COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.11.1996
COM(96) 535 final

95/0207 (COD)

OPINION OF THE COMMISSION

pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the

proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP)

AMENDING THE PROPOSAL OF THE COMMISSION

pursuant to Article 189 a (2) of the EC Treaty

EXPLANATORY MEMORANDUM

Article 189b(2)(d) requests the Commission to express its opinion on the amendments proposed by the European Parliament in its second reading.

The Commission hereby presents its opinion on these amendments to the Council's common position regarding the proposal for a European Parliament and Council Directive on Interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP). This includes a modified proposal incorporating the amendments proposed by the European Parliament at Second Reading which were accepted by the Commission.

OPINION OF THE COMMISSION

1. BACKGROUND

a) The Commission adopted its proposal on 19.07.95, and it was formally transmitted to the EP and the Council on 12.09.95[1].

b) The Economic and Social Committee gave a favourable Opinion on 28.02.96[2].

c) The European Parliament adopted a favourable Resolution at its First Reading on 14.02.96, and proposed 69 amendments to the Commission proposal[3].

d) The Council adopted its Common Position on 18.06.96.

e) The Commission accepted this Common Position and informed the European Parliament of its position on 14.06.96.

f) The European Parliament voted on Second Reading on 19.09.96, adopting a favourable resolution which included 31 amendments to the Common Position[4].

2. PURPOSE OF THE DIRECTIVE

This Directive is an essential component of the regulatory framework for the future liberalised telecommunications sector, to be in place by 1.1.98.

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1 OJ C 313, 24.11.1995, p.7
2 TRA/301 , 28.02.1996
3 A4-0017/96, PV 14.02.1996
4 A4-276/96, PV 19.09.1996

It will enable new market entrants to access existing business and residential customers, on a basis which will encourage increased investment and market growth in the telecommunications services sector, within a predictable and stable regulatory environment. At the same time, it will put in place safeguards to ensure interconnection and interoperability of networks and services so that users may increasingly benefit from the European wide provision of universal telecommunications services.

The Directive lays down harmonized principles for interconnection to be implemented at a national level, under supervision of the national regulatory authorities, in accordance with the principle of subsidiarity.

3. POSITION OF THE COMMISSION ON THE EP AMENDMENTS

3.1 EP AMENDMENTS ACCEPTED BY THE COMMISSION

Of the 31 amendments adopted by the European Parliament at Second Reading, the Commission accepts 12 in full and 9 in part or in principle (ie with some reformulation of the text), making a total of 21.

The Commission is consistent with its position during the First Reading, and is supportive of amendments which can improve the Common Position. On this basis, the Commission position on each amendment is the following:

Amendments accepted in full : 4, 5, 7, 13, 14, 21, 22, 23, 24, 27, 29, 30

Amendments accepted in part or in principle : 1, 3, 8, 9, 10, 16, 17, 25, 31

The Commission's position on each of these amendments is explained in the attached table. The most important amendments accepted by the Commission concern the eight following areas:

Study of creation of a European regulatory authority
[Amendments 8 and 31(part)]

The Commission accepts the request in Amendments 8 and 31(last part) for examination, in the report that the Commission is required to present before the end of 1999, of the possibility of establishing a European regulatory authority for telecommunications, but considers that at this stage it would be premature to specify the tasks to be carried out by such a European regulator. The Council did not accept the EP amendment on this issue at First Reading.
In supporting the EP amendment, the Commission notes that the issue could be dealt with in the report proposed for 1999, even if this is not explicitly stated in the Directive,

Procedure for resolution of cross-border interconnection disputes
[Amendments 5 and 27]

The Commission supports EP Amendments 5 and 27 which re-introduce a binding dispute resolution procedure at the EU-level, as called for in the original Commission proposal.

Deferment of some obligations of this Directive for some Member States
[Amendments 7 and 29]

As expressed in its Communication on the Council Common Position, the Commission considers that the Common Position text meets the main concerns expressed by Parliament in First Reading, as it links any deferments from some of the obligations of this Directive to the transition periods for full liberalisation of telecommunications services, indicating clearly that such deferments should be valid "for as long as and to the extent that" such transition periods exist.
However, the Commission gives preference to the texts proposed by Parliament in Amendments 7 and 29, which require Member States benefiting from transition periods for full liberalisation granted under Commission Art. 90 Directive on full competition in telecommunications markets (96/19/EC) to request a corresponding deferment of some obligations of this Directive, to the extent justified by any special or exclusive rights for telecommunications.

Definition of interconnection
[Amendment 10]

One of the main aims of this Directive is to facilitate the establishment of effective competition at all levels of the telecommunications market. This means competition in services and competition in network infrastructures. For this reason, the Commission can support the principle in Amendment 10 where it is made clear that service providers are included in the scope of the definition of interconnection. However, the wording of this definition in the Commission's original proposal is technically more correct than that proposed in the EP Amendment (ie the linking of the *facilities* of organisations providing telecommunications services, not the linking of telecommunications services, as in the proposed amendment).
The Commission does not support the other part of the amendment which introduces a reference to 'interconnection points', since this term is neither defined nor used in the Directive.

Reconsideration of need for Directive when effective competition is achieved
[Amendment 9]

The Commission agrees with the principle in Amendment 9 that the competition rules of the Treaty will have a predominant role when effective competition is achieved in the telecommunications market, and that at that time the need for this Directive should be

reconsidered. However, the Commission considers that such principle should be stated in a recital, rather than in an article as proposed by Parliament, as it is not a legal requirement. In addition, it would be premature to specify at this stage which provisions will still be (or will no longer be) appropriate in an effective competitive environment.

Number portability
[Amendments 25 and 31(part)]

The Commission supports the requirement in Amendment 25 call for rerouting or indication of the new number to be implemented if number portability is not yet available, due to the importance for telephone users of such facilities. The Commission also agrees with the Parliament on the specification that such facilities should either cost a reasonable fee approved by the national regulatory authority (for number portability and call rerouting), or be free of charge (for indication of new number). The Commission, however, cannot agree to the extension of the requirement for number portability to all national numbers, rather than the numbers on the fixed public telephone network, as this would excessively broaden the requirement for number portability and delay its implementation.

The Commission can support EP Amendment 31(first part), which explicitly mentions the possibility of anticipating the timetable for introduction of number portability.

Position in international numbering organisations and fora
[Amendments 4 and 23]

The Commission supports Amendments 4 and 23, which strengthen the requirements for coordination of the positions of Member States and the Community in international organisations and fora where numbering decisions are taken.

Commission guidelines
[Amendments 3(part) and 17]

Guidelines are considered the most appropriate tool for addressing complex financial issues, in that they are flexible and more easily updated than EU legislation. The committee procedure proposed will ensure that the guidelines have the backing of Member States. The Commission can thus support Amendments 3(first part) and 17(first part), re-introducing the call for guidelines on cost accounting systems and accounting separation (rather than transparency) in relation to interconnection to be drawn by the Commission. However, such guidelines cannot have a mandatory character.

3.2. EP AMENDMENTS NOT ACCEPTED BY THE COMMISSION

The Commission has not accepted 10 of the 31 amendments proposed by the European Parliament.

The amendments not accepted by the Commission are the following:

Amendments not accepted : 2, 6, 11, 12, 15, 18, 19, 20, 26, 28

The reasons are given below, where the amendments are grouped into four broad categories.

Universal service
[Amendments 1(part), 11, 12, 15 and 18]

The Commission can not accept the EP Amendments calling for Member States to be required to set up a universal service fund mechanism for financing the net cost of universal service obligations (Amendments 1(last part), 11, 12 and 18). It is for Member States to decide whether a system for financing universal service is necessary. Some Member States may decide not to establish any mechanism for sharing the net cost of universal service obligations, where this cost is very low. Depending on the way a Member State imposes universal service obligations, it may be appropriate to set up a universal service fund, or to collect contributions to universal service costs through an extra charge on interconnected parties. In both cases, the requirements for transparency and objectivity are the same, and the contributions by market players will be the same. The Commission has expressed a preference for universal service funds in its Communication on the consultation on the Infrastructure Green Paper. However, given the relatively low cost of universal telephone service in some Member States, the overhead of an independently administered universal service fund may not be justified in all cases.

The Commission can neither accept Amendment 15, which calls on the Commission to draw up, before 31 October 1996, a proposal for a European Parliament and Council Directive on the costing and financing of universal service. As announced in its Communication on universal service issued in March of this year[5], the Commission is planning to issue guidelines on costing and financing universal service, which will provide further guidance on costing and financing universal service. The need for a specific Directive on costing and financing of universal service is not foreseen by the Commission at this stage.

Accounting separation
[Amendments 2, 19 and 20]

The purpose of accounting separation is to ensure full transparency of internal cost-transfers, and to avoid discrimination. Accounting separation is not as effective in

5 COM (96) 73, 13.03.1996

preventing discrimination as structural separation, but it is less disruptive. Proposed EP Amendments 2, 19 and 20 would weaken the requirements for accounting separation by calling for 'transparent accounts'. The weaker approach suggested by the Parliament would place much greater demands on the NRAs, in terms of both resources and expertise, in checking that there were no anti-competitive cross transfers taking place.

Comitology
[Amendments 6, 26 and 28]

As expressed in its position on the Council Common Position, the Commission regrets that Council insisted on introduction of a type IIIa regulatory committee procedure in this Directive. However, the Commission also accepts that this gives consistency with other Directives in the field of ONP, where the same regulatory procedure is being used. Therefore, the Commission, while restating its preference for an advisory committee, was able to accept the change in procedure, in order to allow Council to reach a qualified majority for adoption of the Common Position. An inter-institutional agreement was reached in 1994 between the EP, Council and Commission on Comitology, and a *modus vivendi* was drawn up to cover the situation where regulatory committees are used. For these reasons, the Commission does not accept EP Amendments 6, 26 and 28.

Other amendments
[Amendment 16(part)]

The Commission can not accept the first part of Amendment 16 which links charges for interconnection with contributions to the net fixed costs of the local network. Such costs - a form of access deficit - should be phased out as soon as possible, in accordance with EU law, and, where they exist, must be separately identified and not included in the interconnection charges.

4. CONCLUSION

The Commission has accepted 21 of the 31 amendments proposed by the European Parliament at Second Reading either in whole, in part or in principle.

In accordance with Article 189a paragraph 2 of the EC Treaty, the Commission's modified proposal incorporates these amendments.

AMENDED PROPOSAL FOR A

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

ON INTERCONNECTION IN TELECOMMUNICATIONS WITH REGARD TO ENSURING UNIVERSAL SERVICE AND INTEROPERABILITY THROUGH APPLICATION OF THE PRINCIPLES OF OPEN NETWORK PROVISION (ONP)

Common Position text	*Amended text*
Recital 8	
(based on EP Amendment 1)	
Whereas the Council Resolution of 7 February 1994 sets out conditions for financing a universal voice telephony service; whereas obligations for the provision of universal service contribute to the Community objective of economic and social cohesion and territorial equity; whereas there may be more than one organization in a Member State with universal service obligations; whereas the calculation of the net cost of universal service should take due account of costs and revenues, as well as economic externalities and the intangible benefits resulting from providing universal service but should not hinder the on-going process of tariff rebalancing; whereas costs of universal service obligations should be calculated on the basis of transparent procedures; whereas financial contributions related to the sharing of universal service obligations should be unbundled from charges for interconnection; whereas, when a universal service obligation represents an unfair burden on an organization, it is appropriate to allow Member States to establish mechanisms for sharing the net cost of universal provision of a fixed public telephone network and a fixed public telephone service with other organizations operating public telecommunications networks and/or publicly available voice telephony services; whereas this should respect the principles of Community law, in particular those of non-discrimination and proportionality and should be without prejudice to Article 100a(2) of the Treaty;	Whereas obligations for the provision of universal service contribute to the Community objective of economic and social cohesion and territorial equity; whereas there may be more than one organization in a Member State with universal service obligations; whereas the aim should be to introduce new technologies like the integrated services digital network (ISDN) as soon as possible and on as broad a basis as possible in the Member States; whereas at its current stage of development in the Member States, ISDN is not accessible for all users and as such cannot yet be subject to universal service obligations; whereas the calculation of the net cost of universal service should take due account of costs and revenues, as well as economic externalities and the intangible benefits resulting from providing universal service but should not hinder the on-going process of tariff rebalancing; whereas costs of universal service obligations should be calculated on the basis of transparent procedures; whereas financial contributions related to the sharing of universal service obligations should be unbundled from charges for interconnection; whereas, when a universal service obligation represents an unfair burden on an organization, it is appropriate to allow Member States to establish mechanisms for sharing the net cost of universal provision of a fixed public telephone network and a fixed public telephone service with other organizations operating public telecommunications networks and/or publicly available voice telephony services; whereas this should respect the principles of Community law, in particular those of non-discrimination and proportionality and should be without prejudice to Article 100a(2) of the Treaty;

Common Position text	*Amended text*
Recital 12 **(based on EP Amendment 3)**	
Whereas national regulatory authorities have an important role in encouraging the development of a competitive market in the interests of Community users, and of securing adequate interconnection of networks and interoperability of services; whereas negotiation of interconnection agreements can be facilitated by national regulatory authorities setting down certain conditions in advance, and identifying other areas to be covered in interconnection agreements; whereas in the event of a dispute over interconnection between parties in the same Member State, an aggrieved party must be able to call on the national regulatory authority to resolve the dispute; whereas national regulatory authorities must be able to require organizations to interconnect their facilities, where it can be demonstrated that this is in the users' interests;	Whereas national regulatory authorities have an important role in encouraging the development of a competitive market in the interests of Community users, and of securing adequate interconnection of networks and interoperability of services; whereas negotiation of interconnection agreements can be facilitated by national regulatory authorities setting down certain conditions in advance <u>on the basis of common guidelines defined by the Commission so as to facilitate the development of a seamless harmonised European home market</u>, and identifying other areas to be covered in interconnection agreements; whereas in the event of a dispute over interconnection between parties in the same Member State, an aggrieved party must be able to call on the national regulatory authority to resolve the dispute; whereas national regulatory authorities must be able to require organizations to interconnect their facilities, where it can be demonstrated that this is in the users' interests; <u>whereas each operator must be responsible for carrying calls and setting the tariffs for its subscribers up to the most appropriate interconnection point;</u>

Common Position text	*Amended text*
Recital 15 **(based on EP Amendment 4)**	
Whereas numbering is a key element for equal access; whereas national regulatory authorities should have the responsibility for administering and controlling national numbering plans, and those naming and addressing aspects of telecommunications services where coordination at a national level is required, so as to ensure effective competition; whereas in exercising this responsibility, national regulatory authorities must have regard to the principle of proportionality, particularly as to the effect of any measures on network operators, resellers and consumers; whereas number portability is an important facility for users, and should be implemented as soon as practicable; whereas numbering schemes should be developed in full consultation with all the parties involved and in harmony with a long-term Europe-wide numbering framework and international numbering schemes as being considered in the European Conference of Postal and Telecommunications Administrations (CEPT); whereas numbering requirements in Europe, the need for the provision of pan-European and new services and the globalization and synergy of the telecommunications market make the coordination of national positions in international organizations and fora desirable where numbering decisions are taken;	Whereas numbering is a key element for equal access; whereas national regulatory authorities should have the responsibility for administering and controlling national numbering plans, and those naming and addressing aspects of telecommunications services where coordination at a national level is required, so as to ensure effective competition; whereas in exercising this responsibility, national regulatory authorities must have regard to the principle of proportionality, particularly as to the effect of any measures on network operators, resellers and consumers; whereas number portability is an important facility for users, and should be implemented as soon as practicable; whereas numbering schemes should be developed in full consultation with all the parties involved and in harmony with a long-term Europe-wide numbering framework and international numbering schemes as being considered in the European Conference of Postal and Telecommunications Administrations (CEPT); whereas numbering requirements in Europe, the need for the provision of pan-European and new services and the globalization and synergy of the telecommunications market require a coordinated position by the Member States and the Community in international organizations and fora where numbering decisions are taken;
Recital 18 **(based on EP Amendment 5)**	
Whereas in addition to the rights of recourse granted under national or Community law, there is a need for conciliation procedures for cross-border disputes which lie outside the competence of a single national regulatory authority; whereas these procedures, to be initiated by any of the national regulatory authorities concerned, should be responsive, inexpensive and transparent, and should involve all the parties concerned;	Whereas in addition to the rights of recourse granted under national or Community law, there is a need for simple procedures to resolve cross-border disputes which lie outside the competence of a single national regulatory authority; whereas these procedures, to be initiated by any of the parties concerned, should be responsive, inexpensive and transparent, and should involve all the parties concerned;

Common Position text	*Amended text*
Recital 22 **(based on EP Amendment 7)**	
Whereas the implementation of certain obligations must be linked to the date of liberalization of telecommunications services and infrastructure and, in particular in regard to the relevant Member States, take full account of the transition periods granted in the Council Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market and the Council Resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures [2], including the retention of special or exclusive rights in relation to direct interconnection between the mobile networks of those Member States and the fixed or mobile networks of other Member States; whereas deferment of the obligation to provide number portability may be granted where the Commission agrees that the obligation would impose an excessive burden on certain organizations;	Whereas the implementation of certain obligations must be linked to the date of liberalization of telecommunications services and infrastructure and, in particular in regard to the relevant Member States, take full account of the transition periods granted by the Article 2(2) of Commission Directive 90/388/EEC as amended by Commission Directive 96/19/EC[2], including the retention of special or exclusive rights in relation to direct interconnection between the mobile networks of those Member States and the fixed or mobile networks of other Member States; whereas deferment of the obligation to provide number portability may be granted where the Commission agrees that the obligation would impose an excessive burden on certain organizations;

2 OJ No C 379, 31.12.1994, p. 4.

2 OJ L 74, 22.3.1996, p. 13.

Common Position text	*Amended text*
Recital 24 **(based on EP Amendment 9)**	
Whereas the functioning of this Directive should be reviewed by 31 December 1999, in particular to examine the scope of universal service and the timetable for number portability; whereas the situation with regard to interconnection with third countries should also be periodically reviewed, to allow appropriate action to be taken;	Whereas the functioning of this Directive should be reviewed by 31 December 1999, in particular to examine the scope of universal service and the timetable for number portability; whereas the situation with regard to interconnection with third countries should also be periodically reviewed, to allow appropriate action to be taken; whereas when effective competition is achieved in the market, the competition rules of the Treaty will in principle be sufficient to monitor fair competition ex-post so that the need for this Directive may be reconsidered;
Recital 25 **(based on EP Amendment 8)**	
Whereas the essential goal of interconnection of networks and interoperability of services throughout the Community cannot be sufficiently achieved at Member State level, and can therefore be better achieved at Community level by this Directive;	Whereas the essential goal of interconnection of networks and interoperability of services throughout the Community cannot be sufficiently achieved at Member State level, and can therefore be better achieved at Community level by this Directive; whereas it is desirable, when this Directive is reviewed, to envisage the possibility of establishing a European regulatory authority to be responsible for those tasks carried out by the Commission or the national regulatory authority under this Directive, which would be more efficiently carried out by such a European regulatory authority;
Article 2(1)(a) **(based on EP Amendment 10)**	
(a) "interconnection" means the physical and logical linking of telecommunications networks used by the same or a different organization in order to allow the users of one organization to communicate with users of the same or another organization, or to access services provided by another organization;	(a) "interconnection" means the physical and logical linking of the facilities of organisations providing telecommunications networks and/or telecommunications services used by the same or a different organization in order to allow the users of one organization to communicate with users of the same or another organization, or to access services provided by another organization;

Common Position text	*Amended text*
Article 5(5), first subparagraph (based on EP Amendment 13)	
5. Where the mechanisms referred to in paragraph 4 are established, national regulatory authorities shall ensure that the principles for cost sharing, and details of the mechanism used, are open to the public in accordance with Article 14(2).	5. Where a mechanism for sharing the net cost of universal service obligations as referred to in paragraph 4 is established, national regulatory authorities shall ensure that the principles for cost sharing, and details of the mechanism used, are open to public inspection in accordance with Article 14(2).
Article 5(6) (based on EP Amendment 14)	
6. Until such time as the procedure described in paragraphs 3, 4 and 5 is implemented, any charges payable by an interconnected party which include or serve as a contribution to the cost of universal service obligations shall be notified, prior to their introduction, to the national regulatory authority. Where the national regulatory authority finds on its own initiative, or after a substantiated request by an interested party, that such charges are excessive, the organization concerned shall be required to reduce the relevant charges. Such reductions shall be applied retrospectively, from the date of introduction of the charges, but not before 1 January 1998.	6. Until such time as the procedure described in paragraphs 3, 4 and 5 is implemented, any charges payable by an interconnected party which include or serve as a contribution to the cost of universal service obligations shall be notified, prior to their introduction, to the national regulatory authority. Without prejudice of Article 17 of this Directive, where the national regulatory authority finds on its own initiative, or after a substantiated request by an interested party, that such charges are excessive, the organization concerned shall be required to reduce the relevant charges. Such reductions shall be applied retrospectively, from the date of introduction of the charges, but not before 1 January 1998.
Article 7(2) (based on EP Amendment 16)	
2. Charges for interconnection shall follow the principles of transparency and cost orientation. The burden of proof that charges are derived from actual costs including a reasonable rate of return shall lie with the organization providing interconnection to its facilities. National regulatory authorities may request an organization to provide full justification for its interconnection charges, and where appropriate shall require charges to be adjusted. This paragraph shall also apply to organizations set out in Part 3 of Annex I which have significant market power.	2. Charges for interconnection shall follow the principles of transparency and cost orientation. The burden of proof that charges are derived from actual costs including a reasonable rate of return shall lie with the organization providing interconnection to its facilities. National regulatory authorities may request an organization to provide full justification for its interconnection charges, and where appropriate shall require charges to be adjusted. This paragraph shall also apply to organizations set out in Part 3 of Annex I which have been notified by national regulatory authorities as having significant market power on the national market for interconnection.

Common Position text	*Amended text*
Article 7(5), first subparagraph (based on EP Amendment 17)	
5. National regulatory authorities shall ensure that the cost accounting systems used by the organizations concerned are suitable for implementation of the requirements of this Article, and are documented to a sufficient level of detail, as indicated in Annex V.	5. The Commission shall, acting in accordance with the procedure laid down in Article 15, draw up guidelines on cost accounting systems and accounting separation in relation to interconnection. National regulatory authorities shall ensure that the cost accounting systems used by the organizations concerned are suitable for implementation of the requirements of this Article, and are documented to a sufficient level of detail, as indicated in Annex V.
Article 9(1) (based on EP Amendment 21)	
1. National regulatory authorities shall encourage and secure adequate interconnection in the interests of all users, exercising their responsibility in a way that provides maximum economic efficiency and gives the maximum benefit to end-users. In particular, national regulatory authorities shall take into account:	1. National regulatory authorities shall encourage and secure adequate interconnection in the interests of all users, exercising their responsibility in a way that provides maximum economic efficiency and gives the maximum benefit to end-users. In particular, national regulatory authorities shall take into account:
- the need to ensure satisfactory end-to-end communications for users;	- the need to ensure satisfactory end-to-end communications for users;
- the need to stimulate a competitive market;	- the need to stimulate a competitive market;
	- the need to ensure the fair and proper development of a seamless harmonised European telecommunication home market, thus coordinate their policies, guidelines and actions with their counterparts in other Member States and with the Commission and provide them help and assistance when necessary;
- the need to promote the establishment and development of trans-European networks and services, and the interconnection and interoperability of national networks and services, as well as access to such networks and services;	- the need to promote the establishment and development of trans-European networks and services, and the interconnection and interoperability of national networks and services, as well as access to such networks and services;
- the principles of non-discrimination (including equal access) and proportionality;	- the principles of non-discrimination (including equal access) and proportionality;
- the need to maintain and develop universal service.	- the need to maintain and develop universal service.

Common Position text	*Amended text*
Article 11 **(based on EP Amendment 22)**	
Where an organization providing public telecommunications networks and/or publicly available telecommunications services has the right under national legislation to install facilities on, over or under public or private land, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall encourage the sharing of such facilities and/or property with other organizations providing telecommunications networks and publicly available services.	Where an organization providing public telecommunications networks and/or publicly available telecommunications services has the right under national legislation to install facilities on, over or under public or private land, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall encourage the sharing of such facilities and/or property with other organizations providing telecommunications networks and publicly available services, in particular where essential requirements deprive other organisations of access to viable alternatives.
Agreements for collocation or facility sharing shall normally be a matter for commercial and technical agreement between the parties concerned. The national regulatory authority may intervene to resolve disputes, as provided for in Article 9.	Agreements for collocation or facility sharing shall normally be a matter for commercial and technical agreement between the parties concerned. The national regulatory authority may intervene to resolve disputes, as provided for in Article 9.
In particular, Member States may impose facility and/or property sharing arrangements (including physical collocation) only after an appropriate period of public consultation during which all interested parties must be given an opportunity to express their views. Such arrangements may include rules for apportioning the costs of facility and/or property sharing.	Member States may impose facility and/or property sharing arrangements (including physical collocation) only after an appropriate period of public consultation during which all interested parties must be given an opportunity to express their views. Such arrangements may include rules for apportioning the costs of facility and/or property sharing.
Article 12 par. 2 **(based on EP Amendment 23)**	
2. In order to ensure full interoperability of Europe-wide networks and services, Member States shall take all necessary steps to ensure the coordination of their national positions in international organizations and fora where numbering decisions are taken, taking into account possible future developments in numbering in Europe.	2. In order to ensure full interoperability of Europe-wide networks and services, Member States and the Community shall ensure the coordination of their positions in international organizations and fora where numbering decisions are taken, taking into account possible future developments in numbering in Europe.

Common Position text	*Amended text*
Article 12(3) **(based on EP Amendment 24)**	
3. Member States shall ensure that national telecommunications numbering plans are controlled by the national regulatory authority, in order to guarantee independence from organizations providing telecommunications networks or telecommunications services. In order to ensure effective competition, national regulatory authorities shall ensure that the procedures for allocating individual numbers and/or numbering ranges are transparent, equitable and timely and the allocation is carried out in an objective, transparent and non-discriminatory manner. National regulatory authorities may lay down conditions for the use of certain prefixes or certain short codes, in particular where these are used for services of general public interest (e.g. freephone services, kiosk billed services, directory services, emergency services), or to ensure equal access.	3. Member States shall ensure that national telecommunications numbering plans are controlled by the national regulatory authority, in order to guarantee independence from organizations providing telecommunications networks or telecommunications services and facilitate number portability. In order to ensure effective competition, national regulatory authorities shall ensure that the procedures for allocating individual numbers and/or numbering ranges are transparent, equitable and timely and the allocation is carried out in an objective, transparent and non-discriminatory manner. National regulatory authorities may lay down conditions for the use of certain prefixes or certain short codes, in particular where these are used for services of general public interest (e.g. freephone services, kiosk billed services, directory services, emergency services), or to ensure equal access.
Article 12(5) **(based on EP Amendment 25)**	
5. National regulatory authorities shall encourage the earliest possible introduction of the number portability facility whereby end-users who so request can retain their number(s) on the fixed public telephone network at a specific location independent of the organization providing service, and shall ensure that this facility is available at least in all major centres of population before 1 January 2003.	5. National regulatory authorities shall encourage the earliest possible introduction of the number portability facility whereby end-users who so request can retain, against a reasonable fee approved by the national regulatory authority, their number(s) on the fixed public telephone network at a specific location independent of the organization providing service, and shall ensure that this facility is available at least in all major centres of population before 1 January 2003. If this facility is not yet in use, national regulatory authorities shall ensure that, once a user has changed supplier, a telephone call to his old number can be rerouted to the user against a reasonable fee approved by the national regulatory authority, or that during a reasonable period callers are given an indication of the new number, without charging the user or the callers for this service.

Common Position text	*Amended text*
Article 17 **(based on EP Amendment 27)**	
Conciliation procedure for disputes between organizations operating under authorizations provided by different Member States	Dispute resolution at Community-level
1. Without prejudice to:	1. Without prejudice to:
(a) any action that the Commission or any Member State may take pursuant to the Treaty;	(a) any action that the Commission or any Member State may take pursuant to the Treaty;
(b) the rights of the party invoking the procedure in paragraphs 2 and 3, of the organizations concerned or of any other party under applicable national law;	(b) the rights of the party invoking the procedure in paragraphs 2 and 3, of the organizations concerned or of any other party under applicable national law;
the procedure set out in paragraphs 2, 3 and 4 shall be available in the event of an interconnection dispute between organizations operating under authorizations granted by different Member States, where such dispute does not fall within the responsibility of a single national regulatory authority exercising its power in accordance with Article 9.	the procedure set out in paragraphs 2, 3 and 4 shall be available in the event of an interconnection dispute between organizations operating under authorizations granted by different Member States, where such dispute does not fall within the responsibility of a single national regulatory authority exercising its power in accordance with Article 9.
2. Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the principles set out in Article 9(1).	2. Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the principles set out in Article 9(1) and shall inform the Commission.
3. If the national regulatory authorities concerned do not agree between themselves on a solution within six months of referral, the procedure provided for in paragraph 4 may be invoked by one of them by way of a notification to the Commission, with copies to all the parties and national regulatory authorities concerned. The solution shall have binding effect only if all parties are agreed.	3. If the national regulatory authorities concerned do not agree between themselves on a solution within six months of referral, the procedure provided for in paragraph 4 may be invoked by any of the parties or national regulatory authorities concerned by way of a notification to the Commission, with copies to all the parties and national regulatory authorities concerned. The solution shall have binding effect only if all parties are agreed.

Common Position text	*Amended text*
4. Following a notification to the Commission based on paragraph 3, the Commission shall refer the matter to the chairman of the ONP Committee.	4. Following a notification to the Commission based on paragraph 3, the Commission shall convene as soon as possible a working group including at least two members of the ONP Committee and one representative of each 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 normally meet within 10 days of the meeting being convened. The chairman may decide, upon proposal of any of the members of the working group, to invite a maximum of two other persons as experts to advise it.
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 each 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 normally meet within 10 days of the meeting being convened. The chairman may decide, upon proposal of any of the members of the working group, to invite a maximum of two other persons as experts to advise it.	
The working group shall give the party invoking the procedure, the national regulatory authorities of the Member States and the organizations involved the opportunity to present their opinions in oral or written form.	The working group shall give the party invoking the procedure, the national regulatory authorities of the Member States and the organizations involved the opportunity to present their opinions in oral or written form.
The working group shall endeavour to reach agreement between the parties involved. The chairman shall inform the ONP Committee of the results of this procedure.	The working group shall endeavour to reach agreement between the parties involved or otherwise define its position within three months. This position shall form the basis of a solution to be implemented at a national level without delay. If an agreed position is not reached, or if an agreed position is not implemented within a reasonable period of time which shall not, except in justified cases, exceed two months, the appropriate solution shall be adopted by the Commission in accordance with the procedure laid down in Article 16. This solution shall not prejudice the possibilities which exist in national legislation for one party to claim in the relevant courts for the granting of damages if it appears that the behaviour of another party has led to financial losses due to distortion of competition. However, issues which have been settled at EU level cannot be questioned under these claims.

Common Position text	*Amended text*
Article 20(1) **(based on EP Amendment 29)**	
1. Deferment of the obligations under Articles 3(1), 3(2), 4(1), 4(2), 9(1) and 9(3) insofar as those obligations concern direct interconnection between the mobile networks of that Member State and the fixed or mobile networks of other Member States, and under Article 5, shall be granted to those Member States identified in the Council Resolutions of 22 July 1993 and 22 December 1994 which benefit from an additional transition period for the liberalization of telecommunications services for as long as and to the extent that they avail themselves of such transition periods. Member States shall inform the Commission of their intention to make use of them.	1. Member States with less developed networks which are granted an additional period of up to five years in which to implement all or some of the obligations under Directive 96/19/EC may request a corresponding deferment of some or all the requirements of Articles 3(1), 3(2), 4(1), 4(2), 9(1) and 9(3) insofar as those obligations concern direct interconnection between the mobile networks of that Member State and the fixed or mobile networks of other Member States, and under Article 5, to the extent justified by any special or exclusive rights for telecommunications services and infrastructure allowed under Community law.
Article 20(2) **(based on EP Amendment 30)**	
2. Deferment of the obligations under Article 12(5) may be requested where the Member State concerned can prove that they would impose an excessive burden on certain organizations or classes of organization. The Member State shall inform the Commission of the reasons for requesting a deferment, the date by which the requirements can be met, and the measures envisaged in order to meet this deadline. The Commission shall consider the request taking into account the particular situation in that Member State and the need to ensure a coherent regulatory environment at a Community level, and shall inform the Member State whether it deems that the particular situation in that Member State justifies a deferment and, if so, until which date such deferment is justified.	2. Deferment of the obligations under Article 12(5) may be requested where the Member State concerned can prove that they would impose an excessive burden on certain organizations or classes of organization. The Member State shall inform the Commission of the reasons for requesting a deferment, the date by which the requirements can be met, and the measures envisaged in order to meet this deadline. The Commission shall consider the request taking into account the particular situation in that Member State and the need to ensure a coherent regulatory environment at a Community level, and also the existing possibilities of otherwise meeting the requirements, and shall inform the Member State whether it deems that the particular situation in that Member State justifies a deferment and, if so, until which date such deferment is justified.

Common Position text	*Amended text*
Article 22(2) **(based on EP Amendment 31)**	
2. The Commission shall examine and report periodically to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 1999. For this purpose, the Commission may request information from the Member States.	2. The Commission shall examine and report periodically to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 1999. For this purpose, the Commission may request information from the Member States.
The report shall examine what provisions of this Directive should be adapted in the light of the developments in the market, the evolution of technology and the changes in user demand, in particular:	The report shall examine what provisions of this Directive should be adapted in the light of the developments in the market, the evolution of technology and the changes in user demand, in particular:
(a) for the provisions under Article 5;	(a) for the provisions under Article 5;
(b) to confirm the timetable laid down in Article 12(5).	(b) to confirm <u>or advance</u> the timetable laid down in Article 12(5).
	<u>The Commission shall also investigate in the report the possibility of setting up swiftly a European regulatory authority to carry out those tasks carried out by the Commission or the national regulatory authorities according to this Directive, which can better be undertaken at Community level.</u>

ISSN 0254-1475

COM(96) 535 final

DOCUMENTS

EN 15 16 08 06

Catalogue number : CB-CO-96-543-EN-C

ISBN 92-78-10675-5

Office for Official Publications of the European Communities

L-2985 Luxembourg