

**COMMISSION STAFF WORKING DOCUMENT**

**Europe's Liberalised Telecommunications Market - A Guide to the Rules of the Game**

## **Table of contents**

1.	Introduction .....	5
2.	Principles underlying the Community's Approach in Telecommunications .....	6
2.1.	Progressive liberalisation of a former monopoly sector .....	7
2.2.	Accompanying harmonisation measures .....	7
2.3.	Competition rules .....	8
2.4.	Consumer protection legislation.....	9
3.	A Single Market in Telecommunications Services and Infrastructure .....	9
3.1.	The liberalisation of Telecommunications Services and Infrastructure (1990 Services Directive and subsequent amendments).....	9
3.2.	General Regulatory Framework .....	11
3.2.1.	Open Network Provision.....	11
3.2.2.	Significant Market Power .....	11
3.2.3.	Pricing principles.....	12
3.2.4.	Subsidiarity - the potential for additional national regulation.....	12
3.2.5.	Third countries & International aspects.....	13
3.2.6.	European standardisation .....	14
3.3.	Licensing framework .....	14
3.3.1.	Aim     15	
3.3.2.	Individual licences & general authorisations .....	15
3.3.3.	Limitation on number .....	16
3.3.4.	Conditions .....	16
3.3.5.	Fees and time frame for the grant of licences .....	17
3.3.6.	Provisions for harmonisation of licence conditions.....	17
3.3.7.	One stop shopping .....	17
3.4.	Scarce resources .....	18
3.4.1.	General principles.....	18
3.4.2.	Frequencies.....	19
3.4.3.	Numbering.....	22
3.5.	The Interconnection framework .....	23

3.5.1.	Aim	23
3.5.2.	Definition .....	23
3.5.3.	Rights and obligations.....	23
3.5.4.	Pricing and costing principles .....	25
3.5.5.	Other forms of network access.....	26
3.5.6.	Third country interconnection.....	26
3.5.7.	Carrier pre-selection .....	26
3.6.	Universal Service.....	26
3.6.1.	Aim	27
3.6.2.	Scope of universal service.....	27
3.6.3.	Affordability .....	28
3.6.4.	Cost and financing .....	28
3.6.5.	Who must provide universal service?.....	29
3.7.	Provision of mandatory and recommended services in the EU .....	29
3.7.1.	Voice Telephony.....	29
3.7.2.	Leased lines .....	30
3.8.	Protection of personal data and privacy.....	30
3.8.1.	Scope	31
3.8.2.	Security of services and networks .....	31
3.8.3.	Confidentiality of communications .....	31
3.8.4.	Traffic and billing data.....	31
3.8.5.	Calling line identification.....	32
3.8.6.	Directories .....	32
3.8.7.	Unsolicited calls .....	33
3.8.8.	Other provisions .....	33
3.9.	VAT on telecommunication services.....	33
4.	Opening the market for radio equipment and telecommunications terminal equipment .....	34
4.1.	Liberalisation.....	34
4.2.	Current regime.....	35
4.2.1.	Basic principles .....	35

4.2.2.	Essential requirements .....	35
4.2.3.	Common Technical Regulations .....	35
4.2.4.	Conformity assessment procedures .....	36
4.3.	The new regime: Radio and Telecoms Terminal Equipment Directive .....	36
4.3.1.	Basic principles .....	36
4.3.2.	Essential requirements .....	37
4.3.3.	Conformity assessment procedures .....	38
4.3.4.	Safeguards for radio equipment .....	38
5.	Regulating the market: A Shared Responsibility .....	38
5.1.1.	Bodies responsible for implementation and enforcement of the Community regulatory framework .....	39
5.1.2.	Redress under national law: the role of National Regulatory Authorities (NRAs)....	39
5.1.3.	Redress under Community law: the role of the Commission and the Court of Justice 41	
5.1.4.	Competition rules .....	42
5.1.5.	Telecoms Committees.....	43
5.2.	Other bodies involved in European telecommunications regulatory policy .....	45
5.2.1.	CEPT 45	
5.2.2.	European Telecommunications Standards Institute (ETSI).....	46
5.2.3.	European Numbering Forum (ENF).....	46
5.2.4.	European Telecommunications Platform (ETP) .....	47
5.2.5.	Satellite Action Plan Regulatory Working Group (SAPWRG) .....	47
5.2.6.	UMTS Forum .....	47
ANNEX I: LIST OF MEASURES COMPRISING THE TELECOMMUNICATIONS REGULATORY PACKAGE.....		48
ANNEX II : LIST OF NATIONAL REGULATORY AUTHORITIES .....		50
ANNEX III : LIST OF CONSUMER BODIES IN THE FIELD OF TELECOMS.....		53
ANNEX IV: DEFINITIONS IN COMMUNITY TELECOMS LEGISLATION.....		55

## **1. INTRODUCTION**

With the arrival of the full liberalisation of telecommunications in the majority of the Member States of the European Union on 1 January 1998, a 10 year process of harmonisation and liberalisation was completed. The effects of liberalisation are now beginning to be felt as new players come on to the market, quality improves and the prices of many services fall in real terms. Mobile communications and on-line services, notably via the Internet, are seeing continued strong growth, as telephone companies compete with each other to offer new combined fixed and mobile service packages, cheaper second phone lines, as well as new pricing formulae and new ways of paying for services.

These developments will be crucial if Europe is to be able to participate fully in the nascent Information Society. Telecoms liberalisation is the cornerstone of Europe's transition, lowering the price of communicating, and encouraging innovation and investment in new services and networks.

But the transition from a monopoly world to a fully competitive one has not been easy. In order for it to have concrete effects, detailed rules are necessary, and the application of those rules needs to be carefully supervised. So the Commission's work was not complete once 1 January 1998 had arrived. Resources then had to be focused on scrutinising the implementation and practical application of the EU regulatory framework in the Member States, with a number of legal actions being launched where problems arose in national transposition of the measures making up the 1998 Reform Package. This work goes on.

The National Regulatory Authorities (NRAs) for telecoms, which have been established in all Member States, also have much to do. They have been set a range of tasks by the EU regulatory framework, from the grant of new mobile and fixed network licences, to approving interconnection prices and agreements; policing prices charged to customers for changing operators, and dealing with the allocation of numbers to new market players. National competition authorities have also been called upon to examine alleged anti-competitive behaviour in the new telecoms market.

At European level, the rules that are currently applied are set out in 7 liberalising measures and 14 harmonising directives and decisions, which have now been complemented by a number of Recommendations and guidelines (see Annex I for details). Whilst these rules reflect the underlying balance between the responsibilities of the Commission and the Member States, this represents a formidable and sometimes confusing array of legal measures.

This Guide is intended to provide an overview of the main provisions of this framework in a way which should help those providing telecoms services, businesses in general and citizens to find their way around the new telecoms landscape.

Section II of this guide provides an overview of the basic principles underlying the 1998 Reform Package.

Section III and IV of this guide set out the rules governing the markets for networks and services and for telecoms equipment respectively.

Section V explains who is responsible for regulating the sector and provides pointers to where further information and help can be found.

A list of the legislative measures which make up the telecommunications regulatory framework is attached at Annex I. Annex II lists the regulatory bodies (NRAs) which have now been created in each Member State. Annex III lists the consumer bodies which handle complaints in each Member State. Annex IV contains the definitions of terms used in Community telecommunications legislation.

*This Communication is intended as a guide for informed users and is not intended to provide a definitive interpretation of Community law or of future Commission treatment of particular situations.*

For further information on EC telecommunications policy or for on-line versions of legislation please see the Status Report under Communications Policy on <http://www.ispo.cec.be/infosoc/telecompolicy/Welcome.htm> or the Directorate-General for competition) site on <http://europa.eu.int/comm/dg04/>.

## **2. PRINCIPLES UNDERLYING THE COMMUNITY'S APPROACH IN TELECOMMUNICATIONS**

Until around 1980, telecommunications in the EU was characterised by a series of national public monopolies, often run in conjunction with postal services. That situation began to change in the early 1980s, with privatisation and the introduction of limited competition in some Member States. This development was primarily driven by the increasing application of information technology in the telecommunications sector, which offered the potential to revolutionise the industry. In 1987, the Commission issued a Green Paper in which it proposed the introduction of more competition in the telecommunications market, combined with a higher degree of harmonisation in order to maximise the opportunities offered by a single EC market, for example through economies of scale. This was the first step in a ten year process which culminated in the liberalisation of all telecommunications services and networks from 1 January 1998<sup>1</sup>. There are three main strands through which the EU has sought to liberalise and regulate the telecommunications sector:

- the progressive liberalisation of a former monopoly sector;
- accompanying harmonisation measures; and

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<sup>1</sup> It should be noted here that five Member States were permitted to defer the opening of their market beyond that date. For two Member States (Luxembourg and Spain), their markets were fully liberalised in the course of 1998. Three (Ireland, Portugal and Greece) have been permitted to defer full liberalisation until 1 January 2000 (in the case of Ireland and Portugal) and 31 December 2000 in the case of Greece.

- application of the Treaty competition rules.

## 2.1. Progressive liberalisation of a former monopoly sector

The Commission has adopted directives based on Article 86<sup>2</sup> of the Treaty. Article 86 gives the Commission power to require the removal of special or exclusive rights granted to undertakings by Member States where other Treaty rules are broken as a result. In the telecoms sector, the Commission considered that giving certain public enterprises special and exclusive rights to produce telecommunications equipment, provide telecommunications services or operate networks breached Treaty competition and internal market rules. This did not mean that these enterprises should be privatised; just that competition should be introduced into the sector. A series of directives was adopted: the first in 1988<sup>3</sup> concerned the removal of the special and exclusive rights to import, market, connect, bring into service and maintain terminal equipment existing at that time in the Member States; the second, in 1990, concerned telecommunications services<sup>4</sup>. This originally liberalised services other than voice telephony (mainly data), but its scope was gradually extended until in 1998 voice telephony and networks were completely liberalised by the “Full Competition Directive”<sup>5</sup>, subject to certain transitional arrangements for five Member States..

The major principles which the Article 86 Directives introduce are as follows:

- removal of special or exclusive rights: requirement for Member States to ensure that any operator is allowed to supply telecommunications services (with the exception of voice telephony until 1998);
- separation of regulator from incumbent: requirement for Member States to ensure that the historic regulatory functions of telecommunications organisations were removed, and vested in independent bodies. This requirement for separation has now been extended to ensure that where national governments retain some degree of ownership or control over organisations providing telecommunications networks and/or services, the regulatory function is structurally separate from activities associated with ownership or control (i.e. separate ministerial responsibility for each activity). (These bodies are known as National Regulatory Authorities (NRAs));
- objective, non-discriminatory and transparent conditions: requirement for conditions for granting of licences and access to networks to be objective, non-discriminatory and transparent, together with a right to appeal.

## 2.2. Accompanying harmonisation measures

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<sup>2</sup> Ex-Article 90

<sup>3</sup> Commission Directive of 16 May 1988 on competition in the markets in telecommunications equipment (88/301/EEC; OJ L131/73, 27.05.88)

<sup>4</sup> Commission Directive of 28 June 1990 on competition in the markets for telecommunications services (90/388/EEC; OJ L192/10, 24.07.1990), as amended by Commission Directives 94/46/EC, 95/51/EC, 96/2/EC, 96/19/EC and 1999/64/EC.

<sup>5</sup> Commission Directive of 13 March 1996 amending Commission Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets (96/19/EC; OJ L 74/13, 22.03.1996)

Alongside the Article 86 Directives, a series of Council and European Parliament Directives, adopted under Articles 95 (internal market) and 47 and 55 (freedom to provide services), have put in place detailed harmonised regulation to ensure that the aims and principles set out in the Article 86 Directives are upheld.

The main principles behind these Directives are as follows:

- **Open Network Provision (ONP)** This concept seeks to promote the single market in telecoms by harmonising the conditions for access to and use of publicly available networks and services. These ONP conditions aim at ensuring a minimum set of services, securing access and interconnection, harmonising standards for technical interfaces of networks, and ensuring universal service. These conditions must be transparent, objective, proportionate and non-discriminatory.
- **Significant Market Power (SMP)** Since the European telecommunications market generally was (and remains to a large extent) dominated by one incumbent operator in each Member State, the ONP framework introduces the concept of SMP. Operators with SMP are subject to heavier regulation than other operators, because of their power in the market. SMP is defined in a specific manner (in most cases, where an organisation providing telecommunications services has 25% of the national market, though National Regulatory Authorities have some flexibility to determine otherwise depending on the national market situation).
- **Fixed/Mobile** There is also differentiation in the level of regulation applicable to the fixed and mobile sectors (essentially the obligations which apply to SMP operators in those sectors). The reason for this is primarily historical; the mobile sector, as a new technology, has always been subject to some degree of competition. Thus the ONP obligations which apply may be less onerous given that mobile operators are already subject to competitive pressure.

### **2.3. Competition rules**

Naturally, alongside this detailed sector-specific legislation, national and EC competition law also applies to telecoms as to any other sector. Even prior to full liberalisation, the Commission published Guidelines on the application of EC competition law in the telecoms sector<sup>6</sup>. These guidelines sought to clarify, specifically in relation to telecoms, what sort of behaviour is likely to fall foul of Article 81 and 82 of the Treaty. They still provide a useful guide in the context of liberalised markets. The Commission has more recently issued a Notice on the application of competition rules to access agreements.<sup>7</sup> These agreements are vital if new entrant operators are to be able to reach end-users served exclusively by the incumbent's network. The Commission considered that this control which incumbents have over access to end-users could prove a source of competition problems. The Notice therefore sets out the access principles which stem from EC competition law; defines the interplay between competition law and the telecoms regulatory

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<sup>6</sup> Commission Guidelines on the application of EEC competition rules in the telecommunications sector (OJ C 233, 6.09.1991) <http://europa.eu.int/comm/dg04/lawliber/en/91c2331.htm>

<sup>7</sup> Commission Notice of 31 March 1998 on the application of the competition rules to access agreements in the telecommunications sector (OJ C265, 22.8.1998, p.2) <http://europa.eu.int/comm/dg04/lawliber/en/acces.pdf>



framework; and explains how the competition rules will be applied in a consistent way across the various sectors involved.

## **2.4. Consumer protection legislation**

Similarly, alongside the sector-specific legislation, national and EC consumer protection law also applies to telecommunications as to any other sector. Among the most relevant to the sector are the "Unfair terms in consumer contracts"<sup>8</sup>, "distance contracts"<sup>9</sup> and "misleading advertising"<sup>10</sup> directives. The Commission regularly publishes an updated "Inventory of Community Acts relating to consumer affairs and consumer health protection"<sup>11</sup>. This inventory provides the basic information regarding binding and non-binding acts relating to Community consumer protection legislation.

# **3. A SINGLE MARKET IN TELECOMMUNICATIONS SERVICES AND INFRASTRUCTURE**

## **3.1. The liberalisation of Telecommunications Services and Infrastructure (1990 Services Directive and subsequent amendments)**

Liberalisation of services and networks in the European Union has proceeded in a number of stages.

- In 1990 the "Services Directive"<sup>12</sup>, required the abolition of special and exclusive rights over public telecommunications services (but not networks) except the provision of voice telephony services<sup>13</sup>. This covered telecommunications services other than voice telephony and basic data switching, as well as opening up the provision of all communications for businesses or within so-called "closed user groups" (e.g. private

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<sup>8</sup> Council Directive 93/13/EEC of 5.4.93 on "unfair terms in consumer contracts" (OJ L 95 of 21.4.93, pp.29-34)

<sup>9</sup> European Parliament and Council Directive 97/7/EC of 20.5.97, on "the protection of consumer in respect to distance contracts" (OJ L 144 of 4.6.97, pp. 19-28)

<sup>10</sup> Council Directive 84/450/EEC of 10.9.84 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning "misleading advertising" (OJ L 250 of 19.9.84, pp. 17-20)

European Parliament and Council Directive 97/55/EC of 6.10.97 amending directive 84/450/EEC concerning "misleading advertising so as to include comparative advertising (OJ L 290 of 23.10.97, pp. 18-23)

<sup>11</sup> Commission "Inventory of Community Acts relating to Consumer Affairs and Consumer Health protection" [http://europa.eu.int/en/comm/dg24/library/legislation/index\\_en.html](http://europa.eu.int/en/comm/dg24/library/legislation/index_en.html)

<sup>12</sup> c.f. footnote 8

<sup>13</sup> The scope of this monopoly is still relevant in two Member States (Portugal and Greece) that have an additional period before opening their market to full competition. To remain within the monopoly area, a service had to fall within the precise definition of voice telephony found in the directive. This meant in practice that the service had to be offered in real time to the public and allow communication between two people who were using the public telecommunications network to make the call. (See Commission Communication of 4 April 1995 on the status and implementation of Directive 90/388/EEC, COM(95) 113 final).

branch exchanges – PBXs) to competition. Subsequent liberalisation has been introduced by amending this directive to expand the scope of the activities in the liberalised area.

From 1 January 1993, liberalisation had to be extended to the provision of basic data services to the public.

*By mid-1993 the Commission had carried out a broad public consultation which led to political commitments from the Council and European Parliament to accept the full liberalisation of telecoms services from 1 January 1998 (subject to possible transitional periods for certain countries). This agreement was extended to telecom networks by the Council in the autumn of 1994.*

- In 1994 the **provision of satellite services and satellite equipment** was liberalised<sup>14</sup>.
- In 1995 the first steps to liberalise networks was taken with the **Cable Directive**<sup>15</sup>, which required Member States to allow Cable TV networks to be used to offer telecommunications services which were open to competition. *(At the time that opened the possibility of using those networks for corporate and closed user group voice and data services, for value-added services and for the provision of public data services).*
- Also in 1996 the **Mobile Directive**<sup>16</sup> required the removal by 1998 of certain restrictions on the way in which mobile networks were operated (i.e. allowing operators to build their own infrastructure or microwave links, rather than relying on the networks provided by the national fixed network operator; allowing them to directly interconnect with mobile or fixed networks in other Member States, rather than having to interconnect via the incumbent operator in their home State; and the requirement to license DCS 1800 systems in every Member State from 1998).
- In 1996 the **Full Competition Directive**<sup>17</sup> provided for the early liberalisation of alternative telecoms networks from July 1996, and set the deadline of 1 January 1998 for full liberalisation as well as a mechanism for requesting additional transitional periods. It also opened up the market for directory information to full competition.

In addition, (as will be seen below) it set out a range of provisions addressing licensing, universal service, interconnection, and numbering, which established

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<sup>14</sup> Commission Directive of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications (94/46/EEC; OJ L 268/15, 19.10.1994)

<sup>15</sup> Commission Directive of 18 October 1995 amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalised telecommunications services (95/51/EC; OJ L 256/49, 26.10.1995)

<sup>16</sup> Commission Directive of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications (96/2/EC; OJ L 20/59, 26.01.1996)

<sup>17</sup> c.f. footnote 5

basic regulatory principles derived from the competition rules. These have now been complemented by the detailed harmonised framework set out below.

- Finally, on 23 June 1999 the **Cable Ownership Directive**<sup>18</sup> was adopted. This follows the detailed review of the issue of cable network ownership by telecoms operators and of restrictions imposed on telecoms operators which prevent them from offering broadcasting services over the telecoms networks<sup>19</sup>. The Cable Ownership Directive deals only with the issue of joint ownership of cable and terrestrial networks by incumbent operators, and in its current form requires Member States to ensure the structural separation of the cable business. This provision requires separation, but not divestiture of the cable business.

## **3.2. General Regulatory Framework**

### *3.2.1. Open Network Provision*

As has been earlier stated, the regulatory framework for telecommunications has been based on the concept of Open Network Provision (ONP). This establishes the need for harmonised conditions of access to public networks and services according to defined principles of *objectivity*, *transparency* and *non-discrimination*. These principles apply to the actions of both regulators and market players and set the basis for fair and even-handed regulation and commercial conduct in a liberalised telecoms market.

One example of this is the requirement in the Interconnection Directive that operators apply similar interconnection terms and conditions to all operators offering similar services (including their own activities and those of subsidiaries and partners). Another less obvious example is the need for greater transparency than might be appropriate in more traditional markets, because in the transition from a monopoly to a liberalised environment, effective competition may require more information to be in the public domain because of the strong position enjoyed by incumbent operators. Thus the Interconnection Directive contains a requirement for interconnection agreements to be made available by the NRA to all interested parties.

### *3.2.2. Significant Market Power*

As has been mentioned above, the concept of Significant Market Power is an important one in the ONP regulatory framework. Operators with such power are subject to additional regulatory obligations, such as the requirement to offer cost-oriented interconnection rates, or to meet all reasonable requests for access to their network. Generally, there is a presumption that SMP exists where an operator, whether fixed or mobile, is judged by the NRA to have 25% or more in the relevant market, though the NRA may determine that an operator has SMP with less than 25% of the market, or indeed that it does not, even if the

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<sup>18</sup> Commission Directive 1999/64/EC amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entities (OJ L 175, 10.7.1999, p.39)

<sup>19</sup> Commission Communication concerning the review under competition rules of the joint provision of telecommunications and cable television networks by a single operator and the abolition of restrictions on the provision of cable television capacity over telecommunications networks, (98/C71/EC) OJ C71, 07.03.1998

operator has more than 25%. Thus regulators have flexibility whether SMP exists. The undertakings judged to have significant market power must be notified to the Commission. Apart from determining the relevant market, existence of SMP is determined on a range of other factors: the organisation's ability to influence market conditions; its turnover relative to the size of the market; its control of the means of access to end-users; its access to financial resources and its experience in providing products and services in the market. **All incumbent operators are currently judged to possess significant market power in the fixed public telephone market.**

In the case of mobile operators, the Interconnection Directive requires that cost-oriented interconnection pricing should only apply where the operator has significant market power on the **national market for interconnection** (i.e. fixed and mobile). Up to date information on notifications of SMP can be found on the ISPO website ([www.ispo.cec.be](http://www.ispo.cec.be)).

### *3.2.3. Pricing principles*

In a fully competitive market, it is preferable that market forces and the commercial process should set prices rather than regulators. Nevertheless, in the transition to full and effective competition, these forces may not be sufficiently strong, and so Community legislation in the telecoms sector contains two pricing principles which depart from this rule.

- Firstly, the requirement for **cost-oriented tariffs** applies in a wide range of areas to operators notified to the Commission as having significant market power (as defined in Community law). This requirement applies, inter alia, to interconnection charges, the provision of leased lines, the provision of special network access and voice telephony services.

Given the importance of interconnection charges in securing strong competition in a newly liberalised market, guidelines to assist NRAs in determining whether interconnection charges are cost-oriented or not are set out in the Commission Recommendation on interconnection pricing<sup>20</sup>.

- Secondly, a **requirement for affordability** exists in the Voice Telephony Directive in relation to the provision of universal service as defined in Community law. Affordability is for each Member State to define in the light of the different priorities which exist for consumers in different Member States and the differing standards of living.

### *3.2.4. Subsidiarity - the potential for additional national regulation*

The framework put in place for telecoms is fully consistent with the principle of subsidiarity. The regulatory framework at Community level establishes a set of minimum requirements which Member States are obliged to implement and enforce, with the detailed application of those principles and requirements being carried out at a Member State level. The use of Directives as the key legislative instrument in extending the internal market and competition rules to the telecoms sector means that implementation is left to each Member State to decide according to its own requirements and national legal system. Day to day

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<sup>20</sup>

Commission recommendation of 29 July 1998 amending Commission recommendation 98/195/EC of 8 January 1998 on Interconnection in a liberalised telecommunications market. Part 1 - Interconnection Pricing. (C(1998)2234) (not yet published).

management and enforcement of the regulatory framework is the responsibility of the NRAs of each Member State. Licences are granted exclusively at national level, and NRAs decide whether particular services in their territory should be subject to general authorisations or individual licences, within the overall framework established by the Licensing Directive.

Moreover, in certain areas, it is possible for Member States to impose additional national requirements on operators, for example in the area of mandatory service provision. The EC regulatory framework introduces the concept of **universal service** - a set of minimum services which must be available to all. EC legislation gives NRAs discretion to establish a universal service fund to compensate the universal service operator if it considers that the net cost of providing those services constitutes an unfair burden for this operator. In order to calculate the net cost the NRA must take into account the benefits of being a universal service operator.

It is open to a Member State to set additional obligations on operators as part of universal service in its territory. An example of one such additional obligation is the requirement in Belgium for the provision of an ISDN-based Internet access for all schools. But where a Member State does so, such obligations may not be funded via a universal service funding mechanism. Normally, this means that any costs associated with such obligations must be met either by the operator(s) concerned or directly by the State. They would also have to be consistent with the Treaty rules, and in particular, the competition rules relating to state aid.

In other areas, EC legislation does not allow Member States to go further. For example, the Licensing Directive sets out an exhaustive list of conditions which may be applied to licences. Member States are not permitted to impose any other conditions on licences, and the Commission has taken action against certain Member States who have done so.

### *3.2.5. Third countries & International aspects*

The EU's trade relations with third countries in respect of telecommunications are principally governed by the GATS Fourth Protocol on Basic Telecommunications Services<sup>21</sup> which came into force in February 1998.

#### **3.2.5.1. General Agreement on Trade in Services (GATS): 4<sup>th</sup> Protocol on Basic Telecommunications Services**

In the context of the GATS, basic telecommunications means voice telephony, packet and circuit switched data transmission services, telex, telegraph, facsimile and leased lines services. The Protocol covers all telecommunications services sub-sectors: local, long-distance and international, irrespective of whether they consist of the transport of sound, data, images or any combinations thereof. Generally, the commitments made by WTO countries on basic telecommunications include all possible technological means of transmission: cable, radio or satellites. Most countries have specified in their schedules that broadcasting of radio and television programmes is excluded. Unless otherwise specified, schedules follow a technologically neutral approach. The commitments cover market

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<sup>21</sup> The text of the Protocol is attached to Decision 97/838/EC of the Council of 28 November 1997 concerning the conclusions of the WTO negotiations on basic telecommunications services (OJ L347 10.12.1997)

access and national treatment, and are mostly phased-in: the dates for liberalisation of services such as public voice telephony vary from 1998 to 2011.

48 WTO Members, including the EC and its Member States also undertook commitments on regulatory principles on the basis of the so-called Reference paper, which addresses issues such as interconnection, anti-competitive practices, licensing conditions, scarce resources, universal service and independence of the regulatory authorities. They aim to underpin market access and national treatment commitments made by WTO Members.

During the Negotiations, a Chairman's note clarified that WTO Members could maintain policies on management of frequencies, in particular indicating that management of frequencies was not *per se* a measure which needed to be listed as a market access restriction. Thus, a WTO Member has the right to exercise spectrum management provided that such management complies with the criteria of Article VI (Domestic Regulation) of the GATS. This includes the ability to allocate frequency bands taking into account not only present, but also future needs.

In the case of services to and from the EU and other WTO Members, licences can therefore be used to set conditions for market access, consistent with the obligations accepted by the EC and its Member States as a signatory to the GATS Protocol. The Licensing Directive furthermore provides that where EU organisations have difficulty in obtaining or in operating under authorisations in non-WTO member countries, the Commission may submit proposals to the Council for negotiation of comparable rights for Community organisations in these third countries. Similar provisions apply when organisations have difficulty in obtaining interconnection.

#### 3.2.6. *European standardisation*

A key part of telecoms liberalisation and the creation of a European single market is European standardisation. To this end, one of the first steps in telecommunications policy was the establishment of the European Telecommunications Standards Institute (ETSI) in 1988. The ONP framework makes provision for standards developed by ETSI to be published in the Official Journal and their use encouraged by Member States. Similarly, in the field of telecoms terminal equipment, ETSI has been given mandates by the Commission to develop standards which have formed the basis for Common Technical Regulations, which permit a particular class of equipment to circulate freely within the Community<sup>22</sup>.

European standardisation and ETSI in particular has also played a vital role in the development of mobile and wireless communications, for example in the development of the GSM standard.

### 3.3. **Licensing framework**

Sources : Services Directive (as amended)  
Licensing Directive  
SPCS Decision

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<sup>22</sup> When Directive 1999/5/EC is implemented, this latter procedure will no longer be required, but ETSI will continue to play a key role. See section IV.

### 3.3.1. *Aim*

Following the liberalisation of telecoms markets within the European Union, most Member States continue to require some form of licence or authorisation from companies wishing to offer telecommunications services or operate networks in their territory. Attention at an EU level has focused on developing a common framework for these licences and for the procedures according to which they are granted in order to facilitate the development of a single market in telecoms.

Licences are still granted by Member States. Current legislation does not contain a mechanism to grant licences at European level covering more than one Member State, though there are provisions for the harmonisation of licensing conditions across the EU and the development of a one stop shopping procedure. But Member States are required to facilitate the provision of telecoms services between Member States.

### 3.3.2. *Individual licences & general authorisations*

The EU framework envisages two approaches to licensing. Firstly, the use of general authorisations, (e.g. statutory provisions, class licences) and, secondly, the use of a heavier individual licensing procedure – to be used only in certain prescribed cases. In the case of general authorisations, the terms and conditions for operating a particular service are defined by the Member State. A company simply has to comply with those terms in offering its service (and possibly complete administrative formalities such as declaring to the NRA that it is a service provider).

According to the Licensing Directive<sup>23</sup>, Member States may only issue individual licences where the licensee has:

- access to radio frequencies or numbers;
- rights of way in respect of access to public or private land;
- obligations to provide certain services (i.e. under universal service obligations or other mandatory services under ONP legislation, e.g. provision of a minimum set of leased lines);
- obligations arising from a determination of significant market power (e.g. cost accounting requirements for interconnection or leased lines; cost-oriented tariffs for interconnection).

In addition to these four cases, there is a general provision allowing individual licences to be used in relation to “the provision of publicly available voice telephony services, the establishment and provision of public telecommunications networks as well as other networks, involving the use of radio-frequency”. This general provision potentially means

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<sup>23</sup> Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorizations and individual licences in the field of telecommunications services.(OJ L 117/15, 07.05.97)

that all voice telephony service, public networks and all radio-based networks (public or private) could be subject to individual licences. This provision is specifically identified in the Directive as one of the areas to be examined in the 1999 Review.

All other types of services and activities may only be subject to general authorisation regimes. Such regimes may take the form of class licences, or, as is for example the case in Sweden, statutory provisions, where the basic freedom to provide telecoms networks and services is defined in the Telecoms Law without further licensing formalities.

### 3.3.3. *Limitation on number*

The Licensing Directive provides that there should be no limitation on the number of licences granted for a particular type of service or network. This is a departure from the historic approach to licensing, where Member States tended to decide in advance that there would be a limited number of licences granted for a particular service. There remain however two important exceptions to this rule:

- first, limitation is possible in the area of wireless systems, where the limitation to, say, three or four mobile telecommunications systems results from a physical limitation within the given spectrum band rather than from a subjective assessment by a Member State of the number of players the market can support;
- second, limitations have been allowed on a temporary basis where insufficient numbers were available within the national numbering plan. However, the Full Competition Directive<sup>24</sup> placed an obligation on Member States to make adequate numbers available from 1 July 1997, so this provision may no longer be used in the context of a liberalised market.

When a Member State decides to limit the number of licences for a given service, there are certain procedures which must be gone through, principally to ensure that the process is transparent and non-discriminatory. The Member States are required to allow interested parties to comment on the decision to limit before doing so; publish a reasoned decision; review the limitation at reasonable intervals, and invite applications for licences on the basis of objective, non-discriminatory, detailed, transparent and proportionate criteria. If it becomes clear that the number of licences can be increased, this fact shall be published and applications for additional licences shall be invited.

### 3.3.4. *Conditions*

The Licensing Directive contains an exhaustive list of the types of conditions which may be attached to licences in its Annex. These cover a very wide range, from conditions relating to universal service, disabled users, effective use of radio frequency, to conditions to facilitate monitoring and enforcement by NRAs. Any licence conditions must be objectively justified, proportionate, non-discriminatory and transparent and Member States are not permitted to introduce any further conditions in licences, except insofar as are necessary to safeguard the national public interest.

Licence conditions may be amended where objectively justified and in a proportionate manner. When Member States do so, they should publish their intention to ensure

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<sup>24</sup>

c.f. footnote 5



interested parties have a chance to comment. Similar transparent, objective and non-discriminatory procedures are required for granting individual licences, and for revoking general authorisations and individual licences. Member States must ensure that an appeal mechanism (to an institution independent of the national regulatory authority) exists for operators to challenge a decision not to grant or to revoke a licence.

#### *3.3.5. Fees and time frame for the grant of licences*

The Licensing Directive provides that fees for general authorisations should be limited to covering the costs of issuing, managing, controlling and enforcing the licence. Coverage of the administrative costs incurred is also the principle for individual licences, but where these licences give access to scarce resources (frequency or numbers), charges may be imposed which “reflect the need to ensure the optimal use of these resources”. In this context, the EU framework neither requires nor rules out the use of administrative pricing (pricing which seeks to reflect the economic value of the spectrum) or auctioning as a means of allocating licences for radio spectrum. However, Member States must in setting charges take into account the need to foster the development of innovative services and competition.

Where charges are imposed, this must be done in a non-discriminatory way so one operator should not be charged more than another operator without some objective basis for doing so.

The Licensing Directive also establishes **time limits** within which authorisation procedures or licensing should be completed :

- For general authorisations, if any administrative formalities are required prior to starting to operate (e.g. to check that the service falls within the terms of a class licence), the **time limit before starting to operate may not exceed 4 weeks** from receipt by the NRA of all the information it requires.
- For individual licences, an applicant must be informed of the Member State’s decision within 6 weeks of receipt of the application. An extension of up to 4 months (+ further 4 months in the case of comparative bidding) may be required in objectively justified cases.

#### *3.3.6. Provisions for harmonisation of licence conditions*

The Licensing Directive also establishes a mechanism to promote further harmonisation of conditions and procedures for general authorisations within the EU by formalising existing contractual relationships between the European Commission and **CEPT/ECTRA** (European Committee for Telecommunications Regulatory Affairs) and **ERC** (European Radiocommunications Committee). This provides for the Commission, after consulting the **Licensing Committee**, to give mandates to these bodies or to other relevant harmonisation bodies. The results of this work can be formalised by a Commission Decision which is taken after consideration by the Licensing Committee.

#### *3.3.7. One stop shopping*

Since licences continue to be issued at national level, the fact that an operator or service provider is licensed in one Member State does not remove the need to obtain a licence in

other EU Member States for the right to provide services there. The Licensing Directive therefore builds on existing mechanisms developed by the CEPT allowing companies to apply via a single point of contact for licences for particular categories of services in more than one Member State. This “one stop shopping” facility is offered by the European Telecommunications Office (ETO) in Copenhagen, covering most EU Member States and a number of services<sup>25</sup>. It offers users a definitive response to their applications within a 9-week period. It also makes available a database containing details of the national authorisation regimes, and is thus a useful point of departure for new entrants to the EU market.

Because of the limited scope of this procedure, it cannot be used for voice telephony, infrastructure, telex, mobile radio services, satellite PCS services and broadcasting services. This has limited the effectiveness of the procedure, and in practice, operators wishing to provide services in a particular member state tend to approach the relevant NRA themselves.

### 3.4. Scarce resources

Sources : Services Directive (as amended)  
Interconnection Directive (as amended)  
Licensing Directive  
SPCS Decision  
UMTS Decision  
GSM Directive  
ERMES Directive  
DECT Directive  
European Emergency Call Number Decision  
International Telephone Access Code Decision

#### 3.4.1. General principles

National frequency assignment and licensing is governed by European Community legal principles. Conditions governing access to frequencies, which is in most cases considered as a scarce resource, should be objective, non-discriminatory, transparent, published and proportionate to the objective sought.

As has been noted above, one major principle of the EC regulatory framework is that there should be no artificial limits on numbers of operators and service providers in the market. On a wire-based network, there is no resource scarcity, and thus no need to restrict numbers

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<sup>25</sup> ETO is part of the CEPT. The one stop shopping procedure currently covers Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United Kingdom. The services offered under the procedure are: bearer data services, other liberalised services (i.e. all fixed telecoms services other than public voice telephony, telex and bearer data services, liberalised in the EU), Premium Rate Services (shared-cost or shared revenue), and services not provided to the public (e.g. closed user group services). For further information see [www.eto.dk](http://www.eto.dk).

of providers. However, radio- and satellite-based communications use the radio spectrum to carry traffic. Since the spectrum is a scarce resource which by its nature often cannot meet the totality of demand for its use for the provision of certain services, its exploitation must be rationed in some way. Numbers have traditionally also been seen as a scarce resource, although as has been mentioned above, there is now a requirement for sufficient numbers to be made available to operators by NRAs, so scarcity of numbers should only now be an issue in relation to so-called golden numbers (numbers which are particularly attractive, easy to remember, or have some other significance).

The telecoms regulatory framework sets out basic principles for the allocation of scarce resources. These are as follows:

- Responsibility for administration of scarce resources must rest with a body independent of operators;
- Allocation of scarce resources must be carried out in a non-discriminatory, objective and transparent manner;
- Any fees levied for the use of scarce resources must reflect the administrative costs of managing the resource, except insofar as is justified in order to ensure optimal use of those resources, taking into account to the need for non-discrimination, and the need to foster the development of innovative services and competition.

#### *3.4.2. Frequencies*

The telecommunications regulatory framework sets out a set of provisions which govern the allocation and use of frequencies by telecommunications operators.

##### **3.4.2.1. Regulatory principles**

The Services Directive<sup>26</sup> provides that access to radio frequencies may only be restricted where necessary to fulfil essential requirements such as effective use of frequency spectrum and avoidance of harmful interference. The Licensing Directive allows Member States to limit the number of licences it issues for a particular service only where that service uses frequency spectrum. This Directive also recognises use of spectrum as a factor justifying individual licensing and provides certain safeguards covering the manner in which it is awarded, such as a requirement for transparency, objectivity and non-discrimination in granting licences.

##### **3.4.2.2. Mobile and personal communications systems**

Mobile networks were liberalised by the Mobile Directive<sup>27</sup>, which expanded the scope of the Services Directive to include mobile and personal communications systems.

The Directive abolished all remaining special or exclusive rights in the mobile sector. In addition, it provided that Member States could limit the number of licences for mobile and personal communications systems to be issued only on the basis of essential requirements and only where related to the lack of availability of frequency spectrum and justified under

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<sup>26</sup> c.f. footnote 8  
<sup>27</sup> c.f. footnote 16

the principle of proportionality. Therefore, as soon as frequencies were made available, appropriate action had to be taken by the Member States to assign these frequencies in such way as to ensure efficient use of radio spectrum and effective competition amongst operators.

With regard to radio frequency planning and future designation of frequencies for specific communications services, Member States are also required to publish their frequency plans as well as procedures to be followed by operators to obtain frequencies within the designated frequency bands and to review frequency allocations at regular intervals. These plans should include a clear time-scale for further expansion, identify intermediate dates and steps for migration and be communicated to the Commission. In cases where the number of licences has been limited on the basis of spectrum scarcity, Member States must also review whether technological progress makes spectrum available for additional licences. This confirms the need for objective and transparent criteria for the designation of frequencies for specific communication services.

### **3.4.2.3. Harmonised Frequency Bands.**

Frequencies continue to be assigned and managed at a national level, though working within frequency band allocations which have been agreed both at an international level (in the two-yearly World Radiocommunications Conferences), and at a regional level within the **CEPT** (composed of all EEA and EFTA member states, as well as many central and eastern European countries).

For certain pan-European services, there is legislation at Community level which harmonises frequency allocation across the EU. Three Directives were adopted in the late 1980s and early 1990s to harmonise frequency bands for, respectively, GSM, ERMES (digital paging) and DECT (digital enhanced cordless telephony). These were thought necessary to ensure the establishment of truly pan-European services and required Member States to reserve certain frequency bands (which had already been assigned to the respective services at the World Radiocommunications Conference) for GSM, ERMES and DECT.

But more recently, Community policy has sought to exploit the relationship between the Community and the European Radiocommunications Committee (**ERC**) in the CEPT as a means of ensuring progressive harmonisation of frequency bands in the EU.

Thus, since 1992, harmonisation measures have not been used to establish common frequency bands in EU Member States. In a Council Resolution of November 1992<sup>28</sup> Member States undertook actively to participate in the development of ERC decisions, and to commit themselves to implement them. ERC decisions do not have a binding legal effect. Nevertheless, within the Member States, ERC decisions have, in the majority of cases (though not in all) been implemented at a national level<sup>29</sup>.

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<sup>28</sup> Council Resolution of 19 November 1992 on the implementation in the Community of the European Radiocommunications Committee Decisions (92/C 318/01; OJ C318/1, 04.12.92)

<sup>29</sup> See Green Paper on radio spectrum policy (COM(1998)596 final, 09.12.98) and Communication from the Commission to the Council and the European Parliament on the evaluation of the CEPT/ERC decision mechanism (COM(95) 85 final, 26.04.95).

In some cases, these decisions are then backed up by Community law. The Mobile directive<sup>30</sup> obliged Member States not to refuse applications for licences for DCS 1800 (part of the GSM “family”, now known as GSM 1800) once the ERC Decision had been adopted or in any case from 1 January 1998. Similarly, the S-PCS<sup>31</sup> and UMTS<sup>32</sup> decisions both contain a mechanism whereby if the ERC decision to harmonise frequency bands is not progressing satisfactorily, legally binding measures at EU level can be agreed via the Licensing Committee created under the Licensing Directive.

In order to guide this process, the Commission gives mandates and work orders to the ERC and its permanent executive office, the European Radiocommunications Office (ERO).

#### **3.4.2.4. Satellite-Personal Communication Systems (S-PCS)**

S-PCS are satellite systems, mostly in non-geostationary orbit, designed to enable global interconnectivity and mobility via the use of personal, handheld, voice -, data -, and, in the future, video communications equipment. In the case of these services which by their nature have a footprint or service area which covers several countries, the Community adopted a Decision which provides a mechanism to co-ordinate the grant of licences according to common conditions. This Decision requires Member States to organise provision of S-PCS services in frequency bands which have been harmonised by CEPT. It also provides for harmonisation of licensing conditions of S-PCS services through the CEPT, on the basis of mandates issued by the Commission. If the Commission or any Member State considers that this harmonisation work is not progressing satisfactorily, the Decision does leave open the possibility for a Community harmonisation measure, adopted by the Commission via the Licensing Committee.

The S-PCS Decision also contains some provisions which are similar or identical to those found in the Licensing Directive (e.g. on confidentiality of information, one-stop shopping, procedures relating to third countries). This was necessary because the Licensing Directive was not in force when the S-PCS Decision was adopted. The Decision remains in force until May 2000.

#### **3.4.2.5. Universal Mobile Telecommunications System (UMTS)**

A similar approach has also been adopted for the third generation of mobile communications systems (UMTS)<sup>33</sup> This Decision requires Member States to ensure that UMTS services are introduced on their territory by 1 January 2002, and in particular that an authorisation system is in place by 1 January 2000. The provision of this class of service is required to be in frequency bands harmonised by CEPT, using standards developed by ETSI. Harmonisation of Member States’ approach to authorisation is envisaged where potential systems are incompatible.

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<sup>30</sup> c.f. footnote 16

<sup>31</sup> Decision N° 710/97/EC of the European Parliament and of the Council of 24 March 1997 on a coordinated authorization approach in the field of satellite personal-communication services in the Community. (OJ L 105/4, 23.04.97)

<sup>32</sup> Decision N° 128/1999/EC of the European Parliament and the Council on the co-ordinated introduction of a third-generation mobile and wireless communications system (UMTS) in the Community. (OJ L 17/1, 22.01.99)

<sup>33</sup> c.f. footnote 32

Co-operation with CEPT on issues such as harmonisation of frequency use, and one-stop shopping, is envisaged with similar procedures as for S-PCS.

### *3.4.3. Numbering*

Numbers continue to be allocated at a national level as part of national numbering plans. Nevertheless, there are specific rules at EU level for the allocation and of numbers.

#### **3.4.3.1. Allocation**

Under the Services Directive (as amended by the Full Competition Directive) Member States are required to ensure that adequate telecommunications numbers are available for all telecoms services. Numbers have to be allocated in an objective, non-discriminatory and transparent manner. The Interconnection Directive also specifies that numbering plans must be controlled by NRAs, in order to ensure independence from the incumbent operator. The main elements of national numbering plans must be published. Member States are obliged to co-ordinate their national positions in international organisations/forums where numbering issues are discussed. And Member States must also ensure that organisations do not discriminate in the number sequences used to give access to the services of other telecoms operators.

#### **3.4.3.2. Golden numbers**

Since July 1997 therefore, numbers should no longer be regarded as a scarce resource in general terms, since Member States are required to ensure there are sufficient available for all telecoms services (although there may be temporary transitional scarcity if full capacity is reached in numbering plans before they are revised and expanded). However, there are certain numbers which distinguish themselves from all other numbers in a given number range because they are attractive to have, are easy to learn or remember, subjectively pleasing or are in use and known by the general public or client base. These numbers may have a significant commercial value. They may be viewed as a scarce resource, even though as numbering plans are expanded more may be released. NRAs must ensure that the allocation of these numbers is subject to the same principles of transparency, non-discrimination and objectivity.

#### **3.4.3.3. Number portability**

Member States are also required to introduce operator number portability (allowing customers to switch to another phone company, but keep their telephone number if they remain at the same location) in all of the fixed network as of 1 January 2000 (except for those countries with derogations on introduction of voice telephony, for whom the requirement is for two years after liberalisation). There is also an obligation on Member States to ensure that charges to consumers, and interconnection pricing to facilitate number portability, are reasonable.

#### **3.4.3.4. Emergency Number and International Access Code.**

Finally, two specific harmonisation measures on numbering have been agreed at Community level. They require Member States to ensure, in the first case, that “112” was

introduced as the number to access emergency services<sup>34</sup> to co-exist with any national numbers (such as 100 in Belgium or 999 in the UK), and that “00” was introduced in Member States as the access code for international telephone calls<sup>35</sup>.

### 3.5. The Interconnection framework

Sources :	Services Directive (as amended) Interconnection Directive (as amended)
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#### 3.5.1. *Aim*

The interconnection framework aims at providing a common regulatory framework for interconnection in the Member States of the EU by identifying the rights and obligations of different market actors and providing national regulatory authorities with the necessary powers to intervene in the essentially commercial and technical process of negotiating interconnection arrangements.

An interconnection framework is central to the successful development of a competitive telecoms market in the European Union, because at least in the early stages of liberalisation, all new entrants have to rely on the networks of incumbent operators to deliver, transit or terminate traffic from or to their customers. Increasing levels of competition and new technology mean that new entrants are beginning to roll out alternative networks in certain areas, especially for business customers. But a framework which provides fair and transparent interconnection terms is likely to be vital for the development of competition well into the medium term.

#### 3.5.2. *Definition*

Interconnection involves the physical and logical linking of telecommunications networks with the aim of allowing any to any communication between users. This means that interconnection rules are focused on situations where one company controls the access to a particular user.

#### 3.5.3. *Rights and obligations*

Underlying the approach to interconnection is recognition that this is principally an issue for commercial negotiation between the parties concerned. The regulatory framework, however, ensures that almost all operators have a basic right and obligation to negotiate interconnection and promotes a high degree of transparency. In the absence of such a framework, there might be little incentive for incumbent operators to conclude interconnect arrangements with new entrants, or they would only do so on terms which reflected their natural advantages in terms of market position and information. The Interconnection Directive goes further for operators with significant market power, requiring them to meet **all reasonable requests for access** to the network.

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<sup>34</sup> Council Decision of 29 July 1991 on the introduction of a single European emergency call number (91/396/EEC; OJ L 217/31, 06.08.1991)

<sup>35</sup> Council Decision of 11 May 1992 on the introduction of a standard international telephone access code in the Community (92/264/EEC; OJ L 137/21, 20.05.1992)

Rights and obligations to negotiate interconnection fall on any organisation providing public telecommunications networks and/or publicly available telecommunications services controlling access to customers.<sup>36</sup> The framework created for interconnection leaves open the possibility for Member States to put heavier obligations related to interconnection in the licences of operators controlling infrastructure, and thus allowing these operators to benefit from more favourable interconnection rights in comparison with service providers. Naturally, these licence conditions must be non-discriminatory.

The level of regulation in respect of interconnection depends on two factors: the existence or otherwise of significant market power; and whether the operator provides mobile services or fixed ones. The figure below illustrates the various obligations.

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<sup>36</sup> Annex II of the Interconnection Directive specifies that these rights and obligations apply to organisations providing fixed and/or mobile public switched telecoms networks or services where they control access to one or more network termination point or to one or more unique numbers in the national numbering plan; (ii) organisations providing leased lines to user's premises ; (iii) organisations authorised in a Member State to provide international telecoms circuits between the EC and third countries, for which they have special and exclusive rights. (iv) organisations providing telecommunications services which are permitted to interconnect under national licensing provisions.



Type of operator	Obligations under the Interconnection Directive
All operators offering publicly available telephone services and controlling access to end-users.	<ul style="list-style-type: none"> <li>• Right, and obligation when requested by another operator, to negotiate interconnection with each other.</li> <li>• Must provide sufficiently detailed financial information to NRA on request, and submit financial report to independent audit</li> </ul>
All operators with SMP	<ul style="list-style-type: none"> <li>• Meet all reasonable requests for access, including at points other than network termination points offered to majority of end users.</li> <li>• requirement to act in a non-discriminatory manner; make available all necessary information to organisations considering interconnection.</li> <li>• make available interconnection agreements to NRAs who must make parts of them available to interested third parties;</li> </ul>
Mobile operators with SMP on national market for interconnection	<ul style="list-style-type: none"> <li>• offer cost-oriented interconnection; NRAs may require full justification and adjustment of charges if not satisfied.</li> </ul>
Fixed operators with SMP	<ul style="list-style-type: none"> <li>• offer cost-oriented interconnection</li> <li>• requirement to publish a reference interconnection offer;</li> <li>• Interconnection charges should be unbundled.</li> <li>• maintain accounting separation between their interconnection and other activities.</li> </ul>

#### 3.5.4. Pricing and costing principles

Whilst interconnection is principally a matter for commercial agreement, the Interconnection Directive as highlighted above requires operators with significant market power to offer cost-oriented interconnection, though the legal framework does not mandate a particular type of costing methodology to be applied. As has been stated above, the definition of SMP for mobile operators in respect of cost-orientation applies to the national market for interconnection (i.e. market covering all fixed-fixed as well as fixed-mobile and mobile-mobile interconnection), not just the mobile interconnection market. This means that most mobile operators' charges for terminating traffic from the fixed network are unlikely to be subject to cost-orientation.

The issue of costing methodology and indications of best practice figures for interconnection have subsequently been developed in a Commission Recommendation<sup>37</sup> which proposes the use of a long run average incremental costing methodology for interconnection pricing). The best practice figures in the Recommendation are based on the prices in the three lowest cost Member States for three types of fixed - fixed network interconnection. These best practice prices are not binding in nature, but serve as a guideline for Member States. Where operators propose prices that are higher than these figures, NRAs may wish to look more closely at the underlying costs to ensure that the prices claimed are strictly cost-oriented.

#### 3.5.5. *Other forms of network access.*

The Interconnection Directive requires fixed and mobile network operators with significant market power to meet all reasonable requests for access to their networks. This is designed to stimulate innovation and new services, and so there is no precise definition of what is meant by access. Terms and conditions for access are for negotiation by the parties concerned, and the NRA can be called in to resolve disputes if necessary.

#### 3.5.6. *Third country interconnection.*

The Interconnection Directive applies to interconnection within and between Member States of the European Union. Aspects of interconnection between the EU and third countries are governed by the principles set out in the WTO agreement on basic telecoms services, and in particular, on the additional obligations agreed by participants which govern regulatory principles for international services.

#### 3.5.7. *Carrier pre-selection*

The Interconnection Directive requires Member States to take the necessary steps to facilitate the introduction of carrier selection (via short codes) by 1 January 1998. As now amended, the Interconnection Directive also requires Member States to ensure by 1 January 2000 that users are able to pre-select the carrier of their choice, while maintaining a call-by-call override facility, where the carrier concerned (e.g. local, long-distance, or international) is interconnected to the customer's local network provider. Member States who were allowed to postpone full liberalisation of voice telephony may introduce carrier pre-selection two years after liberalisation.

### 3.6. **Universal Service**

Sources : Services Directive (as amended)  
Interconnection Directive (as amended)  
Voice Telephony Directive

<sup>37</sup>

Commission Recommendation of 29 July 1998 amending Commission Recommendation 98/195/EC of 8 January 1998 on Interconnection in a liberalised telecommunications market. Part 1- Interconnection Pricing. (not yet published).

Commission Recommendation of 8 April 1998 on interconnection in a liberalised telecommunication market (Part 2 – Accounting separation and cost accounting) (98/322/EC; OJ L141/41, 13.05.98)

### 3.6.1. *Aim*

The political importance of ensuring a defined level of service at an affordable price for all users is widely recognised. In a monopoly environment service came from a single operator and lower charges for connection, line rentals and local calls could be subsidised out of the higher revenues generated by long-distance and international call charges. As liberalisation approached, a number of Member States as well as consumer and other organisations were concerned about the ability of existing or new operators to guarantee both the level of service and affordable prices. Such concerns questioned the ability of market forces on their own to deliver universal service in a competitive environment.

The regulatory framework addresses the issue of universal service by placing obligations on Member States which define the scope of universal service and which provide mechanisms for sharing any costs associated with its provision amongst market players, where this is considered necessary by the National Regulatory Authority.

### 3.6.2. *Scope of universal service*

Universal service is defined in general terms within Community legislation as a minimum set of services of specified quality which is available to all users independent of their geographical location and, in the light of specific national circumstances, at an affordable price.

Under present legislation, the precise elements to be included in this universal telephone service are contained in the Voice Telephony Directive<sup>38</sup>. In addition, the Interconnection Directive<sup>39</sup> provides the framework for the costing and financing of universal service.

Universal service therefore equates to :

- Provision of the public fixed telephone network, supporting voice telephony, group III fax and voice band data transmission via modems;
- Provision of fixed public telephone service i.e. provision to end-users at a fixed location of international and national calls, access to emergency (112) services;
- the provision of operator assistance, directory services;
- the provision of public pay phones;

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<sup>38</sup> Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (replacing European Parliament and Council Directive 95/62/EC) (98/10/EC; OJ L101/41, 01.04.98)

<sup>39</sup> Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on Interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (OJ L 199, 26.07.1997), as amended by Council and European Parliament Directive 98/61/EC.

- the provision of service under special terms and/or the provision of special facilities for customers with disabilities or with special social needs.

As noted above, Member States may set additional obligations, but where they do so these may not be funded via a universal service funding mechanism. This means that any costs associated with such obligations must be met either by the operator(s) concerned or directly by the State, Treaty rules permitting.

### 3.6.3. *Affordability*

Whilst affordability is now a legal requirement within universal service, the Community framework and in particular the Voice Telephony Directive does not attempt to provide a measure of what affordability should mean in each Member State, given the very different economic and social conditions which apply. But NRAs are required to publish their criteria for affordability, and the Commission closely monitors the evolution of universal service, in terms of penetration, coverage, quality and affordability through monitoring reports published on a regular basis<sup>40</sup>.

In order to ensure affordability, the Voice Telephony Directive requires Member States to have special regard to prices in rural and remote areas and to allow the offer of special price packages, (e.g. low usage schemes). However, where such schemes exist, they must be proportionate, non-discriminatory and transparent.

### 3.6.4. *Cost and financing*

The framework for the costing and financing of universal service is set out in the Full Competition Directive and in the Interconnection Directive. The mandatory provision of these services may impose a cost on the operator or operators who are designated by the NRAs as universal service provider for a certain area. If NRAs felt that this cost outweighed the benefits of being universal service provider, and that it represented an unfair burden, there is provision in the legislation for NRAs to use one of two mechanisms if they decide to share these costs among the various market players:

- firstly, a system of direct payments between operators interconnected with the universal service provider(s); and
- secondly, the creation of an independently administered universal service fund.

The Commission has published Guidelines<sup>41</sup> on the operation of national Universal Service Funds to assist NRAs, and to develop best practice. The Guidelines set out criteria and conditions in respect of three key aspects of Universal Service Funds: the calculation of the net cost of universal service; the mechanisms for financing universal service obligations; and the determination of who contributes and how costs are shared between contributors.

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<sup>40</sup> See 1<sup>st</sup> Monitoring Report on Universal Service in Telecommunications in the European Union, COM(98) 101, 25.2.98

<sup>41</sup> Commission Communication on Assessment Criteria for National Schemes for the Costing and Financing of Universal Service in telecommunications and Guidelines for the Member States on Operation of such Schemes (COM(96) 608)

It is significant that 12 out of the 13 States opening their markets to competition during 1998 have felt able to do so without activating a specific funding mechanism<sup>42</sup>.

In France, the costs associated with universal service were until March 1999 complemented by additional charges, which recovered an amount compensating France Telecom for costs incurred in its local loop.

Only organisations providing public telecommunications networks and/or public voice telephony services may be required under national schemes to contribute to a Universal Service Fund or to any system of supplementary charges. Such requirements for contributions must be in accordance with the principles of non-discrimination and proportionality.

#### *3.6.5. Who must provide universal service?*

The regulatory framework places obligations on Member States to ensure that universal service is delivered, but does not specify which operator or operators should be responsible for providing the service nor how they should be selected. Member States are therefore entitled to confer universal service obligations on one or a number of companies, providing they do so in a non-discriminatory, proportionate and transparent manner. Nevertheless, the Voice Telephony Directive requires Member States to ensure that at least one organisation is responsible for providing universal service at any given location.

Member States may also invite tenders for particular elements of universal service, either on a geographical or service-specific basis. In the event of there being no bid, the Member State would retain the power to impose universal service obligations. Where this sort of “franchising” of universal service takes place, those providing elements of universal service should be able to offset the net cost of such provision against contributions which they would otherwise be required to make through a financing mechanism. This is known as a “pay or play” approach.

### **3.7. Provision of mandatory and recommended services in the EU**

Sources :	Services Directive (as amended)
	Leased Lines Directive (as amended)
	Voice Telephony Directive

In addition to the requirements for universal service within the EU, there are at least two other service elements which must be made available in the Member States.

#### *3.7.1. Voice Telephony*

In addition to the elements of universal service, the Voice Telephony Directive<sup>43</sup> specifies a range of obligations which fall on (generally fixed) network providers with significant market power or designated as a USO provider.

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<sup>42</sup> Only France has an operational universal service funding mechanism.

<sup>43</sup> c.f. footnote 38

These include the provision of contracts for the customer; measuring of a range of quality of service indicators; itemised billing, tone dialling and selective call barring; requirement for cost-oriented pricing by operators with significant market power or designated as USO providers<sup>44</sup>, as well as requirements to unbundle those offerings and to grant special network access where requested. 4. Additionally, cost accounting requirements are placed on organisations required to offer cost oriented tariffs. Any discounts offered by those companies must be published and be non-discriminatory with NRAs enjoying a power to modify or withdraw such schemes.

Finally, the Directive requires Member States to put in place a mechanism ensuring that users are not cut off without warning, in the event of non-payment of their phone bills, and allows Member States to require operators to proceed with complete disconnection only after a stated period during which calls which do not incur a charge to that subscriber are permitted.

### 3.7.2. *Leased lines*

Despite the liberalisation of the telecoms market, it has been felt necessary to continue, at least for the present, to apply conditions to the supply of leased line infrastructure in the EU. Leased lines are the basic building blocks of networks and services being offered within a liberalised environment. The Community framework, which dates back to 1992 has been updated to take account of the removal of special and exclusive rights.

It now requires Member States to ensure that at least one operator is responsible for offering a minimum set of leased lines at any particular location within a Member State, and that leased lines (whether within the minimum set or not) are supplied on the basis of certain defined conditions. In order to avoid over-regulation, the obligations in the directive are now applicable only in respect of leased lines offered by organisations with significant market power, except in the event that there is no SMP organisation in the area concerned.

The minimum set of leased lines includes 2 Mbit/s and 64 kbits circuits. In addition, Member States are to encourage the provision of high speed leased lines (up to 150 Mbit/s).

## 3.8. **Protection of personal data and privacy**

Sources : Services Directive (as amended) Telecoms Data Protection Directive
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The issue of data protection and privacy is an important one in the telecoms field. In the Services Directive, data protection was recognised as one of the key essential requirements, the achievement of which could justify the imposition of conditions on operators. In 1995, a general Directive on data protection was adopted.<sup>45</sup> But the telecoms sector was regarded

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<sup>44</sup> This is without prejudice to the obligations of such operators to offer USO at an affordable price, which may require delivery of some service elements to certain customers below cost.

<sup>45</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. (OJ L 281, 23.11.1995, p31)

as a special case which merited the adoption of a sector-specific Directive<sup>46</sup> which would apply those general rules to telecoms sector. However, the specific Directive is broader than the general Directive in two respects, namely in its coverage of the rights and legitimate interests of both natural and legal persons and in its coverage of privacy issues which are not directly linked to data processing.

#### *3.8.1. Scope*

The directive applies to the processing of personal data in connection with the provision of publicly available analogue or digital telecommunications services, provided over public telecommunications networks (e.g. traffic data – who you call, for how long, etc). The processing of personal data over non-public networks is covered by the general Data Protection Directive.

#### *3.8.2. Security of services and networks*

Both telecoms service providers and network operators are required by the Directive to ensure that the network is protected against breaches in security and to inform their customers about any residual risks.

#### *3.8.3. Confidentiality of communications*

The Directive guarantees confidentiality of communications, among other things, by explicitly prohibiting listening, tapping, storing and interception of communications. There are however three exceptions explicitly provided for in the text:

- Member States are permitted to restrict such confidentiality for purposes of national security, defence, public security, prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the telecommunications system;
- the Directive does not prevent legally authorised recordings of communications in the course of lawful business practice (e.g. where stockbroking firms record orders made over the telephone for legal reasons);
- users concerned give their consent to such practices.

#### *3.8.4. Traffic and billing data*

The Directive establishes the principle that traffic data must be deleted or made anonymous except when it is needed for subscriber billing and interconnection payments purposes. The Directive also specifies which data may be stored and processed for billing purposes. In addition, providers of publicly available telecommunications services may only process such data for marketing their own telecommunications services if the subscriber has given his consent.

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<sup>46</sup>

Directive 97/66/EC of the European Parliament and the Council of 15 December 1997 concerning the processing of personal data and protection of privacy in the telecommunications sector

### 3.8.5. *Calling line identification*

Callers will have to be able to eliminate, simply and free of charge, the presentation of the calling line identification (CLI) on a per-call and per-line basis. Subscribers called must be able to prevent the presentation of the CLI of incoming calls, again simply and “free of charge for reasonable use of this function”.

Subscribers called must also be able to reject incoming calls simply and free of charge where the caller or the subscriber has eliminated his CLI. They must also be entitled to eliminate, simply and free of charge, the presentation of the connected line identification to the calling user. This is particularly useful when the call has been forwarded. The Directive specifies two cases where Member States must enable providers of public telecommunications network or services to override the elimination of the presentation of the CLI, either:

- on a temporary basis, if a subscriber requests the tracing of malicious or nuisance calls; or
- on a per-line basis for organisations dealing with emergency calls.

### 3.8.6. *Directories*

Personal data included in publicly available printed or electronic directories (or obtainable through directory enquiry services) will have to be limited to what is necessary to identify a particular natural subscriber (i.e. a private individual)<sup>47</sup>. An exception will be made when the individual subscriber has given his unambiguous consent to the publication of additional personal data.

The individual subscriber will have to be entitled, free of charge and on request:

- to be omitted from a printed or electronic directory;
- to indicate that his/her personal data may not be used for direct marketing purposes;
- to have his/her address omitted in part and not to have a reference added revealing his or her sex.

Member states may allow operators to require a payment for the exercise of the right not to have subscribers' details entered in a directory. This option depends on two conditions:

- the sum requested should not be so high as to dissuade a subscriber from exercising his/her right;
- the sum should be calculated so as to cover the costs incurred by the operator in adapting and updating the list of subscribers not wishing to have their details entered in a directory.

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The decision taken by the Council and European Parliament was to limit this provision to natural persons. Nevertheless the Directive provides that Member States must ensure that the legitimate interests of legal entities are sufficiently protected with respect to inclusion in directories.



### 3.8.7. *Unsolicited calls*

Automated calling systems without human intervention (automatic calling machines) or fax machines for direct marketing purposes will only be allowed to make calls to subscribers who have given their prior consent. For unsolicited direct marketing calls (other than by automatic calling systems), Member States will be free to choose one of the following two options: to establish either a negative list including subscribers who do not want to receive such calls or a positive list including subscribers who have indicated that they want to receive such calls.

### 3.8.8. *Other provisions*

Where calls are forwarded automatically, the Directive requires Member States to ensure that subscribers have the option, free of charge and by simple means, to stop the call being forwarded automatically by a third party to the subscriber's terminal.

Subscribers have the right to receive non-itemised bills in order to protect the privacy of the users of the telephone line.

## 3.9. **VAT on telecommunication services**

Sources : 6 <sup>th</sup> VAT Directive
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Before 1997, the EU rules on application of value added tax (VAT) to telecommunication services<sup>48</sup>, required EU based service providers to charge VAT on services supplied to all customers<sup>49</sup> established both inside and outside the EU. At the same time, non-EU based suppliers could provide services to EU based customers paying the turnover taxes in their country of establishment instead of the VAT applicable in the EU. With liberalisation of the EU telecommunications market this rule put EU based service providers at a competitive disadvantage both within and outside the EU market, compared with service providers established in countries outside the EU which do not charge VAT.

To remedy this situation, the Council authorised Member States, by way of temporary derogation from the 6<sup>th</sup> VAT Directive,<sup>50</sup> firstly to exempt from VAT services provided to non-EU based customers by EU based suppliers and secondly to apply VAT to services provided by non-EU based suppliers to EU based customers. For this purpose, non-EU based suppliers are now required to register for tax purposes in each Member State where they have customers. The derogations are valid from 1 January 1997 until 31 December 1999.

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<sup>48</sup> 6th Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turn-over taxes OJ No L 145, 13.6.1977, p.1 as last amended by Directive 96/95/EC (OJ No L 338, 28.12.1996, p.89) This Directive establishes the common regime for VAT within the Community.

<sup>49</sup> All so called non-taxable customers, mainly private persons, who cannot deduct or reclaim VAT. For taxable persons (mainly businesses) the situation is more complicated.

<sup>50</sup> Council Decisions 97/200/EC to 97/214/EC of 17 March 1997 (OJ No L 86, 28.3.1997, p.5)

The provisions applicable under the derogations have been consolidated in an amendment of the 6<sup>th</sup> VAT Directive<sup>51</sup> which will be applicable as of 1 January 2000.

VAT rates are not harmonised within the EU and the current rates in the EU Member States vary from 15 to 25 %. Non-EU based service suppliers have to apply the VAT rate of the place of establishment of their customers, whereas EU based suppliers continue to apply the rate of the Member State where they themselves are established (normal rule under the 6<sup>th</sup> VAT Directive).

#### **4. OPENING THE MARKET FOR RADIO EQUIPMENT AND TELECOMMUNICATIONS TERMINAL EQUIPMENT**

Sources :	Terminal Equipment Liberalisation Directive (as amended) Telecoms Terminal Equipment Directive Radio Equipment & Telecoms Terminal Equipment Directive
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##### **4.1. Liberalisation**

The market for telecommunications terminal equipment was the first to be liberalised in the telecoms sector. In 1988 the Commission adopted a Directive<sup>52</sup> under Article 86 of the EC Treaty to remove special and exclusive rights in relation to the supply, marketing, bringing into service, and maintenance of telecommunications terminal equipment. This Directive also required the separation of any type approval or regulatory functions from the operational activities of the telephone companies with the monopoly rights in question.

The use of the competition rules in this way was controversial. However, a landmark judgement of the European Court of Justice in 1991<sup>53</sup> confirmed the Commission's power to use Article 86 to remove special and exclusive rights, where their very existence led the companies concerned to breach the competition (or other Treaty) rules.

However, for companies operating in the late eighties, the removal of monopolies over the supply of equipment was not enough on its own, given the need to have equipment approved and tested in order to place it onto the market in other Member States. Liberalisation measures have therefore been accompanied by measures that have supported the mutual recognition first of test results<sup>54</sup> and then approvals<sup>55</sup> granted in other Member States.

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<sup>51</sup> Council Directive 1999/59/EC of 17 June 1999 amending Directive 77/388/EC as regards the value added tax arrangements applicable to telecommunications services (OJ L 162, 26.06.1999, p.63)

<sup>52</sup> c.f footnote 3

<sup>53</sup> Case 202/88 *France v. Commission* - this upheld the Commission's Art. 90 Directive on competition in the markets for telecommunications terminal equipment in all essential points

<sup>54</sup> Council Directive of 24 July 1986 on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment (86/361/EEC; OJ L217/21, 05.08.86)

<sup>55</sup> Council Directive 91/263/EEC (since consolidated with Directive 93/97/EEC on satellite earth station equipment, OJ L290/1, 24.11.93 in Directive 98/13/EC, OJ L74/1, 12.3.98)

In 1994 the liberalisation of terminal equipment was extended to equipment such as satellite earth stations, used in the provision of satellite telecommunications<sup>56</sup>.

In 1997 the Commission issued a proposal to replace this system (which relied on mutual recognition of approvals based on third party testing and certification) with a more liberal system which required only a declaration by the manufacturer that the product met the requirements in Community legislation. This Directive has now been adopted, but it has not entered into force at the time of writing. There therefore follows a brief description of the “current regime”, followed by a fuller description of the provisions of the new Radio and Telecommunications Terminal Equipment Directive that will replace it.

## **4.2. Current regime**

### *4.2.1. Basic principles*

The current regime deals only with telecommunications terminal equipment (i.e. equipment attached directly or indirectly to public networks) and satellite earth stations. It establishes a procedure for the mutual recognition of type approvals and provides for the possibility of making harmonised standards obligatory throughout the Community by adoption of so-called Common Technical Regulations (CTRs). Harmonised standards are produced by a standards body under a mandate from the Commission to reflect the essential requirements of the Directive. Products compliant with the Directive can circulate freely within the Community. Where harmonised standards do not exist, Member States have retained national regulations. In general, products complying with such national regulations do not have the right to circulate freely.

All equipment, except for receive-only satellite earth stations, must be type-approved (i.e. a priori tested) before it can be placed on the market. Once terminal equipment has been type-approved, not only can it be placed on the market, but it can also be used, subject to there being a contract between the manufacturer and network operator). Thus, for mobile and wireless equipment, there is an embedded frequency authorisation implicit in the type approval. Community legislation has not however harmonised the putting into service of satellite earth stations.

### *4.2.2. Essential requirements*

Terminal and satellite earth station equipment must satisfy certain essential requirements. The essential requirements seek to ensure (where appropriate) the safety of users and of personnel of operators, the effective use of frequency spectrum, the avoidance of harm to the network, as well as the proper functioning of the network (i.e. ensuring that equipment is compatible and works well with the network on which it is operated).

### *4.2.3. Common Technical Regulations*

The Commission, in co-operation with the Approvals Committee for Terminal Equipment (ACTE) established by the Directive, is charged with the responsibility of identifying classes of equipment for which a Common Technical Regulation is required. It then sends a scope statement to the relevant standardisation body. Once the standardisation body has

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<sup>56</sup>

Commission Directive 94/46/EC of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications, OJ L268, 19.10.94

prepared harmonised standards that implement the essential requirements, these standards may be transformed into Common Technical Regulations. Equipment that complies with these harmonised standards is entitled to and must bear a CE marking.

#### *4.2.4. Conformity assessment procedures*

The current regime relies on either **third party certification** or on a “**full quality assurance**” system verified by a competent body notified by a Member State to the Commission. Only for receive-only satellite earth stations is the simpler manufacturer’s declaration of conformity procedure applied.

For third party certification, manufacturers must apply to a notified body with a specimen of the product to be tested and sufficient documentation to enable assessment of the conformity of the product with the essential requirements. If the notified body finds that the product meets the provisions of the directive, it issues the manufacturer with an “EC type-examination certificate.”

In the case of a full quality assurance system, the manufacturer must apply to a notified body for his quality system to be assessed. The notified body must satisfy itself that the system is designed to ensure compliance of the products with the requirement of the Directive. If the notified body is satisfied, the manufacturer is then able to declare that his products meet the terms of the Directive, and affix CE and other relevant markings thereon.

### **4.3. The new regime: Radio and Telecoms Terminal Equipment Directive**

#### *4.3.1. Basic principles*

As part of the preparation of the 1998 package and in the light of the experience of the mutual recognition system, the Commission produced a proposal to replace the current terminal equipment regime with a new Directive. This new Radio Equipment and Telecommunications Terminal Equipment Directive, will replace the current Directive as well as hundreds of national approval regulations.

As well as extending the scope of equipment covered by a Community regime, the new Directive will substantially deregulate approval procedures and reduce the regulatory requirements on equipment. In line with the overall principles of the new approach to standards and technical regulations and consistent with the overall liberalisation of the telecommunications market, it will not make standards mandatory. Moreover, it will abolish the current, rather heavy conformity assessment procedures and replace them with procedures which are proportionate and in line with those used for related product sectors (consumer electronics, electrical appliances), and reduce the regulatory requirements which products have to meet.

The Directive has now been adopted. But transposition by Member States will take a further year, so that the provisions of the new regime will be fully applicable on 8 April 2000.

The scope of the new Directive is substantially enlarged, to cover not just telecommunications terminal equipment, but also (for the first time) radio equipment. While the previous Directive did cover some equipment that used radio frequencies (e.g. GSM terminals), very large parts of the market were not covered. All radio equipment,

whether operating in harmonised or non-harmonised frequency bands, will be subject to the provisions of the Directive.

The Directive does however recognise the different needs of telecommunications terminal equipment and radio equipment and for this reason, different provisions of the Directive apply to different equipment, especially in respect of essential requirements, safeguards against interference, and conformity assessment.

As stated above, the new Directive is based on the “New Approach”<sup>57</sup> to standardisation and technical regulations. It is a full harmonisation directive, no longer permitting co-existing national approval regulations. In particular, the new Directive removes the requirement for conformity with a harmonised standard as the condition of free movement. In accordance with the New Approach, harmonised standards bring with them a presumption of compliance with the essential requirements (and may therefore be attractive to manufacturers), but other means of satisfying the essential requirements are possible.

The new Directive abolishes a priori market access controls on products. Instead, the system will rely on the responsibility and liability of manufacturers and suppliers, as well as on ex post market surveillance by Member States. This should reduce time to market, and encourage greater product innovation.

#### *4.3.2. Essential requirements*

The essential requirements include less protection for networks, making manufacturers less reliant on operators for information on their networks when developing new products. This is appropriate given that most networks are now self-protecting and a product which malfunctions is therefore less likely to cause serious problems.

The Directive deals with both telecoms terminal equipment and radio equipment. There are several common essential requirements, as well as some which apply only to one type of equipment, and a list of others which are applied to specific classes of equipment if the Commission, assisted by the Committee established under the Directive, thinks it is appropriate.

The Directive as it currently stands introduces three general essential requirements which apply to all equipment. These relate to compliance with the Electro-magnetic Compatibility (EMC) Directive<sup>58</sup>, the Low Voltage Directive (LVD)<sup>59</sup>, and a requirement to prevent harm to the network causing unacceptable degradation of service to third parties. In addition, there is a requirement that radio equipment uses spectrum effectively to avoid harmful interference.

There are also five “optional” essential requirements which may apply to certain classes of equipment if the Commission, with the assistance of the Committee, thinks it appropriate.

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<sup>57</sup> Council Resolution of 7 May 1985 on a new approach to technical harmonization and standards (OJ No. C 136, 04/06/1985)

<sup>58</sup> Council Directive of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility (89/336/EEC; OJ L 139/19, 23.05.89)

<sup>59</sup> Council Directive of 19 February 1973 on the harmonization of the laws of Member States relating to electrical equipment designed for use within certain voltage limits (73/23/EEC; OJ L 77, 26.03.73)

These relate to features for users with special needs, emergency services, provisions to combat fraud, data protection and user privacy, and the need for end-to-end interworking.

#### *4.3.3. Conformity assessment procedures*

The new Directive will remove the need for a priori testing of equipment in the EU. For all fixed network equipment, manufacturers must declare that their product complies with the essential requirements of the Directive in order for it to circulate freely in the EU. The manufacturer must establish technical documentation which enables the conformity of the product with the essential requirements to be assessed. This also applies to imported equipment, where the manufacturer or the importer may make the declaration. According to existing EC legislation, the manufacturer is liable for any damage to third parties caused by the product.

In the case of radio equipment for which harmonised standards exist (e.g. GSM terminals), the manufacturer, in addition to declaring that the product complies with the essential requirements, must carry out certain specific radio tests. These must be identified by a notified body of his choice if they are not contained in the harmonised standard or if the manufacturer does not choose to use that standard.

For types of radio equipment where no harmonised standards exist, the manufacturer must carry out tests as specified by a notified body of his choice. He must further give a copy of his technical documentation to that notified body (this documentation comprises proof of conformity with the radio tests as well as the documentation established to back up the declaration of conformity). A notified body must assess that file and give an opinion (within four weeks) that the file contains all the necessary information to be capable of demonstrating that the essential requirements have been met. The manufacturer must wait a maximum of four weeks for the opinion before placing his products on the market. It should be noted that even if the manufacturer receives a negative opinion from the notified body, he may still place his product on the market if he disagrees (at his own risk).

The Directive also permits manufacturers to use the conformity assessment procedures of the EMC and LVD Directives if they prefer.

#### *4.3.4. Safeguards for radio equipment*

This Directive brings radio equipment within the scope of the single market for the first time. But since many radio frequencies are not harmonised across the EU, there is the potential for radio equipment operating in non-harmonised frequency bands to cause interference in certain Member States. The Directive therefore includes various safeguards for Member States to manage such risks. These safeguards range from marking to the ultimate safeguard of not allowing radio equipment to be placed on the market on their territory if it is likely to cause or has already caused interference. Any such measures should of course be proportionate to the likely risk involved.

## **5. REGULATING THE MARKET: A SHARED RESPONSIBILITY**

There are many organisations which play a role in telecoms regulation. This chapter attempts to explain the role and relevance of those bodies with greatest impact on the regulatory framework.

The first section looks at those bodies responsible for implementation and enforcement of telecoms legislation: the NRAs, the Commission and the Telecoms Committees, concentrating in particular on the mechanisms established to resolve disputes, and on the rights which users and companies have to redress where the rules are breached.

The second lists other bodies which have a less direct, but often influential, role to play in the regulatory framework.

### **5.1.1. Bodies responsible for implementation and enforcement of the Community regulatory framework**

#### *5.1.2. Redress under national law: the role of National Regulatory Authorities (NRAs)*

EC telecommunications legislation mainly takes the form of directives. According to Article 249 of the EC Treaty, “a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.”

Thus Member States must ensure that the provisions of the Directive are applicable in their territory by transposing them into national law, but they have flexibility in the means by which that is done. In the telecommunications sector, the responsibility for implementing and enforcing the EC regulatory framework rests primarily with the NRAs. In this sense, the proper functioning of the legislation relies on NRAs carrying out their tasks effectively. Member States are therefore required to ensure that NRAs have the resources to carry out their tasks effectively. The regulatory package also requires Member States to ensure that the historic regulatory functions of the public monopolies are vested in independent bodies, and that where national governments retain some degree of ownership or control over organisations providing telecommunications networks and/or services, the regulatory function is structurally separate from activities associated with ownership or control. (It should be noted that the concept of an NRA is not the same as an independent regulator. In most Member States both the independent regulator and the Government Ministry are NRAs for the purposes of EU telecommunications legislation.)

The tasks of the NRA have been documented above. Briefly the harmonisation Directives provide for certain powers to be devolved to NRAs relating to:

- **licensing** (in particular supervision of the licensing procedure and the amendment and withdrawal of licences);
- **interconnection** (in particular the power to supervise the reference interconnection offer (RIO) and the implementation of suitable cost accounting systems and to secure interconnection and resolve disputes);
- **leased lines** (in particular supervision of refusal, interruption or reduction of availability and ensuring application of the non-discrimination principle);

- **universal service** (in particular ensuring affordability and monitoring any financing scheme); and
- **tariffs** (in particular supervision of the application of the principle of cost-orientation for voice telephony and leased lines and the implementation of suitable cost accounting systems).

Further powers are devolved relating to **numbering, frequencies and rights of way**.

The NRA should be the first port of call for any query about entering a national market. It is also responsible for dealing with disputes between operators or between an operator and its customer, and complaints about the behaviour of a particular operator or operators. The regulatory framework establishes two specific procedures to deal with disputes: conciliation (in respect of matters covered by the Leased Lines and Voice Telephony Directives) and dispute resolution (dealing with interconnection disputes).

#### **5.1.2.1. Conciliation**

The Leased Lines and Voice Telephony Directives introduce this procedure, which allows any party, whether user, service provider, consumer or another organisation, with an unresolved complaint against a telecommunications network operator for an alleged breach of either of those Directives, to bring its case before the NRA. For example, where a user is in conflict with their network operator, they may complain to the NRA. NRAs must ensure that there are procedures for resolving the dispute which are easily accessible and in principle relatively inexpensive.

Where the dispute involves organisation in more than one Member State, the user or organisation may invoke a conciliation procedure by writing to the NRA and the Commission. Where the NRA or the Commission finds there is a case for further examination, the matter may be referred to the Chairman of the Open Network Provision (ONP) Committee. If the Chairman is satisfied that all reasonable steps have been taken to resolve the dispute at national level, he may convene a working group including at least two members of the ONP Committee and one representative of the NRAs concerned. The party invoking the procedure, the NRAs and the organisation concerned shall be invited to submit their opinions on the matter. The working group shall endeavour to reach agreement between the parties involved within three months.

#### **5.1.2.2. Dispute Resolution**

5.iii The Interconnection Directive provides a framework for the resolution of disputes over interconnection. Where either party so requests, the NRA must take steps to resolve the dispute within six months of the request. The resolution of the dispute must represent a fair balance between the legitimate interests of both parties. In doing this the NRA is obliged to take account of a number of factors: 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 Community level;



- The availability of technically and commercially viable alternatives to the interconnection required;
- 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 public interest (e.g. the environment);
- The promotion of competition;
- The need to maintain universal service.

The final decision of the NRA must be made public and a full statement of the reasons on which it is based given to the parties.

The Directive also makes provision, where the dispute is between undertakings operating under authorisations from two different Member States, for the two NRAs to co-ordinate their efforts to resolve the dispute, also within six months.

#### **5.1.2.3. Consumer complaints**

Specific mechanisms now exist for handling consumer complaints in all Member States. Naturally, most complaints are addressed in the first instance to the operator concerned. However, where complaints are not resolved, all the relevant governmental consumer protection institutions (at national, regional or municipal level) and in some Member States, the NRA or other sector-specific consumer body (ombudsman), have specific complaint-handling roles. Annex 2 provides a list of names and addresses of national complaint bodies.

#### *5.1.3. Redress under Community law: the role of the Commission and the Court of Justice*

Member States are required to establish a mechanism whereby appeals can be made against a decision of the NRA at national level, if for example, an individual is not satisfied that his complaint has been properly dealt with by an NRA. In certain cases, an individual may be able to address his complaint to the Commission.

It is the Commission's role to ensure that Member States implement and enforce the various directives in an effective and appropriate way. In telecoms, the two responsible Directorates-General in the Commission (DGIV, dealing with competition issues, and DGXIII, dealing with telecommunications policy) have established a joint team to verify day-to-day transposition and implementation of telecoms legislation by Member States. The directives require Member States to notify certain information to the Commission within certain time limits to facilitate verification of implementation. Since mid-1997, the Commission has issued a series of Implementation Reports<sup>60</sup> assessing the state of

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All reports can be found at <http://www.ispo.cec.be/infosoc/telecompolicy/en/comm-en.htm>

implementation of telecommunications legislation in each Member State. The first three of these concentrated mainly on the transposition of the various directives into national law. But increasingly, the Commission is looking at the state of competition in national markets, rather than the formal transposition of Directives, as the 4<sup>th</sup> report on implementation demonstrates.

If the Commission considers that a Member State has not transposed, or has transposed wrongly, or applies incorrectly a transposed provision in a Directive, it can begin infringement proceedings against that Member State under Article 226 of the Treaty. This Article requires the Commission, after giving the Member State concerned the opportunity to submit its observations, to issue a “reasoned opinion”. If the Member State does not comply with that opinion the Commission may bring the matter before the European Court of Justice, which can require the Member State to bring its national legislation into line with its Community obligations.

In the telecoms sector, the Commission has already initiated Article 226 proceedings against a number of Member States for not transposing the legislation properly, or for not doing so within the prescribed time limits.

Case law in the European Court of Justice has established that individuals are able to rely on the Articles of the Treaty and on directives in Court if they contain provisions which confer rights on individuals. Furthermore, it is possible in some cases to receive damages where Member States have breached the Treaty, failed to implement directives or implemented them wrongly. Three conditions need to be satisfied in order for damages to be appropriate. The rule of Community law must be intended to **confer rights on individuals** ; the breach must be **sufficiently serious**; and there must be a **direct causal link** between the breach of the obligation on the state and the damage sustained by the injured parties<sup>61</sup>.

#### 5.1.4. Competition rules

Thus undertakings are able to rely on certain of the rules set out in the telecoms regulatory package if the Member State in which they are operating has not adequately transposed them. But competition law also applies to the telecommunications market. In many cases this will mean the national competition law of the particular Member State in question. But if there is an effect on trade between Member States, European competition law applies, in the form either of Article 81 (which outlaws “*agreements between undertakings ... which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market*”) or Article 82 (which outlaws “*abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it*”).

The Competition Directorate-General of the European Commission is responsible for competition matters. It has strong powers to investigate alleged breaches of competition law and to fine companies who are found to have breached Articles 81 and/or 82.

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<sup>61</sup> See the leading judgements of the Court of Justice of 19 November 1991 in joined cases C-6/90 and C-9/90, *Francovich*, ECR 1991, p. 5357 and of 5 March 1996 in joined cases C-46/93 and 48/93, *Brasserie du Pêcheur and Factortame III*, ECR 1996, p. 1029 ; see also case C-392/93, *British Telecom*, ECR 1996, 1631.

Member States may also be found to be in breach of the Treaty if they cause the competition rules to be broken by their actions. There are two possible ways in which Member States can be held to account for causing the competition rules to be broken. The first concerns Article 86. This requires that in *“the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty.”* Article 5 of the Treaty requires that Member States *“abstain from any measure which could jeopardise the attainment of the objectives of the Treaty.”* Case law has since established the principle that where Member States cause the competition provisions of the Treaty to be breached, they are in breach of Article 10 of the Treaty.<sup>62</sup>

The Health and Consumer Protection Directorate-General of the European Commission verifies the transposition and implementation of general consumer protection legislation by Member States.

Individuals may rely on general consumer protection directives in Court if they contain provisions which confer rights on individuals. In this context, since consumer protection legislation is applicable to the telecommunications sector, individuals may refer to this legislation, as transposed in the different Member States, in order to protect their consumer rights.

#### 5.1.5. Telecoms Committees

Under Community law, directives establish a broad regulatory framework in the sector to which they apply. But in the majority of cases, there is provision for certain executive tasks to be carried out once the Directive has been adopted. Most Directives therefore establish a committee comprised of Member States and chaired by the Commission (or refer to an existing one), to accomplish those tasks. The so-called “comitology” Decision<sup>63</sup> provided for three types of Committee; advisory, management and regulatory. For most tasks, an advisory committee is deemed sufficient. In this case, the Commission is obliged to take the utmost account of the opinion of the committee before acting, but the Committee has no veto. In the other two types of committee, Member States have the right to vote on whether a particular type of action is appropriate.

Under the telecoms regulatory framework, three Committees have been created: the ONP Committee was originally established under the ONP Framework Directive, and also deals with all issues arising from the other ONP Directives (leased lines, voice telephony and interconnection); the Licensing Committee dealing with issues which arise under the Licensing Directive, the SPC-S Decision, and the forthcoming UMTS Decision; and the Approvals Committee for Terminal Equipment (ACTE), which considers issues arising under the Terminal Equipment Directive. They are all “mixed” committees, i.e. depending on the issue to be decided, the Committees can be convened in their advisory or management forms. They are attended by representatives of Member States of the EU and EEA from the Government ministries responsible for telecommunications and are chaired by the Commission.

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<sup>62</sup> Judgment of the Court of 11 April 1989. Ahmed Saeed Flugreisen and Silver Line Reisebüro GmbH v Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V. (Case 66/86).

<sup>63</sup> Council Decision 1999/468/EEC of 28 June 1999.

Although the main function of these Committees is the statutory one established under the Directives, they can also play a useful role in fostering informal co-operation between Member States, as well as in providing a forum where Member States can seek clarification and guidance on particular issues which arise in implementing the Directives.

#### **5.1.5.1. ONP Committee**

As an advisory committee, it is consulted on the following actions:

- Commission requests for preparation of standards for interconnection and access by European standardisation bodies;
- Commission requests for preparation of standards for harmonised technical interfaces and/or service features for open network provision;
- Dispute resolution (see above).

As a regulatory committee, it is involved in the following actions:

- technical adjustment of Annexes under Interconnection, Leased Lines and Voice Telephony Directives;
- making standards compulsory or withdrawing them.

#### **5.1.5.2. Licensing Committee**

The Licensing Committee is involved principally in the harmonisation of conditions for general authorisations and in the establishment of a one-stop shopping procedure. On harmonisation of conditions, it is consulted (as an advisory committee) on the mandate the Commission submits to CEPT/ECTRA and CEPT/ERC, and votes as a management committee on the final proposal for a decision on harmonised conditions.

#### **5.1.5.3. Approvals Committee for Terminal Equipment (ACTE)**

The principal task of the ACTE Committee for which it meets as a regulatory committee, is to give a formal opinion on the Commission's proposals for Common Technical Regulations. In the same formation, it is involved in the decision on whether it is appropriate to require certain classes of equipment to comply with an "inter-working" essential requirement. Tasks which it carries out as an advisory committee are concerned with where there are shortcomings in the harmonised standards or common technical regulations, or where notified bodies or test laboratories do not meet the relevant criteria.

When the new Radio Equipment and Telecoms Terminal Equipment Directive enters into force, ACTE will be replaced by a Committee established under that Directive, the TCAM. Its main tasks as a regulatory committee will be concerned with identifying additional essential requirements, and establishing assigning equipment class identifiers to equivalent classes of apparatus. As an advisory committee, it will be called upon to deliver an opinion *inter alia* on shortcomings in harmonised standards and a Member State's decision to withdraw a product from the market because of radio spectrum interference.

## 5.2. Other bodies involved in European telecommunications regulatory policy

### 5.2.1. CEPT

The Conférence Européenne des Postes et Telecommunications (CEPT) was established in 1959, and originally comprised the former monopoly-holding telecommunications administrations. Since 1992, CEPT has been made up of national authorities. It has a membership of 43 countries. Under its terms of reference, it is required to consider, in a European context, public policy and regulatory matters relating to posts and telecommunications and to foster the harmonisation of regulations. It also acts as a forum for European co-ordination in discussions in the ITU and WRC.<sup>64</sup>

Its work is divided between three committees, one on postal matters, the CERP (Comité européen des régulateurs postaux) and two on telecommunications issues: the ERC (European Radiocommunications Committee) and the ECTRA (European Committee for Telecommunications Regulatory Affairs). These committees are served by a number of working groups and project teams which prepare recommendations and decisions for adoption in the Committee plenary sessions.

This decision-making mechanism was first established by ERC in order to reserve frequency bands for European services. ECTRA also later implemented this procedure for numbering and licensing issues.

#### 5.2.1.1. ECTRA

ECTRA's remit is to consider and develop common telecommunications regulatory policies in a European context, taking into account European and international legislation and regulations and co-operating closely with ERC and the European Commission. It has established a number of working groups looking at various issues, including terminal equipment, numbering, licensing and in particular one-stop shopping issues and accounting rates.

In 1994, ECTRA established a permanent office in Copenhagen; the European Telecommunications Office (ETO). Its function is to support the activities of ECTRA and to conduct studies for it and the European Commission. As has been noted above, it also acts as a one-stop shop for telecoms operators seeking to provide services in more than one Member State.

#### 5.2.1.2. ERC

The purpose of the ERC is to develop radiocommunications policies:

- to co-ordinate frequency, regulatory and technical matters concerning radiocommunications;

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All Member States of the EU, plus Albania, Andorra, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Norway, Poland, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, Vatican.

- to develop guidelines in respect of radiocommunication matters in preparation for ITU meetings such as Plenipotentiary Conferences, Council Meetings, Radio Conferences and Radiocommunications Assemblies.

The ERC has also established a permanent office in Copenhagen; the European Radiocommunications Office (ERO), with the same functions in respect of the ERC as ETO has with regard to ECTRA.

#### 5.2.2. *European Telecommunications Standards Institute (ETSI)*

The European Telecommunications Standards Institute (ETSI) is a non-profit making organisation whose function is to determine and produce telecommunications standards. It is an open forum that comprises 490 members from 34 countries, representing Administrations, network operators, manufacturers, service providers, and users. Any European organisation demonstrating an interest in promoting European telecommunications standards has the right to represent that interest in ETSI and thus influence the standards-making process.

ETSI members fix the standards work programme according to market needs. Accordingly, ETSI produces voluntary standards - some of these may go on to be adopted in the EU as the technical base for Directives or Regulations - but since they are requested by those who subsequently implement them, the idea is that standards remain practical rather than abstract.

ETSI promotes the worldwide standardisation process whenever possible. Its Work Programme is based on, and co-ordinated with, the activities of international standardisation bodies, mainly the ITU-T and the ITU-R.

ETSI consists of a General Assembly, a Board, a Technical Organisation and a Secretariat. The Technical Organisation produces and approves technical standards. It encompasses ETSI Projects (EPs), Technical Committees (TCs) and Special Committees. More than 3500 experts are at present working for ETSI in over 200 groups.

*In contrast to the bodies described above, the organisations described below are advisory in nature, and their existence is not formalised in Community legislation. Nevertheless, they have mostly been created as a result of Community action.*

#### 5.2.3. *European Numbering Forum (ENF)*

The ENF was established as a result of a Council Resolution<sup>65</sup>, which called for the development of a Europe-wide framework for co-operation on numbering issues. It is closely linked to ECTRA (which appoints the Chairman of ENF). Its (closed) membership seeks to include organisations representing, *inter alia*, operators, equipment manufacturers, other relevant industries and users, as well as ETSI and the European Commission.

Its purpose is to provide a forum for exchange of information and expertise, co-ordination and consultation, discussion and common studies on European numbering, addressing and related issues. ECTRA and the Commission may consult the ENF about draft work programmes and draft proposals and recommendations for numbering reform and related

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<sup>65</sup> Council Resolution 92/C318/02

issues. The ENF may also forward proposals, recommendations and reports on European numbering regulation and related issues to ECTRA for decision.

#### *5.2.4. European Telecommunications Platform (ETP)*

The ETP was originally created to provide the ONP Committee with views from the market players (including incumbents, new entrants, manufacturers, service providers and users). It now has more than 100 members. This body has proved a useful forum for market players to contribute to regulatory policy at the European level. It has three main tasks:

- to produce common positions on telecommunications policy;
- to advise on implementation; and
- to produce technical codes of conduct and best practice, legally non-binding but in practice broadly accepted, on issues such as the detailed procedures required in the negotiation of interconnection agreements.

#### *5.2.5. Satellite Action Plan Regulatory Working Group (SAPWRG)*

The SAPWRG was created by the satellite telecommunications industry as a follow up to the Commission Communication "EU action plan: satellite communications in the information society". The Group, which comprises about 60 European and non-European companies, supports the action plan and in particular provides the Commission with consolidated information about market access barriers and current regulatory regimes in EU Member States and third countries. The Group is also providing input on relevant policy issues such as spectrum policy, and the relationship between EU and CEPT.

#### *5.2.6. UMTS Forum*

The UMTS Forum was set up by a number of telecommunications operators, manufacturers, national governments, and other organisations. Its aim is to define a common strategy and policy for the development and implementation of the future Universal Mobile Telecommunications System, combining personal communications with multimedia services and applications, built on existing fixed and mobile infra-structures.

It seeks to contribute to the development of an European policy on mobile and personal communications and provides advice and recommendations to the European Commission, European Radiocommunications Office, European Telecommunications Office, European Telecommunications Standards Institute and National Regulatory Authorities. Representatives from these bodies take part in the work.

## ANNEX I: LIST OF MEASURES COMPRISING THE TELECOMMUNICATIONS REGULATORY PACKAGE

<b>Liberalisation measures</b>
<b>Terminal Equipment Liberalisation Directive</b> Commission Directive of 16 May 1988 on competition in the markets in telecommunications terminal equipment (88/301/EEC; OJ L131/73, 27.05.88)
<b>Services Directive</b> Commission Directive of 28 June 1990 on competition in the markets for telecommunications services (90/388/EEC; OJ L192/10, 24.07.90) <i>as amended and supplemented by</i>
<b>Satellite Directive</b> Commission Directive of 13 October 1994 amending Directive 88/301/EEC and Directive 90/388/EEC in particular with regard to satellite communications (94/46/EC; OJ L268/15, 19.10.94)
<b>Cable Directive</b> Commission Directive 95/51/EC of 18 October 1995 amending Directive 90/388/EEC with regard to the abolition of the restrictions on the use of cable television networks for the provision of already liberalised telecommunications services (95/51/EC; OJ L 256/49, 26.10.95)
<b>Mobile Directive</b> Commission Directive of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications (96/2/EC; OJ L 20/59, 26.01.96)
<b>Full Competition Directive</b> Commission Directive of 28 February 1996 amending Commission Directive 90/388/EEC regarding the implementation of full competition in telecommunications markets (96/19/EC, OJ L 74/13, 22.03.96)
<b>Cable Ownership Directive</b> <i>Commission Directive 1999/ 64/EC of 23 June 1999 amending Directive 90/388/EEC in order to ensure that telecommunications networks and cable TV networks owned by a single operator are separate legal entities (OJ L 175/39, 10.07.99)</i>
<b>Harmonisation measures</b>
<b>ONP Framework Directive</b> Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directive 90/387/EEC for the purpose of adaptation to a competitive environment in telecommunications. (OJ L 295/23, 29.10.97)
<b>Leased Lines Directive</b> Directive 97/51/EC of the European Parliament and of the Council of 6 October 1997 amending Council Directive 92/44/EEC for the purpose of adaptation to a competitive environment in telecommunications. (OJ L 295/23, 29.10.97)
<b>Licensing Directive</b> Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services.(OJ L 117/15, 07.05.97)
<b>Interconnection Directive</b> Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on Interconnection in Telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) (OJ L199/32, 26.07.97)
<b>Telecoms Data Protection Directive</b> Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector . (OJ L 24, 30.1.98, p1)
<b>Voice Telephony Directive</b> Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (replacing European Parliament and Council Directive 95/62/EC) (98/10/EC; OJ L101/41, 01.04.98)
<b>S-PCS Licensing Decision</b> Decision N° 710/97/EC of the European Parliament and of the Council of 24 March 1997 on a co-ordinated authorisation approach in the field of satellite personal communication services in the Community. (OJ L 105/4, 23.04.97)
<b>UMTS Decision</b> Decision N° 128/1999/EC of the European Parliament and of the Council of 14 December 1998 on the co-ordinated introduction of a third-generation mobile and wireless communications system (UMTS) in the Community. (OJ L 17/1, 22.01.99)



<b>Telecoms Terminal Equipment Directive – <i>in force until 31.12.99</i></b> Directive 98/13/EC of the European Parliament and of the Council of 12 February 1998 relating to telecommunications terminal equipment and satellite earth station equipment, including the mutual recognition of their conformity (OJ L74/41, 12.03.98)
<b>Radio Equipment and Telecoms Terminal Equipment Directive – <i>in force from 08.04.2000</i></b> Directive 99/ /EC of the European Parliament and of the Council relating to Radio Equipment and Telecommunications Terminal Equipment and the mutual recognition of their conformity. (OJ L )
<b>GSM Directive</b> Council Directive of 25 June 1987 on the frequency bands to be reserved for the co-ordinated introduction of public pan-European cellular digital land-based mobile communications in the European Community (87/372/EEC; OJ L196/85, 17.07.87)
<b>ERMES Directive</b> Council Directive of 9 October 1990 on the frequency bands designated for the co-ordinated introduction of pan-European land-based public radio paging in the Community (90/544/EEC; OJ L310/28, 09.11.90)
<b>DECT Directive</b> Council Directive of 3 June 1991 on the frequency band to be designated for the co-ordinated introduction of digital European cordless telecommunications (DECT) into the Community (91/287/EEC; OJ L 144/45, 08.06.91)
<b>International Telephone Access Code Decision</b> Council Decision of 11 May 1992 on the introduction of a standard international telephone access code in the Community (92/264/EEC; OJ L137/21, 20.05.92)
<b>European Emergency Number Decision</b> Council Decision of 29 July 1991 on the introduction of a single European emergency call number (91/396/EEC; OJ L217/31, 06.08.91)
<b>Telecommunications services VAT Directive</b> Council Directive 1999/59/EC of 17 June 1999 amending Directive 77/388/EEC as regards the value added tax arrangements applicable to telecommunications (OJ L 162, 26.06.1999, p.63) ( The 6th Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turn-over taxes (OJ No L 145, 13.6.1977, p.1) establishes the common regime for VAT within the Community)
<b>Recommendations &amp; Notices</b>
<b>Commission Interconnection Recommendation (Part 1 – Interconnection Pricing) (as amended)</b> Commission Recommendation of 29 July 1998 amending Commission Recommendation 98/195/EC of 8 January 1998 on Interconnection in a liberalised telecommunications market. Part 1- Interconnection Pricing. (not yet published)
<b>Commission Interconnection Recommendation (Part 2 – Accounting separation and cost accounting)</b> Commission Recommendation of 8 April 1998 on interconnection in a liberalised telecommunication market (Part 2 – Accounting separation and cost accounting) (98/322/EC; OJ L141/41, 13.05.98)
<b>GSM Recommendation</b> Council Recommendation of 25 June 1987 on the co-ordinated introduction of public pan-European cellular digital land-based mobile communications in the Community (87/371/EEC; OJ L196/81, 17.07.87)
<b>DECT Recommendation</b> Council Recommendation of 3 June 1991 on the co-ordinated introduction of digital European cordless telecommunications (DECT) into the Community (91/288/EEC; OJ L144/47, 08.06.91)
<b>ERMES Recommendation</b> Council Recommendation of 9 October 1990 on the co-ordinated introduction of pan-European land-based public radio paging in the Community (90/543/EEC; OJ L310/23, 09.11.90)
<b>Notice on Internet Voice Telephony</b> Commission Notice concerning the Status of voice communications on Internet under Community law and, in particular, pursuant to Directive 90/388/EC (OJ C6, 10.01.98)
<b>Notice on access agreements in the telecoms sector</b> Commission Notice of 31 March 1998 on the application of the competition rules to Access agreements in the telecommunications sector (OJ C 265, 22.8.1998, p.2)
<b>Guidelines on application of competition rules</b> Guidelines on the application of EEC competition rules in the telecommunications sector (92/C 233/02; OJ C233/2, 06.09.91)
<b>Guidelines on Operation of National Universal Service Funds</b> Commission Communication on Assessment Criteria for National Schemes for the Costing and Financing of Universal Service in telecommunications and Guidelines for the Member States on Operation of such Schemes (COM(96) 608)

## ANNEX II : LIST OF NATIONAL REGULATORY AUTHORITIES

MEMBER STATE	NRA	ADDRESS, TEL, FAX, EMAIL
<b>BELGIUM</b>	BELGISCH INSTITUUT VOOR POSTDIENSTEN EN TELECOMMUNICATIE (BIPT) / INSTITUT BELGE DES SERVICES POSTAUX ET DES TÉLÉCOMMUNICATIONS (IBPT)	STERREKUNDELAAN 14 AVENUE DE L'ASTRONOMIE B-1210 BRUSSEL/ BRUXELLES TEL: +32 2 226 8888 FAX: +32 2 226 8877 <a href="http://www.bipt.be/">http://www.bipt.be/</a>
<b>DENMARK</b>	FORSKNINGSMINISTERIET  TELESTYRELSEN	BREDGADE 43 DK-1260 KØBENHAVN K TEL: +45 3 392 9700 FAX: +45 3 393 8403 <a href="http://www.fsk.dk/">http://www.fsk.dk/</a> HOLSTEINSGADE 63 DK-2100 KØBENHAVN Ø TEL: +45 3 543 0333 FAX: +45 3 543 1434 <a href="http://www.tst.dk/">http://www.tst.dk/</a>
<b>GERMANY</b>	BUNDESMINISTERIUM FÜR WIRTSCHAFT REFERAT VII  REGULIERUNGSBEHÖRDE FÜR TELEKOMMUNIKATION UND POST	VILLEMOMBLER STR D – 53123 BONN TEL: +49 228 14 12 50 FAX: +49 228 14 61 25  POSTFACH 8001 D-53105 BONN 1 TEL: +49 2 28 14 0 FAX: +49 2 28 14 6001 <a href="http://www.regtp.de/">http://www.regtp.de/</a>
<b>GREECE</b>	MINISTRY OF TRANSPORT AND COMMUNICATIONS  NATIONAL COMMISSION FOR TELECOMMUNICATIONS	SYNGROU AVENUE 49 GR-11780 ATHENS TEL: +30 1 924 5928 FAX: +30 1 924 9632 60 KIFISSIAS AVENUE GR-151 25 MAROUSSI TEL: +30 1 680 5040 FAX: +30 1 680 5049 <a href="http://www.eet.gr/">http://www.eet.gr/</a>
<b>SPAIN</b>	MINISTERIO DE FOMENTO – SECRETARIA GENERAL DE COMUNICACIONES  COMISIÓN DEL MERCADO DE LAS TELECOMUNICACIONES (CMT)	PLAZA DE CIBELES S/N E-28071 MADRID TEL: +34 1 346 1580 FAX: +34 1 346 1520 VELÁSQUEZ, 164 E-28002 MADRID TEL: +34 91 372 42 42 FAX: +34 91 372 4205 <a href="http://www.cmt.es/">http://www.cmt.es/</a>

<b>FRANCE</b>	<p>MINISTÈRE DE L'ÉCONOMIE, DES FINANCES, ET DE L'INDUSTRIE</p> <p>AUTORITÉ DE RÉGULATION DES TELECOMS (ART)</p>	<p>20, AVENUE DE SEGUR F-75700 PARIS CEDEX 07 TEL: +33 14 319 6600 FAX: +33 14 319 4210 <a href="http://www.telecom.gouv.fr/">http://www.telecom.gouv.fr/</a> 7 SQUARE MAX HYMANS F - 75715 PARIS CEDEX 07 TEL: +33 14 319 6982 FAX: +33 14 319 4210 <a href="http://www.art-telecom.fr/">http://www.art-telecom.fr/</a></p>
<b>IRELAND</b>	OFFICE OF THE DIRECTOR OF TELECOMMUNICATIONS REGULATION (ODTR)	<p>7 ELY PLACE, IRL-DUBLIN 2 TEL: +353 1 804 9600 FAX: +353 1 804 9680 <a href="http://www.odtr.ie">http://www.odtr.ie</a></p>
<b>ITALY</b>	<p>MINISTERO DELLE POSTE E DELLE TELECOMUNICAZIONI DIREZIONE GENERALE PER LA REGOLAMENTAZIONE E LA QUALITÀ DEI SERVIZI</p> <p>L'AUTORITÀ PER LE GARANZIE NELLE COMUNICAZIONI</p>	<p>VIALE AMERICA, 201 I - 00144 ROMA TEL: +39 65 958 2868 FAX: +39 6 541 4512</p> <p>VIA DE' CROCIFERI 19 I-00187 ROMA TEL: +39 06 692 0991 FAX: +39 06 692 09926</p>
<b>LUXEMBOURG</b>	<p>MINISTÈRE DES COMMUNICATIONS</p> <p>INSTITUT LUXEMBOURGEOIS DES TELECOMMUNICATIONS (ILT)</p>	<p>18, MONTÉE DE LA PÉTRUSSE L-2945 LUXEMBOURG TEL: +35 2 478 6710 FAX: +35 2 40 8940 AVE DE MONTEREY 45A L-2922 LUXEMBOURG <a href="http://www.etat.lu/ILT">http://www.etat.lu/ILT</a></p>
<b>THE NETHERLANDS</b>	<p>MINISTERIE VAN VERKEER EN WATERSTAAT HOOFDDIRECTIE TELECOMMUNICATIE EN POST</p> <p>ONAFHANKELIJK POST EN TELECOMMUNICATIE AUTORITEIT (OPTA)</p>	<p>POSTBUS 20901 NL-2500 EX THE HAGUE TEL: +31 70 351 6941 FAX: +31 70 351 7895 <a href="http://www.minvenw.nl/cend/duo/telecom/website">http://www.minvenw.nl/cend/duo/telecom/website</a> DAENDELSSTRAAT 57 PO Box 90420 NL – 2509 LK THE HAGUE TEL: +31 70 315 3563 FAX: +31 70 315 3501 <a href="http://www.opta.nl/">http://www.opta.nl/</a></p>
<b>AUSTRIA</b>	<p>BUNDESMINISTERIUM FÜR WISSENSCHAFT UND VERKEHR, SEKTION IV, OBERSTE POST- UND FERNMELDEBEHÖRDE</p> <p>TELEKOM CONTROL GMBH</p>	<p>KELSENSTRASSE 7 A-1030 WIEN TEL: +43 179 731 4101 FAX: +43 179 731 4109 <a href="http://www.bmv.gv.at/">http://www.bmv.gv.at/</a> MARIAHILFERSTRASSE 77-79 A-1060 VIENNA TEL: +43 1 580 58 0 FAX: <a href="http://www.tke.at/">http://www.tke.at/</a></p>
<b>PORTUGAL</b>	INSTITUTO DAS COMUNICAÇÕES DE	AV. JOSÉ MALHOA N. 12-21A

	PORTUGAL (ICP)  MINISTRY?	P-1070 LISBOA TEL: +351 1 721 1000 FAX: +351 1 721 1004 <a href="http://www.icp.pt/">http://www.icp.pt/</a> <a href="http://www.min-plan-pt/">http://www.min-plan-pt/</a>
<b>FINLAND</b>	LIIKENNEMINISTERIÖ  TELEHALLINTOKESKUS	ETELÄESPLANADI 16 PL 235, 00131 HELSINKI TEL: +358 9 160 1 FAX: +358 9 160 2588 <a href="http://www.thk.fi/">http://www.thk.fi/</a> <a href="http://www.vn.fi/">http://www.vn.fi/</a>
<b>SWEDEN</b>	POST - OCH TELESTYRELSEN	BOX 5398 SE-102 49 STOCKHOLM TEL: +46 8 678 5500 FAX: +46 8 678 5505 <a href="http://www.pts.se/">http://www.pts.se/</a>
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### ANNEX III : LIST OF CONSUMER BODIES IN THE FIELD OF TELECOMS<sup>66</sup>

Country	National Independent Consumer Complaint Body	
	Phone, fax, www	Name and Address
B	Ph: (+32) 2 2230909 Fax: (+32) 2 2198659	Ombudsman telecommunications Place des Barricades 1 1000 Bruxelles
DK	Ph: +45 3543 0333 Fax: +45 3543 1434  e-mail: <a href="mailto:tst@tst.dk">tst@tst.dk</a> <a href="http://www.tst.dk">http://www.tst.dk</a>	National Telecom Agency Holsteinsgade 63 DK-2100 Copenhagen
D	Ph: 0228 14-0 Fax: 0228 14-88 72	Federal Ministry for Post and Telecommunications (BMPT) Heinrich-von-Stephan-Str. 1 53105 Bonn
EL	Ph: (+30) 1 6805040 Fax: (+30) 1 6805049	National Telecommunications Commission Kifissias 60 15125 Maroussi Athens Greece
E	Ph: n/a Fax: n/a	Las Juntas arbitrales de Consumo (address details not available)
	Ph: n/a Fax: n/a	Delegation del Gobierno en Telefonica de Espana, S.A. (address details not available)
F	Ph: 01 43 19 30 00	Autorité de régulation des télécommunications (ART) 20, avenue Ségur 75354 Paris 07 SP
IRL	Ph: (+353) 16785222 Fax: (+353) 16610570  e-mail: <a href="mailto:ombudman@ombudsman.irlgov.ie">ombudman@ombudsman.irlgov.ie</a>  <a href="http://www.irlgov.ie/ombudsman">http://www.irlgov.ie/ombudsman</a>	Office of the Ombudsman 52 St Stephen's Green Dublin 2
I	Ph: n/a Fax: n/a	n/a (New Telecoms Act provides for independent consumer complaint body to be established)
L	Ph: n/a Fax: n/a	Institut Luxembourgeois des Télécommunications (address details as in Annex II)
NL	Ph: (+31) 70 3105310 Fax: (+31) 70 3658814	Stichting Geschillencommissies Consumentenzaken Geschillencommissie Telecommunicatie en Post Surinamestraat 24 2585 GJ DEN HAAG
AUT	n/a	n/a (New Telecoms Act provides for independent consumer complaint body to be established)

Country	National Independent Consumer Complaint Body	
	Phone, fax, www	Name and Address
P	Ph: 01 721 10 00 Fax: 01 721 10 02 <a href="http://www.icp.pt">http://www.icp.pt</a>	Instituto das Comunicações de Portugal Avaá José Malhoa No 12 1070 Lisboa
FIN	Ph: +(358) 9 69661 Fax: +(358) 9 6966410 <a href="http://www.thk.fi">http://www.thk.fi</a>	Telecommunications Administration Centre Vattuniemenkatu 8 A, PL 53 FIN-00211 Helsinki
SWE	Ph: (+46) 8 783 1700 Fax: (+46) 8 783 1701 <a href="http://www.arn.se">http://www.arn.se</a>	National Board for Consumer Complaints Klarabergsgatan 35 Box 174, S-101 23 Stockholm
UK	Ph: 0171 6348888 Fax: 0171 6348845  e-mail: <a href="mailto:crs.oftel@gtnet.gov.uk">crs.oftel@gtnet.gov.uk</a>  <a href="http://www.oftel.gov.uk/">http://www.oftel.gov.uk/</a>  Ph: 01232 244113 Fax: 01232 247024  Ph: 0131 244 5576 Fax: 0131 244 5696  Ph: 01222 374028 Fax: 01222 668536	OFTEL, Consumer Representations 50 Ludgate Hill London EC4M 7JJ        Northern Ireland Advisory Committee on Telecommunications 7 <sup>th</sup> floor, Chamber of Commerce House, 22 Great Victoria St. .Belfast BT2 7QA  Scottish Advisory Committee on Telecommunications 2 Greenside Lane, Edinburgh EH1 3AH  Welsh Advisory Committee on Telecommunications Welsh Advisory Committee on Telecommunications Caradog House, St Andrews Place Cardiff CF1 3BE

## ANNEX IV: DEFINITIONS IN COMMUNITY TELECOMS LEGISLATION

The table below sets out the various definitions found in the EC telecoms regulatory package, together with the reference of the directive from which it is taken.

*NB: it is important to note that in certain cases, the definitions found in Commission directives differ from those found in the European Parliament and Council directives. The difference results from changes made by the European Parliament and the Council in the course of negotiations on the basis of the Commission's proposal (the definitions in which were identical to those in the Commission directives). Variations between definitions in different texts is one issue which the Commission may address in the context of the 1999 Review.*

Defined Terms within the 1998 Reform Package	
Term	Definition
<b>authorisations</b>	Any permission setting out rights and obligations specific to the telecommunications sector and allowing undertakings to provide telecommunications services and, where applicable, to establish and/or operate telecommunications networks for the provision of such services, in the form of a "general authorisation" or "individual licence" (97/13/EC)
<b>cable TV network</b>	Any mainly wire-based infrastructure approved by a Member State for the delivery or distribution of radio or television signals to the public (95/51/EC)
<b>consumer</b>	Any natural person who uses a publicly available telecommunications service for purposes which are outside his or her trade, business or profession (98/10/EC)
<b>essential requirements</b>	<p>The non-economic reasons in the general interest which may cause a Member State to restrict access to the public telecommunications network or public telecommunications services. These reasons are security of network operations, maintenance of network integrity, and, in justified cases, interoperability of services and data protection. Data protection may include protection of personal data, the confidentiality of information transmitted or stored as well as the protection of privacy, (90/388/EEC)</p> <p>The non-economic reasons in the public interest which may cause a Member State to impose conditions on the establishment and/or operation of telecommunications networks or the provision of telecommunications services. Those reasons shall be the security of network operations, the maintenance of network integrity and, where justified, the interoperability of services, data protection, the protection of the environment and town and country planning objectives as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based telecommunications systems and other space-based or terrestrial systems. Data protection may include protection of personal data, the confidentiality of information transmitted or stored and the protection of privacy (97/51/EC)</p>
<b>exclusive rights</b>	The rights that are granted by a Member State to one undertaking through any legislative, regulatory or administrative instrument, reserving it the right to provide a telecommunication service or undertake an activity within a given geographical area (94/46/EC)

<b>fixed public telephone network</b>	<p>The public switched telecommunications network which supports the transfer between network termination points at fixed locations of speech and 3.1kHz bandwidth audio information, to support inter alia:</p> <ul style="list-style-type: none"> <li>- voice telephony,</li> <li>- facsimile Group III communications, in accordance with ITU-T Recommendations in the “T-series”</li> <li>- 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”</li> </ul> <p>Access to the end-user’s network termination point is via a number or numbers in the national numbering plan. <u>(98/10/EC (cross reference to Annex I of 97/33/EC))</u></p>
<b>general authorisations</b>	<p>An authorisation, regardless of whether it is regulated by a “class licence” or under general law and whether such regulation requires registration, which does not require the undertaking concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorisation <u>(97/13/EC)</u></p>
<b>individual licence</b>	<p>An authorisation which is granted by a national regulatory authority and which gives an undertaking specific rights or which gives an undertaking specific rights or which subjects that undertaking’s operations to specific obligations supplementing the general authorisation where applicable, where the undertaking is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority <u>(97/13/EC)</u></p>
<b>interconnection</b>	<p>The physical and logical linking of telecommunications networks used by the same or a different organisation in order to allow the users of one organisation to communicate with users of the same or another organisation, or to access services provided by another organisation. Services may be provided by the parties involved or other parties who have access to the network <u>(97/33/EC, 97/51/EC)</u></p> <p>The physical and logical linking of the telecommunications facilities of organisations providing telecommunications networks and/or telecommunications service, in order to allow the users of one organisation to communicate with the users of the same or another organisation or to access services provided by third organisations. <u>(96/19/EC)</u></p>
<b>Leased lines</b>	<p>The telecommunications facilities provided in the context of the establishment, development and operation of the public telecommunications network, which provide for transparent transmission capacity between network termination points and which do not include on-demand switching (switching functions with [sic] the user can control as part of the leased line provision) <u>(97/51/EC)</u></p>
<b>mobile and personal communications services</b>	<p>Services other than satellite services whose provision consists, wholly or partly, in the establishment of radiocommunications to a mobile user, and makes use wholly or partly of mobile and personal communications systems <u>(96/2/EC)</u></p>
<b>national regulatory authority</b>	<p>The body or bodies, legally distinct and functionally independent of the telecommunications organisations, charged by a Member State with the elaboration of, and supervision of compliance with, authorisations. <u>(97/13/EC, 97/51/EC)</u></p> <p>The body or bodies in each Member State entrusted by that Member State with, inter alia, the regulatory functions addressed in this Directive <u>(98/10/EC)</u></p>
<b>network termination point</b>	<p>All physical connections and their technical access specifications which form part of the public telecommunications network and are necessary for access to and efficient communication through that public network. <u>(90/388/EEC)</u></p> <p>The physical point at which a user is provided with access to a public telecommunication network. The locations of network termination points shall be defined by the national regulatory authority and shall represent a boundary, for regulatory purposes, of the public telecommunications network <u>(97/51/EC)</u></p>



<b>one-stop-shopping procedure</b>	A procedural arrangement facilitating the obtaining of individual licences from, or, in the case of general authorisations and if required, the notification to more than one national regulatory authority, in a co-ordinated procedure and at a single location (97/13/EC)
<b>ONP Committee</b>	The Committee created by Article 9(1) of Directive 90/387/EEC (98/10/EC)
<b>open network provision conditions</b>	<p>The conditions, harmonised in accordance with this Directive, which govern open and efficient access to public telecommunications networks and, where applicable, publicly available telecommunications services and the efficient use of those networks and services. Without prejudice to their application on a case-by-case basis, open network provision conditions may include harmonised conditions with regard to:</p> <ul style="list-style-type: none"> <li>• technical interfaces, including the definition and implementation of network termination points, where require,</li> <li>• usage conditions,</li> <li>• tariff principles and</li> <li>• access to frequencies and numbers/addresses/names, where required in accordance with the reference framework of the Annex; <u>(90/387/EEC as amended by 97/51/EC)</u></li> </ul>
<b>organisation with significant market power</b>	<p>An organisation authorised to provide fixed public telephone networks and/or voice telephony services in a Member State which, for the purpose of this Directive, has been designated by the national regulatory authority in that Member State as having significant market power and notified to the Commission.</p> <p>An organisation shall be presumed to have significant market power when it has a share of 25% or more of the relevant market in the geographical area in a Member State within which it is authorised to operate.</p> <p>National regulatory authorities may determine that an organisation with a market share of less than 25% in the relevant market has significant market power. They may also determine that an organisation with a market share of more than 25% in the relevant market does not have significant market power. In either case, the determination shall take into account the organisation's ability to influence market conditions, its turnover relative to the size of the market, its control of the means of access to end-users, its access to financial resources and its experience in providing products and services in the market. <u>(98/10/EC ; Article 4(3) of 97/33/EC)</u></p>
<b>packet- and circuit-switched data services</b>	The commercial provision for the public of direct transport of data between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point. <u>(90/388/EEC)</u>
<b>public mobile telephone network</b>	A public telephony network where the network termination points are not at fixed locations. <u>(98/10/EC, cross reference to Annex I, 97/33/EC)</u>
<b>public mobile telephone service</b>	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 public mobile telephony network. <u>(98/10/EC, cross reference to Annex I, 97/33/EC)</u>
<b>public pay telephone</b>	A telephone available to the general public, for the use of which the means of payment are coins and/or credit/debit cards and/or pre-payment cards <u>(98/10/EC)</u>
<b>public telecommunications network</b>	<p>A telecommunications network used inter alia for the provision of public telecommunications services <u>(96/19/EC)</u></p> <p>A telecommunications network used, in whole or in part, for the provision of publicly available telecommunications services <u>(97/33/EC, 97/51/EC)</u></p> <p>The public telecommunications infrastructure which permits the conveyance of signals between defined network termination points by wire, by microwave, by optical means or by other electromagnetic means <u>(98/13/EC)</u></p>
<b>public telecommunications service</b>	A telecommunications service available to the public <u>(96/19/EC)</u>

<b>publicly available telephone services</b>	Fixed public telephone services and public mobile telephone services <u>(98/10/EC)</u>
<b>satellite communications services</b>	Services whose provision makes use, wholly or partly, of satellite network services. <u>(94/46/EC)</u>
<b>satellite earth station equipment</b>	<p>Equipment which is capable of being used for the transmission only, or for the transmission and reception ("transmit/receive"), or for the reception only ("receive only") of radiocommunication signals by means of satellites or other spacebased systems. <u>(94/46/EC)</u></p> <p>Equipment which is capable of being used either for transmission only, or for transmission and reception (transmission/receive), or for reception only (receive-only), of radio-communication signals by means of satellites or other space-based systems, but excluding satellite earth station equipment intended for use as part of the public telecommunications network of a Member State. <u>(98/13/EC)</u></p>
<b>satellite earth station network</b>	A configuration of two or more earth stations which interwork by means by means of a satellite. <u>(94/46/EC)</u>
<b>satellite network services</b>	The establishment and operation of satellite earth station networks; these services consist, as a minimum, in the establishment, by satellite earth stations, of radiocommunications to space segment ("uplinks"), and in the establishment of radiocommunications between space segment and satellite earth stations ("downlinks"). <u>(94/46/EC)</u>
<b>satellite services</b>	The provision of satellite communications services and/or the provision of satellite networks services. <u>(94/46/EC)</u>
<b>simple resale of capacity</b>	The commercial provision on leased lines for the public of data transmission as a separate service, including only such switching, processing, data storage or protocol conversion as is necessary for transmission in real time to and from the public switched network. <u>(90/388/EEC)</u>
<b>special or exclusive rights</b>	The rights granted by a Member State or a public authority to one or more public or private bodies through any legal, regulatory or administrative instrument reserving them the right to provide a service or undertake an activity <u>(90/388/EEC)</u>

<b>special rights</b>	<p>The rights that are granted by a Member State to a limited number of undertakings, through any legislative, regulatory or administrative instrument, which, within a given geographical area,</p> <ul style="list-style-type: none"> <li>- limits to two or more the number of such undertakings, otherwise than according to objective, proportional and non-discriminatory criteria, or</li> <li>- designates, otherwise than according to such criteria, several competing undertakings, or</li> <li>- confers on any undertaking or undertakings, otherwise than according to such criteria, any legal or regulatory advantages which substantially affect the ability of any other undertaking to import, market, connect, bring into service and/or maintain telecommunication terminal equipment in the same geographical area under substantially equivalent conditions <u>(94/46/EC, amending 88/301/EEC)</u></li> </ul> <p>The rights that are granted by a Member State to a limited number of undertakings through any legislative, regulatory or administrative instrument which, within a given geographical area, limits to two or more the number of such undertakings authorised 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 authorised 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 telecommunications service or to undertake the same activity in the same geographical area under substantially equivalent conditions. <u>(94/46/EC amending 90/388/EEC)</u>;</p> <p>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 authorised to provide a service or undertake an activity, otherwise than according to objective, proportionate and non-discriminatory criteria, or designates, otherwise than according to such criteria, several competing undertakings as being authorised 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 <u>(97/33/EC)</u></p>
<b>standard</b>	A technical specification adopted by a recognised standards body for repeated or continuous application, compliance with which is not compulsory. <u>(98/13/EC)</u>
<b>subscriber</b>	Any natural or legal person who or which is party to a contract with the provider of publicly available telecommunications services for the supply of such services <u>(98/10/EC)</u>
<b>technical specification</b>	A specification contained in a document which lays down the characteristics required of a product such as levels of quality, performance, safety or dimensions, including the requirements applicable to the product as regards terminology, symbols, testing and test methods, packaging, marking and labelling. <u>(98/13/EC)</u>
<b>telecommunications network</b>	<p>Transmission equipment 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. <u>(96/19/EC)</u></p> <p>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. <u>(97/33/EC, 97/51/EC)</u></p>
<b>telecommunications organisation</b>	Public or private bodies, and the subsidiaries they control, to which a Member State grants special or exclusive rights for the provision of a public telecommunications network and, when applicable, telecommunications services <u>(90/388/EEC)</u>

<b>telecommunications services</b>	<p>Services whose provision consists wholly or partly in the transmission and routing of signals on a public telecommunications network by means of telecommunications processes, with the exception of radio and television broadcasting to the public, and satellite services. <u>(94/46/EC)</u></p> <p>Services whose provision consists wholly or partly in the transmission and/or routing of signals on a telecommunications network. <u>(95/51/EC)</u></p> <p>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. <u>(97/33/EC, 97/51/EC)</u></p>
<b>telex service</b>	The commercial provision for the public of direct transmission of telex messages in accordance with the relevant Comité consultative international télégraphique et téléphonique (CCITT) recommendation between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point (90/388/EEC)
<b>terminal equipment</b>	<p>Equipment directly or indirectly connected to the termination of a public telecommunications network to send, process or receive information. A connection is indirect if equipment is placed between the terminal and the termination of the network. In either case (direct or indirect), the connection may be made by wire, optical fibre or electromagnetically. Terminal equipment also means satellite earth station equipment. <u>(88/301/EEC, amended by 94/46/EC)</u>;</p> <p>Equipment intended to be connected to the public telecommunication network, namely:</p> <p>(a) to be connected directly to the termination of a public telecommunications network; or</p> <p>(b) to interwork with a public telecommunications network being connected directly or indirectly to the termination of a public telecommunications network</p> <p>in order to transmit, process or receive information. <u>(98/13/EC)</u></p>
<b>Terrestrial connection to the public telecommunications network</b>	Any connection to the public telecommunications network which does not include a space segment <u>(98/13/EC)</u>
<b>undertaking</b>	A public or private body, to which a Member State grants special or exclusive rights for the importation, marketing, connection, bringing into service of telecommunications terminal equipment and/or maintenance of such equipment (88/301/EEC)
<b>universal service</b>	A defined minimum set of services of specified quality which is available to all users independent of their geographical location and, in the light of specific national conditions, at an affordable price <u>(97/33/EC, 97/51/EC, 98/10/EC)</u>
<b>users</b>	Individuals, including consumers or organisations, using or requesting publicly available telecommunications services <u>(97/33/EC, 97/51/EC, 98/10/EC)</u>
<b>voice telephony</b>	The commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point (90/388/EEC)
<b>voice telephony service</b>	A service available to the public for the commercial provision of direct transport of real-time speech via the public switched network or networks such that any user can use equipment connected to a network termination point at a fixed location to communicate with another user of equipment connected to another termination point (98/10/EC)