

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 grant 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 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 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.

SECTION III

INDIVIDUAL LICENCES

Article 7

Scope

1. Member States may issue individual licences for the following purposes only:

- (a) to allow the licensee access to radio frequencies or numbers;
- (b) to give the licensee particular rights with regard to access to public or private land;
- (c) to impose obligations and requirements on the licensee relating to the mandatory provision of publicly available telecommunications services and/or public telecommunications networks, including obligations which require the licensee to provide universal service and other obligations under ONP legislation;
- (d) to impose specific obligations, in accordance with Community competition rules, where the licensee has significant market power, as defined in Article 4 (3) of the Interconnection Directive in relation to the provision of public telecommunications networks and publicly available telecommunications services.

2. Notwithstanding paragraph 1, 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 frequencies may be subject to individual licences.

Article 8

Conditions attached to individual licences

1. The conditions which, in addition to those set out for general authorizations, may, where justified, be attached to individual licences are set out in points 2 and 4 of the Annex.

Such conditions shall relate only to the situations justifying the grant of such a licence, as defined in Article 7.

2. Member States may incorporate the terms of the applicable general authorizations in the individual licence by attaching to the individual licence conditions set out in the Annex.

The rights given under and the conditions attached to any general authorizations must not be restricted or complemented by the granting of an individual licence, except in

objectively justified cases and in a proportionate manner, in particular to reflect obligations relating to the provision of universal service and/or the control of significant market power, or obligations corresponding to offers in the course of a comparative bidding process.

3. Without prejudice to Article 20, Member States shall ensure that information concerning the conditions which will be attached to any individual licence 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*.

4. Member States may amend the conditions attached to an individual licence 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 9

Procedures for the granting of individual licences

1. Where a Member State grants individual licences, it shall ensure that information concerning the procedures for individual licences is published in an appropriate manner, so as to be readily accessible.

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*.

2. Where a Member State intends to grant individual licences:

— it shall grant individual licences through open, non-discriminatory and transparent procedures and, to this end, shall subject all applicants to the same procedures, unless there is an objective reason for differentiation, and

— it shall set reasonable time limits; *inter alia*, it shall inform the applicant of its decision as soon as possible but not more than six weeks after receiving the application. In the provisions adopted to implement this Directive, Member States may extend this time limit to up to four months in objectively justified cases which have been defined specifically in those provisions. In the case of comparative bidding procedures in particular, Member States may further extend this time limit by up to four months. These time limits shall be without prejudice to any applicable international agreements relating to international frequency and satellite coordination.

3. Without prejudice to Article 10 (1), any undertaking which fulfils the conditions decided and published by Member States in accordance with the relevant provisions of this Directive shall be entitled to receive an individual licence. However, where an undertaking applying for an individual licence does not provide the information which is reasonably required in order to demonstrate that it fulfils the conditions imposed in accordance with the relevant provisions of this Directive, the national regulatory authority may refuse to grant the individual licence.

4. Where the beneficiary of an individual licence does not comply with a condition attached to the licence in accordance with the relevant provisions of this Directive, the national regulatory authority may withdraw, amend or suspend the individual licence or impose, 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 view on the application of the conditions and, except in the case of repeated breaches by the said undertaking, where the national regulatory authority can immediately take the appropriate measures, 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.

5. In the event of harmful interference between a telecommunications network using radio frequencies and other technical systems the national regulatory authority may take immediate action to remedy that problem. In such a case the undertaking concerned shall thereafter be given a reasonable opportunity to state its view and to propose any remedies to the harmful interference.

6. Member States refusing to grant or withdrawing, amending or suspending an individual licence shall inform the undertaking concerned of the reasons therefor. Member States shall lay down an appropriate procedure for appealing against such refusals, withdrawals, amendments or suspensions to an institution independent of the national regulatory authority.

Article 10

Limitation on the number of individual licences

1. Member States may limit the number of individual licences for any category of telecommunications services and for the establishment and/or operation of telecommunications infrastructure, 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.

2. Where a Member State intends to limit the number of individual licences granted in accordance with paragraph 1, it shall:

- give due weight to the need to maximize benefits for users and to facilitate the development of competition,
- enable all interested parties to express their views on any limitation,
- publish its decision to limit the number of individual licences, stating the reasons therefor,
- review the limitation at reasonable intervals,
- invite applications for licences.

3. Member States shall grant such individual licences on the basis of selection criteria which must be objective, non-discriminatory, detailed, transparent and proportionate. Any such selection must give due weight to the need to facilitate the development of competition and to maximize benefits for users.

Member States shall ensure that information on such criteria is published in advance in an appropriate manner, so as to be readily accessible. Reference to the publication of this information shall be made in the national official gazette of the Member State concerned.

4. Where, on its own initiative or following a request by an undertaking, a Member State finds, either at the time of entry into force of this Directive or thereafter, that the number of individual licences can be increased, it shall publish this fact and invite applications for additional licences.

Article 11

Fees and charges for individual licences

1. Member States shall ensure that any fees imposed on undertakings as part of authorization procedures seek only to cover the administrative costs incurred in the issue, management, control and enforcement of the applicable

individual licences. The fees for an individual licence shall be proportionate to the work involved and be published in an appropriate and sufficiently detailed manner, so as to be readily accessible.

2. Notwithstanding paragraph 1, Member States may, where scarce resources are to be used, allow their national regulatory authorities to impose charges which reflect the need to ensure the optimal use of these resources. Those charges shall be non-discriminatory and take into particular account the need to foster the development of innovative services and competition.

SECTION IV

PROVISION OF TELECOMMUNICATIONS SERVICES THROUGHOUT THE COMMUNITY

Article 12

Harmonization

1. Wherever necessary, the conditions attached to general authorizations and the procedures for general authorization shall be harmonized.

The harmonization of these conditions and procedures shall aim to develop the least onerous system possible consistent with ensuring compliance with the provisions of this Directive, in particular Articles 3, 4 and 5 thereof and with the relevant essential requirements and other public interest requirements set out in points 1, 2 and 3 of the Annex.

Harmonization shall furthermore aim to establish balanced sets of rights and obligations for the undertakings enjoying authorizations.

2. The Commission shall, in accordance with the procedure laid down in Article 16, give mandates to the European Conference of Postal and Telecommunications Administrations (CEPT)/the European Committee for Telecommunications Regulatory Affairs (Ectra), CEPT/European Radiocommunications Committee (ERC) or other relevant harmonization bodies. These mandates shall define the tasks to be performed and the categories of general authorizations to be harmonized and shall lay down a timetable for the preparation of harmonized conditions and procedures.

3. In the light of the work performed on the basis of paragraph 2 and without prejudice to Article 7, a decision stating that a harmonized general authorization is applicable shall be adopted in accordance with the procedure laid down in Article 17.

Article 13

One-stop-shopping procedure

1. Where appropriate and in conjunction with CEPT/Ectra and CEPT/ERC, the Commission shall take the steps necessary for the operation of a one-stop-shopping procedure for the grant of individual licences and, in the case of general authorizations, for notification procedures, including suitable arrangements for its administration, in accordance with the procedure laid down in Article 17. Information on that one-stop-shopping procedure shall be published in the *Official Journal of the European Communities*.

2. The one-stop-shopping procedure shall comply with the following conditions:

- (a) it shall be open to all undertakings wishing to provide telecommunications services in the Community;
- (b) the submission of applications and notifications shall be possible and one or more bodies to which the applications and the notifications may be submitted shall be designated;
- (c) in the case of individual licences, applications shall be passed to the national regulatory authorities concerned, within seven working days of formal receipt, by the bodies to which they were submitted.

In the case of general authorizations, notifications shall be passed to the national regulatory authorities concerned, within two working days of formal receipt, by the bodies to which they were submitted;

- (d) in the case of individual licences, the national regulatory authorities concerned shall decide on the grant of such a licence within the time limits referred to in Article 9 (2); they shall inform both the applicant and the bodies to which the relevant application was submitted of that decision within one week of taking their decision.

In the case of general authorizations, the national regulatory authorities concerned shall comply with the time limit referred to in Article 5 (2);

- (e) Article 9 and Article 5 shall apply respectively to applications for individual licences and to notifications made by means of the one-stop-shopping procedure;
- (f) the bodies to which the applications and notifications may be submitted shall report annually to the Commission on the operation of the one-stop-shopping procedure, including information on refusals of applications and objections raised to notifications;
- (g) the bodies involved in the one-stop-shopping procedure shall undertake to observe the level of confidentiality prescribed in Article 20.

SECTION V

Article 17

LICENSING COMMITTEE

Committee Procedure No II (b) (*)

Article 14

Establishment of the Licensing Committee

The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission. The Committee shall be called the Licensing Committee (hereinafter referred to as 'the Committee').

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States Within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

Article 15

Exchange of information

The Commission shall, where necessary, inform the Committee on the outcome of regular consultations with the representatives of telecommunications organizations, users, consumers, manufacturers, service providers and trade unions.

The Commission shall adopt the measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission shall defer application of the measures on which it has decided for a period of three months from the date of communication,
- the Council, acting by qualified majority, may take a different decision within the time limit referred to in the first indent.

In addition, the Committee shall, taking account of the Community's telecommunications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding the authorization of telecommunications services.

SECTION VI

GENERAL AND FINAL PROVISIONS

Article 16

Committee procedure No I (*)

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 18

Third countries

1. Member States may inform the Commission of any general difficulties encountered, *de jure* or *de facto*, by Community organizations in obtaining authorizations and in operating under authorizations in third countries, which have been brought to their attention.

2. Whenever the Commission is informed of such difficulties, it may, if necessary, submit proposals to the Council for an appropriate mandate for negotiation of comparable rights for Community organizations in these third countries. The Council shall decide by qualified majority.

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

(*) Procedures set out in Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ No L 197, 18. 7. 1987, p. 33).

*Article 19***New services**

Without prejudice to Sections II and III, where the provision of a telecommunications service is not yet covered by a general authorization and where such a service and/or network cannot be provided without authorization, Member States shall, not later than six weeks after they have received an application, adopt provisional conditions allowing the undertaking to start providing the service or reject the application and inform the undertaking concerned of the reasons therefor. As soon as possible thereafter, Member States shall adopt definitive conditions or consent to the provision of the service concerned without authorization or provide reasons for any refusal to do so. Member States shall lay down an appropriate procedure for appealing to an institution independent of the national regulatory authority against refusals to adopt provisional or definitive conditions, rejections of applications or refusals to consent to the provision of the service concerned without authorization.

*Article 20***Confidentiality**

1. National regulatory authorities shall not disclose information covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

2. Paragraph 1 shall be without prejudice to the right of national regulatory authorities to undertake disclosure where it is essential for the purposes of fulfilling their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of undertakings in the protection of their business secrets.

3. Paragraph 1 shall not preclude publication of information on licensing conditions which does not include information of a confidential nature.

*Article 21***Notification**

1. In addition to the information already required under Directive 90/388/EEC, Member States shall supply the Commission with the following information:

— the names and addresses of the national authorities and bodies competent to issue national authorizations,

— information on national authorization regimes.

2. Member States shall notify any changes in respect of the information supplied under paragraph 1, within one month of their entry into force.

*Article 22***Authorizations existing at the date of entry into force of this Directive**

1. Member States shall make all necessary efforts to bring authorizations in force at the date of entry of this Directive into line with its provisions before 1 January 1999.

2. Where application of the provisions of this Directive results in amendments to the terms of authorizations already in existence, Member States may extend the validity of terms, other than those giving special or exclusive rights which have been or are to be terminated under Community law, provided that this can be done without affecting the rights of other undertakings under Community law, including this Directive. In such cases, Member States shall notify the Commission of the action taken to that end and shall state the reasons therefor.

3. Without prejudice to the provisions of paragraph 2, obligations in authorizations existing at the date of entry into force of this Directive which have not been brought into line by 1 January 1999 with the provisions of this Directive shall be inoperative.

Where justified, Member States may, upon request, be granted a deferment of that date by the Commission.

*Article 23***Review procedures**

Before 1 January 2000, the Commission shall prepare a report to be submitted to the European Parliament and Council and to be accompanied, where appropriate, by new legislative proposals. The report shall include an assessment, on the basis of the experience gained, of the need for further development of the regulatory structures as regards authorizations, in particular in relation to the harmonization of the procedures and the scope of individual licences, to other aspects of harmonization and to trans-European services and networks. The report shall also include proposals with a view to consolidating the various committees existing in Community telecommunications legislation. Any amendments necessary to adapt the content of the Annex to new technological developments and appropriate practical procedures, together with Article 7 (2), shall also be considered in this report.

*Article 24***Deferment**

Deferment of the obligations under Articles 3 (3), 7, 9, 10 (1), 12, 13, 22 shall be granted to those Member States identified in the Council's resolutions of 22 July 1993 and 22 December 1994 which benefit from an additional transition period for the liberalization of telecommunications services for as long as and to the extent that they avail themselves of such transition periods. Member States shall inform the Commission of their intention to use them.

*Article 25***Implementation**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive and publish the conditions and procedures attached to authorizations as soon as possible and, in any event, not later than 31 December 1997. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official

publication. The methods of making such a reference shall be laid down by the Member States.

*Article 26***Entry into force**

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

*Article 27***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 10 April 1997.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

A. VAN DOK VAN
WEELE

ANNEX

CONDITIONS WHICH MAY BE ATTACHED TO AUTHORIZATIONS

1. Any conditions which are attached to authorizations must be consistent with the competition rules of the Treaty.
2. Conditions which may be attached to all authorizations, where justified and subject to the principle of proportionality:
 - 2.1. conditions intended to ensure compliance with relevant essential requirements;
 - 2.2. conditions linked to the provision of information reasonably required for the verification of compliance with applicable conditions and for statistical purposes;
 - 2.3. conditions intended to prevent anti-competitive behaviour in telecommunications markets, including measures to ensure that tariffs are non-discriminatory and do not distort competition;
 - 2.4. conditions relating to the effective and efficient use of the numbering capacity.
3. Specific conditions which may be attached to general authorizations for the provision of publicly available telecommunications services and of public telecommunications networks that are required for the provision of such services, where justified and subject to the principle of proportionality:
 - 3.1. conditions relating to the protection of users and subscribers in relation particularly to:
 - the prior approval by the national regulatory authority of the standard subscriber contract,
 - the provision of detailed and accurate billing,
 - the provision of a procedure for the settlement of disputes,
 - publication and adequate notice of any change in access conditions, including tariffs, quality and the availability of services;
 - 3.2. financial contributions to the provision of universal service, in accordance with Community law;
 - 3.3. communication of customer database information necessary for the provision of universal directory information;
 - 3.4. provision of emergency services;
 - 3.5. special arrangements for disabled people;
 - 3.6. conditions relating to the interconnection of networks and the interoperability of services, in accordance with the Interconnection Directive and obligations under Community law.
4. Specific conditions which may be attached to individual licenses, where justified and subject to the principle of proportionality:
 - 4.1. specific conditions linked to the allocation of numbering rights (compliance with national numbering schemes);
 - 4.2. specific conditions linked to the effective use and efficient management of radio frequencies;
 - 4.3. specific environmental and specific town and country planning requirements, including conditions linked to the granting of access to public or private land and conditions linked to collocation and facility sharing;
 - 4.4. maximum duration, which shall not be unreasonably short, in particular in order to ensure the efficient use of radio frequencies or numbers or to grant access to public or private land, without prejudice to other provisions concerning the withdrawal or the suspension of licences;
 - 4.5. provision of universal service obligations in accordance with the Interconnection Directive and 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⁽¹⁾;
 - 4.6. conditions applied to operators having significant market power, as notified by Member States under the Interconnection Directive, intended to guarantee interconnection or the control of significant market power;
 - 4.7. conditions concerning ownership which comply with Community law and the Community's commitments *vis-à-vis* third countries;
 - 4.8. requirements relating to the quality, availability and permanence of a service or network, including the financial, managerial and technical competence of the applicant and conditions setting a minimum period of operation and including, where appropriate and in accordance with Community law, the

⁽¹⁾ OJ No L 321, 30. 12. 1995, p. 6.

mandatory provision of publicly available telecommunications services and public telecommunications networks;

- 4.9. specific conditions relating to the provision of leased lines in accordance with Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines⁽¹⁾.

This list of conditions shall be without prejudice to:

- any other legal conditions which are not specific to the telecommunications sector,
- measures taken by Member States in accordance with public interest requirements recognized by the Treaty, in particular Articles 36 and 56, specifically in relation to public morality, public security, including the investigation of criminal activities, and public policy.

⁽¹⁾ 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).