

*Communication from the Commission to the Council, the
European Parliament, the Economic and Social Committee and
the Committee of the Regions*

*Fourth Report on the Implementation of the
Telecommunications Regulatory Package*

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Regulatory Package***

TABLE OF CONTENTS

- 1. INTRODUCTION AND EXECUTIVE SUMMARY**
- 2. THE STATE OF IMPLEMENTATION TEN MONTHS AFTER FULL LIBERALISATION**
 - 2.1. Scope
 - 2.2. Methodology
 - 2.3. State of implementation
 - 2.3.1. Transposition
 - 2.3.2. Effective application
 - 2.4. Effective application – results by theme
 - 2.4.1. National regulatory authorities (NRAs)
 - 2.4.2. Licensing
 - 2.4.3. Interconnection / special access
 - 2.4.4. Universal service
 - 2.4.5. Tariffs / accounting systems
 - 2.4.6. Numbering
 - 2.4.7. Frequency
 - 2.4.8. Rights of way
 - 2.4.9. Competition in the local loop

3. FUTURE ACTION BY THE COMMISSION

Annexes

- 1. Market data**
- 2. Telecommunications Regulatory Framework – list of directives/decisions**
- 3. Status of transposition of harmonisation directives**
- 4. Effective application – analysis by theme/Member State**
- 5. Competition in the local loop**

1. INTRODUCTION AND EXECUTIVE SUMMARY

Over the ten-year period 1988-97, the European Community enacted an **extensive package of telecommunications legislation** designed to enable Europe to respond to the challenges of rapidly evolving and converging technologies and the globalisation of the information economy. Adoption of the package by the Council and European Parliament, in line with **Treaty objectives** and the Community's obligations under the **WTO/GATS** agreement¹, implied a radical restructuring of national telecoms legislation and markets.

This is the fourth in a series of reports on the status of implementation of the EC regulatory package. The exercise began in May 1997, with the purpose of informing the EU institutions, and governments, operators, market entrants and equipment manufacturers, of progress in ensuring transposition and application of the measures making up the package. The report covers the whole package of EC telecommunications legislation adopted since 1987, and complements sector-specific reports such as the Frequency Report, the forthcoming Leased Lines Report, and the Report on Universal Service.

The data taken into account in this report was that available up to 16 October 1998². Comments received from Member States on Annexes 4 and 5 up to 10 November 1998 have been taken into account.

The Commission reported to the Council and Parliament in February 1998³ that, as regards transposition, a further examination was needed only of the more recent harmonisation directives, and that future assessments should concentrate on the effective application of the measures transposing the package.

This **Fourth Report** on implementation concludes that

- the further progress made in relation to the more recent directives means that the **bulk of the measures in the package have been transposed into national legislation**;
- national measures giving effect to the **principal regulatory themes** underpinning the package (*national regulatory authorities, licensing, interconnection, universal service, tariffs, numbering, frequency, rights of way*) are being **applied in practice**, although there are, as might be expected with an exercise of this complexity, a considerable number of details remaining to be resolved;
- **dynamic telecoms markets** are evolving rapidly in the Member States.

¹ General agreement on trade in telecommunications services, entered into force 5 February 1998

² The market data in Annex 1 relating to numbers of operators, licence fees and interconnection agreements is that received from the NRAs/Ministries up to September 1998; each table refers to the date of validity of individual data.

³ Third report on the implementation of the telecommunications regulatory package, COM(98)80, <http://www.ispo.cec.be/infosoc/telecompolicy>; <http://www.europa.eu.int/comm/dg4/lawliber/libera.htm>

These conclusions are based on the following inputs:

As regards **transposition**, the Commission has carried out an article-by-article examination of the principal provisions in the directives, and assessed the level of compliance on a scale indicating substantial, partial or non-transposition.

The Commission's assessment of the extent to which **nationally transposed measures** are being **applied effectively** in the Member States has been made on the basis of an analysis of

- a series of **indicators of compliance** with the most important principles and requirements of the regulatory package
- data showing the extent to which **markets are effectively opening to competition**.

The Commission's assessment of **effective compliance** is as follows:

- **National regulatory authorities:** Regulatory authorities have **begun operations in all Member States**, and are cooperating and exchanging information on a systematic basis with each other and with the Commission. While it is reasonable to expect that they will require time to become fully effective, all have begun to **implement the principles laid down in the regulatory package**.

There are, however, some concerns as to the sufficiency of the powers and resources available to them, the degree of separation from the body controlling the incumbent, and the clarity of the division of powers between the different bodies to which NRA tasks have been devolved.

- **Licensing:** The **national frameworks** in place appear to be functioning well, with large numbers of new players authorised to enter the market; the **procedures** applied in practice conform broadly to the requirements of the package.

Concerns relate in particular to onerous licence conditions, lack of transparency in regard to conditions and procedures, the level of fees and the length of time required in certain cases to issue licences.

- **Interconnection:** A **significant number of interconnection agreements** are already in place in the Community. There is evidence that interconnection charges are beginning to converge on best practice charges, thereby contributing to the level of service competition.

There are concerns as to the excessive length of negotiations, the scarcity of agreements in the fixed market, the inadequacy of reference interconnection offers and the lack of transparency relating to cost accounting systems.

- **Universal service:** Schemes for **financing** universal service have been set up in only a limited number of Member States.

There is concern relating to the calculation of the amount of the contribution from market players.

- **Tariffs/accounting systems: Tariff rebalancing** has not been completed in a number of Member States.

*The fact that tariffs are not sufficiently **cost oriented** produces anti-competitive effects in certain market segments and increases the cost burden on other sectors of the economy.*

- **Numbering:** Operators do not appear to be squeezed due to lack of **availability of numbers**. Carrier selection is operating at least partially in most Member States, while number portability has been introduced ahead of schedule in some of them.

*The incumbents in a small minority of Member States appear to exercise an undue influence on the **allocation of numbers**.*

- **Frequency:** All Member States have issued at least **two GSM** and **one DCS 1800 licence**.

Concerns relate to the period required in some Member States for the phasing out of analogue systems.

- **Rights of way:** Network operators are granted the **right to use public ways** in virtually all Member States.

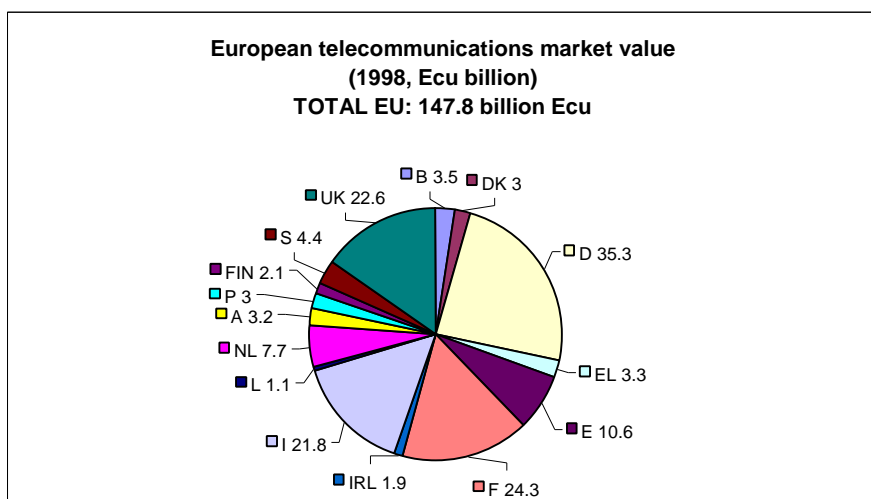
Practical problems appear to exist in several Member States with regard to the use of public ways and sea cables, and in a small number with regard to private land.

In summary, there appear to be no areas in which significant failures have occurred in the practical application of nationally transposed legislation, although corrective action is required on a number of points in a number of countries.

This assessment is **reflected in the state of the market**⁴. It is estimated that the European telecommunications services market will produce total revenues of around **ECU 148 billion in 1998**, ECU 120 billion of which will be in the voice telephony and network service market and ECU 28 billion in mobiles⁵.

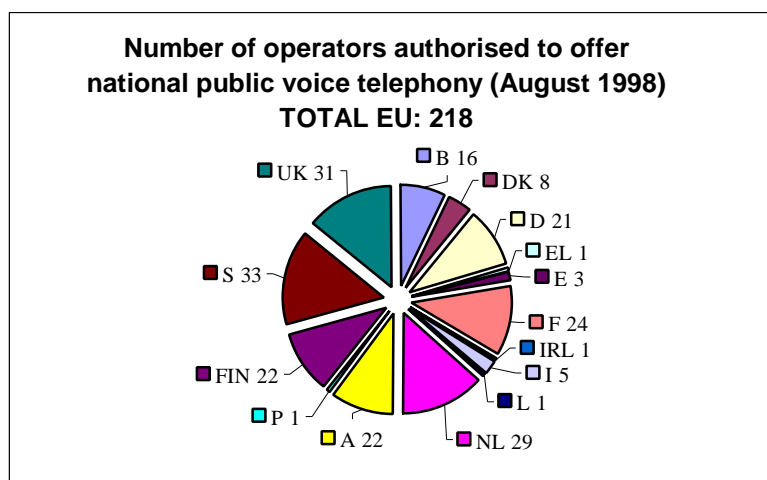
⁴ Fuller data are set out in Annex 1.

⁵ Source: EITO (European Information Technology Observatory), 1998

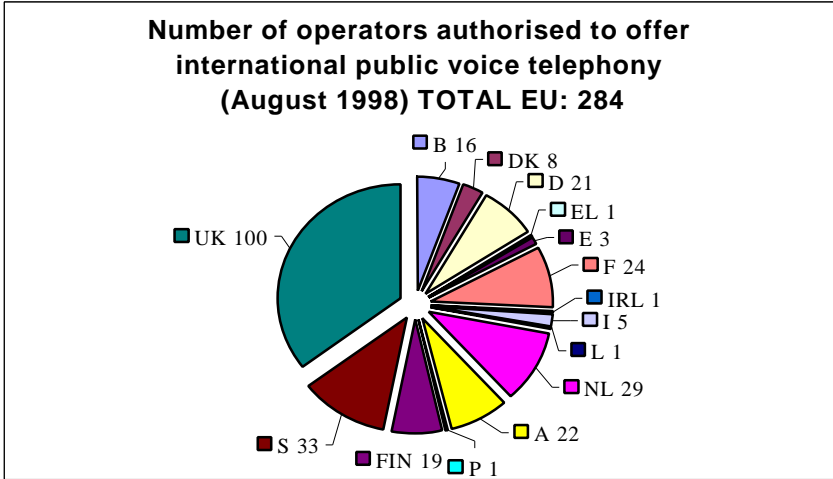


Overall, the telecommunications sector is now widely regarded as being the single most important contributor to economic growth in the Union. In this context the Commission welcomes the decision by Ireland to bring forward the date of full liberalisation as evidence of the benefits to markets of the full adoption of the regulatory package.

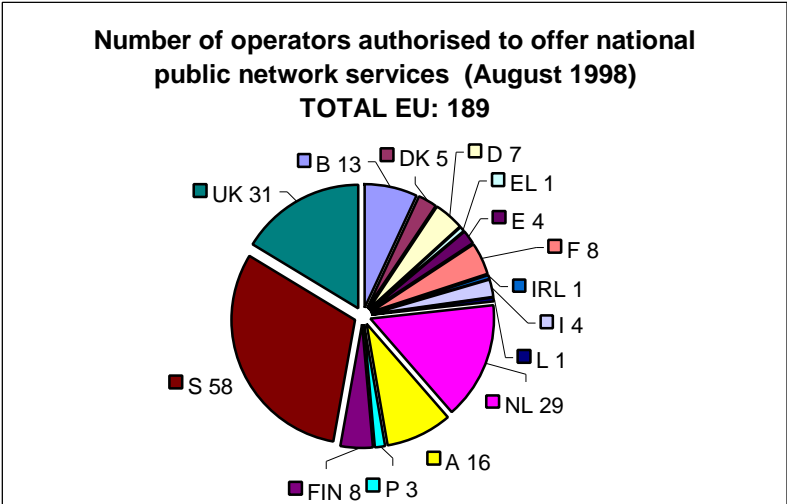
There have already been clear benefits to users and consumers. The most obvious has been the enormous **increase in the number of providers across the range of telecommunications services**. At end August 1998 there were, according to figures provided by the respective NRAs, 218 operators in the Union with authorisation to provide national public voice telephony, excluding a large number which are authorised on the basis of general legal provisions.



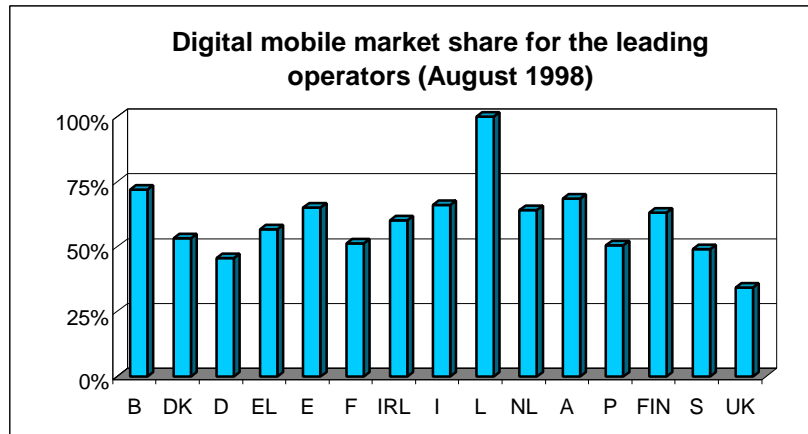
As far as international voice services are concerned, 284 operators are authorised, while a total of 77 national mobile licences have been granted.



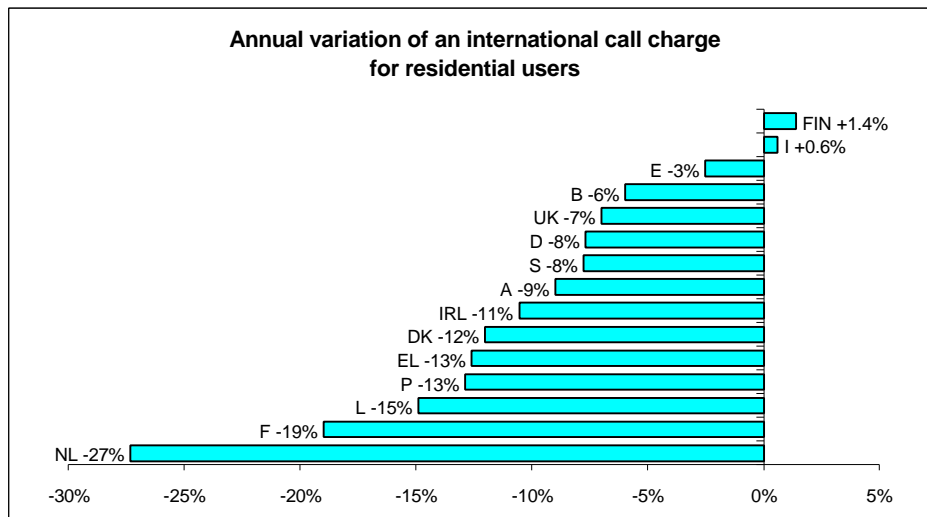
The network services market has also been thrown wide open: 526 operators are now authorised to offer local network services, while 189 can offer network services at national level and 256 at international level.



Although for most Member States it is still too early to see a significant decrease in the market power of incumbents in the fixed market, an analysis of the liberalised mobile market shows clearly that the **market power of the leading operators is falling dramatically.**

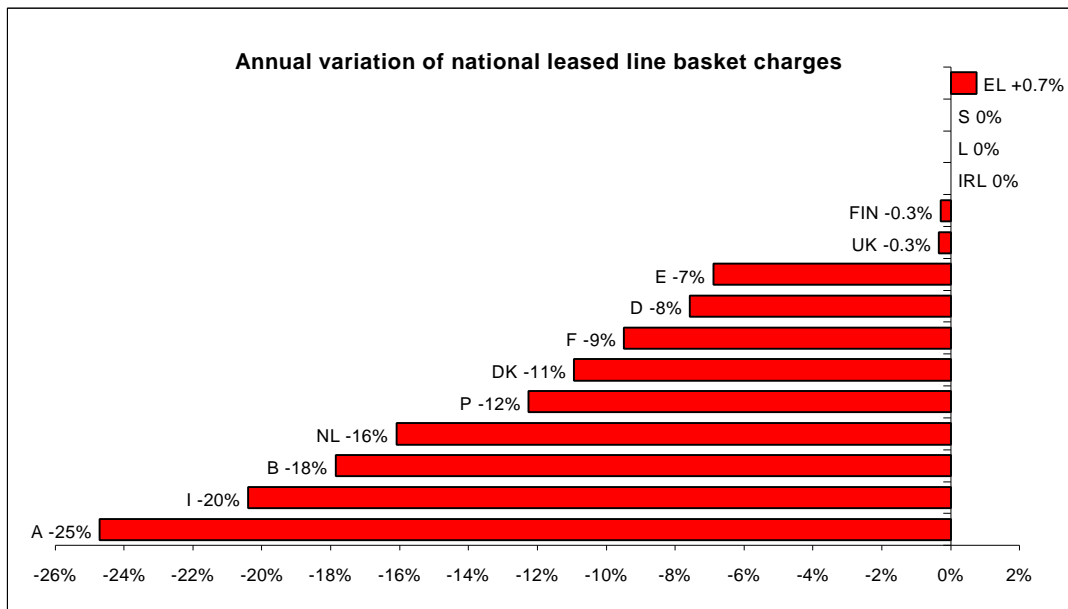


A further important benefit to users and consumers has been the overall **decline in prices of telecommunications services**⁶. However, in view in particular of the need to rebalance tariffs in line with costs, some of the significant reductions for example in international business and residential tariffs are partly offset by rises in some countries in the cost of national calls, in particular local calls, together with rental charges.

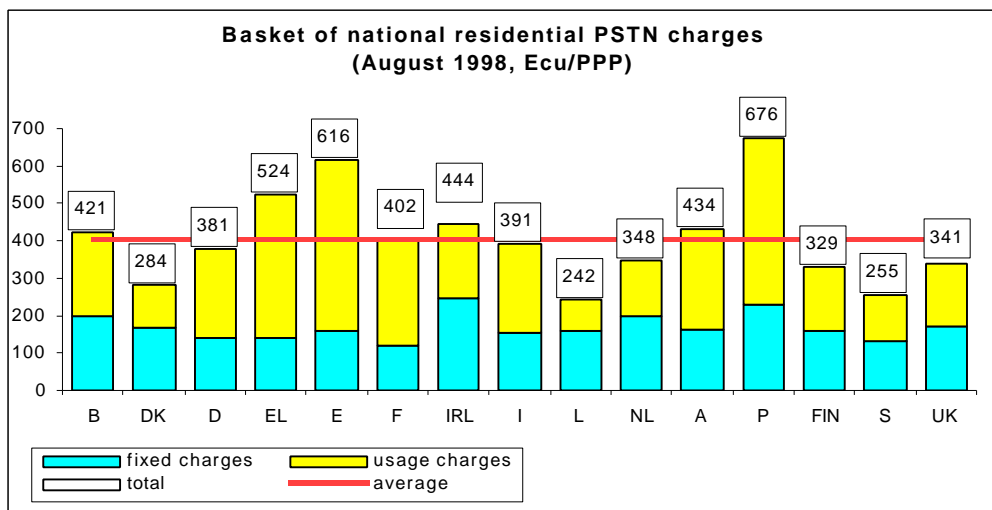


Leased line prices, however, both national and international, have shown significant falls.

⁶ Source: Eurodata Foundation, 1998



As regards the comparison of tariff levels between Member States, countries with a longer experience of liberalisation in particular enjoy significantly lower tariffs for national business and residential calls. This picture is repeated for leased line tariffs over the range of circuits offered.



Data is given in Annex 1 relating to a range of **indicators of market activity**. Specific references to relevant data are made in the appropriate sections of this Report.

Given the fact that market restructuring following liberalisation has barely begun, it is premature to attempt anything more than an estimate of the **impact of the process on employment**. On the one hand there will clearly be pressure on incumbents to increase efficiency as their tariffs and market shares are squeezed; on the other, the rapid rate of market entry, the expansion of services and the introduction of innovative technologies, in large part driven by liberalisation and the single telecoms market, hold out the prospect of substantial net gains in employment across the economy as a whole. Studies are currently in hand, and early indicators are that the initial downturn in employment in the sector is

turning round⁷. This forecast is supported by the estimated **rate of growth in the EU mobile market of 21.2% and in the network services market of 13.7% in 1998**⁸.

Proposals for action

The Member States have adopted an extensive legislative framework for the creation of a fully liberalised, single European telecommunications market. At this stage the Commission has identified no major obstacles to the full realisation of that objective in practice. Given the magnitude of the task and the pressure on time and resources, however, there are inevitably a number of shortcomings, on which this Report focuses in considerable detail. The **Commission urges Member States** to

- Complete the **transposition of the remaining measures** not yet incorporated into national legislation
- Ensure that **national regulatory authorities are fully resourced and equipped**, and have the **necessary degree of independence from the incumbent**, to deal with the problems of practical application highlighted in this Report
- Continue the **constructive cooperation with the Commission** which has contributed to the progress achieved to date.

The Commission will itself continue to follow the situation closely, in accordance with its Treaty obligations. It will in particular pursue the 84 infringement proceedings currently open in respect of the regulatory package (30 relating to the liberalisation and 54 to the harmonisation directives), and **open new proceedings where appropriate**.

A **fuller overview of this report** can be obtained by referring to the boxes setting out, for each theme, the **broad conclusions** reached. These are in turn based on the more detailed material in Annexes 1 (market data) and 4 (analysis by theme/Member State).

2. THE STATE OF IMPLEMENTATION TEN MONTHS AFTER FULL LIBERALISATION

2.1. Scope

The directives and decisions covered by the report are listed in Annex 2.

Derogations have been granted to certain Member States with very small or less developed networks⁹ by decision of the Commission from certain of the requirements of the Article 90 directives, principally as regards the liberalisation of voice telephony

⁷ See also “Job opportunities in the Information Society – exploring the potential of the information revolution” – Report from the Commission to the European Council

⁸ Source: EITO (European Information Technology Observatory), 1998

⁹ Luxembourg: 1 July 1998; Spain: 1 December 1998; Ireland: 1 January 2000; Portugal: 1 January 2000; Greece: 31 December 2000.

services (and underlying network) and alternative infrastructure. This should be borne in mind in relation to certain of the indicators and assessments contained in this report.

2.2. Methodology

In making its assessments, the Commission has relied on a number of sources of information, principally questionnaires to the fifteen national regulatory authorities; audits¹⁰ carried out by independent legal and economic experts working under the direction of the Commission services responsible; formal and informal complaints received in connection with the transposition and application of the regulatory framework; reports from market players in the context of the ongoing contacts and exchanges of views which the Commission conducts with the industry; and consultations with the Member States in relation to this report.

2.3. State of implementation

Article 155 of the EC Treaty places on the Commission an obligation to “ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied”. As stated in the Third Communication on implementation, the Commission’s task, in the light of this obligation, is not only to ensure the **transposition** but, equally important, the **effective application** of the national rules adopted pursuant to the directives. Transposition means the incorporation into national law of the obligations set out in the directives concerned in order to achieve the objectives pursued. The Commission’s view, in line with the case law of the Court of Justice¹¹ is that **only correct transposition provides legal certainty to market players as to their rights under the EC legislation**. However, the Commission has always been equally clear that full implementation of Member States’ obligations under the legislation can be achieved only with the **full and effective application of the national transposition measures**.

2.3.1. Transposition

In the Third Communication the Commission gave an overview of the transposition of all of the directives making up the regulatory package, and concluded that the necessary national measures were “**very largely in place in most Member States**”¹². There were, however, gaps in the transposition of two directives (Licensing, Interconnection) for which the deadline for the adoption of national measures was 31 December 1997, the eve of the date for full liberalisation. The Commission has therefore carried out a further assessment of the transposition of those directives, together with two further important directives, that is, the amended Leased Lines and the revised Voice Telephony Directives.

Annex 3 gives an overview of their transposition, in which the Commission has applied the same methodology as that used in the Third Communication. Three categories of assessment are therefore given, “substantially transposed”, “partially transposed” and “not transposed”, based on the extent to which the **key principles** laid down in the directives concerned are transposed.

¹⁰ Audits/studies were carried out April – October 1998.

¹¹ See, for example, case 239/85, ECR 1986, p 3645; case 363/85, ECR 1987, p 1740

¹² See Annexes I (liberalisation directives) and II (harmonisation directives) to the Third Communication.

The Commission's assessment of the current state of transposition of the outstanding harmonisation directives is as follows:

- **Licensing Directive** – Significant progress has been made with the adoption of secondary legislation in **Spain** and **Ireland** and primary legislation in the **Netherlands**. **Eight Member States** have transposed substantially (**Denmark, Germany, Spain, Ireland, Portugal, Finland, Sweden, United Kingdom**), while a further **six** (**Belgium, France, Italy, Luxembourg, the Netherlands, Austria**) have transposed partially. Greece has not yet notified transposition measures. Secondary legislation is expected in Greece, France, Italy, Luxembourg and the Netherlands.
- **Interconnection Directive** – Significant progress has been made by **Spain** and **Italy** with the adoption of secondary legislation. **Nine Member States** have transposed substantially (**Denmark, Germany, Spain, Ireland, Italy, the Netherlands, Austria, Finland, United Kingdom**), while a further **four** (**Belgium, France, Luxembourg, Sweden**) have transposed partially. Greece and Portugal have not yet notified transposition measures. Secondary legislation is expected in Belgium, Greece, the Netherlands, and Portugal, and primary legislation in Sweden.
- **Amended Leased Lines Directive** – Measures substantially transposing the directive have been notified by **Denmark, Germany, Spain, Ireland, Luxembourg, the Netherlands, Austria, Finland and the United Kingdom**. Belgium has transposed partially. Greece, France, Italy, Portugal and Sweden have not yet notified transposition measures.
- **Revised Voice Telephony Directive** – Measures substantially transposing the directive have been notified by **Denmark, Germany, Spain, Finland and the United Kingdom**. Belgium, Luxembourg, the Netherlands, Austria and Portugal have transposed partially. Greece, France, Ireland, Italy and Sweden have not yet notified transposition measures.

As regards the whole package of harmonisation and liberalisation directives, the Commission notes that the further progress made in relation to the most recent directives complements its assessment in the Third Report **that transposed measures are very largely in place in most Member States**.

The Commission will continue to monitor the full transposition and pursue the infringement proceedings opened in respect of the gaps referred to above.

2.3.2. *Effective application*

The Commission now regards the task of securing the effective application of the national rules adopted pursuant to the directives as being its major priority. **For market players, and new entrants in particular, this is a matter of overriding concern**, since their survival or otherwise in the market place depends on the extent to which the principles taken over from the directives are applied in practice.

While transposition can be judged against clear criteria by comparing the relevant national measures with the texts of the directives, the assessment of the effective application of those measures depends to a much greater extent on the indicators selected and on the Commission's judgment, taking inter account *inter alia* that of market players, as to compliance. In the final analysis, it will be for the Commission to test those judgments

where necessary before the Court of Justice in proceedings brought under Article 169 of the Treaty. In this context the Court has given a clear indication that “the Commission’s function, in the general interest of the Community, is to ensure that the Member States give effect to the Treaty and the provisions adopted by the institutions thereunder... It may therefore ask the Court to find that, in not having achieved, in a specific case, the result intended by the directive, a Member State has failed to fulfil its obligations”¹³.

As stated in the first Communication on implementation, the telecoms package has evolved over a period of years in the light of political and technological change. The result is that many of the major liberalisation and harmonisation principles are spread over a number of directives and decisions and several legal bases.

For the purpose of assessing effective application, therefore, this report presents

- A short analysis of each of the **major themes in the package**, together with a set of **indicators of compliance which are intended to serve as a reference point for the assessment in this and any future reports**;
- An overview of the **effective application** in the Community of the regulation relating to those themes is then given, with a more detailed country-by-country analysis in Annex 4; the focus here is on remaining barriers to the creation of a single, liberalised European telecommunications market resulting from failure to give full effect to the principles of the package.

Given that the prime objective of the legislative package is to open national markets on the basis of a harmonised regulatory framework, a link is also made where appropriate to the **market indicators** set out in Annex 1.

In assessing effective application, the Commission has borne in mind that certain of the principles in the directives do not lend themselves easily to transposition, but require a *direct examination of their practical application*. The requirement in the Interconnection Directive, for example, that Member States “shall ensure the provision of adequate numbers” is most usefully assessed in its practical implementation. Further, and most crucially, in some circumstances a faithful transposition into national law may *in practice* be applied in a way which is *contrary to the intention of the Community legislator*, or may simply be a dead letter; the “practical application” test is also intended to deal with those cases.

There is a further potential barrier to market entry which has been cited by market players in connection with a number of the themes set out here, namely the complexity and in some cases obscurity of national implementing regulation. The Commission urges Member States to review rules and procedures where appropriate, to ensure the greatest possible clarity and ease of application.

¹³ Case 431/92, ECR 1995, p 1, grounds 21,22

2.4. Effective application – results by theme

The indicators in this section represent the criteria used by the Commission in examining the effective application of the salient aspects of each theme. The concern underlying each question is in essence “**Does the way in which national law is applied in practice meet the objectives of the regulatory package? In particular does it discriminate against different market players, especially new entrants?**”

2.4.1. National regulatory authorities (NRAs)

EC framework

Much of the implementation of the telecoms package is delegated to the national regulatory authorities. The existence of regulatory bodies equipped to carry out the tasks assigned under the directives is therefore the first reference point in any assessment of the effective application of the package.

The principal requirements are laid down in the Services and Framework Directives. The first is the **legal and functional independence of the NRA** from network operators and service/equipment providers. Effective independence in this sense may be prejudiced in particular by ‘regulatory capture’, where NRA personnel are too closely influenced by the incumbent or the interests of other operators.

Indicators: Are staff seconded from operators/equipment providers to the NRA? Is there a ‘revolving door’ between the NRA and the incumbent as regards staff?

The same directives also impose **separation of the control and regulatory function** where Member States retain ownership or significant control of the incumbent. Effective structural separation between the Ministry/department responsible for the holding by the State in the incumbent and the different bodies to which the NRA’s tasks have been devolved can be achieved in a number of ways, depending on the legal and administrative structure in a Member State.

Indicators: Do the structures in place ensure that regulatory decisions are not influenced by ownership considerations? Do officials from the bodies to which NRA tasks have been assigned participate directly or indirectly in the management of the incumbent, or vice versa?

The harmonisation directives also lay down powers to be devolved to NRAs relating principally to **licensing** (in particular supervision of the licensing procedure and the amendment and withdrawal of licences); **interconnection** (in particular the power to supervise the reference interconnection offer (RIO) and the implementation of suitable cost accounting systems and to secure interconnection and resolve disputes); **leased lines** (in particular supervision of refusal, interruption or reduction of availability and ensuring application of the non-discrimination principle); **universal service** (in particular ensuring affordability and monitoring any financing scheme); and **tariffs** (in particular supervision of the application of the principle of cost-orientation for voice telephony and leased lines and the implementation of suitable cost accounting systems). Further powers are devolved relating to **numbering, frequencies and rights of way**. An indication of the effective exercise of these powers is the number of decisions taken. Further, in order to be able to exercise its powers the NRA must be sufficiently resourced.

***Indicators:** Is the number of interventions by the NRA proportionate to market activity? Are the NRA's powers exercised effectively in all areas of competence? Does the NRA exercise its powers of initiative? Is the NRA sufficiently resourced to enable it to act?*

NRA's - effective application in the Member States – overview

Regulatory authorities are established in all Member States, and are cooperating and exchanging information on a systematic basis with each other and with the Commission. Given the complex nature of their tasks, the difficulty of attracting qualified staff, and the lack of adequate financial support in some Member States, it is reasonable to expect that they will require time to become fully effective. All have, nonetheless, begun to **implement the principles laid down in the regulatory package**. There are, however, some concerns.

In several Member States the regulatory functions are allocated both to the Ministry responsible for the telecommunications sector and to a separate administrative body. In most cases the Ministry acts as the policy maker and the administrative bodies are responsible for supervising the market. **In certain cases there is a lack of clarity as to the actual division of powers between the different bodies to which NRA tasks have been devolved** (the Netherlands, Austria).

In some Member States concerns are reported that **the structures in place do not ensure that regulatory decisions are not influenced by State ownership considerations**. In these cases, the necessary separation of the control of the incumbent and the regulatory powers should be re-examined (Belgium, Finland, Luxembourg, Ireland, France).

There is concern relating to **limitations on staff numbers** (Belgium, Greece, Luxembourg; Italy, where the NRA is newly-established), thus jeopardising the ability of the NRA to address all the relevant issues. In France there are grounds to believe this is the case for licensing and tariff controls. In certain non-derogation Member States, some new entrants have reported what is perceived as a certain **lack of proactivity** (Denmark, France, the Netherlands, and Sweden). **Legal uncertainty** has been created in Italy due to the late establishment of the NRA. In some Member States **staff are seconded from the operators to the NRA** (Greece, Portugal) or from the Ministry representing the state's shareholding (Ireland), creating concern as to the level of independence.

In certain cases the NRA does **not in relation to interconnection have sufficient power to intervene on its own initiative** (Luxembourg), or the power is not specific enough (Germany), or **interested parties cannot request it to intervene** (the Netherlands). In one case (Portugal), insufficient transposition of some directives creates uncertainty as to the powers granted to the NRA. In another (Belgium) there is concern that the NRA lacks competence to resolve interconnection disputes.

2.4.2. Licensing

EC framework

The common framework for granting authorisations for the provision of telecommunications services is laid down in the Services and Licensing Directives and the S-PCS Decision. The Services Directive lays down principles relating to restrictions on the number of licences and to procedures, fees, essential requirements and appeals.

The Licensing Directive supplements this framework with harmonised criteria for the issue of **general authorisations**, possibly supplemented by **individual licences** in strictly defined circumstances.

***Indicators:** Where general authorisations are put in place, are procedures considered to be too cumbersome? Are fees for general authorisations seen as a deterrent to market entry?*

Individual licences should be required only for the provision of public voice telephony services or public networks, or for purposes involving access to scarce resources or the imposition of obligations relating to universal service or competition safeguards.

Where national licensing schemes require individual licences to be issued, conditions may be attached relating to essential and public interest requirements, but must be limited to those listed in the directive.

***Indicators:** Is excessive reliance placed on individual licensing schemes? Are additional conditions imposed which are not in conformity with the Annex to the Licensing Directive? Are onerous conditions imposed under the guise of conditions permitted under the Licensing Directive, relating eg to network configuration (number of interconnection points)? Are licence conditions published in a form which is not only accessible but which also gives the fullest possible information?*

Is there discrimination between different kinds of operator which is not justified by objective criteria? Is there discrimination between operators within the same class of licence? Is there discrimination in practice against operators from other States?

Procedures must be published in accessible form, be open, non-discriminatory, transparent, and lay down maximum time-limits.

***Indicators:** Are the time-limits laid down in the national legislation exceeded in practice, and are there sanctions/rights of recourse in that event? Are there "hidden" delays in issuing licences (resulting for example from repeated requests for supplementary information)? Is the application assessment procedure transparent?*

Operators which fulfil the conditions laid down and published should be entitled to receive a licence.

***Indicator:** Numbers of licences issued or refused.*

Measures may be laid down to ensure compliance with the licensing conditions.

Limitations on number of licences may relate only to the efficient use of radio frequency or the need to make numbers available, in conformity with Community law.

***Indicator:** Are other grounds used in practice as a means of restricting the issue of licences?*

Fees should seek only to cover the administrative costs incurred in administering the licence in question, and must be proportionate to the work involved. They may reflect the need to ensure the optimal use of scarce resources.

***Indicators:** Are fees perceived in the market as a deterrent to market entry? Are fees considered as reflecting the administrative costs incurred in their issuance, management, supervision and enforcement?*

Licensing - effective application in the Member States - overview

The regulatory framework for licences appears largely to be in place across the Community, taking into account the varying degrees of transposition in the Member States and the existence of temporary schemes in some Member States.

The various national frameworks appear in broad terms to function well, and do not rely too heavily on individual licences, with **all Member States either requiring individual licences for one or very few services, or requiring individual licences only for the services mentioned in the Licensing Directive**. Concerns relating to effective application appear to exist mainly with regard to **licence conditions** imposed (Belgium, Spain, France, Italy), a certain **lack of transparency** with regard to licence conditions (Ireland), the **level of licence fees** (Germany, France, although it should be pointed out that there are large numbers of operators in the market; Luxembourg and Italy as regards mobile), and **time-limits for the issue of licences** (Belgium, Greece, France, Italy, Luxembourg). In some countries (Belgium, Spain, Italy, Austria) there are concerns with regard to **lengthy or cumbersome licence procedures**. In one country there are concerns regarding **limitations on the number of licences** or **failure to grant licences** with full rights (Greece), and in another (Belgium), the licences granted are only provisional.

Some countries have recently amended or completed the licensing framework (Spain, Ireland), or are in the process (Luxembourg, the Netherlands), and it is therefore too early to see the full practical application of the new licensing regimes.

For a comparative overview of the level of licence fees in the Member States, see Annex 1, section 3.

2.4.3. Interconnection / special access

The common framework on interconnection and special access is set out in the Services, Interconnection and Voice Telephony Directives, and aims to develop open and competitive markets by ensuring fair, proportionate and non-discriminatory conditions for interconnection and interoperability of networks and services throughout the Community.

The Services, Mobile and Full Competition Directives required the lifting of restrictions on direct interconnection between mobile networks, between mobile and fixed networks, and between fixed networks, including across borders, and laid down principles relating to the non-discriminatory, proportional and transparent terms on which incumbents should provide interconnection, the cost-orientation of tariffs, the publication of terms and conditions, and the requirement to implement a suitable cost-accounting system identifying the cost elements relevant for pricing interconnection.

The Interconnection and Voice Telephony Directives laid down the principle that interconnection and special access should normally be left to commercial negotiations between parties, while imposing a certain number of detailed **obligations** on operators

notified by Member States as having **significant market power (SMP)** on a relevant market. These are *inter alia* the obligation to meet all reasonable requests for interconnection and special access, respect the principle of non-discrimination in particular between subsidiaries or internal services and other parties, provide suitable information to other parties, communicate interconnection agreements to the NRA, and make restricted use of the information provided for interconnection purposes by third parties.

Further, categories of operators with **rights and obligations** to negotiate interconnection are identified; the list of operators notified by each Member State has been published by the Commission.

***Indicators:** Do new entrants face problems in negotiating and obtaining interconnection, in particular as regards delays in negotiations and delivery of interconnection services? Are there any known and unjustified cases of refusal to interconnect, in particular in the case of cross-border interconnection?*

As regards the **level of charges for interconnection and special access**, Community law does not impose the use of a specific costing model. However, in its *Recommendation on Interconnection Pricing*, the Commission points to the use of the LRAIC¹⁴ model for call termination and sets out a list of "best current practice" interconnection charges that should apply until such time as interconnection prices can be properly calculated on the basis of LRAIC. NRAs have the discretion to require the retrospective adjustment of interconnection charges, and require accounting justification for interconnection charges set by operators subject to cost-orientation obligations. A suitable accounting system and accounting separation must also be in place to ensure that these pricing obligations are observed.

***Indicator:** Do new entrants consider the interconnection tariffs proposed by the incumbent as a barrier to entry on the market?*

Operators which have been notified as having SMP on a relevant market must publish a **reference interconnection offer (RIO)** which must include a description of the interconnection offering, in turn broken down into components according to market needs (and the associated terms and conditions, including charges).

***Indicators:** Has a RIO been published, and approved by the NRA ? Does it cater for the new entrants' specific needs ? Are the services offered sufficiently unbundled?*

Interconnection - effective application in the Member States - overview

One Member State (Portugal) has not notified to the Commission a list of **operators with significant market power**. Belgium, Germany, Spain, France and the Netherlands have not done so for mobile operators.

Interconnection negotiations are reported by new entrants to have an excessive duration in a number of Member States (Belgium, Germany, France, and Austria) or are refused or

¹⁴ Long run average incremental cost

deferred because the incumbent requires the other party to have a licence (Italy and Luxembourg) or are delayed because negotiations involve difficult issues (bottleneck resources in Denmark or local interconnection in Sweden). In some cases these problems raise the question whether NRAs are using their powers to a sufficient extent. In one country (Luxembourg) the NRA has limited powers to fix time-limits for negotiations, and in another (Germany) insufficiently specified powers.

With the exception of Denmark, Germany, France, Finland, Sweden and the United Kingdom, the number of **agreements** is limited and the existing agreements are with or between mobile operators, while very few agreements have been concluded with new entrants on the fixed market.

The existence of substantial interconnection **disputes** has been reported in Denmark, Germany, Austria, Sweden and the United Kingdom, as well as in Greece. In Germany, the NRA is currently addressing the problem of the number of interconnection points imposed by the incumbent.

Reference interconnection offers have been published in all of the Member States except Greece and Portugal, although in the first case a proposal has been made by the incumbent to the NRA. In Germany, most of the terms and conditions are considered confidential and, therefore, not in line with the objective of having an RIO published to provide transparency in the market. In Luxembourg the RIO has been approved by the NRA, but has not yet been published. The completeness and/or adequacy in accordance with market needs of the RIO or draft RIO are the subject of criticism by market entrants in Germany, Greece, France, Italy, Luxembourg and Austria. The RIOs in Italy and Ireland have not yet been approved by the NRA and may be modified substantially. The proposals lodged by the incumbent in Greece and Austria are being assessed by the respective NRAs.

In Germany, France and United Kingdom interconnection **charges** do not deviate at any interconnection level from the 1998 “best current practice” range as recommended by the Commission. For the most common type of interconnection – single transit (metropolitan) level - only five Member States are above the “best current practice” (Belgium, Ireland, Italy, Luxembourg, Portugal), but, in Ireland and Italy, the current interconnection charges are those proposed by the incumbent operator and have not been formally approved by the NRA (in Italy the NRA is in the process of imposing changes to bring the charges into line with best current practice). With regard to interconnection at local level, Greece, Spain, Austria and Finland have not set up local tariffs and interconnecting operators in the first three countries have to pay the higher tariffs of single transit. Indeed, the tariffs at local level provided by Italy, the Netherlands and Portugal are above the best practice. Finally, with regard to double transit (national) level, a number of Member States are still above the “best practice” (Belgium, Spain, Ireland, Italy, Portugal, Finland).

Only the United Kingdom has made available on request a description of the **cost accounting system** in relation to interconnection, showing the main categories under which costs are grouped and the rules used for the allocation of costs to interconnection.

For an overview of the number of interconnection agreements in place and the level of interconnection charges, including the deviation from best current practice, see Annex 1, section 4.

2.4.4. Universal service

The framework for the provision of universal service is based on the principles of affordability for the user and the sharing of costs among market players where universal service is considered to be an unfair burden on the universal service provider or providers. While the scope of universal service and general principles are laid down at Community level, it is left to Member States to determine the mechanism for the provision of universal service and to define affordability.

The Interconnection and revised Voice Telephony Directives define the **scope of universal service**, which currently covers a connection to the fixed public telephone network at a fixed location, capable of supporting fax and data, and access to fixed public telephone services (i.e. the voice telephony service, access to emergency 112 services, provision of operator assistance), directory services, public pay phones, and specific measures, where appropriate, for disabled users and users with special social needs. Member States may, in addition to the current harmonised set of services, impose further public service requirements; these may not, however, be financed from mandatory contributions by market players.

The concept of **affordability** applies in particular in respect of users in rural or high cost areas and vulnerable groups such as the elderly, those with disabilities or those with special social needs, allowing Member States to implement geographical averaging, price-cap mechanisms or other similar schemes such as targeted tariff schemes (e.g. low user schemes), until such time as competition provides effective price control (see also 2.4.5).

Where the **net cost of universal service obligations** represents an **unfair burden** on the organisation providing universal service, the Services and Interconnection Directives provide that it may be shared amongst other market players, with accounting obligations placed on universal service operators (see also 2.4.5). There is, however, no obligation on Member States to set up such schemes. Given that financing schemes must be consistent with certain basic Community policy aims, the following indicators are particularly relevant :

***Indicators:** Are schemes based on objective, transparent, proportional and non-discriminatory criteria? In particular, is the methodology of calculation of net cost sufficiently transparent ?*

Are the administrative burdens and related costs kept to a minimum ?

Is the principle of neutrality of treatment (e.g. as between market players/technologies or between integrated or unbundled provision of services) respected?

Universal service - effective application in the Member States - overview

The great majority of Member States do not currently apply a **mechanism for financing universal service**. France is the only country which has implemented a universal service financing mechanism on the basis of which new entrants are already required to

contribute. In Italy a fund has been created which will be applied in 1999 on the basis of operators' results for 1998. In both countries, the **methodology for calculating the net cost** is of concern.

In two countries with contingent financing schemes there is concern as to the **amount of the possible future contribution** (Ireland) and as to the **methodology for calculating costs** (Belgium).

2.4.5. Tariffs / accounting systems

The ONP Framework Directive provides that telecommunications tariffs in the Member States must be based on objective criteria, guarantee non-discrimination and equality of treatment, be transparent, and must, in the case of SMP operators, be cost-oriented and sufficiently unbundled.

Any charge for access to network resources or services must also comply with the competition rules of the Treaty and should take into account the need to apportion fairly the overall cost of the resources and the need for a reasonable level of return of investment.

2.4.5.1. PSTN retail tariffs/tariff re-balancing

Under the Full Competition Directive, Member States were required to phase out as rapidly as possible all unjustified restrictions on **tariff re-balancing**, while allowing specific market conditions and the need to ensure the affordability of a universal service to be taken into account.

Since re-balancing could make certain telephone services less affordable in the short term for certain groups of users, Member States were permitted to adopt special provisions to soften the impact. However, where such re-balancing was not scheduled to be completed before 1 January 1998, the Member States concerned had to notify the Commission of the future phasing out of remaining tariff imbalances, with a detailed timetable for implementation.

Although under the revised Voice Telephony Directive, tariffs for use of the fixed public telephone network and fixed public telephone service applied by operators with significant market power on the relevant markets are required to follow the principle of cost orientation, NRAs are allowed to impose tariff constraints relating to universal service objectives.

***Indicators:** Are any specific pricing constraints imposed? Are appropriate measures taken to maintain the affordability of services within the scope of universal service for all users (e.g. price caps, targeted tariff schemes, etc.)? Are PSTN tariffs cost oriented/fully re-balanced ?*

2.4.5.2. Leased line tariffs

Under the amended Leased Lines Directive, organisations with significant market power in respect of a specific leased-line offering in a specific geographical area must ensure that tariffs are cost-oriented and transparent. They must, moreover, be independent of the type of application, and non-discriminatory. Where other tariff elements are applied, these must be transparent and based on objective criteria.

2.4.5.3. Accounting systems/accounting separation

In order to enforce the tariff principles set out in the regulatory framework, NRAs must ensure that the cost accounting systems adopted by operators are implemented in a transparent way and show the main categories under which costs are grouped, together with the rules used for the allocation of costs, in particular with regard to the fair attribution of joint and common costs.

Accounting separation is imposed in particular under

- the Cable Directive, to prevent discriminatory behaviour where an operator having an exclusive right to provide public telecommunications network infrastructure also provides cable TV network infrastructure,
- the Interconnection Directive, to ensure transparency where operators have special and exclusive rights for the provision of services in other sectors, and where SMP operators provide interconnection services to other organisations.

***Indicator:** Is a suitable accounting system in place to ensure the application of tariff principles and accounting separation?*

Tariff principles/accounting systems - effective application in the Member States

Only France notified the Commission in due time that tariff rebalancing would not be completed by 1 January 1998. However, since then, it has been recognised that rebalancing had not been completed by that date in Italy, and in Belgium that it was a matter for the operator and that no access deficit charges would be allowed. The Member States with additional periods to implement full competition were expressly granted such periods by the Commission to allow for the necessary structural adjustments. Although the deadline for Luxembourg has now passed, and is rapidly approaching for Spain, rebalancing does not appear to have been completed. Moreover, considerable adjustments are still needed in some of the other Member States concerned.

In general terms, in some Member States the present **tariff structure** of voice telephony provided by the incumbent operator appears to be artificial and end-user tariffs do not follow the principle of cost orientation. As regards specific market segments (in particular the local), this situation impedes competition since potential competitors have no incentive

to enter the relevant segment of the voice telephony market, producing anti-competitive effects.

As regards **leased lines tariffs**, there are concerns with regard to the absence of a **dispute resolution mechanism** in one country (Belgium), and in several Member States in relation to observance of the principle of **non-discrimination**. Concerns relating to effective application of **cost orientation** for leased lines appear to exist in several Member States (Belgium, Greece, Spain, Italy, Luxembourg, Portugal).

As regards **accounting systems and accounting separation** for public telecoms networks/services, although the regulatory framework appears to be in place across the Community except for those countries where secondary legislation is still to be adopted, in several Member States concerns in relation to the **effective application of a suitable cost accounting system** are reported. Certain derogation countries (Spain, Greece, Ireland, Portugal) do not have an appropriate cost accounting system. In several of the other Member States the operators notified as having significant market power do not have a suitable cost accounting system in place (Belgium, Luxembourg) or the overall system **lacks the transparency** needed (Germany, France, Austria, Italy, Sweden) to ensure the absence of cross-subsidisation and the respect of cost orientation for end-user tariffs or interconnection charges. In several countries the present systems appear to be under review (Ireland, Luxembourg).

For a comparative overview of the level of tariffs in the Member States, see Annex 1, section 5.

2.4.6. Numbering

EC framework

The provisions on numbering in the regulatory package are set out in the Interconnection and Full Competition Directives and in the Decisions on the single European emergency number (112) and on the standard international access code (00).

Member States are required to ensure the **availability of adequate numbers** and numbering ranges for all publicly available telecoms services.

Indicator: Are operators, particularly mobile operators, squeezed by a lack of numbers?

Numbering plans must be under the control of the NRAs, in order to ensure equitable allocation. Allocation must be carried out in an objective, transparent, equitable, timely and non-discriminatory manner. Operators allocated ranges of numbers must avoid undue discrimination in the number sequences used to provide access to other operators' services.

Indicator: Is the numbering plan under the control of a body independent of the incumbent/telecoms organisations? Is the allocation of numbers, including special numbers (such as free-phone), carried out by the incumbent or any other organisation?

The main elements of national numbering plans must be **published** in an accessible manner.

***Indicator:** Is the numbering plan still unpublished, or only partially published?*

NRAs are required to implement **carrier selection** on a call-by-call basis by 1 January 1998¹⁵ and encourage the earliest possible introduction of **number portability**, and in any case to ensure that this facility is available by 1 January 2000. In the derogation countries this deadline is as soon as possible after the date of full liberalisation, but not later than two years after that date.

NRAs are also required to ensure, by 1 January 2000, that fixed network operators with SMP enable their subscribers to obtain access to the services of other interconnected service providers, by means of **preselection with a call-by-call override facility**.

The Decision on the **single European emergency number** required the introduction of the number “112”, in parallel with any other existing national emergency call numbers. The Decision applies to all public telephone networks, and is supplemented by provisions in the revised Voice Telephony Directive relating to the obligation on Member States to ensure that all users can access the emergency services *at no charge*, using the 112 dialling code and any other dialling codes specified for use at national level. Member States must also ensure that emergency calls can be made free of charge from public pay phones using the 112 code, without the need to use coins or cards.

***Indicators:** Is the number available in all networks, including mobile? Are operators able to deal with calls in languages other than those of the country, region or province in which the call is made? Has the existence of the number been publicised, in particular in telephone directories and call boxes? Are facilities offered to disabled users for accessing the emergency services through the number?*

In assessing the overall effectiveness of the 112 emergency number, account also needs to be taken of the degree to which services dealing with emergencies can respond to calls. This depends on the organisational structures and operational practices at national, regional or local level and is not considered in this report¹⁶.

The Decision on the **standard international telephone access code** required the introduction of the code “00”. Where special arrangements are established or continued by the Member States for making calls between adjacent locations across borders, subscribers must be informed.

***Indicators:** Has the “00” code been effectively introduced, and are subscribers informed of special arrangements?*

¹⁵ See Council Resolution of 22 September 1997 on the further development of a numbering policy for telecommunications services in the European Union

¹⁶ Reference is made in this respect to the work of the Permanent Network of National Correspondents in the field of Civil Protection (PNNC), established under the Resolution of the Council and the Representatives of the Member States meeting within the Council of 31 October 1994 on strengthening Community cooperation on civil protection, OJ C 313 , 10 November 1994, p1

Numbering - effective application in the Member States – overview

No lack of **numbers** is reported in any of the Member States. However, some concerns have been reported as to discriminatory treatment (Belgium, Luxembourg).

The numbering plan and/or allocation of numbers is under the control of the incumbent in Greece. Numbering plans have been published in most of the Member States (Belgium, Denmark, Spain, France, Ireland, Italy, the Netherlands, Austria, Finland, Sweden and United Kingdom); a new numbering plan will be published in Luxembourg by the end of this year and in Italy by the end of 1999. Delays caused by the incumbent as regards the allocation of numbers are reported in the Netherlands.

Full **number portability** between operators in a given numbering area has so far been introduced in one Member State (Finland); it is already partially available in three Member States (Germany, France, and United Kingdom). The lack of number portability is considered as one of the main obstacles for new entrants in Sweden. In Italy the different time-tables for mobile and fixed telephony could be regarded as discriminatory. In France there are concerns about the level of interconnection tariffs for number portability.

Call-by-call **carrier selection** for long distance and/or international calls is operating in all of the Member States except Greece, Ireland, Luxembourg and Portugal. Carrier pre-selection is partially available in Finland only. In some Member States, the lack of carrier pre-selection is seen as a barrier to new entrants (Denmark, Sweden and United Kingdom).

The emergency call number 112 is operational in all countries except Greece; it is only partially available in Spain. In six Member States, however, emergency calls may be addressed in one language only (Germany, France, Ireland, Austria, Portugal and United Kingdom). Special measures to raise the awareness of the number have been taken in all Member States but two (France and Austria). Specific facilities for disabled users exist in eight Member States (Denmark, Ireland, Italy, Luxembourg, the Netherlands, Finland, Sweden and United Kingdom).

The **00 international access code** appears to be fully applied in all Member States except one (Sweden, due to a complaint to the County Administrative Court).

For an overview of the availability of carrier selection and number portability in the Member States, see Annex 1, section 4.2.

2.4.7. Frequency

EC framework

The Community framework on the one hand sets out rules relating to the coordinated reservation of frequency band for GSM (cellular land-based digital mobile telecommunications), ERMES (land-based public radio paging) and DECT (digital cordless telecommunications), and on the other lays down a framework relating to frequency allocation and the assignment of frequency to operators in line with the

Services, Satellite and Mobile, ONP Framework and Licensing Directives and the S-PCS Decision.

The object of the directives is the coordinated introduction of services on harmonised frequency bands in order to create a wide internal market for land-based and S-PCS mobile communications. As to the frequency bands to be used, the confirmation of CEPT allocations in Community legislation has provided increased legal certainty within the Community. The directives on the reservation of frequency band fixed a **clear deadline for the allocation of core band for GSM, ERMES and DECT**, and, in the case of GSM and ERMES, required that **plans should be prepared** by the Member States **for occupation of the “extension band”** according to commercial demand. In addition, the Mobile Directive provides that allocation schemes, including plans for extension of frequencies, must be published every year or made available on request, and reviewed regularly.

***Indicators:** Have all relevant frequencies been allocated? Have plans been drawn up in the light of commercial demand? Is full objectivity, transparency, and non-discrimination in the assignment of frequency ensured?*

As regards the assignment of frequency to operators, the Mobile Directive provides that, subject to the availability of frequency, licences must be awarded on the basis of open, non-discriminatory and transparent procedures. Furthermore, the number of licences requiring the assignment of frequency may be limited only on the basis of essential requirements and only where related to the lack of frequency and justified under the principle of proportionality.

***Indicators:** Are licences issued in all cases where frequency is available? Are the assignment procedures transparent, non-discriminatory and efficient? Is the effective use of the frequency spectrum ensured?*

Frequency - effective application in the Member States - overview

While no lack of **frequency** is reported in Germany, Spain, France, Ireland and Portugal, in some Member States frequency bands for mobiles are already exhausted (United Kingdom) or are expected to be exhausted in the near future (Denmark, Ireland, Austria, Finland, Sweden). Spectrum policy is not efficient in relation to the scarcity of this resource and the rapidly increasing demand for mobile systems in Italy.

The necessary **bandwidths have been reserved** and allocated to GSM, ERMES and DECT according to the Directives in all Member States except Luxembourg. However, in some Member States **transparency** is still lacking (Belgium, Greece, Italy, the Netherlands). In some cases the time limits to phase out analogue systems seem to be too long to correspond to commercial demand (Denmark, Italy, Sweden).

Frequency plans for the future occupation of the extension band exist in most Member States (Belgium, Denmark, Spain, France, Italy, Austria, Finland, Sweden and United Kingdom).

All Member States have issued at least two **licences** for GSM 900 and one licence for DCS-1800. In some Member States, however, operators of DCS-1800 are still not in the

market (Belgium, Italy, Spain, Portugal). In some of the Member States ERMES services are not yet provided (Belgium, Germany, Spain, Ireland, Luxembourg, Austria and Portugal), and in most of them no DECT licence has been requested or issued so far (Belgium, Denmark, Spain, Ireland, Luxembourg, Austria, Portugal). In the Netherlands and the United Kingdom, no individual licence is necessary for DECT.

Concerns as regards **procedures** concentrate mainly on the lack of procedural rules (Germany, Greece, Luxembourg), the split of competences for the allocation of frequency (France and Austria) or delays in the allocation of frequency (Greece as regards satellites and mobile communications; Italy as regards DCS-1800; Spain as regards satellite personal telecommunications services).

2.4.8. Rights of way

Under the Services Directive, Member States must not discriminate between providers of public telecommunications networks with regard to the granting of rights of way; where the granting of additional rights of way is not possible, Member States must ensure access to existing facilities at reasonable terms.

In view of concerns relating to the environment, the protection of private property and the scarcity of suitable sites for instance for antennas and masts, the Interconnection Directive provides that NRAs should encourage the sharing of facilities, in particular where essential requirements deprive other organisations of access to viable alternatives. Although the matter should normally be resolved through commercial and technical agreement, the NRA may intervene in disputes and may also impose facility-sharing arrangements.

***Indicators:** Are there problems of effective use of rights of way/collocation/sharing of facilities? Are there problems with local authorities (especially where they have an interest in telecoms service provision e.g. via cable TV) and private property owners? Are there problems with the landing of sea cables and with IRUs (Indefeasible Rights of Use)?*

Rights of way - effective application in the Member States - overview

In all Member States providers of public telecommunications networks are granted the **right to use public ways**, with the exception of one, where only the incumbent and two other operators with national coverage have been granted the right to use public ways over the whole territory (the Netherlands).

However, new entrants in several countries encounter **practical problems in using public ways**. In three countries new entrants are not treated on the same footing as the incumbent or the utilities (Ireland, Spain) or other licensed operators (the Netherlands). There are cumbersome and lengthy **authorisation procedures** in Luxembourg. In five countries a market entry barrier is attributable to **procedures** at the level of local authorities (Belgium, Spain, Germany, France, Italy). No problems have been reported by new entrants in four countries (Denmark, Finland, Sweden, UK). In three countries problems have been reported in connection with the **right to use private land**, linked to the special powers of expropriation granted to the incumbent (Ireland) and to practical difficulties with landowners and landlords (Austria, UK). In five countries (Germany, Luxembourg, Netherlands, Finland, Sweden) new entrants have not encountered

difficulties linked to the use of private land. For several countries (Belgium, Denmark, Greece, Spain, France, Italy, and Portugal) no information was forthcoming with regard to this subject.

The main problem encountered in relation to **facility-sharing** is the reluctance of the incumbent to grant this right (Germany, Ireland), or requirements imposed by the incumbent that there must be existing traffic (Denmark). Only in four countries (Greece, Netherlands, Finland, Sweden) have new entrants not encountered problems. For a number of countries (Belgium, Spain, France, Italy, Luxembourg, Portugal, UK) no information was forthcoming with regard to this subject.

As regards **access to sea cables**, there is concern in a number of countries. The main problems reported are linked to the lack of a framework for granting the right of access (Italy) or lack of transparency of the framework (Denmark, UK), reluctance of the incumbent to grant access (Germany), long procedural delays and excessive compensation imposed by landowners (UK). No problems have been reported in France, the Netherlands, Finland and Sweden. No information was forthcoming for Belgium, Greece, Spain and Portugal.

2.4.9. Competition in the local loop

Where competition in fixed voice telephony services has already started, new entrants, both facilities-based and service providers, have in many cases not entered the *residential* local loop market. Competition and hence choice for residential users and SMEs do not seem to emerge easily even if there are no regulatory barriers. However, the market for local access to *business* users seems to be more competitive. This is because a number of issues may affect the development of competition in the local access network, in particular for residential users and SMEs.

As regards **alternative local loop**, the Commission has in particular taken the initiative in the area of cable TV. The Services Directive as amended by the Cable Directive, now under review¹⁷, requires that the use of cable TV networks for the provision of telecommunications services should be allowed. The granting of licences for alternative local loops, including wireless, must be in line with the Licensing Directive. In the context of the establishment of wired alternative local loops, the procedures for granting and pricing rights of ways are essential.

The provision of **unbundled local loop** is specifically envisaged in the regulatory framework of several Member States. Unbundling of local loop is used in those Member States to enable new entrants to use the existing subscriber line, assuming that they would later have an interest in building their own once the customer base is large enough, taking into account the fact that building a network is capital intensive and risky, especially where there is no certainty as to the potential customer base.

¹⁷ Commission communication concerning the review under competition rules of the joint provision of telecommunications networks and cable TV networks by a single operator and the abolition of restrictions on the provision of cable TV capacity over telecommunications networks (OJ C 71, 7 March, 1998, p4)

The implementation by new entrants of xDSL¹⁸ solutions could be eased by unbundling of local loop. However, a recent study has warned of possible interference between some xDSL systems and ISDN conditioned loops, and advocated a closer examination.

Indicators: *Is there some competition in the residential local loop ?*

Are there alternative local loop operators ? In particular, are cable TV networks used to provide telecoms services ? If not, what are the problems encountered in doing so ? Have wireless local loop authorisations been granted ?

Is unbundling of the local loop mandatory at national level ? Are there any problems in practice ?

An overview of the measures taken in the Member States is given in Annex 5.

3. FUTURE ACTION BY THE COMMISSION

The Commission will continue to monitor the effective application of the national measures transposing the telecommunications regulatory package, and will report further to the Council, European Parliament, Economic and Social Committee and Committee of the Regions in 1999 .

The Commission will also continue to open infringement proceedings as appropriate, in the light of the material contained in this report, information brought to its attention and its own findings.

¹⁸ xDSL is a generic abbreviation for a range of Digital Subscriber Line (DSL) systems providing high speed access for customers over existing copper telephone cables in the local loop.