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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3),

(1) Whereas the Council resolution of 22 July 1993 on the review of the situation in the telecommunications sector and the need for further development in that market (4), together with the resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures (5), as well as the European Parliament resolutions of 20 April 1993 (6), 7 April 1995 (7) and 19 May 1995 (8), have supported the process of complete liberalization of telecommunications services and infrastructures by 1 January 1998, with transition periods for certain Member States;

(2) Whereas the Commission communication of 25 January 1995 on the consultation on the Green Paper on the liberalization of telecommunications infrastructure and cable television networks has confirmed the need for rules at Community level, in order to ensure that general authorization and individual licensing regimes are based on the principle of proportionality and are open, non-discriminatory and transparent; whereas the Council resolution of 18 September 1995 on the implementation of the future regulatory framework for telecommunications (9) recognizes as a key factor for this regulatory framework in the Union the establishment, in accordance with the principle of subsidiarity, of common principles for general authorizations and individual licensing regimes in the Member States, based on categories of balanced rights and obligations; whereas those principles should cover all authorizations which are required for the provision of any telecommunications services and for the establishment and/or operation of any infrastructure for the provision of telecommunications services;

(3) Whereas a common framework should be established for general authorizations and individual licences granted by Member States in the field of telecommunications services; whereas under Community law and in particular under Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (10), market entry should be restricted on the basis only of objective, non-discriminatory, proportionate and transparent selection criteria relating to the availability of scarce resources or on the basis of the implementation by national regulatory authorities of objective, non-discriminatory and transparent award procedures; whereas Directive 90/388/EEC also sets out principles regarding, *inter alia*, fees, numbers and rights of way; whereas these rules should be supplemented and enlarged by this Directive to determine this common framework;

(4) Whereas conditions attached to authorizations are necessary in order to attain public interest objectives to the benefit of telecommunications users; whereas under Articles 52 and 59 of the Treaty, the regulatory regime in the field of telecommunications should be compatible and consistent with the principles of freedom of establishment and freedom to provide services and should take into account the need to facilitate the introduction of new services as well as the widespread application of technological improvements; whereas, therefore, general authorization and individual licensing systems should provide for the lightest possible regulation compatible with the

(1) OJ No C 90, 27. 3. 1996, p. 5 and OJ No C 291, 4. 10. 1996, p. 12.
(2) OJ No C 204, 15. 7. 1996, p. 17.
(3) Opinion of the European Parliament of 22 May 1996 (OJ No C 166, 10. 6. 1996, p. 78), Council common position of 9 December 1996 (OJ No C 41, 10. 2. 1997, p. 48) and Decision of the European Parliament of 20 February 1997 (OJ No C 88, 17. 3. 1997). Council Decision of 6 March 1997.
(4) OJ No C 213, 6. 8. 1993, p. 1.
(5) OJ No C 379, 31. 12. 1994, p. 4.
(6) OJ No C 150, 31. 5. 1993, p. 39.
(7) OJ No C 109, 1. 5. 1995, p. 310.
(8) OJ No C 151, 19. 6. 1995, p. 479.
(9) OJ No C 258, 3. 10. 1995, p. 1.
(10) OJ No L 192, 24. 7. 1990, p. 10, as last amended by Directive 96/19/EC (OJ No L 74, 22. 3. 1996, p. 13).

fulfilment of applicable requirements; whereas Member States should not be required to introduce or maintain authorization schemes, in particular where the provision of telecommunications services or the establishment and/or operation of telecommunications networks is not subject to an authorization scheme at the date of entry into force of this Directive;

(5) Whereas this Directive therefore will make a significant contribution to the entry of new operators into the market, as part of the development of the Information Society;

(6) Whereas Member States may define and grant different categories of authorization; whereas this should not prevent undertakings from determining the type of telecommunications services or networks which they wish to provide, subject to compliance with relevant regulatory obligations;

(7) Whereas in order to facilitate the Community-wide provision of telecommunications services, priority should be given to market access schemes not requiring authorizations or relying on general authorizations, to be supplemented where necessary by rights and obligations requiring individual licences for those elements which cannot be suitably dealt with by general authorizations;

(8) Whereas general authorizations permit the provision of a service and the establishment and/or operation of a network without requiring an explicit decision by the national regulatory authority; whereas such general authorizations may take the form of either a set of specific conditions defined in advance in a general manner, such as a class licence, or a general legislation which may allow the provision of the service and the establishment and/or operation of the network concerned;

(9) Whereas Member States may attach conditions to authorizations in order to ensure compliance with essential requirements; whereas Member States may, in addition, attach other conditions in accordance with the Annex to this Directive;

(10) Whereas any conditions attached to authorizations should be objectively justified in relation to the service concerned and should be non-discriminatory, proportionate and transparent; whereas authorizations may be the means for applying conditions required by Community law, in particular in the area of open network provision;

(11) Whereas the harmonization of the procedures associated with the granting of authorizations and the conditions attached to such authorizations should significantly facilitate the free provision of telecommunications services in the Community;

(12) Whereas any fees or charges imposed on undertakings as part of authorization procedures must be based on objective, non-discriminatory and transparent criteria;

(13) Whereas the introduction of individual licensing systems should be restricted to limited, pre-defined situations; whereas Member States may limit the number of individual licences for any category of telecommunications services only to the extent required to ensure the efficient use of radio frequencies or for the time necessary to make available sufficient numbers in accordance with Community law;

(14) Whereas Member States should be allowed to impose specific conditions on undertakings providing public telecommunications networks and telecommunications services by virtue of their market power; whereas the market power of an undertaking is defined by the provisions of the Directive of the European Parliament and of the Council on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP) (hereinafter referred to as the 'Interconnection Directive');

(15) Whereas telecommunications services have a role to play in strengthening social and economic cohesion, *inter alia* by furthering the achievement of universal service, in particular in remote, peripheral, landlocked and rural areas and islands; whereas Member States should therefore be allowed to impose universal service obligations by means of individual licences which require the licensee to provide universal service; whereas obligations to contribute to the financing of universal service are not by themselves a justification for imposing individual licences;

(16) Whereas in order to facilitate the granting of individual licences to undertakings applying for such licences in more than one Member State and in order to facilitate notification procedures in the case of general authorizations, a 'one-stop-shopping procedure' should be established;

(17) Whereas national regulatory authorities should, where possible, endeavour under the one-stop-shopping procedure to shorten the time limits for taking a decision on the grand of individual licences for certain categories of services in response to commercial needs;

(18) Whereas the 'one-stop-shopping procedure' should be implemented without prejudice to national provisions relating to the language used in the relevant procedures;

(19) Whereas a degree of harmonization of the procedures is already provided for in this Directive; whereas further harmonization may be desirable in order to achieve a more integrated telecommunications market; whereas this possibility should be assessed in the report to be drawn up by the Commission;

(20) Whereas any authorization systems should take account of the establishment of trans-European telecommunications networks as envisaged in Title XII of the Treaty; whereas to this end Member States should ensure that their national regulatory authorities shall coordinate where possible their authorization procedures at the request of an undertaking intending to provide a telecommunications service or to establish and/or operate a telecommunications network in more than one Member State;

(21) Whereas Community undertakings should have effective and comparable access to third countries' markets and enjoy treatment in third countries similar to that offered in the Community to undertakings owned wholly, controlled through majority ownership or effectively controlled by nationals of the third countries concerned;

(22) Whereas a committee should be established to assist the Commission;

(23) Whereas, on the one hand, it is necessary, due to the particular commercial sensitivity of information which may be obtained by national regulatory authorities in the course of issuing, managing, controlling and enforcing licences, to establish common principles applicable to these national regulatory authorities in the field of confidentiality; whereas, on the other hand, in this field the members of the institutions of the Community, the members of committees, and the officials and other servants of the Community are required by Community law and in particular by Article 214 of the Treaty not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components;

(24) Whereas the functioning of this Directive should be reviewed in due course, in the light of the development of the telecommunications sector and of trans-European networks, as well as in the light of experience gained from the harmonization and one-stop-shopping procedures set out in this Directive;

(25) Whereas on the basis of the full implementation of a competitive framework, in order to achieve the essential goal of ensuring the development of the internal market in the field of telecommunications and specifically the free provision of telecommunications services and networks throughout the Community, the adoption of this Directive will substantially contribute to the attainment of this goal; whereas Member States should implement this common framework, in particular through their national regulatory authorities;

(26) Whereas this Directive applies to both existing and future authorizations; whereas certain licences have been granted for periods which go beyond 1 January 1999; whereas clauses in such authorizations contrary to Community law, in particular those conferring on the licensees special or exclusive rights, are, according to the case-law of the Court of Justice, inoperative from the date indicated in the relevant Community measures; whereas regarding other rights which do not affect the interests of other undertakings under Community law, Member States could extend their validity in order to avoid claims for compensation;

(27) Whereas in principle obligations in authorizations existing at the date of entry into force of this Directive which have not been brought into line with the provisions of this Directive by 1 January 1999 should be inoperative; whereas on request Member States may be granted a deferment of that date by the Commission,

HAVE ADOPTED THIS DIRECTIVE:

SECTION I

SCOPE, DEFINITIONS AND PRINCIPLES

Article 1

Scope

1. This Directive concerns the procedures associated with the granting of authorizations and the conditions attached to such authorizations, for the purpose of providing telecommunications services, including authorizations for the establishment and/or operation of telecommunications networks required for the provision of such services.

2. This Directive is without prejudice to the specific rules adopted by the Member States in accordance with Community law, governing the distribution of audiovisual programmes intended for the general public, and the content of such programmes. It is also without prejudice to measures taken by Member States concerning defence and to measures taken by Member States in accordance with public interest requirements recognized by the Treaty, in particular Articles 36 and 56, especially in relation to public morality, public security, including the investigation of criminal activity, and public policy.

Article 2

Definitions

1. For the purposes of this Directive,

(a) 'authorizations' means 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 authorization' or 'individual licence', as defined below:

— 'general authorization' means an authorization, 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 authorization,

— 'individual licence' means an authorization which is granted by a national regulatory authority and which gives an undertaking specific rights or which subjects that undertaking's operations to specific obligations supplementing the general authorization where applicable, where the undertaking is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;

(b) 'national regulatory authority' means the body or bodies, legally distinct and functionally independent of the telecommunications organizations, charged by a Member State with the elaboration of, and supervision of compliance with, authorizations;

(c) 'one-stop-shopping procedure' means a procedural arrangement facilitating the obtaining of individual licences from, or, in the case of general authorizations and if required, the notification to more than one national regulatory authority, in a coordinated procedure and at a single location;

(d) 'essential requirements' means 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 on network operations, the maintenance of network integrity and, where justified, the interoperability of services, data protection, the protection of the environment and town and country planning objectives, as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based telecommunications systems and other space-based or terrestrial technical systems. Data protection may include the protection of personal data, the confidentiality of information transmitted or stored, and the protection of privacy.

2. Other definitions given in Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision [1] and the Interconnection Directive shall apply, where relevant, to this Directive.

Article 3

Principles governing authorizations

1. Where Member States make the provision of a telecommunications service subject to an authorization, the grant of such authorization and the conditions to be attached thereto shall comply with the principles set out in paragraphs 2, 3 and 4.

2. Authorizations may contain only the conditions listed in the Annex. Moreover, such conditions shall be objectively justified in relation to the service concerned, non-discriminatory, proportionate and transparent.

3. Member States shall ensure that telecommunications services and/or telecommunications networks can be provided either without authorization or on the basis of general authorizations, to be supplemented where necessary by rights and obligations requiring an individual assessment of applications and giving rise to one or more individual licences. Member States may issue an individual licence only where the beneficiary is given access to scarce physical and other resources or is subject to particular obligations or enjoys particular rights, in accordance with the provisions of Section III.

[1] OJ No L 192, 24. 7. 1990, p. 1.

4. Member States shall, in the formulation and application of their authorization systems, facilitate the provision of telecommunications services between Member States.

SECTION II

GENERAL AUTHORIZATIONS

Article 4

Conditions attached to general authorizations

1. Where Member States subject the provision of telecommunications services to general authorizations, the conditions which, where justified, may be attached to such authorizations are set out in points 2 and 3 of the Annex. Such authorizations shall entail the least onerous system possible consistent with enforcing the relevant essential requirements and relevant other public interest requirements set out in points 2 and 3 of the Annex.

2. Member States shall ensure that the conditions attached to general authorizations are published in an appropriate manner so as to provide easy access to that information for interested parties. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned and in the *Official Journal of the European Communities.*

3. Member States may amend the conditions attached to a general authorization in objectively justified cases and in a proportionate manner. When doing so, Member States shall give appropriate notice of their intention to do so and enable interested parties to express their views on the proposed amendments.

Article 5

Procedures for general authorizations

1. Without prejudice to the provisions of Section III, Member States shall not prevent an undertaking which complies with the applicable conditions attached to a general authorization in accordance with Article 4 from providing the intended telecommunications service and/or telecommunications networks.

2. Member States may require that, before providing the telecommunications service and/or telecommunications networks, the undertaking enjoying the general authorization shall notify the national regulatory authority of its intention to do so, and shall communicate the information relating to the service concerned which is necessary for the purpose of ensuring compliance with the applicable conditions attached in accordance with Article 4. The undertaking may be required to wait for up to four weeks after formal receipt of all the information required as published in accordance with paragraph 4, before starting to provide the services covered by the general authorization.

3. Where the undertaking enjoying a general authorization does not comply with a condition attached to a general authorization in accordance with Article 4, the national regulatory authority may inform the undertaking concerned that it is not entitled to avail itself of the general authorization and/or impose on that undertaking, in a proportionate manner, specific measures aimed at ensuring compliance. The national regulatory authority shall, at the same time, give the undertaking concerned a reasonable opportunity to state its views on the application of the conditions and to remedy any breaches within one month starting from the intervention of the national regulatory authority. If the undertaking concerned remedies the breaches, the national regulatory authority shall, within two months of its initial intervention, annul or modify its decision as appropriate and state the reasons for its decision. If the undertaking concerned does not remedy the breaches, the national regulatory authority shall, within two months of its initial intervention, confirm its decision and state the reasons for its decision. The decision shall be communicated within one week of its adoption to the undertaking concerned. Member States shall lay down a procedure for appealing against such a decision to an institution independent of the national regulatory authority.

4. Member States shall ensure that information concerning the procedures relating to general authorizations is published in an appropriate manner, so as to provide easy access to that information. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned and in the *Official Journal of the European Communities.*

Article 6

Fees and charges for general authorizations procedures

Without prejudice to financial contributions to the provision of universal service in accordance with the Annex, Member States shall ensure that any fees imposed on undertakings as part of the authorization procedures seek only to cover the administrative costs incurred in the issue, management, control and enforcement of the applicable general authorization scheme. Such fees shall be published in an appropriate and sufficiently detailed manner, so as to be readily accessible.