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## **PARLIAMENT – COUNCIL CONCILIATION COMMITTEE**

**Brussels, 19 March 1997**

### **AGREEMENT HAMMERED OUT ON THE INTERCONNECTION DIRECTIVE**

The representatives of the European Parliament and of the Council, meeting in the Conciliation Committee<sup>(1)</sup> on 19 March 1997 under the co-decision procedure, reached agreement on a joint text concerning the "Directive on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP)" .

The Committee had to deal with 31 amendments proposed by the European Parliament to the Council's common position. The final agreement introduces substantial modifications to the latter on a very limited number of issues only.

Once the agreed text has been finalized in the 11 official languages of the Community, each Institution will have a period of six weeks in which to finally confirm it - by an absolute majority of the votes cast as regards the European Parliament, and by a qualified majority in the case of the Council - whereby the Directive will be adopted.

The Interconnection Directive is a key element of the rules which the Community is currently putting into place to guarantee a proper working of the liberalised telecommunications sector in the European Union as from 1 January 1998. It is indeed crucial that any user will have access or will be able to communicate with any other user, whatever the networks to which they belong. At the same time it must be ensured that those operators already established on the market do not abuse their position in order to dissuade new market entrants.

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<sup>(1)</sup> The Conciliation Committee has 30 members: 15 members from the European Parliament and one representative of each Member State. The meeting on 19 March 1997 was co-chaired by the President-in-Office of the Council, Ms Annemarie JORRITSMA-LEBBINK, Minister for Transport and Public Works of the Netherlands, and Mr Renzo IMBENI, Vice-President of the European Parliament.

*Other directives of major importance for full competition in telecommunications in the European Union are :*

- *the Directive on authorizations and licences in the field of telecommunications services, definitively adopted by the "Telecommunications" Council on 6 March 1997 (without the need to convene the Conciliation committee);*
- *the revised Directive on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment (political agreement was reached in the Council, on 6 March last, on a "common position" which the European Parliament will examine at a second reading).*

*It should also be pointed out that Parliament and Council reached agreement, in a meeting of the Conciliation committee held on 7 March, concerning the Decision on a series of guidelines for trans-European telecommunications networks.*

### **Main provisions of the Interconnection Directive**

- The Directive establishes a regulatory framework for securing in the Community the interconnection of telecommunications networks and in particular the interoperability of services, while aiming to ensure provision of universal service in an environment of open and competitive markets.

It concerns the harmonization of conditions for open and efficient interconnection of and access to public telecommunications networks (fixed and mobile) and publicly available telecommunications services.

- Member States must remove any restrictions which prevent organizations authorized to provide public telecommunications networks and publicly available telecommunications services from negotiating interconnection agreements between themselves. Technical and commercial arrangements for interconnection shall be a matter for agreement between the parties involved, subject to certain conditions that must be laid down in advance by national telecommunications regulatory authorities.
- One of the fundamental provisions of the Directive is to grant rights – against obligations – to any body that, by virtue of its market position, controls access to users, to negotiate interconnection with other bodies of the same category.
- The Directive imposes additional obligations and specific checks on organizations having significant market power (the traditional operators, in most cases). They will be obliged to accept any reasonable request for interconnection to their networks and be subject to a whole series of principles such as transparency, access to information they hold, non-discrimination and cost orientation.

"Significant market power" would normally mean a share of more than 25% of a particular telecommunications market in the geographical area within which the company operates.

- The Directive also specifies the conditions that must govern the mechanisms that the Member States shall apply to share out any cost involved in the provision of universal service. Universal service is defined as "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".

The Directive stipulates that public-telecommunications network operators and/or voice-telephony-service providers may be required to share the burden of the fixed public-telephone network and the fixed public-telephone service.

- Member States may impose conditions in interconnection agreements in order to preserve essential requirements, such as the security of network operations, the maintenance of network integrity, the interoperability of services and the protection of data.
- Member States shall ensure the provision of adequate numbers and numbering ranges for all publicly available telecommunications services.

National regulatory authorities shall encourage the earliest possible introduction of the number portability facility whereby end-users who so request can retain their number(s) on the fixed public telephone network at a specific location independent of the organization providing service, and shall ensure that this facility is available at least in all major centres of population before 1 January 2003.

- In the event of an interconnection dispute between organizations in a Member State, the national regulatory authority of that Member State shall, at the request of either party, take steps to resolve the dispute within six months of this request. The resolution of the dispute shall represent a fair balance between the legitimate interests of both parties.

Where a dispute involves organizations operating under authorizations granted by different Member States, the national regulatory authorities concerned shall, on request of either party in dispute, co-ordinate their efforts in order to bring about a resolution, within 6 months of referral. The solution shall, again, represent a fair balance between the legitimate interests of both parties in dispute and be consistent with interconnection rules in the Member States concerned, in conformity with Community law.

- The Directive should be transposed by 1 January 1998, the deadline for the complete liberalization of telecommunications in the European Union. The text provides, however, for the suspension of certain obligations imposed by the Directive in the case of those Member States which are eligible for an additional transitional period for the liberalization of this sector (Ireland, Luxembourg, Portugal, Greece and Spain). The duration of that suspension is linked with the entry into force of liberalization in those Member States and may not under any circumstances exceed five years.

### **Changes made to the Council's common position**

The common position adopted by the Council on 18 June 1996 was modified by the Conciliation committee on the following points in particular :

#### **- Cross-border dispute resolution**

The common position provided for a conciliation procedure for disputes between organizations operating under authorizations granted by different Member States, where the solution would have had a binding effect only if all parties are agreed.

The final text follows an approach whereby the same procedures will, in principle, apply to cross-border disputes as those foreseen for dispute resolution at national level; moreover, the result of a dispute resolution procedure at Community level will be binding.

#### **- European Regulatory Authority (ERA)**

In response to the European Parliament's amendments calling for the setting up of a European Regulatory Authority to carry out those tasks which can better be undertaken at Community level, the compromise states that it is desirable, at the time of review of this directive (i.e. not later than 31 December 1999), to assess the case for the establishment of an ERA.

The other changes to the common position are mostly clarifications.

### **Other points discussed in Conciliation**

#### **- Definition of Interconnection**

Interconnection is limited to linking of telecommunications networks. The European Parliament wanted to extend this definition to linking of telecommunications services in order to allow service providers to benefit from interconnection, but this was not acceptable to the Council as it would extend the scope of the Directive to cover service providers without networks (e.g. weather forecasting services).

The final definition reads as follows: "Interconnection" means the physical and logical linking of telecommunications networks used by the same or a different organization in order to allow the users of one organization to communicate with users of the same or another organization, or to access services provided by another organization. Services may be provided by the parties involved or other parties who have access to the network.

## - **ISDN**

The European Parliament had wanted to make it explicit that ISDN could, in future, become subject to universal service obligations. The Council (supported by the Commission), however, felt that one should not prejudge the evolution of universal service, all the more so as ISDN is, at present, not even accessible everywhere in the Community. The compromise recital states that "ISDN is not subject to the universal service provisions of this Directive; (...) it may be appropriate, in due course, to consider whether ISDN should be part of the universal service".

## - **Future regulation**

The European Parliament had called for the need for this Directive to be reconsidered when effective competition exists. This idea has been partly taken on board, in the form of a recital stipulating that "when effective competition is achieved in the market, the competition rules of the Treaty will in principle be sufficient to monitor fair competition ex-post so that the need for this Directive will be reconsidered, with the exception of the provisions on universal service and the settlement of disputes".

## - **Number portability**

The common position already addressed the question of the number portability facility whereby end-users can, on request, retain their number on the fixed public telephone network independent of the organization providing the service. The European Parliament is keen to ensure that number portability is available as soon as possible to consumers and is provided at a reasonable price. The Parliament, in its amendments, also suggested to provide an alternative system in the meantime involving rerouting of calls or indication of the old number.

The compromise text agreed in the conciliation committee basically sticks to the Council's common position. It was however agreed with the Commission that the latter would, in its opinion on the Parliament's second reading of the ONP/voice telephony Directive, accept the principle of the Parliament's suggestion and look carefully at the implementation of the facilities identified and in particular at the provision that the indication of a new number should be without charge to the user.

The Council stated that it would reflect seriously and take into consideration the Commission's opinion on this matter when the ONP/voice telephony directive returns to it.