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)

(95/C 313/04)

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(Submitted by the Commission on 31 August 1995)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

1. Whereas from 1 January 1998 (with transition periods for certain Member States) the provision of telecommunications services and infrastructure in the Community will be liberalized; whereas the Council's resolution of 7 February 1994 on universal service principles in the telecommunications sector [1] recognizes that in order to promote Community-wide telecommunications services there is a need to ensure interconnection of public networks and, in the future competitive environment, interconnection between different national and Community operators; whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision (ONP) [2] lays down harmonized principles for open and efficient access to, and use of, public telecommunications networks and, where applicable, services; whereas the Council's Resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market [3] recognizes that open network provision measures provide an appropriate framework for harmonizing interconnection conditions;

2. Whereas a general framework for interconnection to public telecommunications networks and public telecommunications services, irrespective of the supporting technologies employed, is needed in order to provide end-to-end interoperability of services for Community users; whereas fair, proportionate and non-discriminatory conditions for interconnection and interoperability are key factors in fostering the development of open and competitive markets;

3. Whereas the abolition of special and exclusive rights in telecommunications means that certain existing definitions need to be revised; whereas for the purposes of this Directive, telecommunications services do not include radio and television broadcast services; whereas the technical conditions, tariffs, usage and supply conditions that apply to interconnection are different from the conditions that apply at end-user/network interfaces;

4. Whereas, following the removal of special and exclusive rights for telecommunications services and infrastructure in the Community, the provision of telecommunications networks or services may require some form of authorization by Member States; whereas all organizations authorized to provide public telecommunications networks or public telecommunications services in all or part of the Community should be free to negotiate interconnection agreements on a commercial basis in accordance with Community law, subject to supervision and intervention by national regulatory authorities; whereas it is necessary to ensure adequate interconnection within the Community of certain networks and services essential for the social and economic well-being of Community users, notably public telephone networks and services, and leased lines;

(1) OJ No C 48, 16. 2. 1994, p. 1.
(2) OJ No L 192, 24. 7. 1990, p. 1.
(3) OJ No C 213, 6. 8. 1993, p. 1.

5. Whereas it is necessary to define those organizations who have rights and obligations for interconnection; whereas in order to stimulate development of new types of telecommunications services, it is important to encourage new forms of interconnection and special network access;

6. Whereas the 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 socio-economical 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, in order not to hinder the on-going process of tariff rebalancing, should not include elements which are due to historic tariff imbalances; 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;

7. Whereas it is important to lay down principles to guarantee transparency, access to information, non-discrimination and equality of access, in particular for organizations with significant market power; whereas the market power of an organization depends on a number of factors including its share of the relevant product or service market in the relevant geographical market, its turnover relative to the size of the market, its ability to influence market conditions, its control of the means of access to end-users, its access to financial resources, its experience providing products and services in the market; whereas, for the purpose of this Directive, an orgnization with a share of more than 25 % of a particular telecommunications market in the geographical area in a Member State within which it is authorized to operate would be presumed to enjoy significant market power, unless its national regulatory authority determined that this was not the case, whereas, for an organization falling below this threshold market share, the national regulatory authority may nevertheless determine that the organization enjoyed significant market power;

8. Whereas pricing for interconnection is a key factor to determine the structure and the intensity of competition in the transformation process towards a liberalized market; whereas organizations with significant market power must be able to demonstrate that their interconnection charges are set on the basis of objective criteria and follow the principles of transparency and cost orientation, and are sufficiently unbundled in terms of network and service elements offered; whereas publication of a list of interconnection services and charges enhances the necessary transparency and non-discrimination; whereas flexibility in the methods of charging for interconnection traffic should be possible, including capacity-based charging; whereas the level of charges should promote productivity and encourage efficient and sustainable market entry, and should not be below a limit calculated by the use of long-run incremental cost and cost allocation and attribution methods based on actual cost causation, nor above a limit set by the stand-alone cost of providing the interconnection in question;

9. Whereas appropriate accounting separation between interconnection activities and other activities ensures transparency of internal cost-transfers; whereas, where an organization with special or exclusive rights in a non-telecommunications field also provides telecommunications services, accounting separation is an appropriate means to discourage unfair cross-subsidies;

10. Whereas national regulatory authorities shall 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 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 the task of national regulatory authorities could be facilitated by the publication of non-binding guidelines in these areas;

11. Whereas, in accordance with Directive 90/387/EEC, the essential requirements upon which restrictions on access to and usage of public telecommunications networks or services are justified are limited to security of network operations, maintenance of network integrity, interoperability of services in justified cases, and protection of data as appropriate;

12. Whereas facility-sharing can be of benefit for town planning, environmental, economic or other reasons, and should be encouraged by national regulatory authorities on the basis of voluntary agreements; whereas compulsory facility-sharing may be appropriate in some circumstances, but should be imposed on organizations only after full public consultation; whereas virtual collocation may provide a satisfactory alternative to physical collocation of telecommunications equipment;

13. Whereas numbering is a key element for equal access; whereas national regulatory authorities should have the responsibility to administer and control 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 number portability — meaning that the end-user is able to change the organization providing telephone service at a location without changing the national number — 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; whereas numbering requirements in Europe, the needs for the provision of pan-European and new services and the globalization and synergy of the telecommunications market make necessary a common Community position in international organizations and fora where numbering decisions are taken;

14. Whereas, in accordance with Directive 90/387/EEC, the harmonization of technical interfaces and access conditions must be based on common technical specifications which take account of international standardization; whereas the development of new European standards for interconnection may be needed; 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], as last amended by European Parliament and Council Directive 94/10/EC [2], new national standards must not be developed in areas where harmonized European standards are under development.

15. Whereas, in accordance with Directive 90/387/EEC, open network provision conditions must be transparent and published in an appropriate manner; whereas that Directive set up a Committee (hereinafter referred to as 'ONP Committee') to assist the Commission, and provides a procedure for consultation with telecommunications organizations, users, consumers, manufacturers and service providers;

16. Whereas in addition to the rights of recourse granted under national or Community law, there is a need for simple procedures for resolution of cross-border disputes which are outside the competence of a single national regulatory authority; whereas these procedures should be responsive, inexpensive and transparent, and should involve all the parties concerned;

17. Whereas, to enable the Commission to monitor effectively the application of this Directive, it is necessary that Member States notify to the Commission the national regulatory authorities which will be responsible for the functions of this Directive and the organizations covered by its provisions;

18. Whereas given the dynamic development in this sector, a responsive procedure for adjustment of the Annexes to this Directive should be established which takes full account of the views of Member States and should involve the ONP Committee;

19. Whereas implementation of certain obligations must be linked to the date of liberalization of telecommunications services and infrastructure; 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;

20. Whereas this Directive should also apply to organizations providing telecommunications networks and telecommunications services in the Community which are not substantially owned and controlled by Member States of the European Economic Area and/or nationals from such Member States, referred to as 'third country organizations'; whereas Community operators should benefit from effective and comparable access to third country markets and enjoy a similar treatment in third countries as this Directive confers on third country organizations; whereas the Community gives priority to the attainment of this goal within the context of multilateral agreements;

21. Whereas the functioning of this Directive should be reviewed after three years; whereas at the same time the situation with regard to interconnection with third countries should also be reviewed, to allow appropriate action to be taken;

[1] OJ No L 109, 26. 4. 1983, p. 8.
[2] OJ No L 100, 19. 4. 1994, p. 30.

22. Whereas the essential goal of interconnection of networks and services throughout the Community and the provision of trans-European networks and services cannot be realized satisfactorily at Member State level, and is better achieved at Community level by this Directive;

23. Whereas this Directive is without prejudice to the application of the competition rules of the Treaty with regard to interconnection to telecommunications networks and services,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope and aim

This Directive established a regulatory framework for securing the interconnection and interoperability of telecommunications networks and services in the Community, in an environment of open and competitive markets.

It concerns the harmonization of conditions for open and efficient interconnection to public telecommunications networks and public telecommunications services.

Article 2

Definitions

1. For the purposes of this Directive:

(a) 'interconnection' means the physical and logical linking of the facilities of organizations providing telecommunications networks and/or telecommunications services, in order to allow the users of one organization to communicate with users of another organization, or to access services provided by another organization;

(b) 'public telecommunications network' means a telecommunications network used *inter alia* for the provision of public telecommunications services;

(c) 'public telecommunication service' means a telecommunications service available to the public;

(d) 'telecommunications network' means transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means;

(e) 'telecommunications services' means services whose provision consists wholly or partly in the transmission and routing of signals on telecommunications networks, with the exception of radio and television broadcasting;

(f) 'users' means end-users, including consumers (e.g. residential end-users), and service providers;

(g) 'special rights' means rights that are granted by a Member State to a limited number of undertakings through any legislative, regulatory or administrative instrument which, within a given geographical area, limits to two or more the number of such undertakings authorized to provide a service or undertake an activity, otherwise than according to objective, proportional and non-discriminatory criteria, or designates, otherwise than according to such criteria, several competing undertakings as being authorized to provide a service or undertake an activity, or confers on any undertaking or undertakings, otherwise than according to such criteria, legal or regulatory advantages which substantially affect the ability of any other undertaking to provide the same service or to undertake the same activity in the same geographical area under substantially the same conditions.

2. Further definitions given in Directive 90/387/EEC shall apply, where relevant.

Article 3

Interconnection and interoperability at national and Community level

1. Member States shall take all necessary measures to remove any restrictions which prevent organizations authorized by Member States to provide telecommunications networks and telecommunications services from negotiating interconnection agreements between themselves in accordance with Community law. The organizations concerned may be in the same Member State or in different Member States. Technical and commercial arrangements for interconnection shall be a matter for agreement between the parties involved, subject to the provisions of this Directive and the competition rules of the Treaty.

2. Member States shall ensure the adequate and efficient interconnection of the public telecommunications networks and public telecommunications services identified in Annex I, Parts 1 and 2, to the extent necessary to ensure universal provision of these services for all users within the Community.

3. Member States shall ensure that organizations who interconnect their facilities to public telecommunications networks and/or public telecommunications services respect at all times the confidentiality of information transmitted or stored.

Article 4

Rights and obligations for interconnection

1. Organizations authorized to provide public telecommunications networks and/or public telecommunications services as identified in Annex II shall have a right and, when requested by organizations in that category, an obligation to negotiate interconnection with each other for the purpose of providing the services in question, in order to ensure provision of these networks and services throughout the Community. On a case-by-case basis, the national regulatory authority may agree to limit this obligation on the grounds that there are technically and commercially viable alternatives to the interconnection requested, and that the requested interconnection is inappropriate in relation to the resources available to meet the request. Any such limitation imposed by a national regulatory authority shall be fully reasoned and made public in accordance with Article 14 (2).

2. Organizations authorized to provide public telecommunications networks and public telecommunications services identified in Annex I which have significant market power shall meet all reasonable requests for interconnection, including requests from service providers for connection to the network at points other than the network termination points offered to the majority of end-users (special network access).

Article 5

Interconnection and universal service contributions

1. Where a Member State determines, in accordance with the provisions of this Article, that universal service obligations represent a unfair burden for an organization, it may establish mechanisms for sharing the net cost of the universal service obligations with other organizations operating public telecommunications networks. Member States shall take due account of the principles of transparency, non-discrimination and proprotionality in setting the contributions to be made. Only the public telecommunications networks and public telecommunications services identified in Annex I, Part 1, may be financed in this way.

2. Contributions to the cost of universal service obligations may be based on a mechanism specifically established for the purpose and administered by a body independent of the beneficiaries, or may take the form of a supplementary charge added to the interconnection charge.

3. In order to determine the burden which the provision of universal service represents, organizations with universal service obligations shall, at the request of their national regulatory authority, calculate the net cost of such obligations in accordance with Annex III. The calculation of the net cost of universal service obligations shall be audited by the national regulatory authority. The cost calculation and the results of the audit shall be open to public inspection in accordance with Article 14 (2).

4. Where justified on the basis of the net cost calculation referred to in paragraph 3, and taking into account the market benefit which accrues to an organization that offers universal service, national regulatory authorities shall determine whether a mechanism for sharing the net cost of universal service obligations is justified.

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 public inspection in accordance with Article 14 (2).

National regulatory authorities shall ensure that an annual report is published giving the calculated cost of universal service obligations, and identifying the contributions made by all the parties involved.

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 and the Commission. Where the national regulatory authority or the Commission finds that such charges are escessive, 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.

7. Where appropriate, the Commission may, acting in accordance with the procedure laid down in Article 15, draw up guidelines on the costing and financing of universal service.

Article 6

Requirements for non-discrimination and transparency

For interconnection to the public telecommunications networks and public telecommunications services identified in Annex I provided by organizations which have been notified by national regulatory authorities as having significant market power, Member States shall ensure that:

(a) the organizations concerned adhere to the principle of non-discrimination with regard to interconnection offered to others. They shall apply similar conditions in similar circumstances to interconnected organizations providing similar services, and shall provide interconnection facilities and information to others under the same conditions and of the same quality as

they provide for their own services, or those of their subsidiaries or partners;

(b) all necessary information and specifications are made available on request to organizations considering interconnection, in order to facilitate an agreement being concluded;

(c) any changes to existing interconnection arrangements are notified to interconnected parties at least six months in advance of the change being implemented, unless agreed otherwise by the parties concerned;

(d) interconnection agreements are open to public inspection, in accordance with Article 14 (2), with the exception of those parts which deal with the commercial strategy of the parties. In every case, details of interconnection charges and any contributions to universal service obligations shall be published.

Article 7

Principles for interconnection charges and cost accounting systems

1. Member States shall ensure that the provisions of paragraphs 2 to 6 apply to organizations operating the public telecommunications networks and/or public telecommunications services identified in Annex I, Parts 1 and 2, who have been notified by national regulatory authorities as having significant market power.

2. Charges for interconnection shall follow the principles of transparency and cost orientation, and promote economic efficiency and sustainable market entry. The burden of proof that charges are cost-oriented 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.

3. Charges for interconnection shall be based on the costs of providing the interconnection services requested, and shall normally contain the following elements, each of which should be itemized separately:

— a charge to cover re-imbursement of the one-time costs incurred in providing the specific elements of the interconnection requested; (i.e. the initial cost of any engineering work needed to provide the interconnection facilities requested),

— usage charges related to the utilization of the network elements and resources requested. These may include capacity-based charges and/or traffic related charges,

Annex IV indicates, for information only, the types of costs that may be included in each of these tariff elements. Where other tariff elements are applied, these must be transparent and based on objective criteria, and approved by the national regulatory authority.

Charges for interconnection may include bulk discount schemes. In some cases, these may be available only to organizations identified in Annex II. Such schemes shall be based on objective criteria and applied in a non-discriminatory manner.

4. Charges for interconnection shall, in accordance with Community law, be sufficiently unbundled, so that the person making the request is not required to pay for network components of facilities which are not required for the service demanded.

5. National regulatory authorities shall ensure the publication, in accordance with Article 14 (1), of a list of interconnection services and associated tariffs broken down into components, according to market needs.

6. 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. Part or all of the documentation approved by the national regulatory authority, giving details of the information identified in Annex V, shall be open to public inspection in accordance with Article 14 (2). Compliance with the cost accounting system shall be verified by a competent independent body. A statement concerning compliance shall be published annually.

7. Where they exist, charges related to the sharing of the cost of universal service obligations, as described in Article 5, shall be unbundled and identified separately.

8. Member States shall ensure that published interconnection charges and charges related to the sharing of the cost of universal service obligations are made available to the ONP Committee at the request of the Commission.

9. In order to provide a common basis for the derivation of interconnection charges, the Commission shall, if necessary, draw up, acting in accordance with the procedure laid down in Article 15, recommendations on cost accounting systems in relation to interconnection.

Article 8

Accounting separation and financial accounts

1. Member States shall require organizations who provide public telecommunications networks and/or public telecommunications services and who have special or exclusive rights for the provision of services in other sectors in the same or another Member State, to keep separate accounts for the different activities, to the extent that would be required if the activities in question were carried out by legally independent companies.

2. Member States shall require organizations notified by national regulatory authorities as having significant market power who provide public telecommunications networks and/or public telecommunications services for end-users and who offer interconnection services to other organizations, to keep separate accounts for, on the one hand, their activities related to interconnection — covering both interconnection services provided internally and interconnection services provided to others — and, on the other hand, other activities, to the extent that would be required if the two types of activities were carried out by legally independent companies.

3. Organizations providing public telecommunications networks or public telecommunications services shall provide financial information to their national regulatory authority promptly on request and to the level of detail required. National regulatory authorities may publish such information as would contribute to an open and competitive market, while taking account of the aspect of commercial confidentiality. Detailed financial information shall be supplied to the Commission on request, where required for fulfilling its obligations under specific Community legislation.

4. The financial accounts of organizations providing public telecommunications networks or public telecommunications services shall be drawn up, published and submitted to independent audit. The audit shall be carried out in accordance with the relevant rules of national legislation.

The first subparagraph shall also apply to the separate accounts required in paragraphs 1 and 2.

5. The provisions of paragraphs 1 and 2 shall not apply to organizations where the annual turnover in telecommunications activities in the Community is less than the threshold set in Annex VI.

6. Where appropriate, the Commission shall, acting in accordance with the procedure laid down in Article 15, draw up guidelines on accounting separation in relation to interconnection.

Article 9

General responsibilities of the national regulatory authorities

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 stimulate a competitive market,

— 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 need to maintain the universal service.

2. In pursuit of the goal referred to in paragraph 1, national regulatory authorities shall have the right to intervene on their own initiative at any time, in order to specify issues which must be covered in an interconnection agreement, or to lay down specific conditions to be observed by one or more parties to such an agreement. National regulatory authorities may require changes to be made to interconnection agreements already concluded, where justified to ensure effective competition and/or interoperability of services for users.

Conditions set by the national regulatory authority may include *inter alia* conditions designed to ensure effective competition, technical conditions, tariffs, supply and usage conditions, conditions about conformance to relevant standards, conformance to essential requirements, protection of the environment, and/or the maintenance of end-to-end quality of service.

The national regulatory authority may also set time limits within which negotiations on interconnection are to be completed. If agreement is not reached within the time allowed, the national regulatory authority shall take steps to bring about an agreement under procedures laid down by that authority. The procedures shall be open to public inspection in accordance with Article 14 (2).

3. General conditions set down in advance by the national regulatory authority shall be published in accordance with Article 14 (1).

In relation to interconnection between organizations identified in Annex II, national regulatory authorities shall:

— set time limits for the negotiation of interconnection agreements, in accordance with paragraph 2,

— set *ex ante* conditions, as listed in Annex VII, Part 1,

— ensure that the issues in Annex VII, Part 2, are covered in interconnection agreements, where appropriate,

— encourage the issues in Annex VII, Part 3, to be covered in interconnection agreements.

4. Where an organization authorized to provide public telecommunications networks or public telecommunications services enters into interconnection agreements with others, the national regulatory authority shall have the right to inspect all such interconnection agreements in their entirety.

5. In the event of an interconnection dispute between organizations operating under authorizations granted by the same Member State, the national regulatory authority of that Member State shall, on request of either party, take steps with a view to resolving the dispute.

In so doing, the national regulatory authority shall take into account, *inter alia*:

— the user interest,

— regulatory obligations or constraints imposed on any of the parties,

— the desirability of stimulating innovative market offerings, and of providing users with a wide range of telecommunications services at a national and at a Community level,

— the availability of technically and commercially viable alternatives to the interconnection requested,

— the desirability of ensuring equal access arrangements,

— the need to maintain the integrity of the public telecommunications network and the interoperability of services,

— the nature of the request in relation to the resources available to meet the request,

— the relative market positions of the parties,

— the public interest (e.g. the protection of the environment).

A decision on the matter by a national regulatory authority shall be made public in accordance with Article 14 (1). The parties concerned shall be given a full statement of the reasons on which it is based.

If the dispute is not resolved in a satisfactory way for all the parties concerned, or if no solution has been found by the national regulatory authority within two months of its referral to this authority:

— either party may refer the dispute to the Commission for conciliation, by way of a notification to the Commission, with copies to all parties involved. Where the Commission finds that there is a case for further examination, the Commission may set up a working group comprising in particular the members of the Committee referred to in Article 15 to assist it. Recourse to this procedure shall not hinder the parties involved from bringing an action under national law, or

— the national regulatory authority may, with the agreement of all parties involved, refer the dispute to the Commission for resolution under the procedure set out in Article 16 (4) and (5), by way of a notification to the Commission, with copies to all parties involved.

6. In cases where organizations who are authorized to provide public telecommunications networks and/or public telecommunications services have not interconnected their facilities, national regulatory authorities may, in the interests of users and following a period of public consultation during which all interested parties are given an opportunity to express their views, require the organizations concerned to interconnect their facilities and, where appropriate, set terms of interconnection.

7. The Commission may, in consultation with the ONP Committee, issue guidelines on the basis of experience gained in the implementation of paragraphs 1 to 6.

Article 10

Essential requirements

Without prejudice to action which may be taken in accordance with Articles 3 (5) and 5 (3) of Directive 90/387/EEC, the essential requirements as specified in Article 3 (2) of Directive 90/387/EEC shall apply to

interconnection to public telecommunications networks and/or public telecommunications services as set out in this Article. Where the national regulatory authority imposes conditions based on essential requirements in interconnection agreements, these conditions shall be published in the manner laid down in Article 14 (1).

(a) Security of network operations: national regulatory authorities shall take all necessary steps to ensure the security of public telecommunications networks and public telecommunications services in case of emergency. 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 lockouts, war, military operations or civil disorder. In an emergency situation the organization(s) affected shall make every endeavour to ensure that service is maintained to all users and to all interconnected parties. The need to maintain the security of public telecommunications networks and public telecommunications services in case of emergency does not constitute a valid reason for refusal to negotiate terms for interconnection.

The national regulatory authority shall ensure that any conditions for interconnection related to the security of networks in case of emergency are proportional and non-discriminatory in nature, and are based on objective criteria identified in advance.

Interconnection agreements may include specific conditions to compensate one party in the event of unavailability of the other party's facilities during an emergency situation.

(b) Maintenance of network integrity: national regulatory authorities shall take all necessary steps to ensure that the integrity of public telecommunications networks is maintained. The need to maintain network integrity does not constitute a valid reason for refusal to negotiate terms for interconnection. The national regulatory authority shall ensure that any conditions for interconnection related to protection of network integrity, including specific conditions to compensate one party in the event of network harm caused by the other party, are proportional and non-discriminatory in nature, and are based on objective criteria identified in advance.

(c) Interoperability of services: national regulatory authorities may impose conditions in interconnection agreements in order to ensure interoperability of services, including conditions designed to ensure satisfactory end-to-end quality. Such conditions may include implementation of specific technical standards, or specifications, or industry-agreed codes of conduct.

(d) Protection of data: Member States may impose conditions in interconnection agreements in order to ensure the protection of data, 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 processed, transmitted or stored, and the protection of privacy, compatible with Community law.

Article 11

Collocation and facility sharing

Where an organization is granted a general right under national legislation to install facilities for telecommunications purposes on, over or under public or private land, or may take advantage of a procedure for the expropriation or use of property for telecommunications purposes, national regulatory authorities shall encourage the sharing of such facilities and property with other organizations providing public telecommunications services.

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 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 sharing.

Article 12

Numbering

1. Member States shall ensure the provision of adequate numbers and numbering ranges for all public telecommunications services.

2. In order to ensure full interoperability of European-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 at a European level.

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 public telecommunications networks or public 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.

4. National regulatory authorities shall ensure that the main elements of the national numbering plans, and all subsequent additions or amendments to them, are published in accordance with Article 14 (1), subject only to limitations imposed on the grounds of national security.

5. National regulatory authorities shall encourage the earliest possible introduction of the facility whereby end-users who so request can retain their national number 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.

6. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives fair and equal treatment to all providers of public telecommunications services. In particular, an organization allocated a range of numbers shall avoid discrimination in the number sequences used to give access to the services of other telecommunications operators.

Articles 13

Technical standards

1. Without prejudice to Article 5 (3) of Directive 90/387/EEC whereby the implementation of specified European standards may be made compulsory, national regulatory authorities shall ensure that organizations providing public telecommunications networks or public telecommunications services take full account of standards referenced in the *Official Journal of the European Communities* as being suitable for the purpose of interconnection.

In the absence of such standards, national regulatory authorities shall encourage the provision of technical interfaces for interconnection according to the standards or specifications listed below:

— standards adopted by European standardization bodies such as 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 Committee (IEC),

or, in the absence of such standards,

— specifications having a wide acceptance within industry and developed by international industry bodies,

or, in the absence of such specifications,

— national standards or specifications.

2. The Commission may, acting in accordance with the procedure laid down in Article 15, request standards for interconnection and access to be drawn up, where appropriate, by European standardization bodies. Reference to standards for interconnection and access may be published in the *Official Journal of the European Communities* in accordance with Article 5 of Directive 90/387/EEC.

Article 14

Publication of and access to information

1. With regard to the information identified in Article 7 (5), Article 9 (3), Article 9 (5), Article 10 and Article 12 (4), national regulatory authorities shall ensure that up-to-date information is published in an appropriate manner in order to provide easy access to that information for interested parties. Reference shall be made in the national Official Journal of the Member State concerned to the manner in which this information is published.

2. With regard to the information identified in Article 4 (1), Article 5 (3), Article 5 (5), Article 6, Article 7 (6) and Article 9 (2), national regulatory authorities shall ensure that up-to-date information is made available for public inspection during the normal working day at no charge. Reference shall be made in the national Official Journal of the Member State concerned to the times and location(s) at which the information can be inpected.

3. National regulatory authorities shall notify to the Commission before 1 January 1998 — and immediately thereafter in case of any change — the manner in which the information referred to in paragraphs 1 and 2 is made available. The Commission shall regularly publish a corresponding reference to such notifications in the *Official Journal of the European Communities.*

Article 15

Committee procedure

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

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 16

Dispute resolution procedure at Community level

1. The procedure set out in paragraphs 2 to 5 shall be available in the event of an interconnection dispute between organizations operating under authorizations provided by different Member States.

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).

3. If the dispute is not resolved within two months of its referral to the national regulatory authorities concerned, either party may, with the agreement of all parties, invoke the procedure provided for in paragraphs 4 and 5, by way of a notification to the Commission, with copies to all parties involved. In so doing, the parties renounce any further action under national law.

4. Where, following a notification to the Commission based on paragraph 3, the Commission finds that there is a case for further examination, the Commission may set up a working group comprising in particular members of the Committee referred to in Article 15, to assist it. The working group shall define its position within three months.

5. The position agreed in accordance with the procedure referred to in paragraph 4 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 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 15.

Article 17

Notification

1. Member States shall ensure that national regulatory authorities have the necessary means for carrying out the tasks identified in this Directive, and shall notify to the Commission by 31 January 1997 the national regulatory authorities responsible for those tasks.

2. National regulatory authorities shall notify to the Commission by 31 January 1997, and immediately thereafter in the event of any change, the names of those organizations which:

— have universal service obligations for the provision of the public telecommunications networks and services identified in Annex I, Part 1,

— are subject to the provisions of this Directive concerning organizations with significant market power,

— are covered by Annex II.

The Commission may request national regulatory authorities to provide their reasons for classifying an organization as having significant market power.

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

Article 18

Technical adjustment

Modifications necessary to adapt the Annexes to the Directive to new technological developments or to changes in market and consumer demand or to improve the coherence of the regulatory environments in Member States shall be determined by the Commission in accordance with the procedure laid down in Article 15.

Article 19

Deferment

1. Deferment from the obligations under Articles 3 (1) and 9 (3) may be requested by those Member States identified in the Council's resolution of 22 July 1993 who benefit from an additional transition period for the liberalization of telecommunications services. Deferments granted on these grounds shall not exceed the transition periods set out in the said resolution.

2. Deferment from 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.

Article 20

Interconnection with third country organizations

1. Member States shall inform the Commission of any general difficulty encountered, *de jure* or *de facto*, by Community organizations in interconnecting with organizations in third countries, which have been brought to their attention.

2. Whenever the Commission establishes that a third country is not providing Community organizations with effective rights to interconnect which are comparable to those which the Community grants to organizations from a third country, the Commission will, if necessary, submit proposals to the Council for an appropriate mandate for negotiation or other appropriate measures to ensure comparable rights for Community organizations in these third countries. The Council shall decide by qualified majority.

3. Measures taken pursuant to paragraph 2 shall be without prejudice to the Community's and Member States' obligations under relevant international agreements.

Article 21

Review of implementation

1. The Commission shall report to the European Parliament and to the Council by 31 December 1997, and periodically thereafter, on the availability of rights to interconnect in third countries for the benefit of Community organizations, and on the state of any negotiations undertaken pursuant to Article 20 (2), or within the framework of international organizations.

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 31 December 2000. For this purpose, the Commission may request information from the Member States. Where necessary, further measures can be proposed in the report for the full implementation of the aims of this Directive.

Article 22

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1997. They shall immediately inform the Commission thereof.

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

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

Article 23

Entry into force

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

Article 24

Addressees

This Directive is addressed to the Member States.

ANNEX I

SPECIFIC PUBLIC TELECOMMUNICATIONS NETWORKS AND PUBLIC TELECOMMUNICATIONS SERVICES

The following public telecommunications networks and public telecommunications services are considered of major importance at the European level.

Organizations providing the public telecommunications networks and/or services identified below who have significant market power are subject to specific obligations with regard to interconnection, as specified in Articles 4 (2), 6 and 7.

PART 1

The fixed public telephone network

The fixed public telephone network means the public switched telecommunications network which supports the transfer between network termination points at fixed locations of speech and 3,1 kHz bandwidth audio information, to support *inter alia:*

— voice telephony,

— facsimile Group I, II and III communications, in accordance to ITU-T recommendations in the 'T-series',

— voice band data transmission via modems at a rate of at least 2 400 bit/s, in accordance with ITU-T recommendations in the 'V-series'.

Access to the end-user's network termination point is via a number or numbers in the national numbering plan.

The fixed public telephone service

The fixed public telephone service means the provision to end-users at fixed locations of a service for the originating and receiving of national and international calls, and may include access to emergency (112) services, the provision of operator assistance, directory information services, provision of public pay phones, provision of service under special terms and/or provision of special facilities for customers with disabilities.

Access to the end-user is via a number or numbers in the national numbering plan.

PART 2

The commercial provision of leased lines

Leased lines means the telecommunications facilities which provide for transparent transmission capacity between network termination points, and which do not include on-demand switching (switching functions which the user can control as part of the leased line provision). They may include systems which allow flexible use of the leased line bandwidth, including certain routing and management capabilities.

PART 3

Public mobile telephone networks

A public mobile telephony network is a public telephone network where the network termination points are not at fixed locations.

Public mobile telephone services

A public mobile telephone service is a telephony service whose provision consists, wholly or partly, in the establishment of radiocommunications to one mobile user, and makes use wholly or partly of a mobile telephone network.

ANNEX II

ORGANIZATIONS WITH RIGHTS AND OBLIGATIONS TO INTERCONNECT WITH EACH OTHER IN ORDER TO ENSURE EUROPEAN-WIDE SERVICES

This Annex covers those organization which provide switched and unswitched bearer capabilities to users upon which other telecommunications services depend.

Organizations in the following categories have both rights and obligations to interconnect with each other, in accordance with Article 4 (1). Interconnection between these organizations is subject to additional supervision by national regulatory authorities, in accordance with Article 9 (3). Special interconnection charges may exist for these categories of organizations in accordance with Article 7 (3).

1. Organizations who provide fixed and/or mobile public switched telecommunications networks and/or public telecommunications services, and in so doing control the means of access to one or more network termination points identified by one or more unique numbers in the national numbering plan. (see notes below)

2. Organizations who provide leased lines to users' premises.

3. Organizations who provide international telecommunications circuits to and from third countries.

4. Organizations included in this category at their own request, under relevant national licensing or authorization schemes.

Notes

Control of the means of access to a network termination point means the ability to control the telecommunications services available to the end-user at that network termination point and/or the ability to deny other service providers access to the end-user at that network termination point.

Control of the means of access may entail ownership or control of the physical link to the end-user (whether wire or wireless), and/or ability to change or withdraw the national number or numbers needed to access a end-user's network termination point.

ANNEX III

CALCULATING THE COST OF UNIVERSAL SERVICE OBLIGATIONS FOR VOICE TELEPHONY — ARTICLE 5 (3)

Universal service obligations refer to those obligations placed upon an organization by a Member State which concern the provision of service throughout a specified geographical area, including — where required — geographical averaged prices for the provision of that service.

The cost of universal service obligations shall be calculated as the difference between the net cost for an organization of operating with the universal service obligations and operating without the universal service obligations.

This applies whether the network in a particular Member State is fully developed or is still undergoing development and expansion.

The calculation shall be based upon the costs attributable to:

(i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.

This category includes service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for disabled people, etc.;

(ii) specific end-users or groups of end-users who, taking into account the cost of providing service, the revenue generated and any geographical averaging of prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those end-users or groups of end-users who would not be served by a commercial operator who did not have an obligation to provide universal service.

In developed networks where such end-users are already being served, the cost calculation should be based on the savings that would be achieved if these end-users were not served.

In peripheral regions with expanding networks, the cost calculation should be based on the additional cost of serving those end-users or groups of end-users which an operator applying the normal commercial principles of a competitive environment would chose not to serve.

Revenues shall be taken into account in calculating the net costs. Costs and revenues should be forward-looking.

ANNEX IV

LIST OF ELEMENTS AND SUB-ELEMENTS OF THE OVERALL INTERCONNECTION CHARGES — ARTICLE 7 (3)

The following list is indicative and not exhaustive, and may vary depending on the Member State and the specific circumstances of each particular interconnection agreement.

OVERALL INTERCONNECTION CHARGES

Connection charges:

are based on the costs of providing the specific interconnection services requested by the interconnecting organization. They may include *inter alia*:

— one-off and rental costs of implementing the physical interconnection (e.g. specific equipment; signalling resources; compatibility testing; connection maintenance; etc.),

— variable costs for ancillary and supplementary services (e.g. access to directory services; operator assistance; data collection; charging; billing; switch-based and advanced services etc.),

Usage charges:

are based on the costs incurred in the conveyance of traffic through the interconnected network (e.g. the costs of switching and transmission). Usage charges may be on a call-per-call basis, and/or on the basis of additional network capacity required.

In addition, interconnection charges may include a fair share, according to the principle of proportionality, of the costs incurred in providing equal access (e.g. the support of identical end-user access procedures), and number portability, and costs of ensuring essential requirements (maintenance of the network integrity; network security in cases of emergency situation; interoperability of services; and protection of data).

ANNEX V

COST ACCOUNTING SYSTEMS FOR INTERCONNECTION

Article 7 (6) calls for details of the cost accounting system to be open to public inspection.

The purpose of publishing this information is to provide transparency in the calculation of interconnection charges, so that other market players are in a position to ascertain that the charges have been fairly and properly calculated.

This objective should be taken into account by the national regulatory authority and the organizations affected when determining the level of detail in the information published.

The list below indicates the elements to be included in the information published.

1. **The cost standard used**

   For example, fully distributed costs, long-run average incremental costs, marginal costs, stand alone costs, embedded direct costs, etc. including the cost base(s) used,

   i.e. historic costs (based on actual expenditure incurred for equipment and systems) or forward-looking costs (based on estimated replacement costs of equipment or systems).

2. **The cost elements included in the interconnection tariff**

   Identification of all the individual cost components which together make up the interconnection charge, including the profit element.

3. **The degrees and methods of cost allocation, in particular the treatment of joint and common costs**

   Details of the degree to which direct costs are analysed, and the degree and method by which joint and common costs are included in interconnection charges.

4. **Accounting conventions**

   i. e. the accounting conventions used for the treatment of costs covering:

   — the timescale for depreciation of major categories of fixed asset (e.g. land, buildings, equipment, etc.),

   — the treatment, in terms of revenue versus capital cost, of other major expenditure items (e.g. computer software and systems, research and development, new business development, direct and indirect construction, repairs and maintenance, finance charges, etc.).

The information on cost accounting systems to be published, as identified in this Annex, may be amended in accordance with the procedure in Article 18.

ANNEX VI

THRESHOLD IN TELECOMMUNICATIONS TURNOVER — ARTICLE 8 (5)

The threshold for annual turnover in telecommunications activities referred to in Article 8 (5) shall be ECU 50 million.

ANNEX VII

FRAMEWORK FOR NEGOTIATION OF INTERCONNECTION AGREEMENTS — ARTICLE 9 (3)

PART 1

Ex-Ante conditions to be set by the national regulatory authority

(a) Dispute resolution procedure.

(b) Requirements for publication/access to interconnection agreements and other periodic publication duties.

(c) Requirements for the provision of equal access and number portability.

(d) Requirements to provide facility sharing, including collocation.

(e) Requirements to ensure the maintenance of essential requirements.

(f) Requirements for allocation and use of numbering resources (including access to directory services, emergency services and pan-European numbers).

(g) Requirements concerning the maintenance of end-to-end quality of service.

(h) Where applicable, determination of the unbundled part of the interconnection charge which represents a contribution to the net cost of universal service obligations.

PART 2

Other issues which should be covered in interconnection agreements

(a) Description of interconnect services to be provided.

(b) Terms of payment, including billing procedures.

(c) Locations of the points of interconnection.

(d) Technical standards for interconnection.

(e) Measures to conformance with essential requirements.

(f) Intellectual property rights.

(g) Definition and limitation of liability and indemnity.

(h) Definition of interconnection charges and their evolution over time.

(j) Dispute resolution procedure between parties before requesting national regulatory authority intervention.

(k) Duration and renegotiation of agreements.

(m) Procedures in the event of alterations being proposed to the network or service offerings of one of the parties.

PART 3

Other issues which may be covered in interconnection agreements

(a) Achievement of equal access.

(b) Provision of facility sharing.

(c) Access to ancillary, supplementary and advanced services.

(d) Traffic/network management.

(e) Maintenance and quality of interconnection services.

(f) Confidentiality of non-public parts of the agreements.

(g) Training of staff.