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I

(Acts whose publication is obligatory)

DIRECTIVE 98/4/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 February 1998

amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

and expansion of world trade; whereas the Agreement has no direct effect;

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

(2) Whereas Directive 93/38/EEC⁽⁵⁾ coordinated the national procedures relating to the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in order to introduce equal conditions of competition for such contracts in all the Member States;

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

(3) Whereas the contracting entities covered by the Agreement which comply with Directive 93/38/EEC, as amended by this Directive, and which apply the same provisions as regards contractors, suppliers and providers of services of third countries signatory to the Agreement are therefore in conformity with the Agreement;

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⁾, in the light of the joint text approved by the Conciliation Committee on 26 November 1997,

(4) Whereas, in view of the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, the arrangements to be applied to tenderers and products from signatory third countries are those defined by the Agreement, the scope of which does not include contracts awarded by contracting entities referred to in Article 2(1)(b) of Directive 93/38/EEC, contracts awarded by contracting entities carrying out activities referred to in Annexes III, IV, V, VI and X of that Directive, service contracts listed in Annex XVI B thereto, R&D service contracts mentioned in Category 8 of Annex XVI A thereto, telecommunications service contracts mentioned in Category 5 of Annex XVI A thereto, whose Common Products Classification (CPC) numbers are 7524, 7525 and 7526 and financial service contracts mentioned in Category 6 of Annex XVI A thereto, in connection with the issue, sale, purchase or transfer of securities or

(1) Whereas the Council, by its Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994)⁽⁴⁾, approved on behalf of the Community, *inter alia*, the Agreement on Government Procurement, hereinafter referred to as 'the Agreement', the purpose of which is to establish a multilateral framework of balanced rights and obligations with respect to government procurement with a view to achieving liberalisation

⁽¹⁾ OJ C 138, 3.6.1995, p. 49 and OJ C 28, 29.1.1997, p. 4.

⁽²⁾ OJ C 256, 2.10.1995, p. 4 and OJ C 212, 22.7.1996, p. 13.

⁽³⁾ Opinion of the European Parliament of 22 October 1996 (OJ C 347, 18.11.1996, p. 25), Council Common Position of 20 December 1996 (OJ C 111, 9.4.1997, p. 65) and Decision of the European Parliament of 14 May 1997 (OJ C 167, 2.6.1997, p. 53). Decision of the European Parliament of 16 December 1997 and Decision of the Council of 15 December 1997.

⁽⁴⁾ OJ L 336, 23.12.1994, p. 1.

⁽⁵⁾ OJ L 199, 9.8.1993, p. 84. Directive as last amended by the 1994 Act of Accession.

other financial instruments, and central bank services;

- (5) Whereas certain provisions of the Agreement introduce more favourable conditions for tenderers than those laid down in Directive 93/38/EEC;
- (6) Whereas, when contracts are awarded by contracting entities within the meaning of the Agreement, the opportunities for access to public service, public supply and public works contracts available under the Treaty to undertakings and products from the Member States must be at least as favourable as the conditions of access to public contracts within the Community accorded under the arrangements contained in the Agreement to undertakings and products from third countries which are signatories to the Agreement;
- (7) Whereas it is therefore necessary to adapt and supplement the provisions of Directive 93/38/EEC;
- (8) Whereas the need to ensure a real opening-up of the market and a fair balance in the application of procurement rules in these sectors continues to require that the entities to be covered must be identified on a basis other than by reference to their legal status;
- (9) Whereas the amendments made to Directive 93/38/EEC should not prejudice the equal treatment of contracting entities operating in the public sector and in the private sector;
- (10) Whereas it must be ensured, in keeping with Article 222 of the Treaty, that the rules in Member States governing the system of property ownership are not to be prejudiced;
- (11) Whereas the application of Directive 93/38/EEC must be simplified and the balance which has been reached in the current Community legislation in the field of public procurement in these sectors must be maintained as far as possible;
- (12) Whereas it is therefore necessary to extend the applicability of certain of the adaptations of Directive 93/38/EEC to all the contracting entities and sectors covered by this Directive;
- (13) Whereas contracting entities may seek or accept advice which may be used in the preparation of specifications for a specific procurement, provided that such advice does not have the effect of precluding competition;
- (14) Whereas the Commission shall make available to small and medium-sized undertakings the training and information materials they need to enable them to participate fully in the changed procurement market;

- (15) Whereas the opening-up of contracts in the sectors covered by this Directive might have adverse effects upon the economies of the Hellenic Republic and the Portuguese Republic, which will have to endure considerable strain; whereas it is appropriate that these member States be granted adequate additional periods to implement this Directive,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Without prejudice to the international rights and commitments devolving on the Community as a result of the acceptance of the Agreement, which defines the arrangements to be applied to tenderers and products from third countries which are signatories to the Agreement, the current scope of which does not include contracts awarded by contracting entities referred to in Article 2(1)(b) of Directive 93/38/EEC, contracts awarded by contracting entities carrying out activities referred to in Annexes III, IV, V, VI and X of that Directive, service contracts listed in Annex XVI B thereto, development service contracts mentioned in Category 8 of Annex XVI A thereto, telecommunications service contracts mentioned in Category 5 of Annex XVI A thereto, whose Common Product Classification (CPC) numbers are 7524, 7525 and 7526, and financial service contracts mentioned in Category 6 of Annex XVI A thereto in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services, Directive 93/38/EEC is hereby amended as follows:

1. in Article 14

- (a) paragraph 1 shall be replaced by the following:

‘1. This Directive shall apply to:

- (a) contracts awarded by contracting entities carrying out activities referred to in Annex X⁽¹⁾, provided that the estimated value, net of value added tax (VAT), is not less than:
- (i) ECU 600 000 in the case of supply and service contracts;
 - (ii) ECU 5 000 000 in the case of works contracts;
- (b) contracts awarded by contracting entities carrying out activities referred to in Annexes I, II, VII, VIII and IX⁽²⁾, provided that the estimated value, net of VAT, is not less than:
- (i) the equivalent in ECU of 400 000 special drawing rights (SDR) for supply contracts and for the service contracts listed in Annex XVI A,

except for the R&D services mentioned in Category 8 and Category 5 telecommunications services, the CPC reference numbers of which are 7524, 7525 and 7526;

- (ii) ECU 400 000 in the case of service contracts other than those mentioned in (i);
 - (iii) the equivalent in ECU of 5 000 000 SDR for works contracts;
- (c) contracts awarded by contracting entities carrying out activities referred to in Annexes III, IV, V, and VI⁽³⁾, provided that the estimated value, net of VAT, is not less than:
- (i) ECU 400 000 in the case of supply and service contracts;
 - (ii) ECU 5 000 000 in the case of works contracts.

⁽¹⁾ Annex X: contracting entities in the telecommunications sector.

⁽²⁾ Annex I: entities in the sectors covering the production, transport or distribution of drinking water.

Annex II: entities in the sectors covering the production, transport or distribution of electricity.

Annex VI: entities in the field of urban railway, tramway, trolleybus or bus services.

Annex VIII: entities in the field of airport facilities.

Annex IX: entities in the field of maritime or inland port or other terminal facilities.

⁽³⁾ Annex III: entities in the sectors covering the transport or distribution of gas or heat.

Annex IV: entities in the sectors covering the exploration for and extraction of oil or gas.

Annex V: entities in the sectors covering the exploration for and extraction of coal or other solid fuels.

Annex VI: entities in the field of railway services.²

- (b) the following paragraphs shall be added:

'14. The value in national currencies of the thresholds laid down specified in paragraph 1 shall, in principle, be revised every two years with effect from 1 January 1996. The calculation of such value shall be based on the average daily values of those currencies expressed in ecus over the 24 months terminating on the last day of August preceding the revision with effect from 1 January. These

values shall be published in the *Official Journal of the European Communities* at the beginning of November.

15. The values of the thresholds of the Agreement on Government Procurement, concluded in the framework of the Uruguay Round multilateral negotiations^(*), hereinafter referred to as the "Agreement", expressed in ecus shall in principle be revised every two years with effect from 1 January 1996. The calculation of these values shall be based on the average daily value of the ecu expressed in SDR over the 24 months terminating on the last day of August preceding the 1 January revision. These values shall be published as provided for in paragraph 14.

16. The methods of calculation laid down in paragraphs 14 and 15 shall be examined pursuant to the second subparagraph of Article 5(1)(c) of Directive 93/36/EEC.

^(*) Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ No L 336, 23.12.1994, p. 1).²

2. Article 21(2)(c) shall be replaced by the following:

'(c) contracting entities shall subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned before beginning the selection of tenderers or participants in negotiations. The information must include at least the following:

(i) the nature and quantity, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised; in the case of recurring contracts the nature and quantity and, if possible, an estimate of the timing of the subsequent calls for competition for the works, supplies or services to be procured;

(ii) whether the procedure is restricted or negotiated;

(iii) any date for starting or completing the delivery of supplies or for performing works or services;

(iv) the address and final date for submitting an application to be invited to tender, as well as the language or languages in which it must be submitted;

- (v) the address of the entity awarding the contract and providing any information necessary for obtaining specifications and other documents;
- (vi) any economic and technical requirements, financial guarantees and information required from suppliers, undertakings or providers of services;
- (vii) the amount and terms of payment of any sum payable for the documentation relating to the procurement procedure; and
- (viii) whether the entity is inviting offers for purchase, lease, rental or hire purchase, or more than one of these methods.;
3. Article 22(1)(b) shall be replaced by the following:
- ‘(b) in the case of works contracts, the essential characteristics of the works contracts which the contracting entities intend to award, the estimated value of which is not less than:
- the threshold laid down in Article 14(1)(a)(ii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annex X,
 - the threshold laid down in Article 14(1)(b)(iii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes I, II, VII, VIII and IX, or
 - the threshold laid down in Article 14(1)(c)(ii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes III, IV, V and VI.’;
4. Article 23(1) and (2) shall be replaced by the following:
- ‘1. This Article shall apply to design contests organized as part of a procedure leading to the award of a service contract whose estimated value net of VAT for which is not less than:
- the threshold laid down in Article 14(1)(a)(i) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annex X,
 - the threshold laid down in Article 14(1)(b)(i) or (ii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes I, II, VII, VIII and IX, or
 - the threshold laid down in Article 14(1)(c)(i) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes III, IV, V and VI.’;
2. This Article shall apply to all design competitions where the total amount of competition prizes and payments to participants is not less than:
- the threshold laid down in Article 14(1)(a)(i) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annex X,
 - the threshold laid down in Article 14(1)(b)(i) or (ii) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes I, II, VII, VIII and IX, or
 - the threshold laid down in Article 14(1)(c)(i) as regards contracts intended to be awarded by entities carrying out an activity referred to in Annexes III, IV, V, and VI.’;
5. Article 24(2) shall be replaced by the following:
- ‘2. Information provided under Section I of Annex XV or under Annex XVIII shall be published in the *Official Journal of the European Communities*. In this connection the Commission shall respect any sensitive commercial aspects which the contracting entities may point out when forwarding this information in connection with points 6, 9 and 11 of Annex XV.’;
6. Article 26 shall be replaced by the following:
- ‘Article 26
1. In open procedures the time limit for the receipt of tenders shall be fixed by contracting entities at not less than 52 days from the date of dispatch of the notice. This time limit may be replaced by one which is sufficiently long to allow those concerned to submit valid tenders and which, as a general rule, shall not be less than 36 days and in any case not less than 22 days from the date on which the contract notice was dispatched, if the contracting entities have sent the *Official Journal of the European Communities* a periodic indicative notice in accordance with Article 22(1), provided that this notice contains the information required in Parts II and III of Annex XIV, insofar as that information is available at the time of publication of the notice referred to in Article 22(1).
- This periodic indicative notice must furthermore have been dispatched to the *Official Journal of the European Communities* within a minimum of 52 days and a maximum of 12 months before the

date on which the contract notice provided for in Article 21(1)(a) is dispatched to the *Official Journal of the European Communities*.

2. In restricted procedures and in negotiated procedures with a prior call for competition, the following shall apply:

- (a) the time limit for receipt of requests to participate, in response to a notice published in accordance with Article 21(1)(a) or in response to an invitation from a contracting entity in accordance with Article 21(2)(c), shall, as a general rule, be at least 37 days from the date of dispatch of the notice or invitation and shall in any case not be less than the time limit for publication laid down in Article 25(3), plus 10 days;
- (b) the time limit for receipt of tenders may be fixed by mutual agreement between the contracting entity and the selected candidates, provided that all tenderers are given equal time to prepare and submit tenders;
- (c) where it is not possible to reach agreement on the time limit for the receipt of tenders, the contracting entity shall fix a time limit which shall, as a general rule, be at least 24 days and shall in any case not be less than 10 days from the date of the invitation to tender; the time allowed shall be sufficiently long to take account in particular of the factors mentioned in Article 28(3).;

7. in Article 28:

- (a) paragraph 5 shall be replaced by the following:

‘5. Requests for participation in contracts and invitations to tender must be made by the most rapid means of communication possible. When requests to participate are made by telegram, telex, fax, telephone or any other electronic means, Member States may require them to be confirmed by letter dispatched before the expiry of the time limit referred to in Article 26(2).’;

- (b) the following paragraph shall be added:

‘6. Tenders shall be submitted in writing, directly or by mail. Member States may authorise the submission of tenders by any other means making it possible to ensure:

- that each tender contains all the information necessary for its evaluation,
- that the confidentiality of tenders is maintained pending their evaluation,

- that, where necessary for reasons of legal proof, such tenders are confirmed as soon as possible in writing or by dispatch of a certified copy,

- that tenders are opened after the time-limit for their submission has expired.’;

8. Article 30(1) shall be replaced by the following:

‘1. Contracting entities which so wish may establish and operate a system of qualification of suppliers, contractors or service providers.

Entities establishing or operating a qualification system shall ensure that suppliers, contractors and service providers may apply for qualification at any time.’;

9. Article 35(1) shall be replaced by the following:

‘1. Article 34(1) shall not apply where a Member State bases the award of contracts on other criteria, within the framework of rules in force at the time of adoption of this Directive, which are intended to give preference to certain tenderers, provided that the rules invoked are compatible with the Treaty.’;

10. Article 38 shall be repealed;

11. Article 41 shall be replaced by the following:

‘Article 41

1. Contracting entities shall keep appropriate information on each contract which shall be sufficient to permit them at a later date to justify decisions taken in connection with:

- (a) the qualification and selection of contractors, suppliers or service providers and award of contracts;
- (b) recourse to derogations from the use of European specifications in accordance with Article 18(6);
- (c) use of procedures without prior call for competition in accordance with Article 20(2);
- (d) non-application of Titles II, III and IV in accordance with the derogations provided for in Title I.

2. The information shall be kept for at least four years from the date of award of the contract so that the contracting entity will be able, during that period, to supply the necessary information to the Commission if the latter so requests.

3. Entities carrying out one of the activities mentioned in Annexes I, II, VII, VIII and IX shall inform participating suppliers, contractors or service providers of decisions on contract awards promptly and, upon request, in writing.

4. The contracting entities carrying out one of the activities mentioned in Annexes I, II, VII, VIII and IX shall, promptly after the date on which a written request is received, inform any eliminated candidate or tenderer of the reasons for rejection of his application or his tender and any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer.

However, contracting entities may decide that certain information on the contract award, referred to in the first subparagraph of this paragraph, be withheld where release of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private, including those of the enterprise to which the contract has been awarded, or might prejudice fair competition between suppliers, contractors or service providers.’;

12. the following paragraphs shall be inserted in Article 42:

‘1a. With respect to the activities to which Annexes I, II, VII, VIII and IX refer, Member States shall, in accordance with the arrangements to be laid down under the procedure provided for in Article 40(4) to (8), ensure that, by 31 October 1997 at the latest for the preceding year and thereafter by 31 October of every year, the Commission receives a statistical report on the contracts awarded. This report shall contain the information necessary to verify the proper application of the Agreement.

The information required under this paragraph shall not include information concerning contracts for the services listed in category 8 of Annex XVI A, telecommunications services listed in category 5, the CPC reference numbers of which are 7524, 7525 and 7526, or the services listed in Annex XVI.B.’;

13. the following Article shall be inserted:

‘Article 42a

For the purposes of the award of contracts by the contracting entities, Member States shall apply in their relations conditions as favourable as those which they grant to third countries in implementation of the Agreement. The Member States shall to this end consult each other within the Advisory Committee for Public Contracts on the measures to be taken pursuant to the Agreement.’;

14. Annexes XII, XIII, XIV and XV shall be replaced by the corresponding texts appearing in Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 February 1999. They shall forthwith inform the Commission thereof.

2. However, the Hellenic Republic and the Portuguese Republic may provide that the provisions referred to in paragraph 1 shall apply not later than 16 February 2000.

3. When Member States adopt the provisions referred to in paragraph 1, they shall contain a reference to this Directive or 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.

4. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive together with a correlation table between this Directive and the national measures adopted.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 16 February 1998.

*For the
European Parliament*

The President

J. M. GIL-ROBLES

For the Council

The President

J. CUNNINGHAM

ANNEX

'ANNEX XII

A. OPEN PROCEDURES

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).
Category of service within the meaning of Annex XVI A or XVI B and description (CPC classification).
Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
 - (a) nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work;
 - (b) indication of whether suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of magnitude of the different lots and the possibility of tendering for one, for several or for all of the lots;
 - (c) for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
5. For services:
 - (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
 - (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
 - (c) reference of the law, regulation or administrative provision;
 - (d) indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services;
 - (e) indication whether suppliers can tender for a part of the services concerned.
6. Authorisation to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 18(6).
8. Time limits for delivery or completion or duration of service contract and, as far as possible, the starting date.
9. (a) Address from which the contract documents and additional documents may be requested.
(b) Where appropriate, the amount and terms of payment of the sum to be paid to obtain such documents.

10. (a) Final date for receipt of tenders.
(b) Address to which they must be sent.
(c) Language or languages in which they must be drawn up.
11. (a) Where appropriate, the persons authorised to be present at the opening of tenders.
(b) Date, time and place of such opening.
12. Where appropriate, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the relevant provisions.
14. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or service providers to whom the contract is awarded.
15. Minimum economic and technical conditions required of the supplier, contractor or provider to whom the contract is awarded.
16. Period during which the tenderer is bound to keep open his tender.
17. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.
18. Other information.
19. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
20. Date of dispatch of the notice by the contracting entity.
21. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

B. RESTRICTED PROCEDURES

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVI A or XVI B and description (CPC classification).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
 - (a) nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work.
 - (b) indication of whether suppliers can tender for some and/or all of the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of magnitude of the different lots and possibility of tendering for one, for several or for all of the lots;
 - (c) for works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
5. For services:
 - (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured;
 - (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
 - (c) reference of the law, regulation or administrative provision;
 - (d) indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services;
 - (e) indication whether suppliers can tender for a part of the services concerned.
6. Authorisation to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 18(6).
8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.
10.
 - (a) Final date for receipt of requests to participate.
 - (b) Address to which they must be sent.
 - (c) Language or languages in which they must be drawn up.
11. Final date for dispatch of invitations to tender.

12. Where appropriate, any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the texts in which these are contained.
14. Information concerning the supplier's, contractor's or provider's position and minimum economic and technical conditions required of him.
15. Criteria for the award of the contract where they are not mentioned in the invitation to tender.
16. Other information.
17. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
18. Date of dispatch of the notice by the contracting entities.
19. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).

C. NEGOTIATED PROCEDURES

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate, state if it is a framework agreement).

Category of service within the meaning of Annex XVI A or XVI B and description (CPC classification).

Where appropriate, state whether tenders are requested for purchase, lease, rental or hire purchase or any combination of these.
3. Place of delivery, site or place of performance of service.
4. For supplies and works:
 - (a) nature and quantity of the goods to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the goods to be procured or the nature and extent of the services to be provided and general nature of the work.
 - (b) Indication of whether suppliers can tender for some and/or all of the goods required.

If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots.
 - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
5. For services:
 - (a) nature and quantity of the services to be supplied, including any options for further procurement and, if possible, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if possible, an estimate of the timing of the subsequent calls for competition for the services to be procured.
 - (b) indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession,
 - (c) reference of the law, regulation or administrative provision,
 - (d) indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services,
 - (e) indication whether suppliers can tender for a part of the services concerned.
6. Authorisation to submit variants.
7. Derogation from the use of European specifications, in accordance with Article 18(6).
8. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
9. Where appropriate, the legal form to be taken by the grouping of suppliers, contractors or providers to whom the contract is awarded.
10.
 - (a) Final date for receipt of requests to participate.
 - (b) Address to which they must be sent.
 - (c) Language or languages in which they must be drawn up.
11. Where appropriate, any deposits and guarantees required.

12. Main terms concerning financing and payment and/or references to the texts in which these are contained.
 13. Information concerning the supplier's, contractor's or service provider's position and minimum economic and technical conditions required of him.
 14. Criteria for the award of the contract where they are not mentioned in the invitation to tender or the contract documents.
 15. Where appropriate, the names and addresses of suppliers, contractors or service providers already selected by the contracting entity.
 16. Where applicable, date(s) of previous publications in the *Official Journal of the European Communities*.
 17. Other information.
 18. Where appropriate, the reference to publication of the periodic information notice in the *Official Journal of the European Communities* to which the contract refers.
 19. Date of dispatch of the notice by the contracting entity.
 20. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
-

ANNEX XIII

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity.
 2. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system).
 3. Conditions to be fulfilled by suppliers, contractors and service providers in view of their qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested suppliers, contractors and service providers, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
 4. Period of validity of the qualification system and the formalities for its renewal.
 5. Reference to the fact that the notice acts as the call for competition.
 6. Address where further information and documentation concerning the qualification system can be obtained (if different from the address mentioned under 1).
 7. Any other relevant information.
-

ANNEX XIV

PERIODIC INFORMATION NOTICE

I. HEADINGS TO BE COMPLETED IN ANY CASE

1. Name, address, telegraphic address, telephone number, telex and fax number of the contracting entity or the service from which additional information may be obtained.
2. (a) For supply contracts: nature and quantity or value of the services or products to be supplied.
(b) For works contracts: nature and extent of the services to be provided, the general characteristics of the work or of the lots by reference to the work.
(c) For service contracts: intended total procurement in each of the service categories listed in Annex XVI A.
3. Date of dispatch of the notice by the contracting entity.
4. Date of receipt of the notice by the Office for Official Publications of the European Communities (to be supplied by that Office).
5. Any other relevant information.

II. INFORMATION WHICH MUST BE SUPPLIED WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS REDUCTION OF THE DEADLINES FOR THE RECEIPT OF CANDIDATURES OR TENDERS

6. A reference to the fact that interested suppliers must advise the entity of their interest in the contract or contracts.
7. Deadline for the receipt of applications for an invitation to tender.

III. INFORMATION TO BE SUPPLIED, IN SO FAR AS SUCH INFORMATION IS AVAILABLE, WHERE THE NOTICE IS USED AS A MEANS OF CALLING FOR COMPETITION OR PERMITS REDUCTION OF THE DEADLINES FOR THE RECEIPT OF CANDIDATURES OR TENDERS

8. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Annex XVI A and description (CPC classification), stating if framework agreement(s) are envisaged, including any options for further procurement and an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, an estimate of the timing of the subsequent calls for competition.
9. State whether tenders are requested for purchase, lease, rental or hire-purchase or any combination of these.
10. Time limits for delivery or completion or duration of service contract and, as far as possible, for starting.
11. Address to which interested undertakings should send their expressions of interest in writing.
Final date for receipt of expressions of interest.
Language or languages authorised for the presentation of candidatures or tenders.
12. Economic and technical conditions, and financial and technical guarantees required of suppliers.
13. (a) Provisional date, if known, for commencing the procedures for awarding the contract or contracts.
(b) Type of award procedure (restricted or negotiated).
(c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.

ANNEX XV

NOTICE ON CONTRACTS AWARDED

I. INFORMATION FOR PUBLICATION IN THE *OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITIES*⁽¹⁾

1. Name and address of the contracting entity.
2. Nature of the contract (supplies, works or services; where appropriate state if it is a framework agreement).
3. At least a summary indication of the nature and quantity of the products, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic information notice; call for tenders).
(b) Reference of publication of the notice in the *Official Journal of the European Communities*.
(c) In the case of contracts awarded without a prior call for competition, indication of the relevant provision of Article 20(2), or Article 16.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases pursuant to Article 20(2)(j).
9. Name and address of supplier(s), contractor(s) or service provider(s).
10. State, where appropriate, whether the contract has been, or may be, subcontracted.
11. Price paid or the prices of the highest and lowest offers taken into account in the award of the contract.
12. Optional information:
 - value and share of the contract which may be subcontracted to third parties,
 - award criteria.

II. INFORMATION NOT INTENDED FOR PUBLICATION

13. Number of contracts awarded (where an award has been split between more than one supplier).
14. Value of each contract awarded.
15. Country of origin of the product or service (Community origin or non-Community origin; if the latter, broken down by third country).
16. Was recourse made to the exceptions to the use of European specifications provided for under Article 18(6). If so, which?
17. Which award criteria were used (most economically advantageous; lowest price; criteria permitted pursuant to Article 35)?
18. Was the contract awarded to a bidder who submitted a variant, in accordance with Article 34(3)?
19. Were any tenders excluded on the grounds that they were abnormally low, in accordance with Article 34(5)?
20. Date of transmission of the notice by the contracting entity.
21. In the case of contracts for services listed in Annex XVI B, agreement by the contracting entity to publication of the notice (Article 24(3)).²

⁽¹⁾ Information in headings 6, 9 and 11 is deemed information not intended for publication where the awarding entity considers that publication thereof might be detrimental to a sensitive commercial interest.

Declaration by the European Parliament, the Council and the Commission

The European Parliament, the Council and the Commission point out that the obligation to communicate the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer, in accordance with the first subparagraph of Article 41(4), must not harm the legitimate commercial interests of public or private enterprises, in particular through the release of sensitive commercial or technical information.

They also point out that, pursuant to Article 4(4) of Council Directive 93/38/EEC, suppliers, contractors or service providers, including the awardee of the contract, may require a contracting entity, in conformity with national law, to respect the confidential nature of information which they make available.

Commission declaration

The Commission declares that, while continuing to ensure that the principle of equal treatment of public and private entities is observed, it will limit its request for statistics pursuant to Article 42(2) to the strict minimum necessary to meet the international obligations ensuing from the GPA in order to reduce the burdens incumbent on contracting entities.

During the ongoing review of the GPA, the Commission also intends to seek a simplification of the statistical requirements at international level. If successful, the Commission will take the necessary steps to ensure that this is taken into account in the internal statistical requirements.

DIRECTIVE 98/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 February 1998

amending Directive 87/102/EEC for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit

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 of 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⁾,

Whereas it is desirable, in order to promote the establishment and functioning of the internal market and to ensure that consumers benefit from a high level of protection, that a single method of calculating the annual percentage rate of charge for consumer credit should be used throughout the Community;

Whereas Article 5 of Directive 87/102/EEC⁽⁴⁾ provides for the introduction of a Community method or methods of calculating the annual percentage rate of charge;

Whereas, in order to introduce this single method, it is desirable to draw up a single mathematical formula for calculating the annual percentage rate of charge and for determining the credit cost items to be used in the calculation by indicating those costs which must not be taken into account;

Whereas Annex II of Directive 87/102/EEC introduced a mathematical formula for the calculation of the annual percentage rate of charge and Article 1a(2) of that Directive provided for the charges to be excluded from the calculation of the 'total cost of credit to the consumer';

Whereas during a transitional period of three years from 1 January 1993, Member States which prior to 1 March 1990 applied laws which permitted the use of another mathematical formula for calculating the annual percentage rate of charge, were permitted to continue to apply such laws;

Whereas the Commission has submitted a Report to the Council which makes it possible, in the light of experience, to apply a single Community mathematical formula for calculating the annual percentage rate of charge;

Whereas, since no Member State has made use of Article 1a(3) of Directive 87/102/EEC by which certain costs were excluded from the calculation of the annual percentage rate of charge in certain Member States, it has become obsolete;

Whereas accuracy to at least one decimal place is necessary;

Whereas a year is presumed to have 365 days or 365,25 days or (for leap years) 366 days, 52 weeks or 12 equal months; whereas an equal month is presumed to have 30,41666 days;

Whereas it is desirable that consumers should be able to recognize the terms used different Member States to indicate the 'annual percentage rate of charge';

Whereas it is appropriate to study without delay to what extent a further degree of harmonization of the cost elements of consumer credit is necessary in order to put the European consumer in a position to make a better comparison between the actual percentage rates of charges offered by institutions in the various Member States, thereby ensuring harmonious functioning of the internal market,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 87/102/EEC shall be amended as follows:

(a) Article 1a(1)(a) shall be replaced by the following:

— in the Greek language version of the Directive:

‘Το συνολικό ετήσιο πραγματικό ποσοστό επιβάρυνσης που εξισώνει σε ετήσια βάση τις παρού-

⁽¹⁾ OJ C 235, 13.8.1996, p. 8 and OJ C 137, 3.5.1997, p. 9.

⁽²⁾ OJ C 30, 30.1.1997, p. 94.

⁽³⁾ Opinion of the European Parliament of 20 February 1997 (OJ C 85, 17.3.1997, p. 108), Council Common Position of 7 July 1997 (OJ C 284, 19.9.1997, p. 1) and Decision of the European Parliament of 19 November 1997. Council Decision of 18 December 1997.

⁽⁴⁾ OJ L 42, 12.2.1987, p. 48. Directive as amended by Directive 90/88/EEC (OJ L 61, 10.3.1990, p. 14).

σεξ αξίες του συνόλου των τρεχουσών ή μελλοντικών υποχρεώσεων (δανείων, εξοφλήσεων και επιβαρύνσεων) που έχουν αναληφθεί από το δανειστή και το (δανειζόμενο) καταναλωτή, υπολογίζεται σύμφωνα με το μαθηματικό τύπο που παρατίθεται στο παράρτημα II.',

— in the English language version of the Directive:

'The annual percentage rate of charge which shall be that rate, on an annual basis which equalizes the present value of all commitments (loans, repayments and charges), future or existing, agreed by the creditor and the borrower, shall be calculated in accordance with the mathematical formula set out in Annex II.');

(b) Article 1a(3) shall be deleted;

(c) Article 1a(5) shall be deleted;

(d) Article 3 shall be replaced by the following:

'Without prejudice to Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising(*), and to the rules and principles applicable to unfair advertising, any advertisement, or any offer which is displayed at business premises, in which a person offers credit or offers to arrange a credit agreement and in which a rate of interest or any figures relating to the cost of the credit are indicated, shall also include a statement of the annual percentage rate of charge, by means of a representative example if no other means is practicable.

(*) OJ L 250, 19.9.1984, p. 17. Directive as last amended by Directive 97/55/EC (OJ L 280, 23.10.1997, p. 18).';

(e) Annex II shall be replaced by the text of Annex I attached hereto;

(f) Annex III shall be replaced by the text of Annex II attached hereto.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive no later than two years after the entry into force of this Directive. They shall inform the Commission thereof.

When Member States adopt those 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 reference shall be laid down by Member States.

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 16 February 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

J. CUNNINGHAM

ANNEX I

'ANNEX II

THE BASIC EQUATION EXPRESSING THE EQUIVALENCE OF LOANS ON THE ONE HAND AND REPAYMENTS AND CHARGES ON THE OTHER

$$\sum_{K=1}^{K=m} \frac{A_K}{(1+i)^{t_K}} = \sum_{K'=1}^{K'=m'} \frac{A'_{K'}}{(1+i)^{t_{K'}}$$

Meaning of letters and symbols:

K is the number of a loan

K' is the number of a repayment or a payment of charges

A_K is the amount of loan number K

$A'_{K'}$ is the amount of repayment number K'

Σ represents a sum

m is the number of the last loan

m' is the number of the last repayment or payment of charges

t_K is the interval, expressed in years and fractions of a year, between the date of loan No 1 and those of subsequent loans Nos 2 to m

$t_{K'}$ is the interval, expressed in years and fractions of a year, between the date of loan No 1 and those of repayments or payments of charges Nos 1 to m'

i is the percentage rate that can be calculated (either by algebra, by successive approximations, or by a computer programme) where the other terms in the equation are known from the contract or otherwise.

Remarks:

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first loan.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days or 365,25 days or (for leap years) 366 days, 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. 365/12).
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. When rounding to a particular decimal place the following rule shall apply:
If the figure at the decimal place following this particular decimal place is greater than or equal to 5, the figure at this particular decimal place shall be increased by one.
- (e) Member States shall provide that the methods of resolution applicable give a result equal to that of the examples presented in Annex III.'

ANNEX II

ANNEX III

EXAMPLES OF CALCULATION

A. CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE ON A CALENDAR BASIS
(1 YEAR = 365 DAYS (OR 366 DAYS FOR LEAP YEARS))**First example**

Sum loaned: S = ECU 1 000 on 1 January 1994.

It is repaid in a single payment of ECU 1 200 made on 1 July 1995 i.e. 1 ½ years or 546 (= 365 + 181) days after the date of the loan.

$$\text{The equation becomes: } 1\,000 = \frac{1\,200}{(1+i)^{\frac{546}{365}}}$$

or:

$$(1+i)^{546/365} = 1,2$$

$$1+i = 1,1296204$$

$$i = 0,1296204$$

This amount will be rounded to 13 % (or 12,96 % if an accuracy of two decimal places is preferred).

Second example

The sum loaned is S = ECU 1 000, but the creditor retains ECU 50 for administrative expenses, so that the loan is in fact ECU 950; the repayment of ECU 1 200, as in the first example, is again made on 1 July 1995.

$$\text{The equation becomes: } 950 = \frac{1\,200}{(1+i)^{\frac{546}{365}}}$$

or:

$$(1+i)^{546/365} = 1,263157$$

$$1+i = 1,169026$$

$$i = 0,169026$$

This amount will be rounded to 16,9 %.

Third example

The sum loaned is ECU 1 000, on 1 January 1994, repayable in two amounts, each of ECU 600, paid after one and two years respectively.

The equation becomes:

$$1\ 000 = \frac{600}{(1+i)} + \frac{600}{(1+i)^{\frac{730}{365}}} = \frac{600}{1+i} + \frac{600}{(1+i)^2}$$

It is solved by algebra and produces $i = 0,1306623$ rounded to 13,1% (or 13,07% if an accuracy of two decimal places is preferred).

Fourth example

The sum loaned is $S = \text{ECU } 1\ 000$, on 1 January 1994, and the amounts to be paid by the borrower are:

After 3 months (0,25 years/90 days):	ECU 272
After 6 months (0,5 years/181 days):	ECU 272
After 12 months (1 year/365 days):	ECU 544
Total:	ECU 1 088

The equation becomes:

$$1\ 000 = \frac{272}{(1+i)^{\frac{90}{365}}} + \frac{272}{(1+i)^{\frac{181}{365}}} + \frac{544}{(1+i)^{\frac{365}{365}}}$$

This equation allows i to be calculated by successive approximations, which can be programmed on a pocket calculator.

The result is $i = 0,13226$ rounded to 13,2% (or 13,23% if an accuracy of two decimal places is preferred).

B. CALCULATION OF THE ANNUAL PERCENTAGE RATE OF CHARGE ON THE BASIS OF A STANDARD YEAR (1 YEAR = 365 DAYS OR 365,25 DAYS, 52 WEEKS, OR 12 EQUAL MONTHS)

First example

Sum loaned: $S = \text{ECU } 1\ 000$.

It is repaid in a single payment of ECU 1 200 made in 1,5 years (i.e. $1,5 \times 365 = 547,5$ days, $1,5 \times 365,25 = 547,875$ days, $1,5 \times 366 = 549$ days, $1,5 \times 12 = 18$ months, or $1,5 \times 52 = 78$ weeks) after the date of the loan.

The equation becomes:

$$1\ 000 = \frac{1\ 200}{(1+i)^{\frac{547,5}{365}}} = \frac{1\ 200}{(1+i)^{\frac{547,875}{365,25}}} = \frac{1\ 200}{(1+i)^{\frac{18}{12}}} = \frac{1\ 200}{(1+i)^{\frac{78}{52}}}$$

or:

$$(1+i)^{1,5} = 1,2$$

$$1+i = 1,129243$$

$$i = 0,129243$$

This amount will be rounded to 12,9% (or 12,92% if an accuracy of two decimal places is preferred).

Second example

The sum loaned is $S = \text{ECU } 1\,000$, but the creditor retains ECU 50 for administrative expenses, so that the loan is in fact ECU 950; the repayment of ECU 1 200, as in the first example, is again made 1,5 years after the date of the loan.

The equation becomes:

$$950 = \frac{1\,200}{(1+i)^{\frac{547,5}{365}}} = \frac{1\,200}{(1+i)^{\frac{547,875}{365,25}}} = \frac{1\,200}{(1+i)^{\frac{18}{12}}} = \frac{1\,200}{(1+i)^{\frac{78}{52}}}$$

or:

$$(1+i)^{1,5} = 1\,200/950 = 1,263157$$

$$1+i = 1,168526$$

$$i = 0,168526$$

This amount will be rounded to 16,9% (or 16,85% if an accuracy of two decimal places is preferred).

Third example

The sum loaned is ECU 1 000, repayable in two amounts, each of ECU 600, paid after one and two years respectively.

The equation becomes:

$$\begin{aligned} 1\,000 &= \frac{600}{(1+i)^{\frac{365}{365}}} + \frac{600}{(1+i)^{\frac{730}{365}}} = \frac{600}{(1+i)^{\frac{365,25}{365,25}}} + \frac{600}{(1+i)^{\frac{730,5}{365,25}}} \\ &= \frac{600}{(1+i)^{\frac{12}{12}}} + \frac{600}{(1+i)^{\frac{24}{12}}} = \frac{600}{(1+i)^{\frac{52}{52}}} + \frac{600}{(1+i)^{\frac{104}{52}}} \\ &= \frac{600}{(1+i)^1} + \frac{600}{(1+i)^2} \end{aligned}$$

It is solved by algebra and produces $i = 0,13066$ which will be rounded to 13,1% (or 13,07% if an accuracy of two decimal places is preferred).

Fourth example

The sum loaned is $S = \text{ECU } 1\,000$ and the amounts to be paid by the borrower are:

After 3 months (0,25 years/13 weeks/91,25 days/91,3125 days):	ECU 272
After 6 months (0,5 years/26 weeks/182,5 days/182,625 days):	ECU 272
After 12 months (1 year/52 weeks/365 days/365,25 days):	ECU 544
Total:	ECU 1 088

The equation becomes:

$$\begin{aligned}
 1\ 000 &= \frac{272}{(1+i)^{\frac{91,25}{365}}} + \frac{272}{(1+i)^{\frac{182,5}{365}}} + \frac{544}{(1+i)^{\frac{365}{365}}} \\
 &= \frac{272}{(1+i)^{\frac{91,3125}{365,25}}} + \frac{272}{(1+i)^{\frac{182,625}{365,25}}} + \frac{544}{(1+i)^{\frac{365,25}{365,25}}} \\
 &= \frac{272}{(1+i)^{\frac{3}{12}}} + \frac{272}{(1+i)^{\frac{6}{12}}} + \frac{544}{(1+i)^{\frac{12}{12}}} \\
 &= \frac{272}{(1+i)^{\frac{13}{52}}} + \frac{272}{(1+i)^{\frac{26}{52}}} + \frac{544}{(1+i)^{\frac{52}{52}}} \\
 &= \frac{272}{(1+i)^{0,25}} + \frac{272}{(1+i)^{0,5}} + \frac{544}{(1+i)^1}
 \end{aligned}$$

This equation allows i to be calculated by successive approximations, which can be programmed on a pocket calculator.

The result is $i = 0,13185$ which will be rounded to 13,2% (or 13,19% if an accuracy of two decimal places is preferred).'

DIRECTIVE 98/10/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 26 February 1998

**on the application of open network provision (ONP) to voice telephony and on universal service
for telecommunications in a competitive environment**

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⁾, in the light of the joint text
approved by the Conciliation Committee on 14 January
1998,

(1) Whereas from 1 January 1998, with transition
periods for certain Member States, the provision
of telecommunications services and infrastructure
in the Community will be liberalised; whereas
the Council⁽⁴⁾, the European Parliament⁽⁵⁾, the
Economic and Social Committee⁽⁶⁾ and the

Committee of the Regions have all recognised that
liberalisation goes hand in hand with parallel action
to create a harmonised regulatory framework
which secures the delivery of universal service;
whereas the concept of universal service must
evolve to keep pace with advances in technology,
market developments and changes in user demand;
whereas progress has been made in the Community
towards defining the scope of universal service and
laying down rules for its costing and financing⁽⁷⁾;
whereas the Commission has undertaken to publish
a report on the monitoring of the scope, level,
quality and affordability of the universal telephone
service in the Community before 1 January 1998,
and at regular intervals thereafter;

(2) 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⁽⁸⁾,
provides a general framework for the application of
ONP principles in specific areas;

(3) Whereas Article 32(1) of European Parliament and
Council Directive 95/62/EC of 13 December 1995
on the application of open network provision
(ONP) to voice telephony⁽⁹⁾ calls for the European
Parliament and the Council to decide by 1 January
1998, on the basis of a proposal submitted by the
Commission, on the revision of the Directive to
adapt it to the requirements of market
liberalisation; whereas Directive 95/62/EC does not
apply to mobile telephony services; whereas in view
of the growing demand for mobile telephony
services it is appropriate that certain provisions of
this Directive should apply to mobile telephony
services; whereas this Directive does not prevent
Member States, in conformity with Community
law, from extending the application of provisions
of the Directive to mobile networks and/or services

⁽¹⁾ OJ C 371, 9.12.1996, p. 22 and OJ C 248, 14.8.1997,
p. 13.

⁽²⁾ OJ C 133, 28.4.1997, p. 40.

⁽³⁾ Opinion of the European Parliament of 20 February 1997
(OJ C 85, 17.3.1997, p. 126), Council Common Position of
9 June 1997 (OJ C 234, 1.8.1997, p. 87) and Decision of the
European Parliament of 17 September 1997 (OJ C 304,
6.10.1997, p. 82). Decision of the European Parliament of
29 January 1998 and Decision of the Council of 12 February
1998.

⁽⁴⁾ Council Resolution 94/C48 of 7 February 1994 on Universal
Service principles in the telecommunications sector (OJ C 48,
16.2.1994, p. 1) and Council Resolution 95/C258 of
18 September 1995 on the implementation of the future
regulatory framework for telecommunications (OJ C 258,
3.10.1995, p. 1).

⁽⁵⁾ European Parliament Resolution of 19 May 1995 on the
Green Paper on the liberalisation of telecommunications
infrastructure and cable television networks — Part II
A4-0111/95; (OJ C 151, 19.6.1995, p. 27).

⁽⁶⁾ Opinion of the Economic and Social Committee of
13 September 1995 on the Green Paper on the liberalisation
of telecommunications infrastructure and cable television
networks — Part II (OJ C 301, 13.11.1995, p. 24).

⁽⁷⁾ Directive 97/33/EC of the European Parliament and of
the Council of 30 June 1997 on interconnection in
telecommunications with regard to ensuring universal service
and interoperability through application of the principles of
Open Network Provision (ONP) (OJ L 199, 26.7.1997,
p. 32).

⁽⁸⁾ OJ L 192, 24.7.1990, p. 1. Directive as amended by
Directive 97/51/EC (OJ L 295, 29.10.1997, p. 23).

⁽⁹⁾ OJ L 321, 30.12.1995, p. 6.

even if they are not explicitly mentioned in its scope; whereas, in moving to a competitive market, there are certain obligations which should apply to all organisations providing telephone services over fixed networks and whereas there are others which should apply only to organisations enjoying significant market power or which have been designated as a universal service operator in accordance with Article 5; whereas full account has been taken of the user and consumer requirements for affordability, cost control and user facilities as expressed in the public consultation on universal service for telecommunications; whereas, since the modifications required to Directive 95/62/EC are substantial, it is convenient for the sake of clarity to reformulate the said Directive; whereas this Directive does not affect the timescale for Member States' implementation of Directive 95/62/EC, as set out in Annex IV;

(4) Whereas a fundamental requirement of universal service is to provide users on request with a connection to the fixed public telephone network at a fixed location, at an affordable price; whereas there should be no constraints on the technical means by which the connection is provided, allowing for wire or wireless technologies; whereas fixed public telephone network infrastructure newly installed after 1 January 1998 should be of a quality which supports, in addition to speech, data communications at rates suitable for access to online information services; whereas affordable price means a price which the Member States define at national level in the light of specific national conditions, including town and country planning aspects, after carrying out the consultation referred to in Article 24; whereas the Commission is to prepare reports on the evolution of tariffs throughout the Community on the basis of the rules and criteria for ensuring affordability published at national level and in doing so may carry out additional consultation at the European level; whereas the affordability of telephone service is related to the information which users receive regarding telephone usage expenses as well as the relative cost of telephone usage compared to other services; whereas, in relation to the provisions for affordable services for users in rural or high cost areas, Member States may make exceptions for holiday homes;

(5) Whereas tariff rebalancing is leading to a move away from non-cost oriented tariffs; whereas, until competition is effectively established, safeguards may be necessary to ensure that price increases in remote or rural areas are not used to compensate for losses in revenue resulting from price decreases

elsewhere; whereas tariff rebalancing is an essential feature of a competitive market; whereas price caps or geographical averaging or similar schemes may be used to ensure that the necessary rebalancing does not unduly affect users and does not endanger the affordability of telephone services;

(6) Whereas the importance of the fixed public telephone network and service is such that the latter should be available to anyone reasonably requesting it; whereas, in accordance with the principle of subsidiarity, it is for Member States to decide on the basis of objective criteria which organisations have the responsibility for providing the universal service for telecommunications as defined in this Directive, taking into account the ability and, where appropriate, the willingness of organisations to provide all or part of it; whereas corresponding obligations could be included as conditions in authorisations to provide publicly available telephone services; whereas, in accordance with Article 5(1) of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP)⁽¹⁾, Member States may establish mechanisms for sharing the net cost of the universal service obligations with other organisations operating public telecommunications networks and/or publicly available voice telephony services; whereas public telecommunications networks include both public fixed networks and public mobile networks; whereas national regulatory authorities should satisfy themselves that those organisations benefiting from universal service funding provide sufficient level of detail of the specific elements requiring such funding in order to justify their request; whereas, in accordance with Community law, Member States' schemes for the costing and financing of universal service will be communicated to the Commission for verification of compatibility with the Treaty;

(7) Whereas provision of directory services is a competitive activity; whereas Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data regulates the processing of personal data⁽²⁾; whereas Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of

⁽¹⁾ OJ L 199, 26.7.1997, p. 32.

⁽²⁾ OJ L 281, 23.11.1995, p. 31.

privacy in the telecommunications sector⁽¹⁾, in particular in the Integrated Services Digital Network (ISDN) and in digital mobile networks, will give the subscriber the right to be omitted, or to have certain data omitted, from a printed or electronic directory at his or her request; whereas users and consumers desire comprehensive directories and directory enquiry service covering all listed telephone subscribers and their numbers (including fixed, mobile and personal telephone numbers); whereas the situation whereby certain telephone directories and directory services are provided in a manner which is perceived to be free of charge to the user is not affected by this Directive;

- (8) Whereas Member States shall, where appropriate, take suitable measures in order to guarantee access to and affordability of all fixed public telephone services for disabled users and users with special social needs; whereas specific measures for disabled users could include, as appropriate, making available public text telephones or equivalent measures for deaf or speech impaired people, providing services such as directory enquiry services free of charge or equivalent measures for blind or partially sighted people, and providing itemised bills in alternative format on request for blind or partially sighted people;
- (9) Whereas Council Decision 91/396/EEC of 29 July 1991 on the introduction of a single European emergency call number⁽²⁾ called for Member States to ensure that no later than 31 December 1996 the number '112' is introduced in public telephone networks as the single European emergency call number; whereas it is important that users are able to call emergency telephone numbers and, in particular, the single European emergency call number '112' free of charge from any telephone, including public pay-telephones, without the use of coins or cards;
- (10) Whereas transparency of network interface specifications is a prerequisite for a competitive market in terminal equipment; whereas the national regulatory authority may consult the interested parties and especially terminal equipment suppliers and the representatives of the users and consumers on the changes in existing network interface specifications;
- (11) Whereas Directive 97/13/EC⁽³⁾ provides for a common framework for general authorisations and individual licences in the field of telecommunications services; whereas quality and price are key factors in a competitive market and whereas national regulatory authorities should be able to monitor achieved quality of service for organisations with significant market power or which have been designated in accordance with Article 5; whereas national regulatory authorities should also be able to monitor the achieved quality of services by other organisations providing fixed public telephone networks and/or fixed public telephone services where the latter have been operating for more than 18 months and where the national regulatory authority deems it necessary; whereas, in relation to the quality of service attained by both types of organisations, national regulatory authorities shall be able to take appropriate corrective measures where they deem it necessary; whereas the Commission will report by 1 January 1998, and at regular intervals thereafter, on the quality, level and scope of universal service in the European Community, as indicated in its Communication of 13 March 1996 on Universal Service for Telecommunications in the perspective of a fully liberalised environment; whereas these powers are without prejudice to the application of competition law by national and Community authorities;
- (12) Whereas conditions on access to and use of fixed public telephone networks or publicly available telephone services may be imposed exceptionally by a Member State on the grounds of essential requirements; whereas national regulatory authorities should have procedures to address at least those situations where an organisation providing voice telephony services which has significant market power or has been designated in accordance with Article 5 and has significant market power interrupts, reduces or varies the availability of services to organisations providing telecommunications networks and/or services; whereas, except in cases of persistent late payment or non-payment of bills, consumers should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium rate services, should continue to have access to essential telephone services pending resolution of the dispute; whereas in some Member States such access may continue to be provided only if the subscriber continues to pay line rental charges; whereas the provisions of this Directive do not prevent a Member State from taking measures justified on grounds set out in Articles 36 and 56 of

⁽¹⁾ OJ L 24, 30.1.1998, p. 1.

⁽²⁾ OJ L 217, 6.8.1991, p. 31.

⁽³⁾ OJ L 117, 7.5.1997, p. 15.

the Treaty, in particular on grounds of public security, public policy and public morality;

- (13) Whereas tone dialling and itemised billing facilities are normally available on modern telephone exchanges and can therefore be provided inexpensively once old exchanges are modernised or new exchanges installed; whereas tone dialling is increasingly being used for interaction with special services and facilities, including value added services, and whereas lack of this facility can prevent users from accessing certain services; whereas itemised billing and selective call barring are valuable means for users to control and monitor their usage of telephone networks; whereas Directive 97/66/EC on the processing of personal data and the protection of privacy in the telecommunications sector safeguards the privacy of users with regard to itemised billing, gives them the means to protect their right to privacy when calling line identification is implemented and safeguards them against nuisance which may be caused by call forwarding; whereas 'number portability' is a facility whereby end users who so request can retain their number(s) on the fixed public telephone network at a specific location independently of the organisation providing service; whereas harmonised technical interface standards have been drawn up by the European standardisation organisations for access to the Integrated Services Digital Network (ISDN) at what is known as the S/T reference point;
- (14) Whereas price transparency should ensure that residential subscribers do not subsidise discounts to business customers; whereas certain obligations concerning tariffs and cost accounting systems will no longer be appropriate once competition is introduced and whereas others can be relaxed by the competent national regulatory authority as soon as competition achieves the desired objectives; whereas in all cases the non-discrimination requirements of the competition rules of Community law apply; whereas the requirement for unbundling does not prevent facilities from being combined in a tariff package, provided this practice is not used to unduly restrict the users' freedom of choosing their suppliers for the different services they may wish to use;
- (15) Whereas issues related to the level of affordability, quality of service and future scope of the universal service should be the subject of consultation at national level with all interested parties; whereas this requires that adequate information on the level, quality and affordability of universal service is available; whereas disabled users should, wherever possible, receive a broadly similar level of services compared to other users in terms of their access to or use of telephone services;
- (16) Whereas the Commission has to be able to monitor effectively the application of this Directive and whereas European users need to know where to find published information on telephone services in other Member States; whereas, in accordance with Directive 97/13/EC on licensing, national regulatory authorities shall not disclose information covered by the obligation of professional secrecy, except where such disclosure is essential for the purpose of fulfilling their duties;
- (17) Whereas, in view of the forecast convergence of fixed and mobile telephone services, the extent to which this Directive applies to mobile services should be re-examined when the Directive is reviewed; whereas the review date of 31 December 1999 will allow for a coordinated review of all the ONP Directives in the light of experience with the liberalisation of public telecommunications networks and voice telephony services; whereas the review should also examine the removal of obligations no longer needed in a market where there is effective competition;
- (18) Whereas the essential goals of ensuring universal service for telecommunications for all European users and of harmonising conditions for access to and use of fixed public telephone networks and publicly available telephone services cannot be realised satisfactorily at Member State level;
- (19) Whereas a *modus vivendi* was concluded on 20 December 1994 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 Treaty,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE, AIM AND DEFINITIONS

Article 1

Scope and Aim

1. This Directive concerns the harmonisation of conditions for open and efficient access to and use of

fixed public telephone networks and fixed public telephone services in an environment of open and competitive markets, in accordance with the principles of open network provision (ONP).

The aims are to ensure the availability throughout the Community of good quality fixed public telephone services and to define the set of services to which all users, including consumers, should have access in the context of universal service in the light of specific national conditions, at an affordable price.

2. This Directive does not apply to public mobile telephone networks and public mobile telephone services, with the exception of Articles 6, 9(b) and (c), 10 and 11(1).

3. This Directive replaces Directive 95/62/EC.

Article 2

Definitions

1. The definitions given in Directive 90/387/EEC shall apply, where relevant to this Directive.

2. For the purposes of this Directive:

- (a) 'users' means individuals, including consumers, or organisations using or requesting publicly available telecommunications services;
- (b) 'consumer' means any natural person who uses a publicly available telecommunications service for purposes which are outside his or her trade, business or profession;
- (c) 'subscriber' shall mean any natural or legal person who or which is party to a contract with the provider of publicly available telecommunications services for the supply of such services;
- (d) 'public pay-telephone' means a telephone available to the general public, for the use of which the means of payment are coins and/or credit/debit cards and/or pre-payment cards;
- (e) 'voice telephony service' means a service available to the public for the commercial provision of direct transport of real-time speech via the public switched network or networks such that any user can use equipment connected to a network termination point at a fixed location to communicate with another user of equipment connected to another termination point;
- (f) 'universal service' means a defined minimum set of services of specified quality which is available to all users independent of their geographical location and, in the light of specific national conditions, at an affordable price;

(g) 'national regulatory authority' means the body or bodies in each Member State entrusted by that Member State with, *inter alia*, the regulatory functions addressed in this Directive;

(h) 'ONP Committee' means the Committee created by Article 9(1) of Directive 90/387/EEC;

(i) 'organisation with significant market power' means an organisation authorised to provide fixed public telephone networks and/or voice telephony services in a Member State which, for the purpose of this Directive, has been designated by the national regulatory authority in that Member State as having significant market power and notified to the Commission.

An organisation shall be presumed to have significant market power when it has a share of 25 % or more of the relevant market in the geographical area in a Member State within which it is authorised to operate.

National regulatory authorities may determine that an organisation with a market share of less than 25 % in the relevant market has significant market power. They may also determine that an organisation with a market share of more than 25 % in the relevant market does not have significant market power. In either case, the determination shall take into account the organisation's ability to influence market conditions, its turnover relative to the size of the market, its control of the means of access to end-users, its access to financial resources and its experience in providing products and services in the market.

3. For the purposes of this Directive:

- (a) The terms 'fixed public telephone network' and 'public mobile telephone network' are described in Annex I of Directive 97/33/EC on Interconnection.
- (b) The term 'publicly available telephone services' includes both fixed public telephone services and public mobile telephone services.

Fixed public telephone services, as indicated in Annex I part I of Directive 97/33/EC on Interconnection, may include — in addition to voice telephony service — access to emergency '112' services, the provision of operator assistance, directory services, provision of public pay phones, provision of service under special terms and/or provision of special facilities for customers with disabilities or with special social needs, as set out in this Directive, but does not include value added services provided over the public telephone network.

CHAPTER II

**PROVISION OF A DEFINED SET OF SERVICES WHICH
MAY BE FUNDED IN THE CONTEXT OF UNIVERSAL
SERVICE***Article 3***Availability of services**

1. Member States shall ensure that the services set out in this Chapter are made available to all users in their territory, independent of geographical location, and, in light of specific national conditions, at an affordable price.

Taking into account the progressive adjustment of tariffs towards costs, Member States shall in particular maintain the affordability of the services set out in this Chapter for users in rural or high cost areas and for vulnerable groups of users such as the elderly, those with disabilities or those with special social needs.

To this end, Member States shall remove obligations which prevent or restrict the use of special or targeted tariff schemes for the provision of the services specified in this Directive and may, in accordance with Community law, implement price caps or geographical averaging or other similar schemes for some or all of the specified services until such time as competition provides effective price control.

Schemes designed to ensure affordability shall follow the principles of transparency and non-discrimination. Member States shall publish the rules and criteria for ensuring affordability at the national level, taking into account Article 24.

2. Member States shall publish regular reports on the evolution of tariffs which should be made available to the public. The Commission shall publish regular reports on the evolution of tariffs throughout the Community.

*Article 4***Financing schemes**

Where the services set out in this Chapter cannot be commercially provided on the basis of conditions laid down by the Member State, Member States may set up universal service funding schemes for the shared financing of those services, in conformity with Community law and, in particular, with Directive 97/33/EC on Interconnection.

National regulatory authorities shall ensure that organisations benefiting from such a shared financing scheme make a declaration to their national regulatory authority indicating the specific elements for which funding is requested, the information referred to in Article 5 of Directive 97/33/EC on Interconnection being made available to interested parties on request, in accordance with Article 11(4).

Member States may impose additional requirements concerning the provision of telecommunication services in accordance with existing Community law. Such additional requirements may not have an impact on the costing of universal service provision as laid down at Community level and may not be financed from a mandatory contribution by market players.

*Article 5***Provision of network connections and access to
telephone services**

1. Member States shall ensure that all reasonable requests for connection to the fixed public telephone network at a fixed location and access to fixed public telephone services are met by at least one operator and may, if necessary to this end, designate one or more operators so that the whole of their territory is covered.

2. The connection provided shall be capable of allowing users to make and receive national and international calls, supporting speech, facsimile and/or data communications.

*Article 6***Directory services**

1. The provisions of this Article are subject to the requirements of relevant legislation on the protection of personal data and privacy, such as Directive 95/46/EC and Directive 97/66/EC.

2. Member States shall ensure that:

- (a) subscribers have the right to have an entry in publicly available directories and to verify and, if necessary, correct or request removal of that entry;
- (b) directories of all subscribers who have not expressed opposition to being listed, including fixed, mobile and personal numbers, are available to users in a

form approved by the national regulatory authority, whether printed or electronic, or both, and are updated on a regular basis;

- (c) at least one telephone directory enquiry service covering all listed subscribers numbers is available to all users, including users of public pay telephones;

3. In order to ensure provision of the services referred to in paragraph 2(b) and 2(c), Member States shall ensure that all organisations which assign telephone numbers to subscribers meet all reasonable requests to make available the relevant information in an agreed format on terms which are fair, cost oriented and non-discriminatory.

4. Member States shall ensure that organisations providing the service referred to in paragraph 2(b) and 2(c) follow the principle of non-discrimination in their treatment and presentation of information provided to them.

Article 7

Public pay telephones

1. Member States shall ensure that public pay telephones are provided to meet the reasonable needs of users in terms of both numbers and geographical coverage.

A Member State may authorise its national regulatory authority not to apply the requirements of this paragraph in all or part of its territory if it is satisfied that these facilities are widely available.

2. Member States shall ensure that it is possible to make emergency calls from public pay telephones using the single European emergency call number '112' referred to in Decision 91/396/EEC and other national emergency numbers, all free of charge and without having to use coins or cards.

Article 8

Specific measures for disabled users and users with special social needs

Member States shall, where appropriate, take specific measures to ensure equal access to and affordability of fixed public telephone services, including directory services for disabled users and users with special social needs.

CHAPTER III

SPECIFIC PROVISIONS CONCERNING ORGANISATIONS PROVIDING FIXED AND/OR MOBILE PUBLIC TELEPHONE NETWORKS AND/OR PUBLICLY AVAILABLE TELEPHONE SERVICES

Article 9

Connection of terminal equipment and use of the network

Member States shall ensure that all users provided with a connection to the fixed public telephone network can:

- (a) connect and use terminal equipment suitable for the connection provided, in accordance with national and Community law;
- (b) access operator assistance services and directory enquiry services in accordance with Article 6.2(c), unless the subscriber decides otherwise;
- (c) access Emergency Services at no charge, using the dialling code '112' and any other dialling codes specified by national regulatory authorities for use at a national level.

Member States shall ensure that mobile users can also access the services mentioned in (b) and (c).

Article 10

Contracts

1. National regulatory authorities shall ensure that organisations providing access to fixed public telephone networks and mobile public telephone networks provide a contract. The contract shall specify the service to be provided or shall make reference to publicly available terms and conditions. The contract or the publicly available terms and conditions shall at least specify the supply time for initial connection and the types of maintenance service offered, the compensation and/or refund arrangements for subscribers which apply if the contracted service is not met and a summary of the method of initiating procedures for the settlement of disputes in accordance with Article 26 and shall provide information on service quality levels offered.

2. National regulatory authorities or other competent bodies according to national legislation shall be able on their own initiative or upon request by an organisation representing user or consumer interests to require the alteration of the conditions of contracts referred to in

paragraph 1 and the conditions of any compensation and/or refund schemes used insofar as they concern the provisions of this Directive in order to protect the rights of users and/or subscribers.

Article 11

Publication of and access to information

1. Member States shall ensure that all organisations providing fixed public telephone networks and mobile public telephone networks or publicly available telephone services publish adequate and up-to-date information for consumers on their standard terms and conditions with regard to access to and use of the public telephone networks and/or publicly available telephone services. In particular, national regulatory authorities shall ensure that tariffs for end-users, any minimum contractual period, if relevant, and conditions of renewal of the contracts are presented clearly and accurately.

2. National regulatory authorities shall ensure that organisations providing fixed public telephone networks provide them with details of technical interface specifications for network access, as identified in Annex II, part 1, to be made available in accordance with paragraph 4. Changes in existing network interface specifications and information on new network interface specifications shall be communicated to the national regulatory authority in advance of implementation. The national regulatory authority may lay down a suitable period of notice.

3. Where and for as long as the provision of fixed public telecommunications networks and voice telephony services are subject to special or exclusive rights in a Member State, national regulatory authorities shall ensure that adequate and up-to-date information on access to and use of the fixed public telecommunications networks and fixed public telephone services is published according to the list of headings given in Annex II, part 2 in the manner laid down in paragraph 4.

4. National regulatory authorities shall ensure that the information is made available in an appropriate manner in order to provide easy access to that information for interested parties. Reference to the manner in which this information is published shall be made in the national Official Gazette of the Member State concerned.

5. National regulatory authorities shall notify to the Commission by no later than 30 June 1998 the manner in which the information referred to in paragraphs 2 and 3 is made available. The Commission shall regularly publish a reference to such notifications in the *Official Journal of the European Communities*. Any changes shall be notified immediately.

Article 12

Quality of service

1. Member States shall be able to set the quality of services identified in this Directive for organisations providing fixed public telephone networks and/or fixed public telephone services in accordance with the procedures set out in this Article.

In accordance with Directive 97/13/EC on Licensing, they may to this end set performance targets in the individual licences, in particular for organisations which have significant market power in the provision of fixed public telephone networks and/or voice telephony services or which have been designated in accordance with Article 5.

In the case of organisations which retain special or exclusive rights for the provision of fixed public telecommunications networks and/or voice telephony services, Member States shall ensure that targets are set and published for the relevant parameters laid down in Annex III, in accordance with Article 11(4).

2. National regulatory authorities shall ensure that organisations with significant market power or which have been designated in accordance with Article 5 start to keep up-to-date information concerning their performance based on the parameters, definitions and measurement methods laid down in Annex III. National regulatory authorities shall also be able to request that other organisations which have been providing fixed public telephone networks and/or fixed public telephony services for more than 18 months do the same.

This information shall be provided to the national regulatory authority on request.

3. Where appropriate, and taking account of, in particular, the views of interested parties in accordance with the provisions of Article 24, national regulatory authorities shall ensure publication, in accordance with Article 11(4), of the performance data referred to in paragraph 1 and may set performance targets for organisations providing fixed public telephone networks and/or fixed public telephone services which either have significant market power or have been designated in accordance with Article 5 where such targets do not exist already.

Persistent failure by an organisation to meet performance targets may result in specific measures being taken in accordance with conditions set out in the relevant authorisation for that organisation.

4. National regulatory authorities shall have the right to call for independent audits of the performance data in order to ensure the accuracy and comparability of the data made available by the organisations referred to in paragraph 2.

Article 13

Conditions of access and use and essential requirements

1. Without prejudice to the procedure for the resolution of national disputes laid down in Article 26(1), national regulatory authorities shall have procedures in order to address situations where organisations providing fixed public telephone networks and/or fixed public telephone services, or at least those organisations providing voice telephony services which either have significant market power or have been designated in accordance with Article 5 and have significant market power, take measures such as the interruption, termination, significant variation or reduction in availability of services at least to organisations providing telecommunications networks and/or services.

The national regulatory authority shall ensure that these procedures provide for a transparent decision-making process in which due respect is given to the rights of the parties. The decision shall be taken after both parties have been given the opportunity to state their case. The decision shall be duly substantiated and notified to the parties within one week of its adoption.

A summary of these procedures shall be published in the manner laid down in Article 11(4).

This provision shall not prejudice the rights of the parties concerned to apply to the courts.

2. Member States shall ensure that, when access to or use of fixed public telephone networks and/or the fixed public telephone services is restricted on the basis of essential requirements, the relevant national provisions identify which of the essential requirements set out in (a) to (e) below are the basis of such restrictions.

These restrictions shall be imposed through regulatory means and shall be published in the manner laid down in Article 11(4).

Without prejudice to action which may be taken in accordance with Articles 3(5) and 5(3) of Directive 90/387/EEC, the following essential requirements shall apply to the fixed public telephone network and fixed public telephone services in the following manner:

(a) *security of network operations*

Member States shall take all necessary steps to ensure that the availability of fixed public telephone networks and of fixed public telephone services is maintained in the event of catastrophic network breakdown or in cases of *force majeure*, such as

extreme weather, earthquake, flood, lightning or fire.

In the event of the circumstances referred to in the first subparagraph, the bodies concerned shall make every endeavour to maintain the highest level of service to meet any priorities laid down by the competent authorities.

National regulatory authorities shall ensure that any restrictions on access to and use of the fixed public telephone network on the grounds of the security of networks are proportionate and non-discriminatory and are based on objective criteria identified in advance.

(b) *maintenance of network integrity*

Member States shall take all necessary steps to ensure that the integrity of the fixed public telephone network is maintained. National regulatory authorities shall ensure that restrictions on access to and use of the fixed public telephone network on the grounds of maintenance of network integrity, in order to protect, *inter alia*, network equipment, software or stored data, are kept to the minimum necessary to provide for normal operation of the network. Such restrictions shall be non-discriminatory and based on objective criteria identified in advance.

(c) *interoperability of services*

When terminal equipment is operating in compliance with Directive 91/263/EEC⁽¹⁾, no further restrictions on use shall be imposed on the grounds of interoperability of services.

(d) *protection of data*

Conditions on access to and use of fixed public telephone networks and/or fixed public telephone services based on the grounds of protection of data may be imposed only in accordance with relevant legislation on the protection of personal data and privacy, such as Directive 95/46/EC and Directive 97/66/EC.

(e) *effective use of the frequency spectrum*

Member States shall take all necessary steps to ensure the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based systems which could restrict or limit access to or use of fixed public telephone networks and fixed public telephone services.

⁽¹⁾ OJ L 128, 23.5.1991, p. 1, as amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

3. Where and for as long as Member States maintain special or exclusive rights for the provision of public telecommunications networks and voice telephony services, conditions imposed on users on the basis of such special or exclusive rights shall be imposed through regulatory means under the authority of the national regulatory authority.

Article 14

Itemised billing, tone dialling and selective call barring

1. In order to ensure that users have access over fixed public telephone networks as early as possible to the facilities of:

- tone dialling,
- itemised billing and selective call barring as facilities available on request,

Member States may designate one or more operators to provide these facilities to most telephone users before 31 December 1998 and to ensure that they are generally available by 31 December 2001.

A Member State may authorise its national regulatory authority not to apply the requirements of this paragraph in all or part of its territory if it is satisfied that these facilities are widely available.

Tone dialling and selective call barring are specified in Annex I, part 1.

2. Subject to the requirements of relevant legislation on the protection of personal data and privacy, such as Directive 95/46/EC and Directive 97/66/EC, itemised bills shall show a sufficient level of detail to allow verification and control of the charges incurred in using the fixed public telephone network and/or fixed public telephone services.

A basic level of itemised billing shall be available at no extra charge to the user. Where appropriate, additional levels of detail may be offered to subscribers at reasonable tariffs or at no charge. National regulatory authorities may lay down the basic level of itemised bills.

Calls which are free of charge to the calling subscriber, including calls to helplines, shall not be identified in the calling subscriber's itemised bill.

Article 15

Provision of additional facilities

1. National regulatory authorities shall ensure that organisations providing voice telephony services, which

either have significant market power or have been designated in accordance with Article 5 and have significant market power, provide, subject to technical feasibility and economic viability, the facilities listed in Annex I, part 2.

2. Subject to the requirements of relevant legislation on the protection of personal data and privacy, such as Directive 95/46/EC and Directive 97/66/EC, Member States shall take all necessary measures to remove any regulatory restrictions which prevent provision of the services and facilities listed in Annex I, part 3, in compliance with the competition rules of Community law.

3. National regulatory authorities shall ensure that dates for the introduction of the facilities listed in Annex I, part 2 are set, taking into account the state of network development, market demand and progress with standardisation, and are published in the manner laid down in Article 11(4).

4. Where the facility of number portability, as referred to in Article 12(5) of Directive 97/33/EC on Interconnection, is not yet in use, national regulatory authorities shall ensure that, for a reasonable period after a subscriber has changed supplier, either a telephone call to his old number can be re-routed to his new number for a reasonable fee or callers are given an indication of the new number, without charging the called party for this service.

National regulatory authorities shall ensure that any fees for the above facilities are reasonable.

Article 16

Special network access

1. National regulatory authorities shall ensure that organisations with significant market power in the provision of fixed public telephone networks deal with reasonable requests from organisations providing telecommunications services for access to the fixed public telephone network at network termination points other than the commonly provided network termination points referred to in Annex II, part 1. This obligation may only be limited on a case-by-case basis and on the grounds that there are technically and commercially viable alternatives to the special access requested, and if the requested access is inappropriate in relation to the resources available to meet the request.

2. The organisation making such a request shall be granted an opportunity to put its case to the national regulatory authority before a final decision is taken to restrict or deny access in response to a particular request.

Where a request for special network access is denied, the organisation making the request should be given a prompt and justified explanation of why the request has been refused.

3. Technical and commercial arrangements for special network access shall be a matter for agreement between the parties involved, subject to intervention by the national regulatory authority as laid down in paragraphs 2, 4 and 5.

The agreement may include reimbursement to the organisation of its costs incurred in providing the network access requested; these charges shall fully respect the principles of cost orientation set out in Annex II to Directive 90/387/EEC.

4. National regulatory authorities may intervene on their own initiative at any time, where justified, in order to ensure effective competition and/or interoperability of services and shall do so, if requested by either party, in order to set conditions which are non-discriminatory, fair and reasonable for both parties and offer the greatest benefit to all users.

5. National regulatory authorities shall also have the right, in the interest of all users, to ensure that the agreements include conditions which meet the criteria set out in paragraph 4, are entered into and implemented in an efficient and timely manner and include conditions on conformity with relevant standards, compliance with essential requirements and/or the maintenance of end-to-end quality.

6. Conditions set by national regulatory authorities in accordance with paragraph 5 shall be published in the manner laid down in Article 11(4).

7. National regulatory authorities shall ensure that organisations with significant market power referred to in paragraph 1 adhere to the principle of non-discrimination when they make use of the fixed public telephone network and, in particular, use any form of special network access, for providing publicly available telecommunications services. Such organisations shall apply similar conditions in similar circumstances to organisations providing similar services and shall provide special network access facilities and information to others under the same conditions and of the same quality as they provide for their own services or those of their subsidiaries or partners.

8. Where appropriate, the Commission shall, in consultation with the ONP Committee, acting in accordance with the procedure laid down in Article 29, request the European Telecommunications Standards Institute (ETSI) to draw up standards for new types of network access. Reference to such standards shall be published in the *Official Journal of the European Communities* in accordance with Article 5 of Directive 90/387/EEC.

9. Details of agreements for special network access shall be made available to the national regulatory authority on request. Without prejudice to the rights and obligations referred to in Article 20(2) of Directive 97/13/EC on Licensing, national regulatory authorities shall keep confidential those parts of the agreements referred to in paragraph 3 which deal with the commercial strategy of the parties.

Article 17

Tariff principles

1. Without prejudice to the specific provisions of Article 3 in relation to affordability or to paragraph 6, national regulatory authorities shall ensure that organisations providing voice telephony services which either have significant market power or have been designated in accordance with Article 5 and have significant market power comply with the provisions of this Article.

2. Tariffs for use of the fixed public telephone network and fixed public telephone services shall follow the basic principles of cost orientation set out in Annex II to Directive 90/387/EEC.

3. Without prejudice to Article 7(3) of Directive 97/33/EC on Interconnection, tariffs for access to and use of the fixed public telephone network shall be independent of the type of application which the users implement, except to the extent that they require different services or facilities.

4. Tariffs for facilities additional to the provision of connection to the fixed public telephone network and fixed public telephone services shall, in accordance with Community law, be sufficiently unbundled so that the user is not required to pay for facilities which are not necessary for the service requested.

5. Tariff changes shall be implemented only after an appropriate public notice period, set by the national regulatory authority, has been observed.

6. Without prejudice to Article 3 in relation to affordability, a Member State may authorize its national regulatory authority not to apply paragraphs 1, 2, 3, 4 or 5 of this Article in a specific geographical area where it is satisfied that there is effective competition in the fixed public telephone services market.

Article 18

Cost accounting principles

1. Member States shall ensure that, where an organisation has an obligation for its tariffs to follow the

principle of cost orientation in accordance with Article 17, the cost accounting systems operated by such organisations are suitable for the implementation of Article 17 and that compliance with such systems are verified by a competent body which is independent of those organisations. National regulatory authorities shall ensure that a statement concerning compliance is published annually.

2. National regulatory authorities shall ensure that a description of the cost accounting systems referred to in paragraph 1, showing the main categories under which costs are compiled and the rules used for the allocation of costs to voice telephony services, is made available to them on request. National regulatory authorities shall submit to the Commission, on request, information on the cost accounting systems applied by the organisations concerned.

3. Where and as long as the provision of public telecommunications networks and voice telephony services are subject to special or exclusive rights in a Member State, the systems referred to in paragraph 1 shall, without prejudice to the last subparagraph of this paragraph, include the following elements:

- (a) the costs of the voice telephony service shall include, in particular, the direct costs incurred by the telecommunications organisations in setting up, operating and maintaining the voice telephony service and in marketing and billing the service;
- (b) common costs, i.e. costs which cannot be directly assigned to either the voice telephony service or other activities, shall be allocated as follows:
 - (i) whenever possible, common cost categories shall be allocated on the basis of direct analysis of the origin of the costs themselves;
 - (ii) when direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;
 - (iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated to, on the one hand, the voice telephony service and, on the other hand, other services.

Other cost accounting systems may be applied if they are suitable for the implementation of Article 17 and have been approved as such by the national regulatory authority for application by the telecommunications

organisations, subject to the Commission's being informed prior to their application.

4. Member States shall ensure that the financial accounts of all organisations providing fixed public telephone networks and/or voice telephony services are drawn up, submitted to audit and published in accordance with the provisions of national and Community legislation applying to commercial undertakings. Detailed accounting information shall be made available to the national regulatory authority in order to ensure compliance with the provisions of this Directive, on its request and in confidence, without prejudice to the rights and obligations of national regulatory authorities referred to in Article 20(2) of Directive 97/13/EC on Licensing.

Article 19

Discounts and other special tariff provisions

Member States shall ensure that, where an organisation has an obligation for its tariffs to follow the principle of cost orientation in accordance with Article 17, discount schemes for users, including consumers, are fully transparent and are published and applied in accordance with the principle of non-discrimination.

National regulatory authorities may require such discount schemes to be modified or withdrawn.

Article 20

Specifications for network access, including the socket

1. Standards suitable for access to fixed public telephone networks shall be published in the ONP List of Standards referred to in Article 5 of Directive 90/387/EEC.

2. Where the services referred to in this Directive are supplied to users over the ISDN network at the S/T reference point, national regulatory authorities shall ensure that the ISDN network termination points comply with the relevant physical interface specifications, in particular those for the socket, referenced in the ONP List of Standards.

Article 21

Non-payment of bills

Member States shall authorise specified measures, which shall be proportionate, non-discriminatory and published in the manner laid down in Article 11(4), to cover non-payment of telephone bills for use of the fixed public

telephone network. These measures shall ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand.

Except in cases of fraud, persistent late payment or non-payment, these measures shall ensure, as far as is technically feasible, that any service interruption is confined to the service concerned. Member States may decide that, where appropriate, complete disconnection takes place only after a stated period during which calls which do not incur a charge to that subscriber are permitted.

Article 22

Conditions for the termination of offerings

1. This Article shall apply where and for as long as the provision of public telecommunications networks and voice telephony services are subject to special or exclusive rights in a Member State.

2. National regulatory authorities shall ensure that service offerings of organisations with such special or exclusive rights continue for a reasonable period of time and that termination of an offering, or a change that materially alters the use that can be made of it, can be done only after consultation with users affected and an appropriate public notice period set by the national regulatory authority.

3. Without prejudice to other rights of appeal provided for by national law, Member States shall ensure that users and, where national law so provides, organisations representing user and/or consumer interests can bring before the national regulatory authority cases where the users affected do not agree with the termination date as envisaged by the organisation concerned.

Article 23

Variation of published conditions

1. This Article shall apply where and for as long as the provision of public telecommunications networks and voice telephony services are subject to special or exclusive rights in a Member State.

2. Where, in response to a particular request, an organisation with such special or exclusive rights considers it unreasonable to provide a connection to the fixed public telephone network under its published tariffs and supply conditions, it must seek the agreement of the national regulatory authority to vary those conditions in that case.

CHAPTER IV

PROCEDURAL PROVISIONS

Article 24

Consultation with interested parties

Member States shall take into account, in accordance with national procedures, the views of the representatives of organisations providing public telecommunications networks, of users, consumers, manufacturers and service providers on issues related to the scope, affordability and quality of publicly available telephone services.

Article 25

Notification and reporting

1. Member States shall notify to the Commission any changes in the information which had to be published under Directive 95/62/EC. The Commission shall publish this information in the *Official Journal of the European Communities*.

2. Member States shall also notify to the Commission:

- organisations with significant market power for the purposes of this Directive,
- details of situations where organisations providing fixed public telephone networks and/or voice telephony services no longer have to follow the principle of cost orientation of tariffs, in accordance with Article 17(6),
- organisations designated in accordance with Article 5, if any.

The Commission may request national regulatory authorities to provide their reasons for classifying or not classifying organisations in either or both of the categories referred to in the first two indents.

3. Where a Member State maintains special or exclusive rights for the provision of public telecommunications networks and voice telephony services, national regulatory authorities shall keep available and submit to the Commission, on request, details of individual cases brought before them other than those covered by Article 21, where access to or use of the fixed public telephone network or voice telephony service has been restricted or denied, including the measures taken and their justification.

*Article 26***Conciliation and resolution of national disputes**

Without prejudice to:

- (a) any action which the Commission or any Member State may take pursuant to the Treaty;
- (b) the rights of the person invoking the procedure in points 3 and 4, of the organisations concerned or of any other person under applicable national law, except insofar as they enter into an agreement for the resolution of disputes between them;
- (c) Article 10(2), which allows the national regulatory authorities to alter the conditions of subscriber contracts,

the following procedures shall be available:

- (1) Member States shall ensure that any party, including, for example, users, service providers, consumers or other organisations having an unresolved dispute with an organisation providing fixed public telephone networks and/or fixed public telephone services concerning an alleged infringement of the provisions of this Directive, shall have a right to bring cases before the national regulatory authority or another independent body. Easily accessible and in principle inexpensive procedures shall be available at a national level to resolve such disputes in a fair, transparent and timely manner. These procedures shall, in particular, apply in cases where users are in dispute with an organisation over their telephone bills or over the terms and conditions under which telephone service is provided.

Organisations representing user and/or consumer interests may bring to the attention of the national regulatory authority or another independent body cases where terms and conditions under which telephone service is provided are deemed to be unsatisfactory for users.

- (2) A user or an organisation may, where the dispute involves organisations in more than one Member State, invoke the conciliation procedure provided for in points 3 and 4 by means of a written notification to the national regulatory authority and to the Commission. Member States may also allow their national regulatory authority to invoke the conciliation procedure.
- (3) Where the national regulatory authority or the Commission finds that there is a case for further examination, following a notification based on point 2, it may refer the matter to the Chairman of the ONP Committee.

- (4) In the circumstances referred to in point 3, the Chairman of the ONP Committee shall initiate the procedure described below if he is satisfied that all reasonable steps have been taken at national level:

- the Chairman of the ONP Committee shall convene as soon as possible a working group including at least two members of the ONP Committee and one representative of the national regulatory authorities concerned, and the Chairman of the ONP Committee or another official of the Commission appointed by him. The working group shall be chaired by the representative of the Commission and shall normally meet within ten days of having been convened. The Chairman of the working group may decide, on a proposal by any of the members of the working group, to invite a maximum of two other persons as experts to advise it,
- the working group shall give the party invoking this procedure, the national regulatory authorities of the Member States involved and the organisations involved the opportunity to present their opinions in oral or written form,
- the working group shall endeavour to reach agreement between the parties involved within three months of the date of receipt of the notification referred to in paragraph 2. The Chairman of the ONP Committee shall inform that Committee of the results of the procedure so that it may express its views.

- (5) The party invoking the procedure shall bear its own costs of participating in this procedure.

*Article 27***Deferment of certain obligations**

1. Deferments granted in relation to Articles 12 and 13 of Directive 95/62/EC shall remain unchanged with regard to Articles 17 and 18 of this Directive.
2. Deferment of the obligations under Article 15(4) may be requested where the Member State concerned can prove that they would impose an excessive burden on certain organisations or classes of organisation. The Member State shall inform the Commission of the reasons for requesting a deferment, the date by which the requirements can be met, and the measures envisaged in order to meet this deadline. The Commission shall consider the request taking into account the particular situation in that Member State and the need to ensure a coherent regulatory environment at a Community level, and shall inform the Member State whether it deems that

the particular situation in that Member State justifies a deferment and, if so, until which date such deferment is justified.

Article 28

Technical adjustment

Modifications necessary to adapt Annexes I, II and III to this Directive to technological developments or to changes in market demand shall be determined in accordance with the procedure laid down in Article 30.

Article 29

Advisory Committee procedure

1. The Commission shall be assisted by the ONP Committee. The Committee shall, in particular, consult the representatives of the organisations providing fixed public telephone networks, publicly available telephone services, users, consumers and manufacturers.

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

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

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

Article 30

Regulatory Committee procedure

1. Notwithstanding the provisions of Article 29, the following procedure shall apply in respect of the matters covered by Article 28.

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

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

If the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 31

Review

The Commission shall examine and report to the European Parliament and to the Council on the functioning of this Directive, on the first occasion not later than 31 December 1999, taking into account the Report on Universal Service to be published by the Commission before 1 January 1998. The review shall be based on, *inter alia*, the information provided by the Member States to the Commission and shall examine in particular:

- the scope of the Directive, in particular the extent to which it is desirable to apply the provisions of this Directive to mobile telephony,
- the provisions in Chapter II in the light of changes in market conditions, user demand and technological progress,
- the maintenance of the obligations imposed under Articles 17, 18 and 19 in the light of the emergence of competition.

Where necessary, further periodic reviews may be proposed in the report.

Article 32

Transposition

1. Member States shall take the measures necessary to comply with this Directive by 30 June 1998. They shall forthwith 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 reference shall be laid down by the Member States.

2. Member States shall inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

Article 33

Repeal of Directive 95/62/EC

Directive 95/62/EC is hereby repealed with effect from 30 June 1998, without prejudice to Member States' obligations for implementation of that Directive according to the timescales laid down in Annex IV.

References made to the repealed Directive shall be construed as being made to this Directive.

Annex V provides a comparative table showing the relationship between the Articles of Directive 95/62/EC and the Articles of this Directive.

Article 34

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 35

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 26 February 1998.

*For the
European Parliament*

The President

J. M. GIL-ROBLES

For the Council

The President

B. ROCHE

ANNEX I

DESCRIPTION OF FACILITIES REFERRED TO IN ARTICLES 14 AND 15

PART 1

Facilities referred to in Article 14(1)(a) *Tone dialling or DTMF (dual-tone multifrequency operation)*

i.e. the fixed public telephone network supports the use of DTMF telephones for signalling to the exchange, using tones as defined in ETSI ETR 207, and supports the same tones for end-to-end signalling throughout the network both within a Member State and between Member States.

(b) *Selective call barring for outgoing calls*

i.e. the facility whereby the subscriber can, on request to the telephone service provider, bar outgoing calls of defined types or to defined types of numbers.

PART 2

List of facilities referred to in Article 15(1)(a) *Calling-line identification*

i.e. the calling party's number is presented to the called party prior to the call's being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, such as Directive 95/46/EC and Directive 97/66/EC.

(b) *Direct dialling-in (or facilities offering equivalent functionality)*

i.e. users on a private branch exchange (PBX) or similar private system can be called directly from the fixed public telephone network, without the intervention of the PBX attendant.

(c) *Call forwarding*

i.e. incoming calls sent to another destination in the same or another Member State (e.g. on no reply, on busy, or unconditionally).

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, such as Directive 95/46/EC and Directive 97/66/EC.

PART 3

List of services and facilities referred to in Article 15(2)(a) *Community-wide access to green/freephone services*

These services, variously known as green numbers, freephone services, cover dial-up services where the caller pays nothing for the call to the number dialled.

(b) *Shared cost services*

These services cover dial-up services where the caller pays only part of the cost of the call to the number dialled.

(c) *Community-wide premium rate services/shared revenue services*

Premium rate service is a facility whereby charges for the use of a service accessed through a telecommunications network are combined with the network call charges.

(d) *Community-wide calling-line identification*

i.e. the calling party's number is presented to the called party prior to the call's being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, such as Directive 95/46/EC and Directive 97/66/EC.

(e) *Access to operator services in other Member States*

i.e. users in one Member State can call the operator/assistance service in another Member State.

(f) *Access to directory enquiry services in other Member States*

i.e. users in one Member State can call the directory enquiry service in another Member State.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, such as Directive 95/46/EC and Directive 97/66/EC.

ANNEX II

HEADINGS FOR INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE 11

PART 1

Information to be supplied to the national regulatory authority in accordance with Article 11(2)

Technical characteristics of network interfaces

Technical characteristics of interfaces at commonly provided network termination points are required, including where applicable reference to relevant national and/or international standards or recommendations:

- for analogue and/or digitally presented networks:
 - (a) single line interface;
 - (b) multiline interface;
 - (c) direct dialling-in (DDI) interface;
 - (d) other interfaces commonly provided,
- for ISDN: (where provided)
 - (a) specification of basic and primary rate interfaces at the *S/T* reference points, including the signalling protocol;
 - (b) details of bearer services able to carry voice telephony services;
 - (c) other interfaces commonly provided,
- and any other interfaces commonly provided.

In addition to the above information to be submitted to the national regulatory authority on a regular basis in the manner laid down in Article 11(2), all organisations providing fixed public telephone networks must inform their national regulatory authority, without undue delay, of any particular network characteristics which are found to affect the correct operation of terminal equipment.

The national regulatory authority shall make this information available on request to terminal equipment suppliers.

PART 2

Information to be published in accordance with Article 11(3)

Note: The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 11(3). It is for the national regulatory authority to decide which information is to be published by the organisations providing telecommunications networks and/or publicly available telephone services and which by the national regulatory authority itself.

1. **Name(s) and address(es) of organisation(s)**

i.e. names and head office addresses of organisations providing fixed public telephone networks and/or publicly available telephone services.
2. **Telephone services offered**
 - 2.1. *Scope of the basic service*

Description of the basic telephone services offered, indicating what is included in the subscription charge and the periodic rental charge (e.g. operator services, directories, directory services, selective call barring, itemised billing, maintenance etc).

Description of optional facilities and features of the telephone service which are tarified separately from the basic offering, including where applicable reference to the relevant technical standards or specifications to which they conform.

2.2. *Tariffs*

covering access, all types of call charges, maintenance, and including details of discounts applied and special and targeted tariff schemes.

2.3. *Compensation/refund policy*

including specific details of any compensation/refund schemes offered.

2.4. *Types of maintenance service offered*

2.5. *Standard contract conditions*

including any minimum contractual period, if relevant.

3. **Conditions for attachment of terminal equipment**

This shall include a complete overview of requirements for terminal equipment in line with the provisions of Directives 91/263/EEC or 93/97/EEC⁽¹⁾, including, where appropriate, conditions concerning customer premises' wiring and location of the network termination point.

4. **Restrictions on access and use**

This shall include any restrictions on access and use imposed in accordance with the requirements of Article 13.

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⁽¹⁾ OJ L 290, 24.11.1993, p. 1.

ANNEX III

SUPPLY-TIME AND QUALITY-OF-SERVICE INDICATORS, DEFINITIONS AND MEASUREMENT METHODS IN ACCORDANCE WITH THE REQUIREMENTS OF ARTICLE 12

Indicator ⁽¹⁾	Definition	Measurement method
supply time for initial connection	ETSI ETR 138	ETSI ETR 138
fault rate per access line	ETSI ETR 138	ETSI ETR 138
fault repair time	ETSI ETR 138	ETSI ETR 138
unsuccessful call ratio	ETSI ETR 138	ETSI ETR 138
call set up time	ETSI ETR 138	ETSI ETR 138
response times for operator services	ETSI ETR 138	ETSI ETR 138
response times for directory enquiry services	as for operator services	as for operator services
proportion of coin and card operated public pay-telephones in working order	ETSI ETR 138	ETSI ETR 138
billing accuracy	(²)	(²)

⁽¹⁾ Indicators should allow for performance to be analysed at a regional level (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat.)

⁽²⁾ Billing accuracy. National definitions and measurement methods should be used until such time as a common definition and measurement method are agreed at the European level.

*ANNEX IV***TIMESCALE REFERRED TO IN ARTICLE 33**

Date by which Member States were obliged to take the necessary measures to
comply with Directive 95/62/EC

13 December 1996.

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ANNEX V

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