

English edition

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I

(Acts whose publication is obligatory)

DECISION No 3052/95/EC OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL

of 13 December 1995

establishing a procedure for the exchange of information on national measures derogating from
the principle of the free movement of goods within the Community

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⁾,

Whereas the Commission has, in accordance with
Article 100b of the Treaty, drawn up the inventory of
national laws, regulations and administrative provisions
which fall under Article 100a of the Treaty and which
have not been harmonized pursuant to that Article;

Whereas that inventory has revealed that most of the
obstacles to trade in products reported by Member States
are dealt with either by measures taken under
Article 100a or through proceedings initiated under
Article 169 of the Treaty for failure to fulfil obligations
under Article 30;

Whereas the transparency of national measures banning
products may make it easier to deal quickly and at the
appropriate level with problems which may jeopardize
the free movement of goods, *inter alia* by approximating
such measures in good time or adjusting them pursuant
to Article 30 of the Treaty;

Whereas, in order to facilitate such transparency, a
simple and pragmatic procedure should be established for
the exchange of information between Member States and
with the Commission so that any problems that may
arise in connection with the operation of the internal
market can be settled satisfactorily for both businesses
and consumers;

Whereas the main purpose of this procedure is to
enhance knowledge concerning the implementation of the
free movement of goods in non-harmonized sectors and
to identify the problems encountered with a view to
finding appropriate solutions to them;

Whereas such a procedure should cover only those cases
in which a Member State takes steps to prevent, on
grounds of non-conformity with its own national rules,
the free movement or placing on the market of goods
lawfully produced or marketed in another Member
State;

Whereas only measures which act as a barrier to a
particular model or type of goods should be covered and
measures relating to second-hand goods which, with time
or use, have become unsuitable for being placed or kept
on the market should therefore be excluded from the
scope of this Decision;

Whereas measures relating exclusively to the protection
of public morality or public order should also be
excluded;

Whereas other Member States and the Commission
should have the opportunity to react to the measures
notified within the framework of this Decision;

Whereas, moreover, the procedure should not duplicate
notification or information procedures provided for by
other Community measures; whereas these different
procedures should be properly coordinated;

Whereas businesses, consumers and other interested
parties should know whom to contact within the

⁽¹⁾ OJ No C 18, 21. 1. 1994, p. 13, and OJ No C 200, 22. 7. 1994, p. 19.

⁽²⁾ OJ No C 195, 18. 7. 1994, p. 6.

⁽³⁾ Opinion of the European Parliament of 20 April 1994 (OJ No C 128, 9. 5. 1994, p. 142), common position of the Council of 29 June 1995 (OJ No C 216, 21. 8. 1995, p. 41), and Decision of the European Parliament of 26 October 1995 (OJ No C 308, 20. 11. 1995) and Council Decision of 23 November 1995.

Commission and the administrations of the individual Member States when a problem arises with regard to the free movement of goods;

Whereas the procedures established to implement this Decision should not involve the creation of unnecessary new bureaucracy while ensuring that an effective balance is struck between safeguarding the legitimate interests of the Member States and maintaining the free movement of goods within the Community;

Whereas, in the interests of transparency, there should be full and up-to-date information available to all interested parties on the implementation of this Decision;

Whereas the removal of obstacles to the free movement of goods is of fundamental importance to the Community and whereas it is necessary for the Community to establish measures in this area to achieve that objective; whereas this measure clearly complies with the principle of proportionality, as a complement to the principle of subsidiarity, since it is confined to ensuring awareness of cases where the application of non-harmonized national rules is liable to affect the satisfactory operation of the internal market,

HAVE ADOPTED THIS DECISION:

Article 1

Where a Member State takes steps to prevent the free movement or placing on the market of a particular model or type of product lawfully produced or marketed in another Member State, it shall notify the Commission accordingly where the direct or indirect effect of the measure is:

- a general ban on the goods,
- a refusal to allow the goods to be placed on the market,
- the modification of the model or type of product concerned before it can be placed or kept on the market, or
- withdrawal of the goods from the market.

Article 2

For the purpose of this Decision:

- 'modification of the model or type of product' means any modification of one or more of the product's characteristics as listed in the 'technical specification'

definition given in Article 1 of Directive 83/189/EEC⁽¹⁾,

- 'judicial decision' means any decision taken by a judicial body whose role it is to give a ruling,
- 'measure' means any measure other than a judicial decision.

Article 3

1. The notification requirement laid down in Article 1 shall apply to measures taken by the competent authorities of the Member States so authorized, with the exception of judicial decisions.

Where a particular model or type of product is the subject of several measures, adopted under identical substantive conditions and procedures, only the first of those measures shall be subject to the notification requirement.

2. Article 1 shall not apply to:

- measures taken solely in pursuance of Community harmonization measures,
- measures notified to the Commission under specific provisions,
- draft measures notified to the Commission under specific Community provisions,
- measures preparing or leading up to the main measure referred to in Article 1, such as preventive measures or investigations,
- measures relating solely to the protection of public morality or public order,
- measures relating to second-hand goods which, with time or use, have become unsuitable for being placed or kept on the market.

3. The initiation of proceedings for judicial review of such a main measure shall under no circumstances result in suspension of the application of Article 1.

⁽¹⁾ 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 (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).

Article 4

1. The notification referred to in Article 1 shall be made in sufficient detail and in clear and comprehensible form. It shall consist in the dispatch of:

- an information sheet containing the particulars listed in the Annex, and
- a copy of the measure taken by the authorities referred to in Article 3 (1), as published or notified to the person concerned.

Information not covered by the headings on the sheet may be omitted from the copy.

2. The information referred to in paragraph 1 shall be communicated within 45 days of the date on which the measure referred to in Article 1 is taken.

3. The Commission shall send a copy of the information referred to in paragraph 1 to the other Member States.

Article 5

1. Where the measure which must be notified under this Decision comprises one or more Annexes, only a list briefly indicating its/their contents shall be transmitted together with the copy of the measure.

2. The Member State which has taken the measure may be requested by the Commission or any other Member State to provide, within one month of the date of any such request, the full text of the Annexes mentioned in the list referred to in paragraph 1 or any other relevant information on the measure.

3. Where national law provides that the investigation must remain confidential, the communication of information not covered by the headings on the sheet referred to in Article 4 (1) shall, where appropriate, be subject to authorization by the competent judicial authority.

Article 6

The Member States and the Commission shall take the steps necessary to ensure that their officials and agents are required not to disclose information obtained for the purposes of this Decision which, by its nature, is covered by professional secrecy except information concerning the safety aspects of a given product the disclosure of which is necessitated by the circumstances in order to protect the health and safety of persons.

Article 7

Each Member State shall inform the Commission of the competent national authority or authorities which it has appointed to transmit or receive the information referred to in this Decision. The Commission shall pass on this information to the other Member States forthwith.

Member States shall seek to ensure that a contact point, which may be the competent national authority or authorities referred to in the first paragraph, or network of contact points is established in order to act as an initial point of reference for all inquiries about the grounds on which other national rules are not recognized, and about the general functioning of this Decision.

Article 8

1. The Commission shall reinforce its coordination concerning all matters arising out of the implementation of this Decision, including the coordination of the notification or information procedures concerned, complaints concerning individual obstacles to the free movement of goods, and general problems of mutual recognition.

2. The Commission shall seek to ensure that businesses, consumers and other interested parties know whom to contact when problems arise.

Article 9

While respecting confidentiality where necessary, and without prejudice to unresolved cases, the Commission shall provide Community-wide information on national measures notified pursuant to this Decision which have implications for the principle of free movement of goods in the non-harmonized sectors. It shall also provide information on follow-up action decided on.

National measures notified shall be listed in an Annex to the annual report on the internal market.

Article 10

For the purposes of implementing this Decision, the Commission shall be assisted by the Standing Committee set up by Directive 83/189/EEC. It shall keep that Community regularly informed of the functioning of the procedure provided for by this Decision and of measures notified by Member States.

Where appropriate, the Commission shall also inform the sectoral committees set up by specific Community provisions.

Article 11

Within two years of the date of implementation of this Decision, the Commission shall report to the European Parliament and the Council on its operation and shall propose any amendment it deems appropriate. For the preparation of that report, Member States shall communicate to the Commission any relevant information on the way in which they implement this Decision.

The Commission's report shall also examine the issue as to whether notification pursuant to this Decision is being adequately coordinated with notification pursuant to other Community instruments.

Article 12

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Within six months of the date of publication, each Member State shall communicate to the Commission the measures it has taken for the purpose of implementing the Decision.

The Decision shall apply as from 1 January 1997.

Article 13

This Decision is addressed to the Member States.

Done at Brussels, 13 December 1995.

*For the European
Parliament
The President
K. HÄNSCH*

*For the Council
The President
J. L. DICENTA BALLESTER*

ANNEX

PROCEDURE FOR THE EXCHANGE OF INFORMATION

on national measures derogating from the principle of the free movement of goods within the Community

(Decision No 3052/95/EC)

1. *Notifying Member State*

State the name and address of the person to be contacted for further information.

2. *Date of notification*

3. *Model or type of product*

Give a detailed description of the type or model of product.

4. *Measures taken*

5. *Main grounds*

- State the ground(s) of general interest justifying the measures taken.
 - Give details of the national rules with which the product in question is deemed not to conform.
 - Indicate in what respects the national rules, or other conditions, according to which the product in question is produced or marketed in another Member State do not ensure equivalent protection of the general interest concerned.
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DIRECTIVE 95/62/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 13 December 1995

on the application of open network provision (ONP) to voice telephony

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 ⁽⁴⁾ provides *inter alia* for the adoption of a specific Directive establishing open network provision conditions for the voice telephony service;
- (2) Whereas in accordance with Directive 90/387/EEC, open network provision (ONP) applies to public telecommunications networks and, where applicable, public telecommunications services; whereas therefore the application of ONP to the voice telephony service must also include the application of ONP to the network over which the voice telephony service is provided;
- (3) Whereas ONP conditions for access to and use of the fixed public telephone networks and services must apply to all the network technologies currently in use in Member States, including analogue telephone networks, digital networks and the integrated services digital network (ISDN);
- (4) Whereas this Directive does not apply to mobile telephony services; whereas it does apply to the use of fixed public telephone networks by operators of public mobile telephony services, in particular with respect to the interconnection of mobile telephone networks with the fixed public telephone network in a single Member State, in order to achieve comprehensive Community-wide services; whereas

this Directive does not apply to direct interconnection between operators of public mobile telephony services;

- (5) Whereas this Directive does not apply to services or facilities provided at network termination points located outside the Community;
- (6) Whereas Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services ⁽⁵⁾ requires Member States to abolish exclusive rights for the supply of telecommunications services other than voice telephony; whereas Directive 90/388/EEC does not apply to telex, mobile radiotelephony and paging services;
- (7) Whereas some Member States have abolished exclusive rights for the provision of voice telephony and the public telecommunications network; whereas those Member States should ensure that all users can subscribe to harmonized telephony services in accordance with this Directive; whereas the provisions of this Directive should not hinder entry to markets for voice telephony or the provision of the public telecommunications network;
- (8) Whereas the voice telephony service has become important for social and economic reasons, and everyone in the Community should have the right to subscribe to this service; whereas in application of the principle of non-discrimination, voice telephony service must be offered and provided on request without discrimination to all users; whereas the principle of non-discrimination applies to, *inter alia*, availability of technical access, tariffs, quality of service, delivery period, fair distribution of capacity in the event of scarcity, repair time, availability of network information and customers' information, subject to relevant legislation concerning the protection of personal data and privacy;
- (9) Whereas in accordance with Directive 90/388/EEC, Member States which maintain exclusive rights for the provision and operation of public telecommunications networks must take the necessary measures to make the conditions governing access to and use of the network objective and non-discriminatory and to publish them; whereas it is necessary to harmonize which specifications should be published and in what form, in order to facilitate the provision of telecommunications services within and between Member States, and in particular the provision of

⁽¹⁾ OJ No C 122, 18. 5. 1995, p. 4.

⁽²⁾ OJ No C 236, 11. 9. 1995, p. 38.

⁽³⁾ Opinion of the European Parliament of 16 May 1995 (OJ No C 151, 19. 6. 1995, p. 27), common position of the Council of 12 July 1995 (OJ No C 281, 25. 10. 1995, p. 19), Decision of the European Parliament of 26 October 1995 (OJ No C 308, 20. 11. 1995) and Council Decision of 27 November 1995.

⁽⁴⁾ OJ No L 192, 24. 7. 1990, p. 1.

⁽⁵⁾ OJ No L 192, 24. 7. 1990, p. 10. Directive as amended by Directive 94/46/EC (OJ No L 268, 19. 10. 1994, p. 15).

- services by companies, firms or natural persons established in a Member State other than that of the company, firm or natural person for which or for whom the services are intended;
- (10) Whereas in conformity with the principle of separation of regulatory and operational functions, national regulatory authorities have been created in the Member States; whereas in application of the principle of subsidiarity, the national regulatory authority of each Member State should play an important role in the implementation of this Directive, particularly in matters relating to the publication of targets and performance statistics, dates for the implementation of new facilities, adequate consultation with users/consumers and user/consumer organizations, the control of numbering plans, the supervision of conditions of use, and the resolution of disputes and in ensuring that users are given fair treatment throughout the Community; whereas they should have the necessary means to carry out these tasks fully;
- (11) Whereas quality of service as perceived by users is an essential aspect of the service provided, and quality-of-service parameters and achieved performance levels should be published for the benefit of users; whereas harmonized quality-of-service parameters and common measurement methods are required in order to assess Community-wide convergence of quality of service; whereas different categories of user require different levels of quality of service, for which different tariffs may be appropriate;
- (12) Whereas users of the fixed public telephone network should have at least similar rights when dealing with telecommunications organizations as they have with the providers of other goods and services, and telecommunications organizations should not have any undue legal protection when dealing with users of the fixed public telephone network;
- (13) Whereas agreement between the parties involved can constitute a contract; whereas, in order to avoid unfair contractual clauses, it is necessary that national regulatory authorities have the right to require modifications of conditions imposed by telecommunications organizations on users in their contracts; whereas Member States may decide whether their national regulatory authority shall check these contractual conditions either before their use by telecommunications organizations, or at any time at the user's request;
- (14) Whereas Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts⁽¹⁾ already provides general protection for consumers with regard to contractual terms; whereas nevertheless for the purpose of this Directive it is necessary to complete this general protection by adding more specific rules which should apply to all users;
- (15) Whereas in addition to the basic voice telephony service made available to users it is desirable to ensure that, subject to technical feasibility and economic viability, a harmonized minimum set of advanced voice telephony facilities is offered to users for communications both within and between Member States;
- (16) Whereas an agreement on a *modus vivendi* between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the EC Treaty was reached on 20 December 1994;
- (17) Whereas the provision of other voice telephony facilities, provided in response to market demand in addition to the harmonized minimum set of voice telephony facilities described herein, should not impede the provision of the basic voice telephony facilities and should not lead to unreasonable increases in the prices for basic voice telephony service;
- (18) Whereas harmonized conditions for the voice telephony service should allow Member States flexibility to determine the timescales for implementation, given the different situations with regard to technical development of the network and market demand;
- (19) Whereas the Commission has issued Guidelines on the application of Community competition rules in the telecommunications sector⁽²⁾ in order *inter alia* to clarify the application of Community competition law when telecommunications organizations cooperate in order to implement Community-wide interconnectivity between public networks and services;
- (20) Whereas, in order to provide efficient and effective telecommunications services, and to offer new applications, telecommunications service providers and other users may, in accordance with the principles of Community law, request access to the fixed public telephone network at points other than the network termination points offered to the majority of telephone users; whereas such requests must be reasonable in terms of technical feasibility and economic viability; whereas procedures must be introduced to provide a balance between the requirements of users and the justified concerns of telecommunications organizations; whereas it is essential that in making full and efficient use of the fixed public telephone network via such special network access, the integrity of the public network is maintained;
- (21) Whereas in accordance with the definition in Directive 90/387/EEC, the network termination point may be located on the premises of a telecommunications organization; whereas

⁽¹⁾ OJ No L 95, 21. 4. 1993, p. 29.

⁽²⁾ OJ No C 233, 6. 9. 1991, p. 2.

- installation of equipment owned by service providers on the premises of a telecommunications organization is not specifically called for in this Directive;
- (22) Whereas it is necessary for adequate safeguards to be implemented by national regulatory authorities in order to ensure that telecommunications organizations do not discriminate against service providers with whom they are in competition, including, in particular, safeguards to ensure fair access to network interfaces; whereas the tariffs which apply to telecommunications organizations when using the fixed public telephone network for the provision of telecommunications services should be the same as the tariffs which apply to other users;
- (23) Whereas users should benefit from economies of scope and scale which may result from new intelligent network architectures; whereas the development of the Community market in telecommunications services calls for the widest availability of facilities such as those defined in this Directive; whereas the principle of non-discrimination should be applied in a manner that does not hinder the development of advanced telecommunications services;
- (24) Whereas telecommunications organizations should be encouraged to establish the necessary cooperation mechanisms in order to ensure full Community-wide interconnectivity between public networks, in particular for the voice telephony service; whereas national regulatory authorities should facilitate such cooperation; whereas such interconnection should be subject to regulatory supervision in order to safeguard the interests of users throughout the Community and ensure compliance with Community law, where appropriate in compliance with the existing international regulatory framework within the scope of the International Telecommunications Union (ITU); whereas therefore national regulatory authorities should have the right of access to full information about network interconnection agreements where required; whereas the Commission may request from Member States details of special network access agreements and interconnection agreements in so far as Community law so provides;
- (25) Whereas interconnection of public telephone networks is essential for the provision of Community-wide voice telephony services; whereas it is the responsibility of national regulatory authorities to ensure that the conditions governing interconnection with the fixed public telephone networks, including interconnection by telecommunications organizations from other Member States and operators of public mobile telephony services, are objective and non-discriminatory in accordance with Directive 90/387/EEC;
- (26) Whereas where the fixed public telephone network in a Member State is operated by more than one telecommunications organization, appropriate supervision of interconnection arrangements by national regulatory authorities is necessary in order to guarantee Community-wide provision of the voice telephony service; whereas such interconnection arrangements should take due account of the principles laid down in this Directive;
- (27) Whereas the principle of non-discrimination in relation to interconnection primarily aims at preventing abuse of a dominant position by telecommunications organizations;
- (28) Whereas in accordance with Directive 90/387/EEC common, efficient tariff principles, based on objective criteria and cost orientation, should be applied throughout the Community; whereas a reasonable transition period may be necessary in order to implement these tariff principles fully; whereas tariffs must nevertheless be transparent and properly published, must be sufficiently unbundled in accordance with the competition rules of the Treaty, and must be non-discriminatory and guarantee equality of treatment; whereas application of the principle of cost orientation should take account of the objective of universal service and may take account of town and country planning policies aimed at ensuring cohesion within a Member State;
- (29) Whereas national regulatory authorities should have responsibility for supervising tariffs; whereas tariff structures should evolve in response to technological development and user demand; whereas the requirement for cost-oriented tariffs means that telecommunications organizations should implement within a reasonable time limit cost accounting systems by which costs can be allocated to services as accurately as possible on the basis of a transparent cost accounting system; whereas such requirements can be fulfilled for example by implementation of the principle of fully distributed costing;
- (30) Whereas, within the overall principle of cost orientation, some flexibility is needed, under supervision of the national regulatory authority, in order to allow discount schemes for certain uses, or socially desirable tariffs for particular groups of people, for particular types of call, or at particular times of day; whereas discount schemes must be compatible with the competition rules of the Treaty, and in particular with the general principle that the conclusion of contracts must not be subject to acceptance of unrelated supplementary obligations; whereas, in particular, discount schemes must not link the supply of services provided under special or exclusive rights with services provided competitively;

- (31) Whereas users must be able to check the correctness of their bills by being given the possibility of itemized bills with a degree of detail compatible with user needs and with relevant legislation on data protection and privacy;
- (32) Whereas directories of users who subscribe to the voice telephony service should be readily available, since they are an important element for use of the voice telephony service; whereas directory information should be made available on fair and non-discriminatory terms; whereas users should have the choice of being included or excluded from directories, in conformity with relevant legislation on data protection and privacy; whereas this Directive does not change the regulatory situation regarding the supply of directories;
- (33) Whereas public pay-telephones provide an important means of access to the voice telephony service, especially in emergencies, and it is desirable to ensure that they are available to meet the reasonable needs of users;
- (34) Whereas, recognizing that users would benefit from a single type of telephone payment card usable in all Member States, the Commission has given the European Committee for Standardization (CEN)/the European Committee for Electrotechnical Standardization (Cenelec) a mandate to develop suitable standards; whereas, in addition to these standards, commercial agreements are needed to ensure that pre-payment cards issued in one Member State can be used in other Member States;
- (35) Whereas, within each Member State, measures may be taken to assist groups of people with special needs; whereas this may include provisions relating to the voice telephony service, because it is recognized as an important service for disabled people;
- (36) Whereas the Commission has requested the European Telecommunications Standards Institute (ETSI) to study the technical feasibility and economic viability of a harmonized single line network interface suitable for access to and use of the fixed public telephone network in all Member States; whereas, to ensure harmonized access for ISDN terminal equipment, it is desirable to set requirements for the corresponding network termination point, including specifications for the socket;
- (37) Whereas national telephone numbers are a resource which should be controlled by national regulatory bodies; whereas numbering schemes should be developed in close consultation with telecommunications organizations and in harmony with a long-term Europe-wide numbering framework and the international numbering scheme; whereas number changes are expensive for both telecommunications organizations and users, and should be kept to a minimum compatible with national and international long-term requirements;
- (38) Whereas the Council resolution of 19 November 1992 on the promotion of Europe-wide cooperation on numbering of telecommunications services⁽¹⁾ regards as a major policy goal the strengthening of cooperation on the numbering arrangements for services with pan-European applications; whereas there is a need to create a European numbering area in order to facilitate the implementation and use of Europe-wide voice telephony services, including freephone/green numbers;
- (39) Whereas in accordance with Directive 90/388/EEC Member States which make the supply of telecommunications services subject to a licensing or declaration procedure must ensure that the conditions for the grant of licences are objective, non-discriminatory and transparent, that reasons are given for any refusal, and that there is a procedure for appealing against any such refusal; whereas conditions for using the fixed public telephone network must be compatible with Community law and in particular Directive 90/387/EEC; whereas in accordance with Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines⁽²⁾, any restrictions aimed at ensuring compliance with the essential requirements should be compatible with Community law and imposed by the national regulatory authorities through regulatory means; whereas no technical restrictions may be introduced or maintained for the interconnection of leased lines and public telephone networks;
- (40) Whereas in accordance with Directive 90/387/EEC the essential requirements on the basis of which restrictions on access to and use of public telecommunications networks or services are justified are limited to the security of network operations, maintenance of network integrity, interoperability of services in justified cases and protection of data as appropriate; whereas, in addition, the conditions generally applicable to the connection of terminal equipment apply; whereas national regulatory authorities may authorize procedures whereby a telecommunications organization can act immediately in the event of a serious breach of conditions of access or use;
- (41) Whereas the principle of transparency should apply to the standards upon which voice telephony services are based; whereas in accordance with Directive 90/387/EEC, the harmonization of technical interfaces and access conditions must be based on common technical specifications which

⁽¹⁾ OJ No C 318, 4. 12. 1992, p. 2.

⁽²⁾ 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).

- take account of international standardization; whereas in accordance with 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⁾, new national standards must not be developed in areas where harmonized European standards are under development;
- (42) Whereas, to enable the Commission to monitor effectively the application of this Directive, it is necessary that Member States notify to the Commission which national regulatory authorities will be responsible for the functions created by this Directive and the provision of the relevant information called for in this Directive;
- (43) Whereas, in addition to the rights of recourse granted under national or Community law, there is a need for a simple conciliation procedure for disputes at both national and Community level; whereas this procedure should be responsive, inexpensive and transparent and should involve all the parties concerned;
- (44) Whereas telecommunications services are subject to consumer protection legislation, data protection legislation and legislation concerning dissemination of information or material which may be considered offensive by the general public, and therefore no specific additional measures are envisaged in this Directive;
- (45) Whereas transparency would be improved by regular and systematic dialogue with telecommunications organizations, users, consumers, manufacturers and service providers as regards Community-wide issues raised by this Directive; whereas consultation with trade unions is already covered by Commission Decision 90/450/EEC ⁽²⁾ which set up, to assist the Commission, a Joint Committee on Telecommunications Services consisting of representatives of employers and employees;
- (46) Whereas given the dynamic development of this sector, the application of open network provision to voice telephony must be a progressive and ongoing process, and the regulatory conditions must be flexible enough to meet the demands of a changing market and changing technology; whereas a responsive procedure for technical adjustment should therefore be established which takes full account of the views of Member States and involves the ONP Committee;
- (47) Whereas a procedure will probably have to be introduced for ensuring Community-wide convergence by determining harmonized targets and target dates for voice telephony services and facilities; whereas such a convergence procedure should involve the ONP Committee; whereas in such a procedure full account must be taken of the state of network development and market demand in the Community;
- (48) Whereas the goal of an advanced cost-effective Community-wide voice telephony service — an essential foundation of the internal market — cannot be realized satisfactorily at Member State level, and hence is better achieved at Community level by the adoption of this Directive;
- (49) Whereas Decision 91/396/EEC ⁽³⁾ requires the introduction in the Community of a single European emergency call number ⁽³⁾; whereas 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 ⁽⁴⁾, defines the conditions for connection of terminal equipment to the fixed public telephone network;
- (50) Whereas Europe is shifting towards an information-based economy; whereas open access to networks is a critical issue at world level; whereas the Council has agreed a timetable for the liberalization of all telecommunication services, networks and infrastructures; whereas a balanced policy of liberalization and harmonization, including accompanying measures for universal service, will continue to ensure that business, industry and the public can access modern, economic and efficient communications infrastructures over which a rich and diverse range of services will be offered;
- (51) Whereas the Council resolution of 22 July 1993 ⁽⁵⁾ calls on the Commission to introduce the necessary proposals for legislation by 1 January 1996 and to consider how to adjust open network provision to future developments,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive concerns the harmonization of conditions for open and efficient access to and use of fixed public telephone networks and public telephony services, and the availability throughout the Community of a harmonized voice telephony service.

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

⁽²⁾ OJ No L 230, 24. 8. 1990, p. 25.

⁽³⁾ OJ No L 217, 6. 8. 1991, p. 31.

⁽⁴⁾ OJ No L 128, 23. 5. 1991, p. 1. Directive as last amended by Directive 93/97/EEC (OJ No L 290, 24. 11. 1993, p. 1).

⁽⁵⁾ OJ No C 213, 6. 8. 1993, p. 1.

2. This Directive does not apply to mobile telephony services in so far as it concerns interconnection between the networks used for public mobile telephony services and the fixed public telephone networks.

Article 2

Definitions

1. The definitions given in Directive 90/387/EEC shall apply, where relevant, to this Directive.
2. For the purposes of this Directive:
 - 'fixed public telephone network' means the public switched telecommunications network which is used, *inter alia*, for the provision of voice telephony service between network termination points at fixed locations,
 - 'users' means end-users, including consumers (e.g. residential end-users), and service providers, including telecommunications organizations where the latter provide services which are or may be provided also by others,
 - 'national regulatory authority' means the body or bodies in each Member State, legally distinct and functionally independent of the telecommunications organizations, entrusted by that Member State, *inter alia*, with the regulatory functions addressed in this Directive,
 - 'ONP Committee' means the committee created by Article 9 (1) of Directive 90/387/EEC,
 - 'public pay-telephone' means a telephone available to the general public, for the use of which the means of payment are coins, credit/debit cards and/or pre-payment cards.

Article 3

Provision of service, connection of terminal equipment and use of the network

Member States shall ensure that the respective telecommunications organizations separately or jointly provide a fixed public telephone network and a voice telephony service in accordance with the provisions of this Directive, in order to guarantee a harmonized offering throughout the Community.

In particular Member States shall ensure that users can:

- (a) obtain on request a connection to the fixed public telephone network;
- (b) connect and use approved terminal equipment situated on the users' premises, in accordance with national and Community law.

Member States shall ensure that no restrictions other than those referred to in Article 22 are placed on the use made of the connection provided.

Article 4

Publication of and access to information

1. National regulatory authorities shall ensure that adequate and up-to-date information on access to and use of the fixed public telephone network and voice telephony service is published according to the list of headings given in Annex I.

Changes in existing service 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.

2. The information referred to in paragraph 1 shall be published in such a way as to provide easy access for users to that information. Reference shall be made in the national Official Journal of the Member State concerned to the publication of this information.

3. National regulatory authorities shall notify to the Commission no later than one year after the adoption of this Directive — and thereafter in the event of any change — the manner in which the information referred to in paragraph 1 is made available; the Commission shall regularly publish a corresponding reference to such notifications in the *Official Journal of the European Communities*.

Article 5

Targets for supply time and quality of service

1. National regulatory authorities shall ensure that targets are set and published for the supply-time and quality-of-service indicators listed in Annex II. Definitions, measurement methods and the performance of telecommunications organizations in relation to those targets shall be published annually. Definitions, measurement methods and targets shall be reviewed at least every three years by the national regulatory authority.

2. Publication shall be in the manner laid down in Article 4.

3. Where appropriate, the Commission shall, in consultation with the ONP Committee, acting in accordance with the procedure laid down in Article 30, request ETSI to draw up European standards for common definitions and measurement methods.

Article 6

Conditions for the termination of offerings

1. National regulatory authorities shall ensure that service offerings continue for a reasonable period of time and that termination of an offering, or a change that

materially alters the use that can be made of it, can take place only after consultation with users affected and an appropriate public notice period set by the national regulatory authority.

2. Without prejudice to other rights of appeal provided for by national law, Member States shall ensure that users, acting where national law provides for this in conjunction with organizations representing user and/or consumer interests, can bring before the national regulatory authority cases where the users affected do not agree with the termination date envisaged by the telecommunications organization.

Article 7

User contracts

1. National regulatory authorities shall ensure that users have a contract which specifies the service to be provided by a telecommunications organization. National regulatory authorities shall as a general rule require compensation and/or refund arrangements to be provided if the contracted service quality levels are not met, and shall ensure that any exceptions to this rule are justified by the telecommunications organization or organizations concerned and made clear in the users' contract.

2. Telecommunications organizations shall respond to a request for connection to the fixed public telephone network without delay and shall give the user an estimated date for provision of service.

3. National regulatory authorities shall be able to require alteration of the conditions of contracts and the conditions of any compensation and/or refund schemes used by telecommunications organizations. Users' contracts with telecommunications organizations shall contain a summary of the method of initiating procedures for the settlement of disputes.

4. Member States shall ensure that users have the right to institute proceedings against a telecommunications organization.

Article 8

Variation of published conditions

Where in response to a particular request a telecommunications organization considers it unreasonable to provide a connection to the fixed public telephone network under its published tariffs and supply conditions, it must seek the agreement of the national regulatory authority to vary those conditions in that case.

Article 9

Provision of advance facilities

1. National regulatory authorities shall ensure the provision, subject to technical feasibility and economic viability, of the facilities listed in Annex III (1), in accordance with the technical standards identified in Article 24.

2. National regulatory authorities shall facilitate and encourage provision of the services and facilities listed in Annex III (2), in accordance with the technical standards identified in Article 24, through commercial arrangements between telecommunications organizations and where applicable other persons providing the service or facilities, in compliance with the competition rules of the Treaty and in response to user demand.

3. National regulatory authorities shall ensure that dates for the introduction of the facilities listed in Annex III (1) are set, taking into account the state of network development, market demand and progress with standardization, and are published in the manner laid down in Article 4. They shall similarly encourage the setting and publication of dates for the services and facilities listed in Annex III (2).

Article 10

Special network access

1. National regulatory authorities shall ensure that telecommunications organizations respond to reasonable requests from users other than:

- (a) operators of public mobile telephony services;
- (b) telecommunications organizations when providing a voice telephony service;

for access to the fixed public telephone network at network termination points other than the network termination points referred to in Annex 1.

Where in response to a particular request a telecommunications organization considers it unreasonable to provide the special network access requested, it must seek the agreement of the national regulatory authority to restrict or deny that access. Users affected must be given the opportunity to put their case to the national regulatory authority before a decision is taken.

Where a request for special network access is denied, the user making the request must be given a prompt and reasoned explanation as to why the request has been refused; however, this provision shall not apply to any

action taken under national regimes for the enforcement of licensing conditions in conformity with Community law or to proceedings before a national court.

2. Technical and commercial arrangements for special network access shall be a matter for agreement between the parties involved, subject to intervention by the national regulatory authority as laid down in paragraphs 1, 3 and 4. The agreement may include reimbursement to the telecommunications organization of the costs incurred, *inter alia* in providing the network access requested; these charges shall fully respect the principles of cost orientation set out in Annex II to Directive 90/387/EEC.

3. National regulatory authorities may intervene on their own initiative at any time, and shall do so if requested by either party, in order to set conditions that are non-discriminatory, are fair and reasonable for both parties and offer the greatest benefit to all users.

4. National regulatory authorities shall also have the right, in the interest of all users, to ensure that the agreements include conditions that meet the criteria set out in paragraph 3, are entered into and implemented in an efficient and timely manner and include conditions on conformity with relevant standards, compliance with essential requirements and/or the maintenance of end-to-end quality.

5. Conditions set by national regulatory authorities in accordance with paragraph 4 shall be published in the manner laid down in Article 4.

6. National regulatory authorities shall ensure that telecommunications organizations adhere to the principle of non-discrimination when they make use of the fixed public telephone network for providing services which are or may also be supplied by other service providers.

7. The Commission shall, in consultation with the ONP Committee, acting in accordance with the procedure laid down in Article 30, request ETSI to draw up, where appropriate, standards for new types of network access. Reference to such standards shall be published in the *Official Journal of the European Communities* in accordance with Article 5 (1) of Directive 90/387/EEC.

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

Article 11

Interconnection

1. National regulatory authorities shall ensure that reasonable requests for interconnection with the fixed

public telephone network from the organizations listed below are met, in particular to ensure Community-wide provision of voice telephony services:

- (a) telecommunications organizations providing fixed public telephone networks in other Member States, whose names have been notified in accordance with Article 26 (3);
- (b) operators of public mobile telephony services in the same Member State.

No request for interconnection shall be refused by a telecommunications organization without the prior agreement of its national regulatory authority.

Interconnection with the fixed public telephone network of operators of public mobile telephony services in other Member States, whose names have been notified in accordance with Article 26 (3), may also be agreed between the parties involved. No request for such interconnection shall be refused by a telecommunications organization without the prior agreement of its national regulatory authority.

2. Technical and commercial arrangements for interconnection shall be a matter for agreement between the parties involved, subject to intervention by the national regulatory authority as laid down in Article 10 (3) and (4).

3. National regulatory authorities shall ensure that telecommunications organizations adhere to the principle of non-discrimination when they enter into interconnection agreements with others.

4. If interconnection agreements include specific compensation provisions for the telecommunications organization in situations where different operating conditions, e.g. price controls or universal service obligations, are imposed upon the respective parties, such compensation provisions shall be cost-oriented, non-discriminatory and fully justified, and shall only be applied with the approval of the national regulatory authority acting in accordance with Community law.

5. Details of interconnection agreements shall be made available, upon request, to the national regulatory authorities concerned.

Article 12

Tariff principles and transparency

1. National regulatory authorities shall ensure that tariffs for use of the fixed public telephone network and the voice telephony service follow the basic principles of transparency and cost orientation set out in Annex II to Directive 90/387/EEC, and comply with the provisions of this Article.

2. Without prejudice to application of the principle of cost orientation, national regulatory authorities may impose on telecommunications organizations tariff constraints relating to the objectives of universal telephone-service accessibility, including town and country planning aspects.

3. Tariffs for access to and use of the fixed public telephone network shall be independent of the type of application which the users implement, except to the extent that they require different services or facilities.

4. Tariffs for facilities additional to the provision of connection to the fixed public telephone network and provision of voice telephony service shall, in accordance with Community law, be sufficiently unbundled, so that the user is not required to pay for facilities which are not necessary for the service requested.

5. Tariffs shall normally contain the following elements, each of which should be itemized separately for the user:

- an initial charge for connection to the fixed public telephone network and subscription to the voice telephony service,
- a periodic rental charge based on the type of service and facilities selected by the user,
- usage charges which may, *inter alia*, take account of peak and off-peak periods.

Where other tariff elements are applied, they must be transparent and based on objective criteria.

6. Tariffs shall be published in the manner laid down in Article 4.

7. Tariff changes shall be implemented only after an appropriate period of public notice set by the national regulatory authority.

Article 13

Cost accounting principles

1. Member States shall ensure that their telecommunications organizations notified in accordance with Article 26 (2) operate by 31 December 1996 at the latest a cost accounting system suitable for the implementation of Article 12 and that compliance with such a system is verified by a competent body which is independent of those organizations. A statement concerning compliance shall be published periodically.

2. National regulatory authorities shall ensure that a description of the cost accounting system showing the main categories under which costs are gathered and the rules used for the allocation of costs to the voice telephony service is made available on request. National regulatory authorities shall submit, on request, to the Commission information on the cost accounting systems applied by the telecommunications organizations.

3. Without prejudice to the last subparagraph of this paragraph, the system referred to in paragraph 1 shall include the following elements:

- (a) the costs of the voice telephony service shall in particular include the direct costs incurred by the telecommunications organizations in setting up, operating and maintaining the voice telephony service and in marketing and billing the service.
- (b) common costs, that is to say costs which can be directly assigned to neither the voice telephony service nor other activities, shall be allocated as follows:
 - (i) whenever possible, common cost categories shall be allocated on the basis of direct analysis of the origin of the costs themselves;
 - (ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;
 - (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 or indirectly assigned or allocated, on the one hand, to the voice telephony service and, on the other hand, to other services.

Other cost accounting systems may be applied if they are suitable for the implementation of Article 12 and have been approved as such by the national regulatory authority for application by the telecommunications organizations, subject to the Commission being informed prior to their application.

4. Detailed accounting information shall be made available to the national regulatory authority on request and in confidence.

5. Member States shall ensure that the financial accounts of those telecommunications organizations notified in accordance with Article 26 are drawn up, published and submitted for audit in accordance with the provisions of national legislation.

*Article 14***Discounts, low-usage schemes and other specific tariff provisions**

1. National regulatory authorities may agree that bulk discount schemes can be offered to users and shall make those schemes subject to supervision by the national regulatory authority.
2. National regulatory authorities may agree special tariffs for the provision of socially useful services such as emergency services, or for low-usage users or specific social groups.
3. National regulatory authorities shall ensure that tariff structures allow for reduced-rate calls within the Community at off-peak times, including night-time and weekends if appropriate.
4. National regulatory authorities shall ensure that, where special tariffs are introduced for voice telephony services provided in connection with specific projects of limited duration, they shall be subject to prior notification to the national regulatory authority.

*Article 15***Itemized billing**

National regulatory authorities shall ensure that targets are set and published for the provision of itemized billing as a facility available to users on request, taking into account the state of network development and market demand.

Subject to the following paragraph and the level of detail permitted under relevant legislation on the protection of personal data and privacy, itemized bills shall show the composition of the charges incurred.

Calls which are free of charge to the caller, including calls to helplines, shall not be identified in the caller's itemized bill.

Within this framework, different levels of detail may be offered to users at reasonable tariffs.

*Article 16***Directory services**

Subject to the requirements of relevant legislation on the protection of personal data and privacy, national regulatory authorities shall ensure that:

- (a) directories of subscribers to the voice telephony service are made available to users in either printed or electronic form, and are updated on a regular basis;

- (b) users have the right to have or not to have an entry in publicly available directories;
- (c) telecommunications organizations make available on request public directory information concerning the voice telephony service on published terms which are fair, reasonable and non-discriminatory.

*Article 17***Provision of public pay-telephones**

National regulatory authorities shall ensure that public pay-telephones are provided to meet the reasonable needs of users, in terms of both numbers and geographical coverage, and that it is possible to make emergency calls from such telephones. Calls to the single European emergency call number referred to in Decision 91/396/EEC shall be free of charge.

*Article 18***Telephone pre-payment cards**

1. The Commission shall ensure that standards for a harmonized telephone pre-payment card suitable for use in pay-telephones in all Member States, and associated network interface standards, are drawn up by ETSI and/or CEN/Cenelec, in order to make it possible for pre-payment cards issued in one Member State to be used in other Member States. A reference to these standards and to associated standards shall be published in the *Official Journal of the European Communities*.

2. National regulatory authorities shall encourage the progressive introduction of public pay-telephones conforming to these standards.

*Article 19***Specific conditions for disabled users and people with special needs**

National regulatory authorities may draw up specific conditions to aid disabled users and people with special needs in their use of the voice telephony service.

*Article 20***Specifications for network access, including the socket**

1. Where appropriate, the Commission shall, in consultation with the ONP Committee, acting in accordance with the procedure laid down in Article 30,

request ETSI to draw up standards for new types of harmonized network access, in accordance with the reference framework set out in Annex II (2) to Directive 90/387/EEC. References to these standards shall be published in the *Official Journal of the European Communities*.

2. Where voice telephony service is supplied to users over the ISDN network at the S/T reference point, national regulatory authorities shall ensure that, after the implementation of this Directive, the introduction of a new network termination point complies with the relevant physical interface specifications, in particular those for the socket, referenced in the list of standards published in the *Official Journal of the European Communities*.

Article 21

Numbering

1. Member States shall ensure that national telephone numbering plans are controlled by national regulatory authorities, in order to ensure fair competition. In particular the procedures for allocating individual numbers and numbering ranges shall be transparent, equitable and timely and the allocation shall be carried out in an objective, transparent and non-discriminatory manner.

2. National regulatory authorities shall ensure that the main elements of the national numbering plan and all subsequent additions or amendments to them are published, subject only to limitations imposed on the grounds of national security.

2. National regulatory authorities shall encourage appropriate use of any European numbering schemes for the provision of the facilities identified in Annex III (2).

Article 22

Conditions of access and use and essential requirements

1. Member States shall ensure that conditions which restrict access to and use of fixed public telephone networks or voice telephony services are based only on the grounds given in paragraphs 3, 4 and 5, and are subject to the agreement of the national regulatory authority.

2. National regulatory authorities shall draw up procedures in order to decide, on a case-by-case basis and as soon as possible, whether or not to allow telecommunications organizations to take measures such as the refusal to provide access to the fixed public telephone network or the interruption or reduction in availability of voice telephony service, on the grounds of

a user's alleged failure to comply with the conditions of use. These procedures may also provide for the possibility of the national regulatory authority authorizing *a priori* specified measures in the event of defined infringements of the conditions of use.

The national regulatory authority shall ensure that these procedures provide for a transparent decision-making process which respects the rights of the parties. The decision shall be taken after both parties have been given the opportunity to state their case. The decision shall be duly substantiated and notified to the parties within one week of its adoption.

A summary of these procedures shall be published in the manner laid down in Article 4.

This provision shall not prejudice the rights of the parties concerned to apply to the courts.

3. Any restrictions placed upon users on the basis of special or exclusive rights for voice telephony shall be imposed through regulatory means and shall be published in accordance with Article 4.

4. Conditions for connection of terminal equipment to the fixed public telephone network shall comply with Directive 91/263/EEC and shall be published in accordance with Article 4 of this Directive.

Without prejudice to the provisions of Directive 91/263/EEC, where a user's terminal equipment does not comply or no longer complies with its approval conditions, or where it malfunctions in a way which adversely affects the integrity of the network, or where there is a danger of physical injury to persons, national regulatory authorities shall ensure that the following procedure is followed:

- service provision may be interrupted by the telecommunications organization until the terminal is disconnected from the network termination point,
- the telecommunications organization shall immediately inform the user about the interruption, giving the reasons for it,
- as soon as the user has ensured that the terminal equipment is disconnected from the network termination point, service provision shall be restored.

5. When access to or use of the fixed public telephone network is restricted on the basis of essential requirements, national regulatory authorities shall ensure that the relevant national provisions identify which of the essential requirements set out in (a) to (d) below are the basis of such restrictions.

Restrictions imposed on the basis of essential requirements shall be published in the manner laid down in Article 4.

Restrictions derived from essential requirements shall be imposed through regulatory means.

Without prejudice to Articles 3 (5) and 5 (3) of Directive 90/387/EEC, the essential requirements specified in Article 3 (2) of that Directive shall apply to the fixed public telephone network and voice telephony service in the following manner:

(a) *Security of network operations*

There shall be no restrictions on access to and use of the fixed public telephone network on the grounds of security of network operations except in emergency situations, when a telecommunications organization may take the following measures in order to safeguard the security of network operations:

- interruption of service,
- limitation of service features,
- denial of access to the network and service for new users.

An emergency situation in this context means catastrophic network breakdown or an exceptional case of *force majeure*, such as extreme weather, flood, lightning or fire, industrial action or lockout, war, military operations or civil disorder. In an emergency situation the telecommunications organization shall make every endeavour to ensure that service is maintained to all users.

National regulatory authorities shall ensure that telecommunications organizations have procedures in place whereby users and the national regulatory authority are immediately informed of the beginning and the end of the emergency, as well as the nature and extent of temporary service restrictions.

(b) *Maintenance of network integrity*

National regulatory authorities shall ensure that restrictions on access to and use of the fixed public telephone network on the grounds of maintenance of network integrity, in order to protect *inter alia* network equipment, software or stored data, are kept to the minimum necessary to provide for normal operation of the network. Restrictions shall be based on published, objective criteria and shall be applied in a non-discriminatory manner.

(c) *Interoperability of services*

When terminal equipment has been approved and is operating in compliance with Directive 91/263/EEC, no further restrictions on use shall be imposed on the grounds of interoperability of services.

Where the national regulatory authority imposes conditions concerning interoperability of services in contracts relating to interconnection of public

networks or special network access, those conditions shall be published in the manner laid down in Article 4.

(d) *Protection of data*

Member States may restrict access to and use of the fixed public telephone network on the grounds of protection of data only to the extent necessary to ensure compliance with relevant regulatory provisions on the protection of data, including protection of personal data, the confidentiality of information transmitted or stored, and the protection of privacy, in a manner compatible with Community law.

6. National regulatory authorities shall ensure that, where appropriate, users are informed in advance by appropriate means by the telecommunications organizations of periods when access to or use of the fixed public telephone network may be restricted or denied as a result of planned maintenance activity.

Article 23

Non-payment of bills

Member States shall authorize specified measures, which shall be published in the manner laid down in Article 4, to cover non-payment of bills and any consequent service interruption or disconnection. These measures shall ensure that any service interruption is confined to the service concerned, as far as is technically feasible, and that due warning is given to the user beforehand.

Article 24

Technical standards

1. National regulatory authorities shall encourage the provision of services according to the standards listed below:

- standards published in the *Official Journal of the European Communities*, in accordance with Article 5 (1) of Directive 90/387/EEC,
 - or, in the absence of such standards,
- European standards adopted by ETSI, or CEN/Cenelec,
 - or, in the absence of such standards,
- international standards or recommendations adopted by the International Telecommunications Union (ITU), the International Organization for Standardization (ISO) or the International Electrotechnical Commission (IEC),
 - or, in the absence of such standards,
- national standards or specifications,

without prejudice to reference to European standards, which reference may be made compulsory under Article 5 (3) of Directive 90/387/EEC.

2. National regulatory authorities shall ensure that telecommunications organizations inform users on request of standards or specifications, including any European and/or international standards which are implemented through national standards, in accordance with which the services and facilities in this Directive are provided.

Article 25

Provisions for Community-wide convergence

1. On the basis of the reports provided by the national regulatory authorities under Article 26 (5) and the information published under Article 4, the Commission shall review progress towards convergence of targets and implementation of common services and facilities within the Community.

2. If implementation of the requirements of Articles 5, 9 or 15 appears inadequate to ensure the provision of harmonized services and facilities to users at a Community level, harmonized targets and target dates may be determined in accordance with the procedure laid down in Article 31.

The procedure initiated by the Commission shall take full account of the state of network development and market demand in all individual Member States.

3. In particular with regard to those facilities requiring Community-wide cooperation described in Article 9 (2), where commercial agreements between telecommunications organizations cannot be concluded, conditions necessary to achieve the provision of harmonized facilities to users may be recommended.

The recommendations shall take due account of the state of network development, the various architectures and market demand in the Community.

Article 26

Notification and reporting

1. Member States shall notify the name of their national regulatory authority to the Commission by 13 December 1996.

2. Member States shall notify to the Commission the names of the telecommunications organizations to which this Directive applies, in particular to ensure the

provision of the network and service in accordance with Article 3.

Without prejudice to the future applicability of ONP measures, Member States which have abolished exclusive rights for voice telephony may apply this Directive to organizations defined on the basis of a significant market share or on the basis of a dominant position in their authorized area of operation, in such a way as to ensure that at every point in their territory at least one organization is subject to the provisions of this Directive.

Member States may ensure that telecommunications organizations are obliged to supply the information necessary to determine the application of this Directive.

3. National regulatory authorities shall notify to the Commission the names of the telecommunications organizations in their territory which are authorized to interconnect their fixed networks directly with those of telecommunications organizations in other Member States in order to provide voice telephony service.

National regulatory authorities shall notify to the Commission the names of the operators of public mobile telephony services in their territory which are authorized to interconnect directly with the fixed networks of telecommunications organizations in other Member States in order to provide voice telephony service.

4. The Commission shall publish the names referred to in paragraphs 2 and 3 in the *Official Journal of the European Communities*.

5. National regulatory authorities shall, each for the matters for which it is responsible, make available to the Commission once each calendar year a report covering the progress made in achieving the targets agreed by them under Articles 5, 9 and 15.

The annual report shall be sent to the Commission within five months of the end of the year.

6. National regulatory authorities shall keep available and submit to the Commission on request details of individual cases brought before them, other than those covered by Article 23, where access to the public telephone network or voice telephony service or use of the network or service has been restricted or denied, including the measures taken and their justification.

However, this provision shall not apply to any action taken under national regimes for the enforcement of licensing conditions in conformity with Community law, or to proceedings before a national court.

*Article 27***Conciliation of national dispute resolution**

Without prejudice to:

- (a) any action that the Commission or any Member State may take pursuant to the Treaty;
- (b) the rights of the person invoking the procedure in paragraphs 3 and 4, of the telecommunications organizations concerned or of any other person under applicable national law, except in so far as they enter into an agreement for the resolution of disputes between them;
- (c) the provisions of this Directive which allow the national regulatory authorities to set the terms of contracts between telecommunications organizations and users,

the following procedures shall be available to the user:

- (1) Member States shall ensure that any party, including users, service providers, consumers, or other telecommunications organizations having an unresolved dispute with a telecommunications organization concerning an alleged infringement of the provisions of this Directive, shall have a right of appeal to the national regulatory authority or another independent body. Easily accessible and in principle inexpensive procedures shall be created at national level to resolve such disputes in a fair, transparent and timely manner. These procedures shall also apply in cases where users are in dispute with a telecommunications organization about their telephone bills.
- (2) A user or a telecommunications organization may, where the dispute involves telecommunications organizations in more than one Member State, invoke the conciliation procedure provided for in paragraphs 3 and 4 by means of a written notification to the national regulatory authority and to the Commission. Member States may also allow their national regulatory authority to invoke the conciliation procedure.
- (3) Where the national regulatory authority or the Commission finds that there is a case for further examination, following a notification based on paragraph 2, it can refer the matter to the Chairman of the ONP Committee.
- (4) In the circumstances referred to in paragraph 3, the Chairman of the ONP Committee shall initiate the procedure described below if he is satisfied that all reasonable steps have been taken at national level:
 - (a) the Chairman of the ONP Committee shall convene as soon as possible a working group including at least two members of the ONP Committee and one representative of the national regulatory authorities concerned, and

the Chairman of the ONP Committee or another official of the Commission appointed by him. The working group shall be chaired by the representative of the Commission and shall normally meet within ten days of having been convened. The Chairman of the working group may decide, upon proposal by any of the members of the working group, to invite a maximum of two other persons as experts to advise it;

- (b) the working group shall give the party invoking this procedure, the national regulatory authorities of the Member States involved and the telecommunications organizations involved the opportunity to present their opinions in oral or written form;
- (c) the working group shall endeavour to reach agreement between the parties involved within three months of the date of receipt of the notification referred to in paragraph 2. The Chairman of the ONP Committee shall inform that Committee of the results of the procedure so that it may express its views.

- (5) The party invoking the procedure shall bear its own costs of participating in this procedure.

*Article 28***Deferment of certain obligations**

- 1. When a Member State is unable to or can foresee that it will be unable to fulfil the provisions of Articles 12 and 13, it shall notify the Commission of the reasons.
- 2. Deferment of obligations under Articles 12 or 13 can be accepted only in cases where the Member States concerned can prove that fulfilment of the obligation would impose an excessive burden on the telecommunications organizations in that Member State.
- 3. The Member State shall inform the Commission of the date by which the obligation can be fulfilled and of the measures envisaged in order to meet that deadline.
- 4. When the Commission receives a notification in accordance with paragraph 1, it shall inform the Member State whether the particular situation of the Member State concerned justifies, on the basis of criteria set out in paragraph 2, a deferment for that Member State of the application of Article 12 or Article 13 and until which date such deferment is justified.

*Article 29***Technical adjustment**

Modifications necessary to adapt Annex I (2), Annexes II and III to technological developments or to changes in market demand shall be determined in accordance with the procedure laid down in Article 31.

*Article 30***Advisory Committee procedure**

1. The Commission shall be assisted by the Committee set up by Article 9 (1) of Directive 90/387/EEC.

The Committee shall, in particular, consult the representatives of the telecommunications organizations, users, consumers, manufacturers and service providers.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

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

*Article 31***Regulatory Committee procedure**

1. Notwithstanding the provisions of Article 30, the following procedure shall apply in respect of the matters covered by Articles 25 and 29.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the EC Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

4. If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, within a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

*Article 32***Review**

1. The European Parliament and the Council shall decide by 1 January 1998, on the basis of a proposal which the Commission will submit to them in good time, on the revision of this Directive to adapt it to the requirements of market liberalization.

2. The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 13 December 1998. The report shall be based *inter alia* on the information provided by the Member States to the Commission and to the ONP Committee. Where necessary, further measures may be proposed in the report for full implementation of the aims of the Directive.

*Article 33***Implementation**

1. Member States shall take the measures necessary to comply with this Directive before 13 December 1996. 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 of making such reference shall be laid down by the Member States.

2. Member States shall inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

*Article 34***Entry into force**

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

Article 35

This Directive is addressed to the Member States.

Done at Brussels, 13 December 1995.

For the European
Parliament

The President

K. HÄNSCH

For the Council

The President

J. L. DICENTA BALLESTER

ANNEX I

HEADINGS FOR INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE 4

1. Name(s) and address(es) of telecommunications organization(s)

i.e. name(s) and head office address(es) of the telecommunications organization(s) providing fixed public telephone networks and/or voice telephony services.

2. Telecommunications services offered

2.1. Types of connection to the public fixed telephone network

Technical characteristics of interfaces at commonly provided network termination points are required, including where applicable reference to national and/or international standards or recommendations, in accordance with Article 24:

— for analogue and/or digitally presented networks:

- (a) single line interface;
- (b) multi-line interface;
- (c) direct dialling-in (DDI) interface;
- (d) other interfaces commonly provided,

— for ISDN:

- (a) specification of basic and primary rate interfaces at the S/T reference points, including the signalling protocol;
- (b) details of bearer services able to carry voice telephony services;
- (c) other interfaces commonly provided,

— and any other interfaces commonly provided.

In addition to the above information to be published on a regular basis in the manner laid down in Article 4, telecommunications organizations must inform terminal equipment suppliers, without undue delay, of any particular network characteristics which affect the correct operation of approved terminal equipment.

2.2. Telephone services offered

Description of the basic voice telephony service offered, indicating what is included in the subscription charge and the periodic rental charge (e.g. operator services, directories, maintenance).

Description of optional facilities and features of the voice telephony service which are tariffed separately from the basic offering, including where applicable reference to the relevant technical standards or specifications to which they conform, in accordance with Article 24.

2.3. Tariffs

covering access, usage, maintenance, and including details of any discount schemes

2.4. Compensation/refund policy

including specific details of any compensation/refund schemes offered

2.5. Types of maintenance service offered

2.6. Ordering procedure

including designated contact points within the telecommunications organization

2.7. Standard contract conditions

including any minimum contractual period.

3. Licensing requirements

This shall include a clear description of all licensing conditions which have an impact on users, including service providers, containing at least:

— information on the nature of the licensing conditions, in particular whether registration and/or authorization is required on an individual basis, or whether the licence is of a general nature which does not require individual registration and/or authorization,

- the duration of any relevant licences or authorizations,
- a list referring to all documents containing relevant licensing conditions which the Member State imposes.

4. **Conditions for attachment of terminal equipment**

This shall include a complete overview of requirements for terminal equipment as regulated by the national regulatory authority, in line with the provisions of Directive 91/263/EEC, including, where appropriate, conditions concerning customer premises wiring and location of the network termination point.

5. **Restrictions on access and use**

This shall include any restrictions on access and use imposed in accordance with the requirements of Article 22.

6. **Performance and quality-of-service parameters**

Definitions, measurement methods, targets and achieved performance figures, in accordance with the requirements of Article 5.

7. **Targets for the introduction of new services, features, facilities and tariffs**

Targets shall be published in accordance with the requirements of Articles 9 and 15.

8. **Conditions for special network access**

This shall include conditions for special network access set by national regulatory authorities in accordance with Article 10 (5).

9. **Availability of the description of the cost accounting system**

The address from which the description of the cost accounting system may be requested in accordance with the requirements of Article 13.

10. **Main elements of the national numbering plan**

In accordance with the requirements of Article 21.

11. **Terms for the use of directory information**

In accordance with Article 16 (c).

12. **Conciliation and dispute resolution procedure**

This shall include guidelines for users on the appeal mechanisms available for conciliation and resolving disputes with telecommunications organizations, according to the procedure described in Article 27. This shall also include a summary of the procedures for resolving disputes referred to in Article 22 (2).

13. **Procedure in the event of non-payment of bills**

In accordance with the requirements of Article 23.

*ANNEX II***SUPPLY-TIME AND QUALITY-OF-SERVICE INDICATORS IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 5**

The following list specifies areas where quality-of-service indicators are required for telecommunications organizations notified in accordance with Article 26 (2):

- supply time for initial network connection,
- fault rate per connection,
- fault repair time,
- call failure rates,
- dial tone delay,
- call set up delay,
- transmission quality statistics,
- response times for operator services,
- the proportion of coin and card-operated public pay-telephones in working order,
- billing accuracy.

ANNEX III

PROVISION OF ADVANCED FACILITIES IN ACCORDANCE WITH ARTICLE 9

1. List of facilities referred to in Article 9 (1):

(a) *DTMF (dual-tone multifrequency operation)*

i.e. the fixed public telephone network supports the use of DTMF telephones for signalling to the exchange, using tones as defined in ITU-T Recommendation Q.23, and supports the same tones for end-to-end signalling through the network, both within a Member State and between Member States.

(b) *Direct dialling-in (or facilities offering equivalent functionality)*

i.e. users on a private branch exchange (PBX) or similar private system can be called directly from the fixed public telephone network without intervention by the PBX attendant.

(c) *Call forwarding*

i.e. incoming calls sent to another destination in the same or another Member State (e.g. on no reply, on busy, or unconditionally).

This facility should be provided in accordance with relevant legislation on data protection and privacy.

(d) *Calling-line identification*

i.e. the calling party's number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on data protection and privacy.

2. List of services and facilities referred to in Article 9 (2):

(a) *Community-wide access to green/freephone services*

Such services, variously known as green numbers, freephone services, 0800 numbers etc. include dial-up services where the caller pays either nothing for the call or only part of the total cost of the call.

(b) *Community-wide kiosk billing*

Kiosk billing means a facility whereby charges for the use of a service accessed through a telecommunications organization's network are combined with the network call charges ('premium rate service').

(c) *Community-wide call transfer*

i.e. transfer of an established call to a third party in the same or another Member State.

(d) *Community-wide automatic reverse charging service facility for calls which are terminated and originated within the Community.*

i.e. prior to the call being connected, the called party, at the caller's request, agrees to accept the cost of the call.

(e) *Community-wide calling-line identification*

i.e. the calling party's number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on data protection and privacy.

(f) *Access to operator services in other Member States*

i.e. users in one Member State can call the operator/assistance service in another Member State.

(g) *Access to directory enquiry services in other Member States*

i.e. users in one Member State can call the directory enquiry service in another Member State.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 10 July 1995

on the implementation of a programme encouraging the development and distribution of European audiovisual works (Media II — Development and distribution) (1996-2000)

(95/563/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130 (3) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

(1) Whereas the European Council meeting in Brussels on 10 and 11 December 1993 took note of the White Paper 'Growth, competitiveness and employment' as the reference point for action by the European Union and its Member States; whereas the White Paper supports an industrial development approach based on global competitiveness, as the key to growth and employment; and states, in particular in Chapter 5-C, the economic importance of the audiovisual industry;

(2) Whereas the European Council meeting in Corfu on 24 and 25 June 1994, took note of the report by the 'Bangemann Group' entitled 'Europe and the global information society — recommendations to the European Council', in particular acknowledging the strategic importance of the audiovisual programme industry in terms of content;

(3) Whereas the 'Industry/Telecommunications' Council, of 28 September 1994, issued a favourable opinion on the Commission's communication of 19 July 1994 entitled 'Europe's way to the information society: an action plan'; whereas it emphasized the need to improve the competitiveness of the European audiovisual industry;

(4) Whereas the Council took formal note, on 17 June 1994 of the Green Paper on 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union';

(5) Whereas the Commission consulted the people in the industry on the options put forward in the Green Paper, in particular by holding the 'European Audiovisual Conference' in Brussels from 30 June to 2 July 1994; whereas the consultation process revealed a strong desire for an enhanced programme of support for the European audiovisual industry, in particular in the area of development and distribution;

(6) Whereas the European Parliament, in its resolution of 6 May 1994 ⁽⁴⁾, examined the problems of the audiovisual industry, following Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽⁵⁾ (the 'Television Without Frontiers' Directive), in preparation for the European audiovisual conference 'and took the view that the priorities established *inter alia* during the discussions on amendments to the Media

⁽¹⁾ OJ No C 108, 29. 4. 1995, p. 8.

⁽²⁾ OJ No C 166, 3. 7. 1995, p. 191.

⁽³⁾ OJ No C 256, 2. 10. 1995, p. 24.

⁽⁴⁾ OJ No C 205, 25. 7. 1994, p. 561.

⁽⁵⁾ OJ No L 298, 17. 10. 1989, p. 23.

- programme, namely financing mechanisms, pre-production, distribution and training, were the best means of establishing coherent, stable European networks’;
- (7) Whereas on 14 September 1994 the Economic and Social Committee issued its opinion on the Green Paper, stating that European-level programmes such as Media could have a positive influence on the development of programme structures and means of production in Europe;
- (8) Whereas the Commission has implemented an action programme to encourage the development of the European audiovisual industry (Media) (1991—1995), adopted by Council Decision 90/685/EEC of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (Media) (1991 to 1995)⁽¹⁾, including, in particular, measures to support the development and distribution of European audiovisual works;
- (9) Whereas the Council, at its meeting of 5 November 1993, after taking note of the Commission Communication of 23 July 1993 on the Media programme mid-term evaluation report, took the view that it would be appropriate to examine suitable measures for launching a Media II programme after 1995;
- (10) Whereas the European Council meeting in Essen on 9 and 10 December 1994 called on the Commission to present proposals for a new Media programme;
- (11) Whereas Article 128 (4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of the Treaty; whereas participation in the Programme should reflect European cultural diversity;
- (12) Whereas there is a need to take into account the cultural aspects of the audiovisual sector;
- (13) Whereas experience from the Media Programme has shown that action is needed both before and after production; whereas an environment favourable to the taking of initiatives by companies, in particular small and medium-sized businesses and their development, should be fostered and cooperation between distributors/broadcasters and producers should be encouraged;
- (14) Whereas the emergence of a European audiovisual market requires the development of ‘European works’, which means works from Member States of the European Union as defined in Article 6 of Directive 89/552/EEC;
- (15) Whereas the competitiveness of the audiovisual programme industry requires utilization of new technologies at the programme development stage;
- (16) Whereas there is a need for improvement in the circulation prospects of European cinematographic works on the market, in particular the European market; whereas cooperation between distributors, cinema owners and producers should be encouraged and support should be given to concerted action to promote common programming measures at European level;
- (17) Whereas there is a need for improvement in the television broadcasting prospects of European works on the market, in particular the European market; whereas cooperation between broadcasters and producers should be encouraged and support should be given to concerted action to promote common programming measures at European level;
- (18) Whereas promotion and access to the market of European independent production should be facilitated;
- (19) Whereas there is a need to improve enhancement of the European audiovisual heritage and to meet the requirements of the programme market in this area;
- (20) Whereas support for development and distribution should take account of structural objectives such as developing potential where audiovisual production capacity is low, as in small countries or regions with less widely spoken languages and/or developing the independent production industry, in particular small and medium-sized businesses;
- (21) Whereas a reference amount, within the meaning of point 2 of the declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Decision for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
- (22) Whereas, in accordance with the principle of subsidiarity, action taken by the Community should support and supplement action taken by the relevant authorities in the Member States;
- (23) Whereas it is necessary to continue and step up the process of opening up the Media programme to participation by the associated countries of Central and Eastern Europe (CCEE), in accordance with the conditions resulting from the Additional Protocols to the Association Agreements concerning participation Community programmes concluded or to be concluded with these countries, and to participation by Cyprus, Malta and those EFTA States which are parties to the EEA Agreement on the basis of additional appropriations, in accordance with procedures to be agreed on with these countries; whereas the programme should

⁽¹⁾ OJ No L 380, 31. 12. 1990, p. 37.

also be opened up to cooperation with other third countries which have concluded Agreements containing audiovisual clauses; whereas the details of such participation or cooperation should be decided on at the appropriate time by the parties concerned;

- (24) Whereas Community support should be granted on the basis of prior appraisal, monitoring, and subsequent evaluation,

HAS DECIDED AS FOLLOWS:

Article 1

This Decision establishes a programme to promote the development and, within the Union and outside it, the distribution of European audiovisual works (hereinafter referred to as 'the Programme'), to run for a period from 1 January 1996 until 31 December 2000, for the purpose of strengthening the European audiovisual industry.

Article 2

The aims of the Programme are as follows:

1. As regards development:

- to promote, by providing financial and technical assistance, the development of production projects submitted by companies which include the enhancement of the audiovisual heritage and are aimed, in particular, at the European market, to encourage an environment favourable to initiative and to the development of the companies and to encourage networking among them,
- to promote the development of production projects which include the enhancement of the audiovisual heritage that make use of new techniques of creation and animation, to support an environment favourable to initiative and development by companies and to encourage networking among them.

2. As regards distribution:

- to strengthen the European distribution sector in the field of cinema and video by favouring the networking of European distributors and encouraging them to invest in the production of European cinema films,
- to favour wider transnational distribution of European films by way of stimulation measures concerning their distribution and their exhibition in cinemas, and to encourage the networking of operators,
- to promote the circulation, in the European Union and outside it, of European television programmes

capable of appealing to a European and world audience and to encourage independent European producers and European broadcasters to cooperate in the production of such programmes,

- to actively support linguistic diversity of audiovisual and cinema works,
- to facilitate the promotion of independent European production and its access to the market by the implementation of promotion services and actions.

The aims of the programme must work towards:

- an increase in the competitiveness of the audiovisual industry notably in the European market, by supporting the development of projects which have a true distribution potential,
- respect for European linguistic and cultural diversity,
- enhancing the European audiovisual heritage,
- the development of potential in countries or regions with a low capacity for audiovisual production and/or a restricted geographical and linguistic area,
- the development of an independent production and distribution sector especially of small and medium-sized enterprises.

Article 3

Beneficiaries of Community support, as laid down in Article 2, must provide a significant proportion of the funding. Community funding shall not exceed 50% of the cost of operations.

The financial reference amount for implementation of the programme for the period referred to in Article 1 shall be ECU 265 million.

The annual appropriations shall be authorized by the budgetary authority in accordance with the current financial perspective.

Without prejudice to the agreements and conventions to which the Community is a contracting party, the businesses benefitting from the programme must be in the possession and continue to be in the possession, whether directly, or by majority participation, of the Member States and/or of nationals from Member States.

Article 4

Financial support under the Programme may be granted in the form of loans, repayable advances, or subsidies, as defined in the Annex. The repayments under the

Programme, together with the repayments from operations under the Media programme (1991/95), will be allocated to the requirements of the Media II programme.

Article 5

1. The Commission shall be responsible for the implementation of the Programme, in accordance with the arrangements laid down in the Annex.

In the performance of this task, it shall be assisted by a committee composed of two representatives from each Member State and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee, for its opinion, a draft of the measures to be taken concerning:

- arrangements for the implementation of the actions provided for in the Annex,
- the content of calls for proposals, the definition of criteria and procedures for the approval and selection of projects, as well as the final choice of intermediary organizations,
- questions concerning the annual internal distribution of finances within the programme, including among the actions established in the distribution sector,
- arrangements for monitoring and evaluating the operations.

Furthermore, the representative of the Commission shall also submit, for its opinion, the examination of all community allocations which are higher than ECU 300 000 per year as regards development and higher than ECU 500 000 per year as regards distribution. This threshold can be reviewed by the Committee in the light of experience.

3. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall

be communicated by the Commission to the Council forthwith. In that event:

- the Commission shall defer application of the measures which it has decided upon for a period of two months,
- the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

4. The Commission may consult the Committee on any other question concerning the implementation of the programme.

The Committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

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

The Commission representative shall keep the Committee informed in good time and on a regular basis of the financial allocation agreed in the framework of the programme (amounts, duration, internal distribution of finances, beneficiaries).

Article 6

The programme shall be open to the participation of the associated countries of Central and Eastern Europe (CCEE) in accordance with the conditions laid down in the additional protocols to the Association Agreements on participation in Community programmes concluded or to be concluded with those countries.

This programme shall be open to the participation of Cyprus, Malta and EFTA countries members of the EEA Agreement on the basis of additional appropriations in accordance with the same rules as applied to EFTA States, in accordance with procedures to be agreed with these countries.

It shall also be open to cooperation with other non-member countries which have concluded agreements containing audiovisual clauses.

The arrangements for this participation or cooperation will be fixed at the appropriate time between the parties concerned.

Article 7

1. The Commission shall ensure that actions under this Decision are subject to prior appraisal, monitoring and subsequent evaluation.

2. The selected beneficiaries shall submit an annual report to the Commission.

3. After the completion of projects, the Commission shall evaluate the manner in which they have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

4. After two years and six months of implementation of the programme and within the six months that follow this period, the Commission, after having brought the matter before the Committee in accordance with the procedure laid down in Article 5 (2) and (3), shall present to the European Parliament, the Council and the Economic and Social Committee an evaluation report on the results which were obtained, accompanied if need be by appropriate proposals.

Within the framework of this report, the Commission shall evaluate the comparative results of the systems

established in points 1.2.1.(a) and (b) of the Annex, with regard to the objectives of the programme. It shall submit to the Committee, in accordance with the procedure laid down in Article 5 (2) and (3) of this Decision, appropriate proposals as to the respective proportion for each of the two systems and as to the implementation arrangements for the continuation of the programme.

5. When the programme has run its full term, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the implementation and results of the programme.

Done at Brussels, 10 July 1995.

For the Council

The President

P. SOLBES MIRA

ANNEX

1. ACTIONS TO BE TAKEN

The proposed actions shall cover the following:

1.1. In the development sector

Improving development opportunities (preproduction) for drama, documentaries and animation and with a view to access to the European and world market:

- by supporting the development of drama, documentaries and animation (cinema and television) presented by businesses which are aimed at a European and world audience through the provision of assistance (planning and/or financial support) for writing techniques (workshops, a screenplay team etc.) for the establishment of the financial arrangements and the business plan; by encouraging a favourable environment for initiative and development by companies that have development project packages with in particular, European market potential and by encouraging their networking,
- by encouraging a favourable environment for initiative and development by companies in the sector of new technology and animation which present development projects aimed, in particular, at the European market, and by promoting their networking.

1.2. In the distribution sector**1.2.1. Video and cinema distribution**

To meet the aims referred to in Article 2 (2), the following action lines shall be implemented:

- (a) a system of subsidy, repayable, for cinema distributors and video publishers of European films.

The aims of this system shall be:

- to favour the networking of all European distributors and publishers having common marketing strategies, in particular, on the European market,
- to particularly encourage distributors to invest in adequate promotion and distribution costs for European films whatever their production budget may be,
- to encourage video publishing and distribution of European works,
- to actively support linguistic diversity of European works (dubbing, subtitling and multilingual production);

- (b) A system of subsidy for European distributors proportionate to cinema attendance for European films outside their national territory up to an upper limit fixed per film and graded according to each country.

The subsidy generated in this way can only be used by distributors to be invested:

- in the production of European films which have a distribution potential, in particular, on the European market,
- in the meeting of editorial costs (taking of copies, dubbing and subtitling), promotion and advertising costs.

During the first year of application of the programme the Commission shall prepare a report assessing the possible arrangements, the cost and impact of the system referred to under (b), which it shall present to the Committee in accordance with the procedure laid down in Article 5 (2) for the purpose of determining the conditions for operational implementation of the system which will be of an experimental nature for two years.

Within the framework of the report provided for in Article 7 (4) the Commission shall evaluate the compared results of the systems referred to under (a) and (b) in the light of the objectives of the programme. It shall present to the Committee in accordance with the procedure laid down under Article 5 (2) appropriate proposals as regards the respective share for each of the systems and the arrangements for applying them to the rest of the programme, while ensuring the preservation of an adequate balance between the two systems.

The criteria for choosing the beneficiaries can include ones aiming to distinguish between projects according to their budget category.

A special subsidy shall be granted to films which are of interest for the enhancement of European cultural diversity.

- (c) A system of support, for example in the form of guaranteed receipts, is also intended to encourage exhibitors to put forward a significant showing of European films in commercial first appearance cinemas for a minimum period of exhibition time.

1.2.2. *Television broadcasting*

- encouraging independent producers to produce works (fiction, documentary and animation) involving the participation of at least two broadcasters from several Member States belonging particularly to different linguistic zones and encouraging the broadcasting of such works,
- actively supporting linguistic diversity of these works (dubbing, subtitling and multilingual production).

The criteria for selecting the beneficiaries may include provisions to distinguish projects according to their budget category.

Particular support shall be granted to audiovisual works presenting an interest for the enhancement of European cultural diversity.

1.2.3. *Promotion and access to the market*

Improving access for independent producers and distributors to the European and world market through promotion, assistance and bringing enterprises together at commercial events (markets, fairs, festivals and other fora for meetings), organized at European and world level.

2. **IMPLEMENTATION PROCEDURE**

2.1. **Approach**

In implementing the Programme, the Commission will work closely with the Member States. It will also consult the partners involved.

The Commission will ensure that there is a good geographical spread among the professionals participating in the programme and that Europe's cultural diversity is reflected, paying particular attention to the specific need of countries which have a low production capacity and/or which are linguistically or geographically restricted as well as to the development of the independent production and distribution sector and in particular the SME.

2.2. **Funding**

2.2.1. *Community contribution*

Community funding shall not exceed 50 % of the costs of the actions proposed and shall be granted in the form of repayable advances, loans or subsidies. The remainder will be provided in particular by the partners from the industry.

Community support for linguistic diversity in production will be granted in the form of subsidies.

2.2.2. *Appraisal, monitoring and evaluation*

Before approving an application for support, the Commission shall appraise it thoroughly to assess its conformity with this Decision and the conditions laid out in points 2 and 3 of this Annex.

Without prejudice to Article 3 of this Decision, Community support shall not exceed the minimum considered necessary for a project.

Applications for Community support should provide, where appropriate:

- a financial plan listing all the components of the funding of the projects, including the financial support requested from the Commission,

- a provisional timetable of work,
- any other relevant information requested by the Commission.

2.2.3. *Financial provisions and financial control*

The Commission shall determine the arrangements for commitments and payments for actions taken under this Decision in conformity with the relevant rules of the financial regulation.

2.3. **Implementation**

The Commission shall implement the programme in accordance with the procedure set out in Article 5 of the decision.

- 2.3.1. In implementing the programme, in particular the technical selection of projects, monitoring and evaluation of projects benefitting from the programme's funding and actions for networking, the Commission will ensure that it obtains the expertise of acknowledged specialists in the field of the development and distribution of cinema and television works.

To this end, it can if necessary involve intermediary organizations which, on the basis of their professional expertise, will provide technical assistance and will formulate proposals for the choice of the beneficiaries, without prejudice to other selection methods. These organizations will be chosen after calls for proposals and following the procedure described in Article 5 (2).

The Commission shall make the final selection of projects benefitting from the Programme's funding, in the context of the dispositions of Article 5 (2).

- 2.3.2. Furthermore, the Commission and the Member States shall organize the mutual exchange of information useful in the implementation of the programme and take the necessary steps, particularly by continuing the activities of the Media desks, to ensure the promotion of the programme, and encourage the greatest possible participation of professionals in its actions and ensure permanent contacts with the different support institutions of the Member States, for the purpose of achieving complementarity between the actions of this programme and national support measures.
-

COUNCIL DECISION

of 22 December 1995

on the implementation of a training programme for professionals in the European audiovisual programme industry (Media II — Training)

(95/564/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 127 (4) 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 189c of the Treaty ⁽³⁾,

1. Whereas the European Council meeting in Brussels on 10 and 11 December 1993 took note of the White Paper 'Growth, competitiveness and employment' as reference point for action by the European Union and its Member States; whereas the White Paper supports an industrial development approach based on global competitiveness, as the key to growth and employment, and states, in particular in Chapter 7, the need to adapt vocational skills in line with industrial and technological developments;
2. Whereas the European Council meeting in Corfu on 24 and 25 June 1994 took note of the report by the 'Bangemann Group' entitled 'Europe and the Global Information Society — Recommendations to the European Council', in particular acknowledging the strategic importance of the audiovisual programme industry in terms of content;
3. Whereas the 'Industry/Telecommunications' Council of 28 September 1994 issued a favourable opinion on the Commission's communication of 19 July 1994 entitled 'Europe's way to the information society: an action plan'; whereas it emphasized the need to improve the competitiveness of the European audiovisual industry;
4. Whereas the Council took formal note of the Commission's communication of 1 September 1994

entitled 'An industrial competitiveness policy for the European Union' which showed the close correlation between the development prospects of technologies, products, programmes (in particular audiovisual programmes) and the associated services and networks and recalled the need to raise the training standards of human resources in order to make European industry competitive;

5. Whereas the Council took formal note on 17 June 1994 of the Green Paper 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union';
6. Whereas the Commission consulted the people in the industry on the options put forward in the Green Paper, in particular by holding the 'European Audiovisual Conference' in Brussels from 30 June to 2 July 1994; whereas the consultation process revealed a strong desire for an enhanced programme of support for the European audiovisual industry, in particular in the area of training;
7. Whereas the European Parliament, in its resolution of 6 May 1994 ⁽⁴⁾, examined the problems of the audiovisual industry, following Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽⁵⁾ (the 'television without frontiers' Directive), in preparation for the European audiovisual conference, 'and took the view that the priorities established *inter alia* during the discussions on amendments to the Media programme, namely the financing mechanisms, pre-production, distribution and training, were the best means of establishing coherent, stable European networks';
8. Whereas on 14 September 1994 the Economic and Social Committee issued its opinion on the Green Paper, stating that European-level programmes such as Media could have a positive influence on the development of programme structures and means of production in Europe;
9. Whereas the Commission implemented an action programme to encourage the development of the

⁽¹⁾ OJ No C 108, 29. 4. 1995, p. 4.

⁽²⁾ OJ No C 256, 2. 10. 1995, p. 24.

⁽³⁾ Opinion of the European Parliament of 16 June 1995 (OJ No C 166, 3. 7. 1995, p. 200), Council common position of 10 July 1995 (OJ No C 281, 25. 10. 1995, p. 1) and Decision of the European Parliament of 15 November 1995 (not yet published in the Official Journal).

⁽⁴⁾ OJ No C 205, 25. 7. 1994, p. 561.

⁽⁵⁾ OJ No L 298, 17. 10. 1989, p. 23.

- European audiovisual industry (Media) (1991 to 1995), adopted by Council Decision 90/685/EEC of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (Media) (1991 to 1995) ⁽¹⁾, including, in particular, training measures to upgrade the vocational skills of people working in the audiovisual programme industry;
10. Whereas the Council, at its meeting of 5 November 1993, after taking note of the Commission's communication of 23 July 1993 on the Media programme mid-term evaluation report, took the view that it would be appropriate to examine suitable measures for launching a Media II programme after 1995;
 11. Whereas the European Council meeting in Essen on 9 and 10 December 1994 called on the Commission to present proposals for a new Media programme;
 12. Whereas at its meeting of 6 December 1994 the Council adopted Decision 94/819/EC ⁽²⁾ setting up the 'Leonardo da Vinci' action programme for the implementation of a European Community vocational training policy; whereas Article 8 (1) of the said Decision requires the Commission to ensure overall consistency between that programme and other Community measures in the field of training;
 13. Whereas there should be proper coordination with vocational training actions undertaken pursuant to the objectives of the Structural Funds;
 14. Whereas pursuant to Article 128 (4) of the Treaty the Community shall take cultural aspects into account in its action under other provisions of the Treaty; whereas it is necessary to ensure that participation in this programme reflects European cultural diversity;
 15. Whereas there is a need to take into account the cultural aspects of the audiovisual sector;
 16. Whereas the emergence of a European audiovisual market requires vocational skills adapted to the new dimension of the market, particularly as regards economic and commercial management of the industry and utilization of new technology at all stages of programme design, development, production and transmission;
 17. Whereas people in the industry should be provided with vocational skills that enable them to take full advantage of the, in particular, European dimension of the audiovisual programme market and they should be encouraged to develop projects which meet the demands of that market;
 18. Whereas there should be an improvement in the exploitation of the European audiovisual heritage and a response to the needs of the market for programmes in the field;
 19. Whereas the initial training of professionals must incorporate the indispensable economic and technological components; whereas the speed of change in these areas makes continuous training especially necessary;
 20. Whereas networking between vocational training centres should be encouraged so as to facilitate the transfer of know-how and the development of training modules at European level;
 21. Whereas support for vocational training must take account of structural objectives such as developing the potential for creation and production in countries or regions where audiovisual production capacity is low and/or where the geographical and linguistic area is restricted and/or developing the independent production sector, in particular small and medium-sized enterprises (SMEs);
 22. Whereas equal opportunities constitute a fundamental principle in the policies of the European Union which must be taken into account in implementing this programme;
 23. Whereas a reference amount, within the meaning of point 2 of the declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Decision for the entire duration of this programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
 24. Whereas, in accordance with the principle of subsidiarity, action taken by the Community should support and supplement action taken by the relevant authorities in the Member States;
 25. Whereas the measures provided for under this programme are all aimed at cross-border cooperation which will enhance the value of action taken in the Member States or by those responsible for training, in accordance with the principle of subsidiarity referred to above;
 26. Whereas it is appropriate to follow up and intensify the opening up of the Media programme to the participation of the associated countries of central and eastern Europe (CCEE) in accordance with the conditions laid down in the additional protocols to the association agreements on participation in Community programmes concluded or to be concluded with those countries and to the participation of Cyprus, Malta and the EFTA States members of the EEA Agreement on the basis of additional appropriations in accordance with the same rules as those applied to the EFTA countries, under procedures to be agreed on with those
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- ⁽¹⁾ OJ No L 380, 31. 12. 1990, p. 37.
⁽²⁾ OJ No L 340, 29. 12. 1994, p. 8.

- countries; whereas, moreover, this programme should be open to cooperation with other third countries which have concluded agreements with audiovisual clauses; whereas the details of such participation or cooperation should be determined at the appropriate time between the parties concerned;
27. Whereas it is desirable to coordinate the activities laid down by the programme with those deployed by international organizations, such as the Council of Europe;
28. Whereas Community support should be granted on the basis of prior appraisal, monitoring and subsequent evaluation,

HAS DECIDED AS FOLLOWS:

Article 1

This Decision establishes a vocational training programme (hereinafter referred to as 'the programme') to run from 1 January 1996 to 31 December 2000. This programme, which supports and supplements action taken by Member States in full recognition of the responsibility of those States for the content and organization of vocational training programmes and cultural diversity of the countries and regions, excluding any harmonization of the laws and regulations of the Member States, has the purpose of providing professionals in the European audiovisual industry with the skills they need to exploit the European dimension of the market to the full and make use of new technology.

Article 2

In the context of Article 1, the aims of the programme are:

1. to meet the needs of the industry and bolster its competitiveness by improving initial and particularly continuing training for audiovisual professionals in order to provide them with the know-how and skills they need in order to take account of the European market and other markets, notably in the field of:
 - economic and commercial management, including legal aspects,
 - utilization and development of new technologies for the production of audiovisual programmes with high commercial and artistic added value, supplementing training in the audiovisual professions,
 - screenplay techniques.

This aim will take account of the transnational dimension through supporting the development of businesses and projects (new programmes or

enhancement of the audiovisual heritage) as well as of common entrepreneurial practices;

2. to encourage cooperation and exchange of know-how by networking between partners involved in training: training institutions, the professional sector and businesses and by developing teacher training.

In carrying out the objectives mentioned in points 1 and 2 of the first paragraph, particular attention shall be paid to the specific needs of countries or regions with a low production capacity and/or a restricted linguistic and geographical area, as well as the development of an independent European production and distribution sector and especially of small and medium-sized enterprises (SMEs).

Article 3

Recipients of Community support involved in implementing the measures laid down in the Annex must provide a significant proportion of the funding (at least 50%). In duly justified exceptional cases this percentage may be reduced to as low as 25%.

Community funding shall be determined in relation to the cost and nature of each measure envisaged.

The financial reference amount for implementing the programme for the period referred to in Article 1 shall be ECU 45 million.

The annual appropriations shall be authorized by the budgetary authority in accordance with the current financial perspective.

Article 4

1. The Commission shall be responsible for the implementation of the programme, in accordance with the arrangements laid down in the Annex.

In the performance of this task, it shall be assisted by a committee composed of two representatives from each Member State and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee, for its opinion, a draft of the measure to be taken concerning:

- the arrangements for the implementation of the actions provided for in the Annex,
- the content of calls for proposals, the definition of criteria and procedures for the approval and selection of projects and the final choice of intermediary organizations,

- questions concerning the annual internal distribution of finances within the programme,
- arrangements for monitoring and evaluating the operations.

Furthermore, the representative of the Commission shall also submit, for its opinion, the examination of all Community allocations of more than ECU 200 000 per year; this threshold can be reviewed by the Committee in the light of experience.

3. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission shall defer application of the measures which it has decided upon for a period of two months,
- the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

4. The Commission may consult the Committee on any other question concerning the implementation of the programme.

The Committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

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

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

The Commission representative shall keep the Committee informed in good time and on a regular basis of the financial allocation agreed in the framework of the programme (amounts, duration, internal distribution of finances, beneficiaries).

Article 5

The programme shall be open to the participation of the associated countries of central and eastern Europe

(CCEE) in accordance with the conditions laid down in additional protocols to the association agreements on participation in Community programmes concluded or to be concluded with those countries.

This programme shall be open to the participation of Cyprus, Malta and EFTA countries members of the EEA Agreement on the basis of additional appropriations in accordance with the same rules as applied to EFTA States, in accordance with procedures to be agreed with those countries.

It shall also be open to cooperation with other non-member countries which have concluded agreements containing audiovisual clauses.

The arrangements for this participation or cooperation will be fixed at the appropriate time between the parties concerned.

Article 6

1. The Commission shall ensure that actions under this Decision are subject to prior appraisal, monitoring and subsequent evaluation.

2. The selected beneficiaries shall submit an annual report to the Commission.

3. After the completion of projects, the Commission shall evaluate the manner in which they have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

4. After two years and six months of implementation of the programme and within the six months that follow this period, the Commission, after having brought the matter before the Committee in accordance with the procedure laid down in Article 4 (2) and (3), shall present to the European Parliament, the Council and the Economic and Social Committee an evaluation report on the results which were obtained, accompanied if need be by appropriate proposals.

This report shall in particular show the added value created on the basis of the financial support provided by the Community and the socio-economic aspect.

5. When the programme has run its full term, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report of the implementation and results of the programme.

Done at Brussels, 22 December 1995.

For the Council

The President

L. ATIENZA SERNA

ANNEX

1. ACTIONS TO BE TAKEN

The programme is intended, in supporting and supplementing the actions undertaken by Member States, to help people in the industry adapt to the, in particular, European dimension of the market by promoting vocational training in the field of economic and commercial management, including legal aspects, and new technologies (including the protection and enhancement of the European film and audiovisual heritage).

The actions will cover initial training and, in particular, continuing professional training.

1.1. Training in economic and commercial management

This aims to develop the ability of people in the industry to conceptualize and exploit the European dimension in the development, production, distribution and broadcasting of audiovisual programmes.

The actions will consist in:

- promoting the elaboration and updating of training modules on management to supplement the actions undertaken by Member States,
- encouraging incorporation of the training modules into training actions taken by training institutions, the professional sector and businesses,
- networking of training programmes, facilitating exchanges of students/professionals by providing grants and organizing work-experience placements in companies in other Member States and contributing to teacher training, in particular distance learning, encouraging exchanges and partnerships between countries and regions with a low production capacity and/or a restricted linguistic and geographical area.

1.2. Training on new technologies

The training aims to develop the ability of people in the industry to use advanced creative techniques, such as animation, computer graphics, multimedia and interactive technologies.

The actions will consist in:

- promoting the definition and updating of training modules on new audiovisual technologies, to supplement measures taken by the Member States,
- encouraging incorporation of the training modules into training actions taken by training institutions, the professional sector and businesses,
- networking of training measures, facilitating exchanges of teachers and students/professionals by providing grants and organizing work-experience placements in companies in other Member States and contributing to teacher training and especially distance learning, encouraging exchanges and partnerships between countries and regions with a low production capacity and/or a restricted linguistic and geographical area.

2. IMPLEMENTATION PROCEDURE**2.1. Approach**

In implementing the programme, the Commission will work closely with the Member States. It will also consult the partners concerned. It will ensure that the professionals participating in the programme reflect a balanced representation of Europe's cultural diversity.

It will encourage cooperation between training institutions, the professional sector and business and module designers from the start of the process.

It will facilitate the placement of trainees, especially those from countries and regions with a low production capacity and/or restricted linguistic and geographical area.

2.2. Community funding

Community funds are intended to support the efforts of the national partners to supplement existing training courses with modules on management and new technologies.

Community funding of up to 50 % (which may be increased up to 75 % in duly justified exceptional cases) of total training costs will be within a framework of joint funding with public and/or private partners.

The procedure laid down in Article 4 shall be applied to determine:

- allocation of funds for each type of action listed in points 1.1 and 1.2 of this Annex, and
- the Community contribution towards the costs of individual projects, selected following calls for proposals.

Module designers and training centres adopting them will be selected by calls for tender.

2.3. Implementation

The Commission shall implement the programme in conformity with Article 4.

- 2.3.1. In implementing the programme, in particular the technical selection of projects, monitoring and evaluation of projects benefiting from the programme's funding, the Commission will ensure that it obtains the expertise of acknowledged specialists from the audiovisual sector in the field of professional training.

To this end, it can if necessary involve intermediary organizations which, on the basis of their professional expertise, will provide technical assistance and will formulate proposals for the choice of the beneficiaries, without prejudice to other selection methods. These organizations will be chosen after calls for proposals and following the procedure described in Article 4 (2).

The Commission shall make the final selection of beneficiaries from the programme's funding, in the context of the dispositions of Article 4 (2).

Furthermore, the Commission and the Member States shall organize the mutual exchange of information useful in the implementation of the programme and take the necessary steps, particularly by continuing the activities of the Media desks, to ensure the promotion of the programme and encourage the greatest possible participation of professionals in its actions and ensure permanent contacts with the different support institutions of the Member States for the purpose of achieving complementarity between the actions under this programme and national support measures.
