DIRECTIVE 95/62/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 1995

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3],

(1) Whereas Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision [4] provides *inter alia* for the adoption of a specific Directive establishing open network provision conditions for the voice telephony service;

(2) Whereas in accordance with Directive 90/387/EEC, open network provision (ONP) applies to public telecommunications networks and, where applicable, public telecommunications services; whereas therefore the application of ONP to the voice telephony service must also include the application of ONP to the network over which the voice telephony service is provided;

(3) Whereas ONP conditions for access to and use of the fixed public telephone networks and services must apply to all the network technologies currently in use in Member States, including analogue telephone networks, digital networks and the integrated services digital network (ISDN);

(4) Whereas this Directive does not apply to mobile telephony services; whereas it does apply to the use of fixed public telephone networks by operators of public mobile telephony services, in particular with respect to the interconnection of mobile telephone networks with the fixed public telephone network in a single Member State, in order to achieve comprehensive Community-wide services; whereas this Directive does not apply to direct interconnection between operators of public mobile telephony services;

(5) Whereas this Directive does not apply to services or facilities provided at network termination points located outside the Community;

(6) Whereas Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services [5] requires Member States to abolish exclusive rights for the supply of telecommunications services other than voice telephony; whereas Directive 90/388/EEC does not apply to telex, mobile radiotelephony and paging services;

(7) Whereas some Member States have abolished exclusive rights for the provision of voice telephony and the public telecommunications network; whereas those Member States should ensure that all users can subscribe to harmonized telephony services in accordance with this Directive; whereas the provisions of this Directive should not hinder entry to markets for voice telephony or the provision of the public telecommunications network;

(8) Whereas the voice telephony service has become important for social and economic reasons, and everyone in the Community should have the right to subscribe to this service; whereas in application of the principle of non-discrimination, voice telephony service must be offered and provided on request without discrimination to all users; whereas the principle of non-discrimination applies to, *inter alia*, availability of technical access, tariffs, quality of service, delivery period, fair distribution of capacity in the event of scarcity, repair time, availability of network information and customers' information, subject to relevant legislation concerning the protection of personal data and privacy;

(9) Whereas in accordance with Directive 90/388/EEC, Member States which maintain exclusive rights for the provision and operation of public telecommunications networks must take the necessary measures to make the conditions governing access to and use of the network objective and non-discriminatory and to publish them; whereas it is necessary to harmonize which specifications should be published and in what form, in order to facilitate the provision of telecommunications services within and between Member States, and in particular the provision of

[1] OJ No C 122, 18. 5. 1995, p. 4.
[2] OJ No C 236, 11. 9. 1995, p. 38.
[3] Opinion of the European Parliament of 16 May 1995 (OJ No C 151, 19. 6. 1995, p. 27), common position of the Council of 12 July 1995 (OJ No C 281, 25. 10. 1995, p. 19), Decision of the European Parliament of 26 October 1995 (OJ No C 308, 20. 11. 1995) and Council Decision of 27 November 1995.
[4] OJ No L 192, 24. 7. 1990, p. 1.
[5] OJ No L 192, 24. 7. 1990, p. 10. Directive as amended by Directive 94/46/EC (OJ No L 268, 19. 10. 1994, p. 15).

services by companies, firms or natural persons established in a Member State other than that of the company, firm or natural person for which or for whom the services are intended;

(10) Whereas in conformity with the principle of separation of regulatory and operational functions, national regulatory authorities have been created in the Member States; whereas in application of the principle of subsidiarity, the national regulatory authority of each Member State should play an important role in the implementation of this Directive, particularly in matters relating to the publication of targets and performance statistics, dates for the implementation of new facilities, adequate consultation with users/consumers and user/consumer organizations, the control of numbering plans, the supervision of conditions of use, and the resolution of disputes and in ensuring that users are given fair treatment throughout the Community; whereas they should have the necessary means to carry out these tasks fully;

(11) Whereas quality of service as perceived by users is an essential aspect of the service provided, and quality-of-service parameters and achieved performance levels should be published for the benefit of users; whereas harmonized quality-of-service parameters and common measurement methods are required in order to assess Community-wide convergence of quality of service; whereas different categories of user require different levels of quality of service, for which different tariffs may be appropriate;

(12) Whereas users of the fixed public telephone network should have at least similar rights when dealing with telecommunications organizations as they have with the providers of other goods and services, and telecommunications organizations should not have any undue legal protection when dealing with users of the fixed public telephone network;

(13) Whereas agreement between the parties involved can constitute a contract; whereas, in order to avoid unfair contractual clauses, it is necessary that national regulatory authorities have the right to require modifications of conditions imposed by telecommunications organizations on users in their contracts; whereas Member States may decide whether their national regulatory authority shall check these contractual conditions either before their use by telecommunications organizations, or at any time at the user's request;

(14) Whereas Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts [1] already provides general protection for consumers with regard to contractual terms; whereas nevertheless for the purpose of this Directive it is necessary to complete this general protection by adding more specific rules which should apply to all users;

(15) Whereas in addition to the basic voice telephony service made available to users it is desirable to ensure that, subject to technical feasibility and economic viability, a harmonized minimum set of advanced voice telephony facilities is offered to users for communications both within and between Member States;

(16) Whereas an agreement on a *modus vivendi* between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the EC Treaty was reached on 20 December 1994;

(17) Whereas the provision of other voice telephony facilities, provided in response to market demand in addition to the harmonized minimum set of voice telephony facilities described herein, should not impede the provision of the basic voice telephony facilities and should not lead to unreasonable increases in the prices for basic voice telephony service;

(18) Whereas harmonized conditions for the voice telephony service should allow Member States flexibility to determine the timescales for implementation, given the different situations with regard to technical development of the network and market demand;

(19) Whereas the Commission has issued Guidelines on the application of Community competition rules in the telecommunications sector [2] in order *inter alia* to clarify the application of Community competition law when telecommunications organizations cooperate in order to implement Community-wide interconnectivity between public networks and services;

(20) Whereas, in order to provide efficient and effective telecommunications services, and to offer new applications, telecommunications service providers and other users may, in accordance with the principles of Community law, request access to the fixed public telephone network at points other than the network termination points offered to the majority of telephone users; whereas such requests must be reasonable in terms of technical feasibility and economic viability; whereas procedures must be introduced to provide a balance between the requirements of users and the justified concerns of telecommunications organizations; whereas it is essential that in making full and efficient use of the fixed public telephone network via such special network access, the integrity of the public network is maintained;

(21) Whereas in accordance with the definition in Directive 90/387/EEC, the network termination point may be located on the premises of a telecommunications organization; whereas

[1] OJ No L 95, 21. 4. 1993, p. 29.

[2] OJ No C 233, 6. 9. 1991, p. 2.

installation of equipment owned by service providers on the premises of a telecommunications organization is not specifically called for in this Directive;

(22) Whereas it is necessary for adequate safeguards to be implemented by national regulatory authorities in order to ensure that telecommunications organizations do not discriminate against service providers with whom they are in competition, including, in particular, safeguards to ensure fair access to network interfaces; whereas the tariffs which apply to telecommunications organizations when using the fixed public telephone network for the provision of telecommunications services should be the same as the tariffs which apply to other users;

(23) Whereas users should benefit from economies of scope and scale which may result from new intelligent network architectures; whereas the development of the Community market in telecommunications services calls for the widest availability of facilities such as those defined in this Directive; whereas the principle of non-discrimination should be applied in a manner that does not hinder the development of advanced telecommunications services;

(24) Whereas telecommunications organizations should be encouraged to establish the necessary cooperation mechanisms in order to ensure full Community-wide interconnectivity between public networks, in particular for the voice telephony service; whereas national regulatory authorities should facilitate such cooperation; whereas such interconnection should be subject to regulatory supervision in order to safeguard the interests of users throughout the Community and ensure compliance with Community law, where appropriate in compliance with the existing international regulatory framework within the scope of the International Telecommunications Union (ITU); whereas therefore national regulatory authorities should have the right of access to full information about network interconnection agreements where required; whereas the Commission may request from Member States details of special network access agreements and interconnection agreements in so far as Community law so provides;

(25) Whereas interconnection of public telephone networks is essential for the provision of Community-wide voice telephony services; whereas it is the responsibility of national regulatory authorities to ensure that the conditions governing interconnection with the fixed public telephone networks, including interconnection by telecommunications organizations from other Member States and operators of public mobile telephony services, are objective and non-discriminatory in accordance with Directive 90/387/EEC;

(26) Whereas where the fixed public telephone network in a Member State is operated by more than one telecommunications organization, appropriate supervision of interconnection arrangements by national regulatory authorities is necessary in order to guarantee Community-wide provision of the voice telephony service; whereas such interconnection arrangements should take due account of the principles laid down in this Directive;

(27) Whereas the principle of non-discrimination in relation to interconnection primarily aims at preventing abuse of a dominant position by telecommunications organizations;

(28) Whereas in accordance with Directive 90/387/EEC common, efficient tariff principles, based on objective criteria and cost orientation, should be applied throughout the Community; whereas a reasonable transition period may be necessary in order to implement these tariff principles fully; whereas tariffs must nevertheless be transparent and properly published, must be sufficiently unbundled in accordance with the competition rules of the Treaty, and must be non-discriminatory and guarantee equality of treatment; whereas application of the principle of cost orientation should take account of the objective of universal service and may take account of town and country planning policies aimed at ensuring cohesion within a Member State;

(29) Whereas national regulatory authorities should have responsibility for supervising tariffs; whereas tariff structures should evolve in response to technological development and user demand; whereas the requirement for cost-oriented tariffs means that telecommunications organizations should implement within a reasonable time limit cost accounting systems by which costs can be allocated to services as accurately as possible on the basis of a transparent cost accounting system; whereas such requirements can be fulfilled for example by implementation of the principle of fully distributed costing;

(30) Whereas, within the overall principle of cost orientation, some flexibility is needed, under supervision of the national regulatory authority, in order to allow discount schemes for certain uses, or socially desirable tariffs for particular groups of people, for particular types of call, or at particular times of day; whereas discount schemes must be compatible with the competition rules of the Treaty, and in particular with the general principle that the conclusion of contracts must not be subject to acceptance of unrelated supplementary obligations; whereas, in particular, discount schemes must not link the supply of services provided under special or exclusive rights with services provided competitively;

(31) Whereas users must be able to check the correctness of their bills by being given the possibility of itemized bills with a degree of detail compatible with user needs and with relevant legislation on data protection and privacy;

(32) Whereas directories of users who subscribe to the voice telephony service should be readily available, since they are an important element for use of the voice telephony service; whereas directory information should be made available on fair and non-discriminatory terms; whereas users should have the choice of being included or excluded from directories, in conformity with relevant legislation on data protection and privacy; whereas this Directive does not change the regulatory situation regarding the supply of directories;

(33) Whereas public pay-telephones provide an important means of access to the voice telephony service, especially in emergencies, and it is desirable to ensure that they are available to meet the reasonable needs of users;

(34) Whereas, recognizing that users would benefit from a single type of telephone payment card usable in all Member States, the Commission has given the uropean Committee for Standardization (CEN)/the European Committee for Electrotechnical Standardization (Cenelec) a mandate to develop suitable standards; whereas, in addition to these standards, commercial agreements are needed to ensure that pre-payment cards issued in one Member State can be used in other Member States;

(35) Whereas, within each Member State, measures may be taken to assist groups of people with special needs; whereas this may include provisions relating to the voice telephony service, because it is recognized as an important service for disabled people;

(36) Whereas the Commission has requested the European Telecommunications Standards Institute (ETSI) to study the technical feasibility and economic viability of a harmonized single line network interface suitable for access to and use of the fixed public telephone network in all Member States; whereas, to ensure harmonized access for ISDN terminal equipment, it is desirable to set requirements for the corresponding network termination point, including specifications for the socket;

(37) Whereas national telephone numbers are a resource which should be controlled by national regulatory bodies; whereas numbering schemes should be developed in close consultation with telecommunications organizations and in harmony with a long-term Europe-wide numbering framework and the international numbering scheme; whereas number changes are expensive for both telecommunications organizations and users, and should be kept to a minimum compatible with national and international long-term requirements;

(38) Whereas the Council resolution of 19 November 1992 on the promotion of Europe-wide cooperation on numbering of telecommunications services [1] regards as a major policy goal the strengthening of cooperation on the numbering arrangements for services with pan-European applications; whereas there is a need to create a European numbering area in order to facilitate the implementation and use of Europe-wide voice telephony services, including freephone/green numbers;

(39) Whereas in accordance with Directive 90/388/EEC Member States which make the supply of telecommunications services subject to a licensing or declaration procedure must ensure that the conditions for the grant of licences are objective, non-discriminatory and transparent, that reasons are given for any refusal, and that there is a procedure for appealing against any such refusal; whereas conditions for using the fixed public telephone network must be compatible with Community law and in particular Directive 90/387/EEC; whereas in accordance with Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines [2], any restrictions aimed at ensuring compliance with the essential requirements should be compatible with Community law and imposed by the national regulatory authorities through regulatory means; whereas no technical restrictions may be introduced or maintained for the interconnection of leased lines and public telephone networks;

(40) Whereas in accordance with Directive 90/387/EEC the essential requirements on the basis of which restrictions on access to and use of public telecommunications networks or services are justified are limited to the security of network operations, maintenance of network integrity, interoperability of services in justified cases and protection of data as appropriate; whereas, in addition, the conditions generally applicable to the connection of terminal equipment apply; whereas national regulatory authorities may authorize procedures whereby a telecommunications organization can act immediately in the event of a serious breach of conditions of access or use;

(41) Whereas the principle of transparency should apply to the standards upon which voice telephony services are based; whereas in accordance with Directive 90/387/EEC, the harmonization of technical interfaces and access conditions must be based on common technical specifications which

[1] OJ No C 318, 4. 12. 1992, p. 2.
[2] OJ No L 165, 19. 6. 1992, p. 27. Directive as amended by Commission Decision 94/439/EC (OJ No L 181, 15. 7. 1994, p. 40).

take account of international standardization; whereas in accordance with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1], new national standards must not be developed in areas where harmonized European standards are under development;

(42) Whereas, to enable the Commission to monitor effectively the application of this Directive, it is necessary that Member States notify to the Commission which national regulatory authorities will be responsible for the functions created by this Directive and the provision of the relevant information called for in this Directive;

(43) Whereas, in addition to the rights of recourse granted under national or Community law, there is a need for a simple conciliation procedure for disputes at both national and Community level; whereas this procedure should be responsive, inexpensive and transparent and should involve all the parties concerned;

(44) Whereas telecommunications services are subject to consumer protection legislation, data protection legislation and legislation concerning dissemination of information or material which may be considered offensive by the general public, and therefore no specific additional measures are envisaged in this Directive;

(45) Whereas transparency would be improved by regular and systematic dialogue with telecommunications organizations, users, consumers, manufacturers and service providers as regards Community-wide issues raised by this Directive; whereas consultation with trade unions is already covered by Commission Decision 90/450/EEC [2] which set up, to assist the Commission, a Joint Committee on Telecommunications Services consisting of representatives of employers and employees;

(46) Whereas given the dynamic development of this sector, the application of open network provision to voice telephony must be a progressive and ongoing process, and the regulatory conditions must be flexible enough to meet the demands of a changing market and changing technology; whereas a responsive procedure for technical adjustment should therefore be established which takes full account of the views of Member States and involves the ONP Committee;

(47) Whereas a procedure will probably have to be introduced for ensuring Community-wide convergence by determining harmonized targets and target dates for voice telephony services and facilities; whereas such a convergence procedure should involve the ONP Committee; whereas in such a procedure full account must be taken of the state of network development and market demand in the Community;

(48) Whereas the goal of an advanced cost-effective Community-wide voice telephony service — an essential foundation of the internal market — cannot be realized satisfactorily at Member State level, and hence is better achieved at Community level by the adoption of this Directive;

(49) Whereas Decision 91/396/EEC [3] requires the introduction in the Community of a single European emergency call number [3]; whereas Council Directive 91/263/EEC of 29 April 1991 on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity [4], defines the conditions for connection of terminal equipment to the fixed public telephone network;

(50) Whereas Europe is shifting towards an information-based economy; whereas open access to networks is a critical issue at world level; whereas the Council has agreed a timetable for the liberalization of all telecommunication services, networks and infrastructures; whereas a balanced policy of liberalization and harmonization, including accompanying measures for universal service, will continue to ensure that business, industry and the public can access modern, economic and efficient communications infrastructures over which a rich and diverse range of services will be offered;

(51) Whereas the Council resolution of 22 July 1993 [5] calls on the Commission to introduce the necessary proposals for legislation by 1 January 1996 and to consider how to adjust open network provision to future developments,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope

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

[1] OJ No L 109, 26. 4. 1983, p. 8. Directive as last amended by Directive 94/10/EC of the European Parliament and of the Council (OJ No L 100, 19. 4. 1994, p. 30).
[2] OJ No L 230, 24. 8. 1990, p. 25.
[3] OJ No L 217, 6. 8. 1991, p. 31.
[4] OJ No L 128, 23. 5. 1991, p. 1. Directive as last amended by Directive 93/97/EEC (OJ No L 290, 24. 11. 1993, p. 1).
[5] OJ No C 213, 6. 8. 1993, p. 1.