible for subscribers to stop the forwarded calls being passed on to their terminals by simple request to the provider of the publicly available telecommunications service;

(19) Whereas directories are widely distributed and publicly available; whereas the right to privacy of natural persons and the legitimate interest of legal persons require that subscribers are able to determine the extent to which their personal data are published in a directory; whereas Member States may limit this possibility to subscribers who are natural persons;

(20) Whereas safeguards must be provided for subscribers against intrusion into their privacy by means of unsolicited calls and faxes; whereas Member States may limit such safeguards to subscribers who are natural persons;

(21) Whereas it is necessary to ensure that the introduction of technical features of telecommunications equipment for data-protection purposes is harmonized in order to be compatible with the implementation of the internal market;

(22) Whereas in particular, similarly to what is provided for by Article 13 of Directive 95/46/EC, Member States can restrict the scope of subscribers' obligations and rights in certain circumstances, for example by ensuring that the provider of a publicly available telecommunications service may override the elimination of the presentation of calling-line identification in conformity with national legislation for the purpose of prevention or detection of criminal offences or State security;

(23) Whereas where the rights of the users and subscribers are not respected, national legislation must provide for judicial remedy; whereas sanctions must be imposed on any person, whether governed by private or public law, who fails to comply with the national measures taken pursuant to this Directive;

(24) Whereas it is useful in the field of application of this Directive to draw on the experience of the working party on the protection of individuals with regard to the processing of personal data composed of representatives of the supervisory authorities of the Member States, set up by Article 29 of Directive 95/46/EC;

(25) Whereas, given the technological developments and the attendant evolution of the services on offer, it will be necessary technically to specify the categories of data listed in the Annex to this Directive for the application of Article 6 of this Directive with the assistance of the committee composed of representatives of the Member States set up in Article 31 of Directive 95/46/EC in order to ensure a coherent application of the requirements set out in this Directive regardless of changes in technology;

(26) Whereas, to facilitate compliance with the provisions of this Directive, certain specific arrangements are needed for processing of data already under way on the date that national implementing legislation pursuant to this Directive enters into force,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object and scope

1. This Directive provides for the harmonization of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the telecommunications sector and to ensure the free movement of such data and of telecommunications equipment and services in the Community.

2. The provisions of this Directive particularize and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for

protection of legitimate interests of subscribers who are legal persons.

3. This Directive shall not apply to the activities which fall outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law.

Article 2

Definitions

In addition to the definitions given in Directive 95/46/EC, for the purposes of this Directive:

(a) *Subscriber* shall mean any natural or legal person who or which is party to a contract with the provider of publicly available telecommunications services for the supply of such services;

(b) *User* shall mean any natural person using a publicly available telecommunications service, for private or business purposes, without necessarily having subscribed to this service;

(c) *Public telecommunications network* shall mean transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means, which are used, in all or in part, for the provision of publicly available telecommunications services;

(d) *telecommunications service* shall mean services whose provision consists wholly or partly in the transmission and routing of signals on telecommunications networks, with the exception of radio- and television broadcasting.

Article 3

Services concerned

1. This Directive shall apply to the processing of personal data in connection with the provision of publicly available telecommunications services in public telecommunications networks in the Community, in particular via the integrated services digital network (ISDN) and public digital mobile networks.

2. Articles 8, 9 and 10 shall apply to subscriber lines connected to digital exchanges and, where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.

3. Cases where it would be technically impossible or require a disproportionate investment to fulfil the requirements of Articles 8, 9 and 10 shall be notified to the Commission by the Member States.

Article 4

Security

1. The provider of a publicly available telecommunications service must take appropriate technical and organizational measures to safeguard security of its services, if necessary in conjunction with the provider of the public telecommunications network with respect to network security. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available telecommunications service must inform the subscribers concerning such risk and any possible remedies, including the costs involved.

Article 5

Confidentiality of the communications

Member States shall ensure via national regulations the confidentiality of communications by means of public telecommunications network and publicly available telecommunications services. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications, by others than users, without the consent of the users concerned, except when legally authorized.

Article 6

Traffic and billing data

1. Traffic data relating to subscribers and users processed to establish calls and stored by the provider of a public telecommunications network and/or publicly available telecommunications service must be erased or made anonymous upon termination of the call without prejudice to the provisions of paragraphs 2, 3 and 4.

2. For the purpose of subscriber billing and interconnection payments, data indicated in the Annex may be processed. Such processing is permissible only up to the end of the period during which the bill may lawfully be challenged or payment may be pursued.

3. For the purpose of marketing its own telecommunications services, the provider of a publicly available telecommunications service may process the data referred to in paragraph 2, if the subscriber has given his consent.

4. Processing of traffic and billing data must be restricted to persons acting under the authority of providers of the public telecommunications networks and/or publicly available telecommunications services handling billing or traffic management, customer enquiries, fraud detection and marketing the provider's own telecommunications services and it must be restricted to what is necessary for the purposes of such activities.

5. Paragraphs 1, 2, 3 and 4 shall apply without prejudice to the possibility for competent authorities to be informed of billing or traffic data in conformity with applicable legislation in view of settling disputes, in particular interconnection or billing disputes.

Article 7

Itemized billing

1. Subscribers shall have the right to receive non-itemized bills.

2. Member States shall apply national provisions in order to reconcile the rights of subscribers receiving itemized bills with the right to privacy of calling users and called subscribers, for example by ensuring that sufficient alternative modalities for communications or payments are available to such users and subscribers.

Article 8

Presentation and restriction of calling and connected line identification

1. Where presentation of calling-line identification is offered, the calling user must have the possibility via a simple means, free of charge, to eliminate the presentation of the calling-line identification on a per-call basis. The calling subscriber must have this possibility on a per-line basis.

2. Where presentation of calling-line identification is offered, the called subscriber must have the possibility via a simple means, free of charge for reasonable use of this function, to prevent the presentation of the calling-line identification of incoming calls.

3. Where presentation of calling-line identification is offered and where the calling line identification is presented prior to the call being established, the called subscriber must have the possibility via a simple means to reject incoming calls where the presentation of the calling-line identification has been eliminated by the calling user or subscriber.

4. Where presentation of connected line identification is offered, the called subscriber must have the possibility via a simple means, free of charge, to eliminate the presentation of the connected line identification to the calling user.

5. The provisions set out in paragraph 1 shall also apply with regard to calls to third countries originating in the Community; the provisions set out in paragraphs 2, 3 and 4 shall also apply to incoming calls originating in third countries.

6. Member States shall ensure that where presentation of calling and/or connected line identification is offered, the providers of publicly available telecommunications services inform the public thereof and of the possibilities set out in paragraphs 1, 2, 3 and 4.

Article 9

Exceptions

Member States shall ensure that the provider of a public telecommunications network and/or publicly available telecommunications service may override the elimination of presentation of the calling-line identification:

(a) on a temporary basis, on application of a subscriber requesting the tracing of malicious or nuisance calls; in this case, in accordance with national law, the data containing the identification of the calling subscriber will be stored and be made available by the provider of a public telecommunications network and/or publicly available telecommunications service;

(b) on a per-line basis for organizations dealing with emergency calls and recognized as such by a Member State, including law enforcement agencies, ambulance services and fire brigades, for the purpose of answering such calls.

Article 10

Automatic call forwarding

Member States shall ensure that any subscriber is provided, free of charge and via a simple means, with the possibility to stop automatic call-forwarding by a third party to the subscriber's terminal.

Article 11

Directories of subscribers

1. Personal data contained in printed or electronic directories of subscribers available to the public or

obtainable through directory enquiry services should be limited to what is necessary to identify a particular subscriber, unless the subscriber has given his unambiguous consent to the publication of additional personal data. The subscriber shall be entitled, free of charge, to be omitted from a printed or electronic directory at his or her request, to indicate that his or her personal data may not be used for the purpose of direct marketing, to have his or her address omitted in part and not to have a reference revealing his or her sex, where this is applicable linguistically.

2. Member States may allow operators to require a payment from subscribers wishing to ensure that their particulars are not entered in a directory, provided that the sum involved is reasonable and does not act as a disincentive to the exercise of this right.

3. Member States may limit the application of this Article to subscribers who are natural persons.

Article 12

Unsolicited calls

1. The use of automated calling systems without human intervention (automatic calling machine) or facsimile machines (fax) for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.

2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited calls for purposes of direct marketing, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these calls, the choice between these options to be determined by national legislation.

3. Member States may limit the application of paragraphs 1 and 2 to subscribers who are natural persons.

Article 13

Technical features and standardization

1. In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs 2 and 3, that no mandatory requirements for specific technical features are imposed on terminal or other telecommunications equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.

2. Where provisions of this Directive can be implemented only by requiring specific technical features, Member States shall inform the Commission according to the procedures provided for by Directive 83/189/EEC [1] which lays down a procedure for the provision of information in the field of technical standards and regulations.

3. Where required, the Commission will ensure the drawing-up of common European standards for the implementation of specific technical features, in accordance with Community legislation on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity, and Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications [2].

Article 14

Extension of the scope of application of certain provisions of Directive 95/46/EC

1. Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in Articles 5, 6 and Article 8 (1), (2), (3) and (4), when such restriction constitutes a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of unauthorized use of the telecommunications system, as referred to in Article 13 (1) of Directive 95/46/EC.

2. The provisions of Chapter III on judicial remedies, liability and sanctions of Directive 95/46/EC shall apply with regard to national provisions adopted pursuant to this Directive and with regard to the individual rights derived from this Directive.

3. The working party on the protection of individuals with regarding to the processing of personal data established according to Article 29 of Directive 95/46/EC shall carry out the tasks laid down in Article 30 of the abovementioned Directive also with regard to the protection of fundamental rights and freedoms and of legitimate interests in the telecommunications sector, which is the subject of this Directive.

4. The Commission, assisted by the committee established by Article 31 of Directive 95/46/EC, shall technically specify the Annex according to the procedure mentioned in this Article. The aforesaid committee shall be convened specifically for the subjects covered by this Directive.

[1] OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Directive 94/10/EC (OJ No L 100, 19. 4. 1994, p. 30).

[2] OJ No L 36, 7. 2. 1987, p. 31. Decision as last amended by the 1994 Act of Accession.

Article 15

Implementation of the Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 24 October 1998 at the latest.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. By derogation from the last sentence of Article 6 (3), consent is not required with respect to processing already under way on the date the national provisions adopted pursuant to this Directive enter into force. In those cases the subscribers shall be informed of this processing and if they do not express their dissent within a period to be determined by the Member State, they shall be deemed to have given their consent.

3. Article 11 shall not apply to editions of directories which have been published before the national provisions adopted pursuant to this Directive enter into force.

4. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.

Article 16

Addressees

This Directive is addressed to the Member States.

Done at . . .

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

LIST OF DATA

For the purpose referred to in Article 6 (2) the following data may be processed:

Data containing the:

— number or identification of the subscriber station,

— address of the subscriber and the type of station,

— total number of units to be charged for the accounting period,

— called subscriber number,

— type, start time and duration of the calls made and/or the data volume transmitted,

— other information concerning payments such as advance payment, payments by instalments, disconnection and reminders.

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 27 July 1990 the Commission submitted a proposal for a Directive, based on Article 100a of the EC Treaty, concerning the protection of personal data and privacy in the context of digital telecommunications networks, in particular the integrated services digital network (ISDN) and public digital mobile networks.

The Economic and Social Committee delivered its opinion on 24 April 1991. The European Parliament delivered its opinion on 11 March 1992.

After re-examining its proposal in the light of those opinions, the Commission submitted an amended proposal to the European Parliament and the Council.

The Council adopted its common position in accordance with Article 189b of the Treaty on 12 September 1996.

II. AIM OF THE PROPOSAL

The proposal sets out to apply for the specific purposes of telecommunications networks the general data protection principles laid down by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995. It is accordingly designed, in a constantly changing field, to prevent Member States' legislation from developing along different lines in ways that might jeopardize the single market in telecommunications services and terminal equipment, while ensuring a high level of protection of the rights of individuals, in particular their right to privacy.

III. ASSESSMENT OF THE COMMON POSITION

1. General comments

The common position adopted by the Council provides confirmation of the approach followed by the Commission in its amended proposal and of the Commission's objectives, even though the Council has been prompted to make some changes to the detailed provisions of that proposal.

In making such amendments, the Council was generally concerned to:

— align the provisions of this Directive on those of the general Directive (particularly as regards the scope, Articles 1 and 14),

— ensure that they are consistent with the Community rules already adopted or in preparation in the telecommunications sector (e.g. the definitions in Article 2),

— clarify the scope of some provisions or make them more flexible.

2. Specific comments

(i) With regard to the European Parliament's amendments, the Council took the following line:

— *Amendment 96, first part (private networks and services)*

Article 3 of the common position stipulates that the Directive applies to publicly available telecommunications services provided in public telecommunications networks. However, that Article is to be construed as allowing a Member State to apply its provisions to non-public or non-publicly available networks and services, with the proviso that Directive 95/46/EC in any case applies to the processing of personal data in the context of such networks and services.

— *Amendment 97 (development of technologies)*

The Council went along with the Commission, which did not include in its amended proposal the new recital 21 (a) proposed by the European Parliament.

— *Amendments 96 second part (value-added services), 98 (special or exclusive rights), 107 and 108 (service-providers other than telecommunications organizations)*

These amendments could not be accepted as they were no longer consistent with the legal situation brought about by the new Community rules governing the telecommunications sector.

— *Amendment 99*

The definition of a telecommunications service given in this amendment has been included in Article 2 (d).

— *Amendment 100 (directories of subscribers)*

The content of this amendment has mainly been included in Article 11 of the common position.

However, under that provision, the principle that the right to be omitted from the directory is applicable free of charge may be departed from, subject to certain conditions. Article 11 (2) stipulates that Member States may allow operators to require a payment from subscribers for exercising that right, provided that the sum involved is reasonable and does not act as a disincentive to the exercise of the right.

It should be noted that this paragraph is to be construed as reflecting the provision agreed on the same subject matter by the Council of Europe in its recommendation No R(95)4 of 7 February 1995.

— *Amendment 101 (electronic profiles of subscribers)*

The Council took the same line as the Commission in not including Article 4 of the original proposal, to which the amendment related. However, it believes that the protection sought by the European Parliament is in any event ensured, in general terms by Directive 95/46/EC and in the specific case of traffic and billing data by Article 6 of the common position, in particular paragraph 3.

— *Amendment 102 (protection of the contents of information transmitted)*

The Council took the same line as the Commission in not including Article 5 of the original proposal, to which the amendment related (see the following point for traffic and billing data).

— *Amendments 103 and 104 (traffic and billing data)*

The points about which the European Parliament was concerned have been accommodated in the various paragraphs of Article 6 of the common position.

The provision put forward by the Commission in its amended proposal with regard to traffic data is included in Article 6 (1). (The Council has also followed the Commission in not including the provision corresponding to Article 10 (1) of the original proposal — the subject of amendment 103 — which is already taken into account in the general Directive).

The provisions on billing data (Article 9 of the original proposal, Article 5 of the amended proposal) have been included in Article 6 (2), with an exhaustive list of data which may be processed for the purpose of subscriber billing now being given in an annex to the Directive, in the interests of ensuring a high level of protection.

Under Article 14 (4) of the common position, that list, which is the same as the one proposed by the Commission and endorsed by the European Parliament, may only be technically specified by the Committee established by Article 31 of Directive 95/46/EC (see Article 14 (4)). This provision is to be construed as in no way allowing the substance of the Annex and of Article 6 to be changed, for example by adding or deleting categories of data, and as merely permitting the list of data to be particularized on account of changes in technology. Substantial amendments calling into question data protection may therefore be introduced only under the procedure laid down in Article 100a of the Treaty.

All data other than those listed in that Annex to the common position, moreover, should be regarded as having to be processed in accordance with the principles in Directive 95/46/EC, especially Article 16 of it.

Article 6 (4) of the common position contains provisions on restriction of access to traffic and billing data that accommodate the concern expressed by the European Parliament in amendment 103.

— *Amendment 105 (automatic call-forwarding)*

This amendment is to a large extent taken into account in Article 10 of the common position, which enjoins Member States to ensure that any subscriber is provided, free of charge and via a simple means, with the possibility to stop automatic call-forwarding by a third party to the subscriber's terminal.

— *Amendment 106 (teleshopping service)*

The provisions contained in Article 16 of the original proposal have been omitted from the common position, as the European Parliament wished.

(ii) The other main changes made in the common position are as follows:

— *Article 3:*

the Directive applies to services provided via digital and analogue networks. However, the provisions of Articles 8, 9 (presentation of line identification) and 10 (automatic call-forwarding) are applicable to subscriber lines connected to analogue exchanges only where technically possible and if this does not require a disproportionate economic effort (paragraphs 2 and 3).

— *Article 4 (security)*

This Article corresponds to Article 8 of the original proposal.

The Article is to be understood as follows:

— the provisions of paragraph 1 are designed to establish a level of processing security consistent with that advocated by Article 17 of Directive 95/46/EC,

— as regards the provisions of paragraph 2, where, in spite of the security measures taken, there is still a particular risk of a breach of the security of the network, the provider of a telecommunications service, where appropriate together with the provider of the public telecommunications network, is in addition required to inform individuals of that risk and of possible remedies.

— *Article 5 (confidentiality of communications)*

The provisions on confidentiality of communications (Article 12 of the Commission proposal) have been redrafted more concisely and placed at the start of the enacting terms, after the provisions on security, in order to highlight the importance to be attached to that principle.

— *Article 7 (itemized billing)*

The Council has opted for a wording which reconciles the right of subscribers to be able to check the correctness of their bills with the right to the protection of privacy; recital 16 also stipulates that Member States may, in order to protect users' privacy more effectively, opt to require the deletion of a number of digits from the called number mentioned in itemized bills.

— *Article 8 (presentation of calling and connected line identification)*

The provisions in the amended Commission proposal with regard to calling-line identification have been redrafted so as not to be dependent upon any particular technology or terminal equipment and provisions on the connected line identification service have also been added.

With specific reference to the possibility, under paragraph 3, of rejecting a call from a user who has eliminated the presentation of identification of his line, it should be noted that this provision does not prevent Member States from prohibiting government agencies, public utilities and emergency services from rejecting calls where the presentation of the calling-line identification has been eliminated by the calling user or subscriber.

— *Article 12 (unsolicited calls)*

The provisions of this Article have been redrafted so as to tally with Article 10 of the common position for the Directive on distance selling.

— *Article 13 of the amended proposal (technical application and modification)*

This Article has been deleted and technical adaptation is now confined to the Annex, under the procedure laid down in Article 31 of Directive 95/46/EC (see the comments above on Parliament's amendments 103 and 104).

— *Article 14 (3) (working party on the protection of individuals)*

The Council, supported by the Commission, considers that the working party, set up under Article 29 of Directive 95/46/EC, which also has a role to play in the implementation of this Directive, could for the purposes of the Directive usefully draw on the expertise of the national regulatory authorities for telecommunications by where appropriate inviting representatives of those authorities to its meetings as experts.

— *Article 15 (implementation of the Directive)*

For transposition of the Directive into national law in the Member States, the Council has opted for the same time limit as for the general Directive, with a deadline of 24 October 1998.

COMMON POSITION (EC) No 58/96

adopted by the Council on 12 September 1996

with a view to the adoption of Directive 96/. . ./EC of the European Parliament and of the Council, of . . ., amending Council Directives 90/387/EEC and 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications

(96/C 315/07)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) Whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (ONP) [4] concerns the harmonization of conditions for open and efficient access to and use of public telecommunications networks and, where applicable, services; whereas, in accordance with that Directive, the Council adopted Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines [5];

(2) Whereas Council resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market [6], combined with Council resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures [7], calls for the liberalization of telecommunications services and infrastructures by 1 January 1998 (with transitional periods for certain Member States); whereas this is supported by European Parliament resolution of 20 April 1993 on the Commission's 1992 review of the situation in the telecommunications sector [8], and European Parliament resolution of 19 May 1995 on the Green Paper on the liberalization of telecommunications infrastructures and cable television networks (Part II) [9];

(3) Whereas Council resolution of 22 July 1993 considered as a major goal for the Community's telecommunications policy the application throughout the Community and, where necessary, the adaptation, in the light of further liberalization, of open network provision principles in respect of the entities covered and of such issues as universal service, interconnection and access charges as well as the consequent questions connected with licensing conditions; whereas Council resolution of 18 September 1995 on the implementation of the future regulatory framework for telecommunications [10] called on the Commission, in accordance with the timetable set out in Council resolutions of 22 July 1993 and 22 December 1994, to present to the European Parliament and the Council before 1 January 1996 all legislative provisions intended to establish the European regulatory framework for telecommunications accompanying the full liberalization of this sector, in particular concerning the adaptation to the future competitive environment of open network provision measures;

(4) Whereas European Parliament resolution of 6 May 1994 on the Commission communication accompanied by the proposal for a Council resolution on universal service principles in the telecommunications sector [11] emphasizes the central importance of universal service principles; whereas Council resolution of 7 February 1994 on universal service principles in the telecommunications sector [12] provides a basic definition of universal service and calls upon the Member States to establish and maintain an appropriate regulatory framework in order to

[1] OJ No C 62, 1. 3. 1996, p. 3.
[2] OJ No C 204, 15. 7. 1996, p. 14.
[3] Opinion of the European Parliament of 22 May 1996 (OJ No C 166, 10. 6. 1996, p. 91), Council common position of 12 September 1996 (not yet published in the Official Journal) and Decision of the European Parliament of . . . (not yet published in the Official Journal).
[4] OJ No L 192, 24. 7. 1990, p. 1.
[5] OJ No L 165, 19. 6. 1992, p. 27. Directive as amended by Commission Decision 94/439/EC (OJ No L 181, 15. 7. 1994, p. 40).
[6] OJ No C 213, 6. 8. 1993, p. 1.
[7] OJ No C 379, 31. 12. 1994, p. 4.
[8] OJ No C 150, 31. 5. 1993, p. 39.
[9] OJ No C 151, 19. 6. 1995, p. 479.
[10] OJ No C 258, 3. 10. 1995, p. 1.
[11] OJ No C 205, 25. 7. 1994, p. 551.
[12] OJ No C 48, 16. 2. 1994, p. 1.

ensure it throughout their territories; whereas, as was recognized by the Council in that resolution, the concept of universal service must evolve to keep pace with advances in technology, market development and changes in user demand; whereas universal service in telecommunications will have a role to play in strengthening social and economic cohesion, in particular in remote, peripheral, landlocked and rural areas and islands of the Community; whereas, where justified, the net cost of universal service obligations may be shared by market players in accordance with Community law;

(5) Whereas the basic principles concerning access to and the use of public telecommunications networks and services, set out within the open network provision framework, must be adapted to ensure Europe-wide services in a liberalized environment, in order to benefit users and organizations providing public telecommunications networks and/or services; whereas a voluntary approach based on common technical standards and specifications, with consultations undertaken where necessary to satisfy user needs, is appropriate in a liberalized environment; whereas, nevertheless, the provision of universal service and the availability of a minimum set of services must be guaranteed to all users in the Community in accordance with the Community measures applicable; whereas a general framework for interconnection to public telecommunications networks and public telecommunications services is needed in order to provide end-to-end interoperability of services for Community users;

(6) Whereas open network provision conditions must not restrict the use of or access to public telecommunications networks or publicly available telecommunications services except on grounds of essential requirements or the exercise of special and exclusive rights retained by Member States in accordance with Community law;

(7) Whereas the provisions of this Directive do not prevent a Member State from taking measures justified in grounds set out in Articles 36 and 56 of the Treaty, and in particular on grounds of public security, public policy and public morality;

(8) Whereas in accordance with the principle of the separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities with a view to ensuring the impartiality of their decisions, and ensure that the national regulatory authority or authorities of each Member State will play a key role in the implementation of the regulatory framework set out in relevant Community legislation; whereas this requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States, or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership in accordance with Article 222 of the Treaty; whereas the national regulatory authorities should be in possession of all the resources necessary, in terms of staffing, expertise, and financial means, for the performance of their function;

(9) Whereas numbering and the more general concepts of addressing and naming play an important role; whereas adherence to a harmonized approach for numbering/addressing and, where applicable, naming, will contribute to Europe-wide end-to-end communications for users and the interoperability of services; whereas in addition to numbering it may be appropriate to apply the principles of objectivity, transparency, non-discrimination and proportionality in the allocation of names and addresses; whereas Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets [1] provides for adequate numbers to be available for all telecommunications services, and for numbers to be allocated in an objective, transparent, non-discriminatory and proportionate manner;

(10) Whereas in order to guarantee the provision of leased lines throughout the Community, Member States should ensure that at every point in their territories users have access to a minimum set of leased lines from at least one organization; whereas organizations with obligations to provide leased lines should be designated by Member States; whereas Member States must notify the Commission of the organizations subject to this Directive, the leased-line types within the minimum set which they are required to provide, and the geographical area in which this requirement applies; whereas, within a specific geographical area, all the leased line types provided by a notified organization are subject to the general provisions of this Directive;

(11) Whereas the market power of an organization depends on a number of factors, including its share of the relevant product or service market in the relevant geographical market, its turnover relative to the size of the market, its ability to influence market conditions, its control of the means of access to end-users, its access to financial resources and its experience in providing products and

[1] OJ No L 74, 22. 3. 1996, p. 13.

services in the market; whereas determining which organizations have significant market power should be a function of national regulatory authorities taking into account the situation on the relevant market;

(12) Whereas the concept of leased-lines services will evolve with new technological advances and market demand, allowing users a more flexible use of the leased-line bandwidth;

(13) Whereas, in order to achieve more efficient communications within the Community, it is important that Member States encourage the provision of an additional harmonized set of higher-order leased lines, taking into account market demand and progress with standardization;

(14) Whereas until an effective competitive environment is achieved, there is a need for the regulatory supervision of tariffs for leased lines with a view to ensuring cost orientation and transparency in accordance with the principle of proportionality; whereas it is appropriate to allow the requirements for cost orientation and transparency in specific markets to be set aside where no organization has significant market power or where effective competition ensures that tariffs for leased lines are reasonable;

(15) Whereas common technical regulations (CTRs) adopted under Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity [1] and Council Directive 93/97/EEC of 29 October 1993 supplementing Directive 91/263/EEC in respect of satellite earth station equipment [2] define the conditions for the connection of terminal equipment to leased lines;

(16) Whereas certain amendments to existing open network provision measures are appropriate in order to ensure their consistency with new technical developments and with other regulatory measures that will form part of the overall regulatory framework for telecommunications;

(17) Whereas all the areas identified in Annex I to Directive 90/387/EEC as possible areas for the application of open network provision conditions have been addressed in analysis reports subject to public consultation, in accordance with the procedure laid down in Article 4 of that Directive; whereas all the priority measures identified in Annex III thereto have been adopted;

(18) Whereas in order to enable the Commission to carry out the monitoring task assigned to it by the Treaty, changes in national regulatory authority or authorities and the organizations affected must be swiftly communicated to the Commission;

(19) Whereas, in accordance with the principles of subsidiarity and proportionality as stated in Article 3b of the Treaty, the objective of adapting Directives 90/387/EEC and 92/44/EEC to a competitive environment in telecommunications cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community;

(20) Whereas the functioning of Directives 90/387/EEC and 92/44/EEC should be reviewed no later than 31 December 1999; whereas that review should take account of the increasing effectiveness of competition in telecommunications markets;

(21) Whereas under Articles 52 and 59 of the Treaty, the regulatory regime in the field of telecommunications should be compatible and consistent with the principles of freedom of establishment and freedom to provide services and should take into account the need to facilitate the introduction of new services as well as the widespread application of technological improvements,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendment to Directive 90/387/EEC

Directive 90/387/EEC is hereby amended as follows:

1. Article 1 shall be amended as follows:

   (a) paragraph 2 shall be replaced by the following:

   '2. The purpose of the conditions prescribed in paragraph 1 shall be to facilitate the provision of public telecommunications networks and/or public telecommunications services, within and between Member States, and in particular the provision of services by companies, firms or natural persons established in a Member State other than that of the company, firm or natural person for whom the services are intended.';

   (b) the following paragraph shall be added:

   '3. Open network provision conditions shall aim at:

   — ensuring the availability of a minimum set of services,

[1] OJ No L 128, 23. 5. 1991, p. 1. Directive as last amended by Directive 93/68/EEC (OJ No L 220, 30. 8. 1993, p. 1).
[2] OJ No L 290, 24. 11. 1993, p. 1.

— securing access and interconnection to public telecommunications networks and public telecommunications services,

— encouraging the provision of harmonized telecommunications services to the benefit of users, in particular by identifying and promoting by voluntary means harmonized technical interfaces for open and efficient access and interconnection, and associated standards and/or specifications, and

— guaranteeing the privision of universal service in telecommunications, taking account of any future evolution,

throughout the Community.'.

2. Article 2 shall be replaced by the following:

'*Article 2*

For the purposes of this Directive:

1. "Users" shall mean individuals, including consumers, or organizations using or requesting publicly available telecommunications services;

2. "Telecommunications network" shall mean transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means;

   "Public telecommunications network" shall mean a telecommunications network used, in all or in part, for the provision of publicly available telecommunications services;

3. "Telecommunications services" shall mean services the provision of which consists wholly or partly in the transmission and routing of signals on telecommunications networks, with the exception of radio and television broadcasting;

4. "Universal service" shall mean a defined minimum set of services of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price;

5. "Network termination point" shall mean the physical point at which a user is provided with access to a public telecommunications network. The locations of network termination points shall be defined by the national regulatory authority and shall represent a boundary, for regulatory purposes, of the public telecommunications network;

6. "Essential requirements" shall mean the non-economic reasons in the public interest which may cause a Member State to impose conditions on the establishment and/or operation of telecommunications networks or the provision of telecommunications services. Those reasons shall be the security of network operations, the maintenance of network integrity and, where justified, the interoperability of services, data protection, the protection of the environment and town and country planning objectives as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based telecommunications systems and other space-based or terrestrial technical systems. Data protection may include protection of personal data, the confidentiality of information transmitted or stored and the protection of privacy;

7. "Interconnection" shall mean the physical and logical linking of telecommunications-network facilities used by the same or a different organization in order to allow the users of one organization to communicate with users of the same or another organization or to access services provided by another organization;

8. "Open network provision conditions" shall mean the conditions, harmonized in accordance with this Directive, which govern open and efficient access to public telecommunications networks and, where applicable, public telecommunications services and the efficient use of those networks and services.

   Without prejudice to their application on a case-by-case basis, open network provision conditions may include harmonized conditions with regard to:

   — technical interfaces, including the definition and implementation of network termination points, where required,

   — usage conditions,

   — tariff principles,

   — access to frequencies and numbers/addresses/names, where required in accordance with the reference framework of the Annex;

9. "Technical specifications", "standards" and "terminal equipment" shall have the same meanings as in Article 1 of Directive 91/263/EEC(*).

(*) OJ No L 128, 23. 5. 1991, p. 1.'

3. Article 3 shall be amended as follows:

(a) paragraphs 2 and 3 shall be replaced by the following:

'2. Open network provision conditions shall not restrict access to public telecommunications networks or public telecommunications services, except on grounds of essential requirements within the framework of Community law. In

addition, the conditions generally applicable to the connection of terminal equipment to the network shall apply.

3. Open network provision conditions may not allow for any additional restrictions on the use of the public telecommunications networks and/or public telecommunications services, except those which are compatible with Community law.';

(b) paragraph 4 shall be deleted;

(c) paragraph 5 shall be replaced by the following:

'5. Without prejudice to the specific Directives adopted in the field of open network provision and in so far as the application of the essential requirements referred to in paragraph 2 may cause Member States to limit access to public telecommunications networks or services, the rules for uniform application of the essential requirements, in particular concerning the interoperability of services and the protection of data, shall be determined, where appropriate, by the Commission, in accordance with the procedure laid down in Article 10.'.

4. Article 4 shall be deleted.

5. Article 5 shall be replaced by the following:

'*Article 5*

1. References to standards and/or specifications drawn up as a basis for harmonized technical interfaces and/or service features for open network provision shall be published in the *Official Journal of the European Communities* as suitable for the requirement of open and efficient access, interconnection and interoperability in order to encourage the provision of harmonized telecommunications services to the benefit of users throughout the Community.

Where necessary, the Commission may, in consultation with the committee referred to in Article 9, request standards to be drawn up by European standardization bodies.

2. Member States shall encourage the use of the standards and/or specifications to which reference is made in the *Official Journal of the European Communities*, in accordance with paragraph 1, for the provision of technical interfaces and/or network functions.

As long as such standards and/or specifications are not adopted, Member States shall encourage:

— standards and/or specifications adopted by European standardization bodies such as ETSI or the European Committee for Standardization/European Committee for Electrotechnical Standardization CEN/Cenelec,

or, in the absence of such standards and/or specifications,

— international standards or recommendations adopted by the International Telecommunications Union (ITU), the International Organization for Standardization (ISO) or the International Electrotechnical Committee (IEC),

or, in the absence of such standards and/or specifications,

— national standards and/or specifications.

3. If the implementation of the standards and/or specifications referred to in paragraph 1 appears to be inadequate to insure the interoperability of transfrontier services in one or more Member States, the implementation of such standards and/or specifications may be made compulsory under the procedure laid down in Article 10, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users, subject to Articles 85 and 86 of the Treaty.

Before the implementation of the standards and/or specifications is made compulsory in accordance with the first subparagraph, the Commission shall, by publishing a notice to that effect in the *Official Journal of the European Communities*, invite public comment by all parties concerned.

4. Where a Member State or the Commission considers that the harmonized standards and/or specifications referred to in paragraph 1 do not correspond to the objective of open and efficient access, interconnection and interoperability, in particular the basic principles and the essential requirements referred to in Article 3, it shall be decided whether or not it is necessary to withdraw references to those standards and/or specifications from the *Official Journal of the European Communities* in accordance with the procedure laid down in Article 10.

5. The Commission shall inform the Member States of any such decision and publish information on the withdrawal of those standards and/or specifications in the *Official Journal of the European Communities*.'.

6. The following Article shall be inserted:

'*Article 5 (a)*

1. Where the tasks assigned to the national regulatory authority in Community legislation are undertaken by more than one body, Member States shall ensure that the tasks to be undertaken by each body are made public.

2. In order to guarantee the independence of national regulatory authorities:

— national regulatory authorities shall be legally distinct from and functionally independent of all organizations providing telecommunications networks, equipment or services,

— Member States that retain ownership or a significant degree of control of organizations providing telecommunications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

3. Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the national regulatory authority has a right of appeal to a body independent of the parties involved.

4. Member States may take steps to ensure that national regulatory authorities are able to obtain from organizations providing telecommunications networks and/or services all the information necessary for them to apply Community legislation.'.

7. Articles 6 and 7 shall be deleted.

8. Article 8 shall be replaced by the following:

'*Article 8*

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion no later than 31 December 1999. The report shall be based *inter alia* on the information supplied by the Member States to the Commission and to the committee referred to in Articles 9 and 10. Where necessary, further measures for the adaptation of this Directive, taking account of developments towards a fully competitive environment, may be proposed in the report.'.

9. In the second paragraph of Article 9 (1), 'telecommunications organizations' shall be replaced by 'organizations providing public telecommunications networks and/or publicly available telecommunications services.'.

10. Annexes 1 and 3 shall be deleted.

11. Annex 2 shall be replaced by Annex I to this Directive.

Article 2

Amendment to Directive 92/44/EEC

Directive 92/44/EEC is hereby amended as follows:

1. 'Telecommunications organizations' shall be replaced by 'organizations notified in accordance with Article 11 (1) (a)' throughout.

2. The following paragraphs shall be added to Article 1:

'Member States shall ensure that at every point in their territory at least one organization is subject to the provisions of this Directive.

Member States shall ensure that obligations arising out of this Directive are not imposed on organizations without significant market power in the relevant leased-lines market, unless there are no organizations with significant market power in the relevant leased-lines market in a given Member State.'.

3. Article 2 shall be replaced by the following:

'*Article 2*

Definitions

1. The definitions given in Directive 90/387/EEC shall apply, where relevant, to this Directive.

2. In addition, for the purposes of this Directive,

— "leased lines" shall mean the telecommunications facilities which provide for transparent transmission capacity between network termination points and which do not include on-demand switching (switching functions which the user can control as part of the leased-line provision),

— "open network provision committee" shall mean the committee referred to in Articles 9 and 10 of Directive 90/387/EEC,

— "national regulatory authority" shall mean the body referred to in Article 5 (a) of Directive 90/387/EEC.

3. For the purpose of this Directive, an organization shall be presumed to have significant market power when its share of the relevant leased-lines market in a Member State is 25 % or more. The relevant leased-lines market shall be assessed on the basis of the type(s) of leased line offered in a particular geographical area. The geographical area may cover the whole or part of the territory of a Member State.

National regulatory authorities may determine that an organization with a market share that is less than 25 % of the relevant leased-lines market has significant market power. They may also determine that an organization with a market share that is 25 % or more of the relevant leased-lines market does not have significant market power.

In either case, the determination shall take into account the organization's ability to influence the leased-lines market conditions, its turnover relative to the size of the market, its access to financial resources and its experience in providing products and services in the market.'.

4. Article 3 shall be amended as follows:

   (a) the second sentence of paragraph 1 shall be replaced by the following:

   'Changes in existing offerings and information on new offerings shall be published as soon as possible. The national regulatory authority may lay down a suitable period of notice';

   (b) paragraph 3 shall be deleted.

5. The first subparagraph of the second indent in Article 4 shall be replaced by the following:

   '— the typical delivery period, which is the period, counted from the date when the user has made a firm request for a leased line, in which 95 % of all leased lines of the same type have been put through to the customers,'.

6. Article 6 shall be amended as follows:

   (a) paragraph 1 shall be replaced by the following:

   '1. Member States shall ensure that when access to and use of leased lines is restricted in accordance with Community law those restrictions are imposed by the national regulatory authorities through regulatory means.

   No technical restrictions shall be introduced or maintained for the interconnection of leased lines among each other or for the interconnection of leased lines and public telecommunications networks.';

   (b) the second subparagraph of paragraph 3 (a) shall be replaced by the following:

   'An emergency situation in this context shall mean an exceptional case of *force majeure*, such as extreme weather, earthquakes, flood, lightning or fire.';

   (c) the first subparagraph of paragraph 4 and footnote 1 shall be replaced by the following:

   'Access conditions relating to terminal equipment shall be considered to be fulfilled when the terminal equipment complies with the approval conditions laid down for its connection to the network-termination point of the type of leased line concerned in accordance with Directive 91/263/EEC(*) or 93/97/EEC(**).

   (*) OJ No L 128, 23. 5. 1991, p. 1.
   (**) OJ No L 290, 24. 11. 1993, p. 1.'.

7. Article 7 shall be amended as follows:

   (a) the following paragraph shall be inserted:

   '2 (a) Member States shall encourage provision of the additional types of leased lines specified in Annex III, taking into account market demand and progress with standardization';

   (b) paragraph 3 shall be replaced by the following:

   '3. The amendments necessary to adapt Annexes II and III to new technical developments and to changes in market demand, including the possible deletion of certain types of leased lines from the Annexes, shall be adopted by the Commission under the procedure provided for in Article 10 of Directive 90/387/EEC, taking into account the state of development of national networks.'.

8. Article 8 (2) shall be replaced by the following:

   '2. The national regulatory authority shall ensure that the organizations notified in accordance with Article 11 (1) (a) adhere to the principle of non-discrimination when providing leased lines. Those organizations shall apply similar conditions in similar circumstances to organizations providing similar services, and shall provide leased lines to others under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners, where applicable.'.

9. Article 9 shall be deleted.

10. Article 10 shall be amended as follows:

   (a) paragraph 1 (a) shall be replaced by the following:

   '(a) tariffs for leased lines shall be independent of the type of application which the users of the leased lines implement, without prejudice to the principle of non-discrimination set out in Article 8 (2);'

   (b) paragraph 2 (b) (iii) shall be replaced by the following:

   '(iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly assigned or allocated to leased lines, on the one hand, to those allocated to other services, on the other hand;'

   (c) the following paragraph shall be added:

   '4. The national regulatory authority shall not apply the requirements of paragraph 1 where an organization does not have significant market power in respect of a specific leased-lines offering in a specific geographical area.

   The national regulatory authority may decide not to apply the requirements of paragraph 1 in a specific geographical area where it is satisfied that there is effective competition in the relevant leased-lines market as evidenced by tariffs that already comply with those requirements.'.

11. Article 11 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Member States shall notify the Commission of their national regulatory authority or authorities responsible for carrying out the tasks specified in this Directive.

They shall promptly notify the Commission of any changes in their national regulatory authorities.';

(b) the following paragraph shall be inserted:

'1 (a) National regulatory authorities shall notify the Commission of the names of those organizations providing leased lines subject to requirements under this Directive. That notification shall, where appropriate, include the types of leased lines that each organization is required to provide in each geographical area in order to comply with Article 1 and shall include any cases where, pursuant to Article 10 (4), Article 10 (1) is not applied.';

(c) the second subparagraph of paragraph 2 shall be replaced by the following:

'The national regulatory authority shall keep available and submit to the Commission on request the data on all cases in which access to or use of leased lines has been restricted, as well as details of the measures taken, including the reasons why they were taken.'.

12. Article 14 shall be replaced by the following:

'*Article 14*

Report

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion no later than 31 December 1999. The report shall be based, *inter alia*, on the information supplied by the Member States to the Commission and to the open network provision Committee. The report shall include an assessment of the need for continuation of this Directive, taking account of developments towards a fully competitive environment. Where necessary, further measures for the adaptation of this Directive may be proposed in the report.'.

13. Annex I shall be amended as follows:

(a) footnote 1 shall be replaced by the following:

'(1) OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by European Parliament and Council Directive 94/10/EC (OJ No L 100, 19. 4. 1994, p. 30).';

(b) in Section D, points 1, 2, 3, 5 and 6 shall be deleted;

(c) Section E shall be replaced by the following:

'E. Conditions for the attachment of terminal equipment

The information on the attachment conditions must include a complete overview of the requirements with which terminal equipment to be attached to the relevant leased line must comply in accordance with Directive 91/263/EEC or Directive 93/97/EEC.'.

14. Annex II to this Directive shall be added as Annex III.

Article 3

Transposition

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive no later than 31 December 1997. They shall immediately inform the Commission thereof.

When the Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. The Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

This Directive shall enter into force on the 20 day after that of its publication in the *Official Journal of the European Communities*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at . . .

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

'ANNEX

Reference framework for the application of ONP conditions

The application of open network provision conditions as defined in Article 2 (8) should be in accordance with the following reference framework, taking into account the relevant rules of the Treaty:

1. *Harmonized technical interfaces and/or network functions*

   When open network provision conditions are drawn up, the following scheme should be taken into account for the definition of specifications for technical interfaces and/or network functions:

   — for existing services and networks, existing interface specifications should be adopted,

   — for entirely new services or the improvement of existing services, existing interface specifications should also be adopted, as far as feasible. When existing interfaces are not suitable, enhancements and/or new interface specifications will have to be specified,

   — for networks that are still to be introduced but for which the standardization programme has already commenced, open network provision requirements falling within the terms of Article 3 should be taken into account when new interface and network functions specifications are developed.

   Open network provision proposals must, wherever possible, be in line with the ongoing work in the European standardization bodies, in particular the ETSI, and must also take into account work in international standardization organizations, such as the ITU-T.

2. *Harmonized supply and usage conditions*

   Supply and usage conditions identify conditions of access and of provision of services as far as required.

   (a) Supply conditions concern conditions under which a service is offered to users. They may include:

      — typical delivery period,

      — typical repair time,

      — quality of service, in particular availability and quality of transmission,

      — maintenance and network management;

   (b) usage conditions concern conditions which apply to users, such as:

      — conditions for network access,

      — conditions for shared use,

      — conditions regarding protection of personal data and confidentiality of communications, where required.

3. *Harmonized tariff principles*

   Tariff principles must be consistent with the principles stated in Article 3 (1).

   Those principles imply, in particular, that:

   — tariffs must be based on objective criteria and, until such time as competition becomes effective in keeping down prices for users, must in principle be cost-oriented, on the understanding that the fixing of the actual tariff level will continue to be the province of national legislation and is not the subject of open network provision conditions. Where an organization no longer has significant market power in the relevant market, the requirement for cost-orientation may be set aside by the competent national regulatory authority. One of the aims should be the definition of efficient tariff principles throughout the Community while ensuring a general service for all,

   — tariffs must be transparent and must be properly published,

   — in order to leave users a choice between the individual service elements and where technology so permits, tariffs must be sufficiently unbundled in accordance with the competition rules of the Treaty. In particular, additional features introduced to provide certain specific extra services must, as a general rule, be charged independently of the inclusive features and transportation as such,

— tariffs must be non-discriminatory and guarantee equality of treatment, except for restrictions which are compatible with Community law.

Any charge for access to network resources or services must comply with the principles set out above and with the competition rules of the Treaty and must also take into account the principle of fair sharing in the global cost of the resources used, the need for a reasonable level of return on investment and, where appropriate, the financing of universal service in accordance with the interconnection Directive [1].

There may be different tariffs, in particular to take account of excess traffic during peak periods and lack of traffic during off-peak periods, provided that the tariff differentials are commercially justifiable and do not conflict with the above principles.

4. *Harmonized approach to numbering/addressing/naming*

Numbering/addressing and in some instances naming provide for the selection of the destination or destinations, or for the selection of a service, of a service-provider or a network operator.

Adherence to a harmonized approach for numbering/addressing and, where applicable, naming is therefore essential to guarantee Europe-wide end-to-end interconnection of users and the interoperability of services. Furthermore, the allocation of numbers/addresses/names should be fair, proportionate and consistent with the requirements for equal access.

To achieve that, it is necessary:

— to ensure the provision according to harmonized principles of adequate ranges of numbers and addresses, prefixes and short codes and, where applicable, of adequate naming, for all public telecommunications services,

— to ensure the coordination of national positions in international organizations and forums where decisions are taken on numbering/addressing/naming, taking into account possible future developments in numbering/addressing/naming at European level,

— to ensure that the relevant national telecommunications numbering/addressing/naming plans are under the supervision of the national regulatory authority, in order to guarantee independence from organizations providing public telecommunications networks or publicly available telecommunications services,

— to ensure that the procedures for allocating individual numbers/addresses/names, prefixes and short codes and/or addressing/numbering ranges are transparent, equitable and timely and that the allocation is carried out in an objective, transparent and non-discriminatory manner, taking into account the principle of proportionality,

— to give national regulatory authorities the possibility of laying down conditions for the use in numbering/addressing plans of certain prefixes or certain short codes, in particular where these are used for services of general public interest (e.g. directory services or emergency services), or to ensure equal access.

5. *Access to frequencies*

Member States must ensure that frequencies are made available for telecommunications services in accordance with Community law. Access to frequencies granted by means of licences or other authorizations must comply with Council resolution of 19 November 1992 on the implementation in the Community of the European Radiocommunications Committee Decisions [2].

---

[1] Common position (EC) No 34/96 adopted by the Council on 18 June 1996 with a view to adopting a directive of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP) (OJ No C 220, 29. 7. 1996, p. 13).

[2] OJ No C 318, 4. 12. 1992, p. 1.

ANNEX II

'ANNEX III

DEFINITION OF LEASED LINES THE PROVISION OF WHICH IS TO BE ENCOURAGED IN ACCORDANCE WITH ARTICLE 7 (2 a)

Leased-line type	Technical characteristics	
	Interface presentation specifications	Connection characteristics and performance specifications
34 368 kbit/s digital structured	ETS 300 686 (1)	ETS 300 687 (1)
34 368 kbit/s digital unstructured	ETS 300 686 (1)	ETS 300 687 (1)
139 264 kbit/s digital structured	ETS 300 686 (1)	ETS 300 688 (1)
139 264 kbit/s digital unstructured	ETS 300 686 (1)	ETS 300 688 (1)
155 Mbit/s digital (STM-1) (2)	Based on ITU-T G.708	Based on ITU-T G.708

(1) These standards are still under development in ETSI.
(2) ETSI has been requested to carry out further work on standards for SDH VC-based leased digital bandwidth.'

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 10 January 1996, the Commission submitted a proposal amending the Council ONP framework Directive (90/387/EEC) and the Council leased lines-Directive (92/44/EEC) for the purpose of adapting them to a competitive environment in telecommunications in the context of total liberalization of the sector from 1 January 1998.

   The proposal is based on Article 100a of the EC Treaty.

   The European Parliament delivered its first-reading opinion on 22 May 1996.

   The Economic and Social Committee delivered its opinion on 25 April 1996.

   In the light of these opinions, the Commission submitted an amended proposal on 31 July 1996.

3. The Council adopted its common position, under Article 189b of the Treaty, on 12 September 1996.

II. OBJECTIVE

This proposal is an essential part of the regulatory reform package needed to enable full liberalization of telecommunications services and infrastructure from 1 January 1998. As such, it amends two of the key existing Directives relating to open network provision (ONP) in order to adapt them to the new competitive environment.

The most important change to the ONP framework Directive concerns provisions aimed at guaranteeing the independence of national regulatory authorities (NRAs) and effective structural separation of the regulatory function from activities associated with ownership or control. In addition, emphasis has now been placed on achieving harmonized conditions of access to and use of public telecommunications networks through observance of voluntary standards.

The leased-line Directive (92/44/EEC) has been amended essentially to ensure that all users have access to leased lines from *at least one operator* throughout each Member State, under harmonized conditions of access and use. The obligation to provide leased lines will however only be placed on operators with significant market power, unless there is no operator with significant market power in the relevant leased-lines market.

In addition, the requirement for cost-orientation of tariffs as specified in Directive 92/44/EEC has been relaxed where strong competition exists in the provision of leased lines in the relevant leased-line market.

III. THE COMMON POSITION

(Unless otherwise indicated, the references to the recitals and the Articles are those used in the common position).

1. General comments

The Council's common position is largely in line with the objectives of the Commission proposal, amending it where necessary in order to align it with the terms of the

common position on the interconnection Directive(1), particularly in terms of the definitions contained in Article 2.

With regard to the amendments adopted by the European Parliament, the Council has in most cases followed the line taken by the Commission in its amended proposal.

Where it has made changes to the Commission proposal or where it has not taken up the amendments put forward by the European Parliament, the Council's attitude has been guided by a concern to:

— ensure consistency with other relevant Community legislation, in particular the common position on the interconnection Directive which was adopted on 18 June 1996,

— clarify the scope of certain provisions (for example Article 1 (2) of Directive 92/44/EC as amended).

2. **Specific comments**

(i) The Council has included in its common position amendments 2, 4 (first part) and 17 of the European Parliament and incorporated all bar the last three words of amendment 9. The words not accepted ('in full autonomy') are already covered by the first part of recital 8.

In addition, the Council accepted the principle contained in amendment 13 of the European Parliament in adding a new paragraph (3) to Article 2 of Directive 92/44/EEC as amended, which reflects the definition of 'significant market power' of an undertaking as agreed in the common position on the interconnection Directive.

(ii) However, the Council was unable to go along with the Commission's acceptance of the following two amendments proposed by the European Parliament:

Amendment 10 (Article 8 of Directive 90/387/EEC) and *Amendment 14* (Article 14 of Directive 92/44/EEC)

The Council considered that the wording proposed by the European Parliament was unnecessary as the common position already provides for the Commission's report on the functioning of the two Directives to take account of developments towards a fully competitive environment (i.e. developments in the market).

Moreover, with regard to the second part of amendment 10, the Council took the view that the report on the functioning of the ONP framework Directive was not the appropriate place to examine the possibility of establishing a European Regulatory Authority.

(iii) It should also be noted that the Council has included in its common position a number of new provisions or modifications to the Commission's proposal.

The main points are summarised hereafter:

Recitals

Recital 4: In line with provisions in the common position on the interconnection Directive, a reference to the sharing of net cost of universal service obligations was added.

(1) Common position No 34/96 adopted by the Council on 18 June 1996 with a view to adopting a directive of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP) (OJ No C 220, 29. 7. 1996, p. 13).

Recital 7: This new recital was already included in the common position on the interconnection Directive. It points out that this amending Directive is without prejudice to the provisions of Articles 36 and 56 of the Treaty relating to public security, public policy and public morality.

Recital 8: The Council felt it necessary to clarify that the requirement for independence of NRAs in Article 5 (a) of Directive 90/387/EEC was without prejudice to the institutional autonomy and constitutional obligations of Member States and the provisions of Article 222 of the Treaty.

In addition, recitals 9, 11, 14 have been modified and a new recital 6 added in conformity with changes in the corresponding Articles. Recitals 6 and 21 of the Commission's proposal were deleted as they were no longer relevant to the text of the common position.

Directive 90/387/EEC

Article 1 (3): The indent relating to guaranteeing the provision of universal service was amended to include a reference to the evolution of universal service.

Article 2: Where relevant, the definitions have been aligned with those agreed in the common position on the interconnection Directive.

Article 3 (2): Paragraph 2 of the framework ONP Directive was amended in line with the changes to the definition of 'essential requirements' agreed in the context of the interconnection Directive.

Article 5 (2): The reference to standards and specifications developed by international bodies having a wide acceptance across the sector has been deleted, in line with the interconnection Directive.

Article 5 (4) and (5): The comitology procedure in paragraph 4 was changed from an advisory committee under Article 9 of the ONP framework Directive to a regulatory committee type IIIa pursuant to Article 10. The wording of paragraph 5 has been amended accordingly.

Directive 92/44/EEC

Article 1: The drafting was modified to clarify that where the obligations of this Directive are not imposed on organizations without significant market power, this refers to organizations *in the relevant leased-line market.* Moreover, the text specifies that where there are no organizations with significant market power in a specified leased-line market, the obligations of paragraph 1 apply.

Article 2 (3): This paragraph provides a definition of organizations with 'significant market power' in line with the interconnection Directive.

Article 2 (5): The definition of 'network termination point' was modified to clarify that the technical location of this point is to be determined by the national regulatory authority.

Article 6 (1): This paragraph which relates to the question of 'special and exclusive rights' was rephrased to align with Article 3 (3) of Directive 90/387/EEC as amended. (A new recital 6 was inserted to reflect the same aim).

Article 6 (3) (a): The text of Directive 92/44/EEC relating to 'essential requirements' has been aligned with the text of the common position on the interconnection Directive.

Article 8 (4): This paragraph relating to the provision of information was considered unnecessary in this context and the general obligation to provide information achieved through a more general provision in Article 5 (a) (4) of Directive 90/387/EEC as amended.

Article 10 (1) (a): It was considered useful to clarify that this provision was without prejudice to the principle of non-discrimination set out in Article 8 (2).

Article 10 (4): This paragraph was added to specify that the cost-orientation principles of Article 10 (1) need not be applied where there was sufficient effective competition in the relevant leased-line market. (Corresponding modifications were made to the first indent of Annex I Section 3 and to recital 14).

Annex I Section 3: A reference to the financing of universal service in accordance with the common position on the interconnection Directive was added to the paragraph dealing with any charges for access to network resources or services.

Annex I Section 4: The content of the first two paragraphs has been condensed and transferred to recital 9. References to prefixes and short codes have been included and a reference to the principle of proportionality has been added to the fourth indent. (Recital 9 was also modified in this respect).

Annex I Section 5: This paragraph on access to frequencies was added in order to align the Annex with the definition of ONP conditions in Article 2.

(iv) It should also be noted that at the 'Telecommunications' Council of 27 June 1996, the Commission clarified the meaning of the requirement in Article 5 (a) of Directive 90/387/EEC as amended for 'effective structural separation of the regulatory function from activities associated with ownership or control' along the following lines:

— In accordance with Article 189 of the Treaty, the proposed revision of Directive 90/387/EEC (including new Article 5 (a) sets out a result to be achieved, but leaves to the national authorities the choice of form and methods.

In accordance with Article 222 of the Treaty, nothing in this Directive in any way prejudices the rules in Member States governing the system of property ownership.

The aim of effective structural separation can be achieved in a number of ways depending on the legal and administrative traditions in a Member State. Possible mechanisms could include placing the regulatory and operational activities in separate ministries, or placing the regulatory activities with an independent regulatory agency, or having both activities in one ministry, with appropriate safeguards which guarantee the effectiveness of the separation.

That means the emphasis is on the effectiveness of the separation, not its form. In order to ensure effective separation, Member States must, in particular, ensure that:

— regulatory decisions are not influenced by ownership considerations,

— commercially sensitive information gained by the regulatory body in the course of its supervision of the market is not passed over to the body which acts as shareholder or owner of the operator, where it could be used to gain competitive advantage for a State-owned or State-controlled operator,

— special safeguards are enforced for any transfer of staff from the regulatory body to the body which acts as shareholder or owner of the operator, and from the latter to the regulatory body,

— the two activities of regulation and supervision/ownership have separate financial accounting, personnel management, and reporting structures,

— no members of staff in either body face a conflict of interest between meeting government objectives as shareholder/owner, and government objectives or obligations as regulator.

The above safeguards must be reflected in the constitution and the actual behaviour of the regulatory body.