

FINAL REPORT

ON

**FIXED TELECOMMUNICATIONS SERVICES
OTHER THAN VOICE TELEPHONY, TELEX
AND BEARER DATA SERVICES**

(OTHER LIBERALISED SERVICES)



This study has been prepared by ETO on behalf of ECTRA for the Commission of the European Union.

The study reflects the views of ECTRA which has given its approval for the report to be delivered to the Commission on 3 July 96; nevertheless, individual ECTRA members do not necessarily endorse all findings and proposals contained herein.

© European Commission

Work order nr 48266

End date: 1 September 1996

Date: 31 July 1996

Author: Laura Pontiggia

This report has been written by Laura Pontiggia, ETO licensing expert, with the kind participation of members of the ECTRA Project Team on Licensing.

Table of contents

EXECUTIVE SUMMARY	5
CHAPTER 1- PRESENTATION OF THE STUDY	13
1.1 - ETO PRESENTATION	13
1.2 - PRESENTATION OF THE WORK ORDER	13
1.3 - SCHEDULE AND METHODOLOGY	14
CHAPTER 2 - BACKGROUND: THE EXISTING SITUATION	17
2.1 - EXISTING TYPES AND REGIMES OF OTHER LIBERALISED SERVICES IN EUROPE	17
2.1.1 - <i>Definition of other liberalised services</i>	18
2.1.2 - <i>Regimes for other liberalised services in Europe</i>	20
2.2 - CONDITIONS THAT THE SERVICE PROVIDER HAS TO RESPECT.....	22
2.2.1 - <i>Qualification conditions</i>	22
2.2.2 - <i>Conditions for operating the service</i>	28
2.2.3- <i>Specific conditions for operating Premium Rate Services (PRSs)</i>	32
2.3 - OTHER RELEVANT ELEMENTS OF THE LICENSING PROCEDURES	36
2.3.1 <i>Authorities which grant the licence</i>	36
2.3.2 <i>Duration of the licence</i>	36
2.3.3 <i>Fees</i>	36
2.3.4 <i>Withdrawal of a licence</i>	36
2.3.5 - <i>Appeal procedures</i>	37
CHAPTER 3 - RESULTS OF THE SECOND PHASE OF HARMONISATION.....	39
3.1 HARMONISED CONDITIONS	41
3.1.1 <i>Qualification conditions</i>	41
3.1.2 - <i>Conditions of operating</i>	47
3.1.3 <i>Specific conditions for operating Premium Rate Services</i>	52
3.2 A PROPOSAL FOR HARMONISED PROCEDURES.....	52
3.3 OTHER RELEVANT ELEMENTS OF LICENSING PROCEDURES	54
3.3.1 <i>Body in charge of granting licences</i>	54
3.3.2 <i>Duration of licences</i>	55
3.3.3 <i>Fees</i>	55
3.3.4 <i>Withdrawal of licences</i>	55
3.3.5 <i>Appeal procedures</i>	56
3.4 CONCLUSION: SUMMARISING TABLE.....	57
CHAPTER 4 - CONCLUSIONS	58
ANNEX 1 - WORK ORDER SIGNED BY ETO WITH THE EUROPEAN COMMISSION.....	62
ANNEX 2 - SPECIAL REGULATION FOR PREMIUM RATE SERVICE.....	64
ANNEX 3 - DEFINITIONS OF CLOSED USER GROUPS.....	74
ANNEX 4 - COMMENTS FROM ECTRA MEMBERS.....	78
ANNEX 5 – RESULTS OF THE WORKSHOP	82
GENERAL COMMENTS ON THE PROPOSAL FOR A REGISTRATION PROCEDURE.....	82
DETAILED COMMENTS ON ETO’S PROPOSALS	83
COMMENTS ON THE SCOPE OF ETO’S STUDIES	84

EXECUTIVE SUMMARY

This study on Fixed Telecommunications Services other than Voice Telephony, Telex or Bearer Data Services, (referred to as "Other liberalised services" in the report) has been prepared by ETO on behalf of ECTRA for the European Commission. It has been commissioned as one of a series of independent studies aimed at proposing harmonised licensing regimes for those telecommunications services which have been liberalised in all Union countries in accordance with European Union directives.

The purpose of this study is to define a set of harmonised conditions for the authorisation of fixed telecommunications services other than voice telephony, telex or bearer data services. Such harmonisation is required for the creation of an internal market for such services, where appropriate involving mutual recognition of national authorisations.

Since this is one of a series of studies, some of the proposals contained herein have been also used as a general framework for other studies, i.e. definitions of licensing procedures (see the report on Fixed Packet- or Circuit-Switched Data Services offered to the public ["Bearer Data Services"]).

According to the work order issued by the European Commission to ETO, the justification for such a study lies in the fact that, even though European Directives have defined a general framework for a common European approach, at present, authorisation for such services is not uniform throughout Europe but subject to national conditions and procedures which vary from country to country. These different conditions and procedures might prevent the creation of an internal market for these services. A set of harmonised conditions and procedures has therefore to be agreed upon by European countries.

According to the work requirements contained in the European Commission's work order, the main objectives of ETO's study are defined as follows:

1. to identify, if necessary, different services and/or service elements within the category of services covered by the subject of this work order that have to be distinguished with regard to authorisations.
2. to propose harmonised licensing conditions as well as harmonised procedures for these services or service elements.
3. to identify areas where harmonisation cannot be achieved in the immediate future or where such harmonisation is not necessary for the creation of the internal market.

Different definitions of the services covered by this work exist in all European countries. In response to work requirement 1, ETO has identified a single common

definition of these services which is compatible with existing national definitions and which has been accepted by ECTRA countries:

“All fixed telecommunications services other than voice telephony for the public, telex and bearer data services, liberalised by Directive 90/388/EEC. These are services based on the transmission or switching of signals and consisting of the completion, storage, modification or other processing (adding value) of information intended to be transmitted on a public switched network or on leased lines”.

Furthermore, because some European countries have specific licensing regimes for Premium Rate Services and for Services Not Provided to the Public, these services are defined separately from Other Liberalised Services, even if they belong to the same group of services.

Premium Rate Services (shared-cost or shared revenue): value added services involving a billing function which has the aim of sharing the cost of the service or of earning extra revenues. This billing function is managed by a third party independent from the service provider who may be the network operator or a specific company. Because of this specific billing system, PRSs have to be considered a special kind of Value Added Services.

Services Not Provided to the Public : for example telecommunications services provided within Closed User Groups and services provided over connections of leased lines to the PSTN at one end.

Information on national regulations for other liberalised services in European countries has been gathered by ETO from CEPT/ECTRA National Regulatory Authorities (NRAs) through questionnaires and presentations. This work has been carried out in parallel with the setting up of the One-Stop-Shopping scheme and the ETO database on telecommunications regulation which is available on the Internet at the following address: <http://www.eto.dk>.

ETO has worked in collaboration with experts from the National Regulatory Authorities of CEPT/ECTRA countries and has discussed its findings and proposals in detail with the ECTRA Project Team on Licensing (PTL) and the Commission.

The result of the above work is the present final report, approved by ECTRA and sent to the Commission in August 1996.

Following its analysis of other liberalised service licensing regimes in European countries, ETO has identified four types of licensing procedures: -

- a) Free Regime
- b) Class Licence
- c) Registration and other similar regimes
- d) Individual Licence

The licensing regimes listed above are based on conditions which have to be respected by service providers. Following ETO's analysis of licensing regimes in European countries, two kinds of conditions were identified:

1) Qualification conditions: Conditions to be respected by the service provider in order to be authorised to provide the service.

These conditions, which can be considered as pre-conditions of service provision, have been divided into:

- a) Service provider's qualifications
- b) Information requested from the service provider

2) Conditions of operating: Conditions/rules to comply with while operating the authorised service.

These conditions are a set of "obligations and rights". Some of these conditions have to be respected by providers of all types of services, while others create a framework applicable to the operation of a specific service.

Work requirement 2 required that ETO propose a harmonised set of licensing conditions. ETO's proposal is based on two important concepts: -

(a) In order for a free competitive environment to develop, authorisation regimes should not impose undue burdens on service providers. The new regulatory framework should therefore be based on a set of conditions which does not encumber the service provider.

In addition to this, (b) the development of a free competitive environment involves transparency, i.e. it is necessary to establish a clear set of rules, published in advance in a manner which guarantees that all interested parties are aware of them.

With these two concepts in mind, ETO proposes a harmonised set of conditions consisting of an exhaustive list of conditions which can be imposed by NRAs on services providers. It should be noted that each NRA is free to decide if it wants to impose all listed conditions, only some of them or none at all.

The proposal is as follows: -

1) A provider of other liberalised services may be asked to respect the following qualification conditions:

- Provision of the following information to the NRA:
 - Service provider identification
 - Description of the service

2) A provider of other liberalised services may be asked to respect the following conditions of operating:

- Essential requirements
- Telecommunications-specific war, defence and national security requirements
- To provide the following information to users at their request:
 - Service provider contact point
 - Description of the service
 - Geographical coverage of the service
 - Parameters used to define permanence, availability and quality of services
 - Availability of standards for specific terminals which can be used
 - Tariffs, delivery terms, supply conditions

In addition to the conditions listed above for other liberalised services, providers of Premium Rate Services may be asked to adhere to the following:

1) qualification conditions:

- Provision of the following information to the NRA:
 - Nature and character of the service

In addition to the conditions listed above for other liberalised services, providers of Voice Services not provided to the public may be asked to adhere to the following:

1) qualification conditions:

- Provision of the following information to the NRA:
 - a) when the service is provided on leased lines:
 - Number of connections to the PSTN
 - b) when the service is provided to a Closed User Group (CUG):
 - Description of each CUG to which the service is provided
 - Evidence of the relationship linking the members of each CUG together

From the conclusions listed above, it can be seen that:

- a) with regard to “qualification conditions” ETO proposes that some “information requested from the service providers” be included in the list of harmonised conditions and concludes that no “service provider’s qualifications” can be imposed on service providers;
- b) with regard to “conditions of operating”, ETO has identified some obligations, but has no identified any rights to be included in the list of harmonised conditions. Nevertheless, service providers do have rights and these can be found in general law and in telecommunications regulation both at the national and EU level.

In accordance with work requirement 2, ETO also had to propose harmonised licensing procedures for other liberalised services.

The licensing procedures chosen must ensure that the above conditions are respected by service providers without imposing any undue burden on them.

With regard to other liberalised services ETO, foresees the possibility of reducing the number of applicable licensing procedures from the four identified at present in European countries to only two.

The two procedures proposed by ETO for other liberalised services are the following:

1- General authorisation: a regime under which the service provider need not take any action and need not await any decision from the NRA before opening the service.

The legal form which regulates this authorisation consists of a set of conditions (rights and obligations) which can be found in general law, telecommunications regulation, in a single document like a class licence order, or in all three. Breaches of these conditions may lead the NRA to impose sanctions or to withdraw the permission to provide the service.

2- Registration: a regime which requires that the service provider make a declaration to the NRA of his/her intention to provide the service. In this declaration, the applicant has to supply the NRA with a list of information clearly stated and published in advance. The service provider can start to provide the service X¹ weeks after the declaration. The legal form which regulates this authorisation consists of conditions (rights and obligations) set in general law and telecommunications regulation. Breaches of these conditions may lead the NRA to impose sanctions or withdraw the permission to provide the service.

The two proposed licensing procedures ensure that both qualification conditions and conditions for operating are respected.

The above General authorisation is based on the idea that in order for free competition to develop, service providers should be free from any unnecessary restrictions imposed on them by authorisation regimes. The General authorisation proposed by ETO, in which the service provider is not required to take any action and the NRA cannot exercise any “a priori” control over the service provider, seems to be the most adequate procedure.

Registration can be maintained as a regime for the authorisation of other liberalised services in order to ensure that NRAs and users obtain some clear information on services and service providers. Under the Registration procedure proposed by ETO it is not possible for the NRA to raise any objections. In this way it is also possible to take into account the demand of service providers for a more automatic procedure.

This regime could apply to countries which are still in a transitional period and progressing towards a fully competitive market. As already stated, in a completely competitive environment the most adequate regime is probably General authorisation; nonetheless, in countries where a completely competitive environment does not yet exist, the Registration procedure represents a form of light “a priori control” which can give more guarantees to new entrants in markets where public operators still maintain a strong dominant position.

This Registration regime could also be maintained in those countries imposing certain licensing conditions on Premium Rate Service providers for the purpose of controlling the provision of these services. It could also be maintained in those countries which need to ensure that the provision of voice services to non-public users is really limited to CUGs or that it does not consist of a service provided on leased lines with double-end connection to the PSTN. A Registration regime, in fact, gives the NRA the opportunity to collect the necessary information regarding the service itself, the users to which the service is provided and the transmission means used.

Finally, with regard to work requirement 3, ETO has not identified any areas in the sector of fixed telecommunications services other than voice telephony, telex or bearer data services where harmonisation cannot be achieved in the immediate future or where harmonisation is not necessary for the creation of an internal market.

¹ The waiting period that the service provider is required to observe before he may start providing the service will be established in accordance with the waiting period provided for notification in the “European Parliament and Council Directive on a common framework for general authorisations and individual licences in the field of telecommunications services”, when approved.

The harmonised conditions and procedures proposed in this report are, with some slight differences, the same as those proposed in a previous ETO report on Bearer Data Services

CHAPTER 1- PRESENTATION OF THE STUDY

1.1 - ETO presentation

The European Telecommunications Office (ETO) was established by the European Committee on Telecommunications Regulatory Affairs (ECTRA) which is one of the three committees of the CEPT², Conférence Européenne des Postes et Télécommunications. The Memorandum of Understanding (MOU) on the establishment of ETO has been signed by 23 countries^{3,4}, 15 of which have also signed the arrangement on the One-Stop-Shopping on licensing.

ETO has two fields of activity - Licensing and Numbering. ETO's tasks with regard to licensing are to propose harmonised licensing conditions and procedures and to set up a One-Stop-Shopping procedure for licensing of European telecommunications services. The services concerned are Bearer Data Services and Other Liberalised Services such as Value Added Services and Services Not Provided to the Public. Satellite services have also been included at a later date. On 9 September 1994 ETO signed a framework contract with the European Commission and following this, signed two work orders with the Commission.

ETO has compiled a database on the licensing regimes in the CEPT countries that have signed the arrangement on the One-Stop-Shopping procedure on licensing. ETO has also prepared an application form for obtaining licences in these countries.

1.2 - Presentation of the work order

The services studied in this report are fixed telecommunications services other than Voice Telephony, Telex or Bearer Data Services, referred to from now on in this report as "Other liberalised services". The text of the work order signed by the Commission and ETO is attached as annex 1.

The purpose of this study is to define harmonised conditions for the authorisation of these services in order to facilitate the creation of an internal market for such services. Where harmonisation is perhaps not necessary, investigations will be carried out to

² The others are the ERC, the European Radiocommunications Committee, and the CREPE, the Comité Européen des Régulateurs Postaux.

³ Countries who signed the MOU and the arrangement on the One-Stop-Shopping : Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Norway, The Netherlands, Spain, Sweden, Switzerland and The United Kingdom

⁴ Countries who only signed the MOU on the establishment of ETO: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Greece, Portugal, Slovak Republic,.

identify services that could be open to the mutual recognition of national authorisations.

The justification for such a study lies in the fact that at present, authorisation for such services is not uniform throughout Europe but subject to national conditions and procedures which vary from country to country. These different conditions and procedures form a barrier which prevent the creation of an internal market for these services.

The work assigned to ETO is as follows.

- (1) to identify, if necessary, different services and/or service elements within the category of services covered by the subject of this work order that have to be distinguished between with regard to authorisations;
- (2) to propose harmonised licensing conditions as well as harmonised procedures for these services or service elements;
- (3) to identify areas where harmonisation cannot be achieved in the immediate future or where harmonisation is not necessary for the creation of an internal market.

1.3 - Schedule and methodology

Chapters 1 and 2 of this document were prepared in early December 1994 and were presented to other parties in order to obtain their comments, positions and requirements. These parties are:

- EIIA (European Information Industry Association),
- ECTUA/INTUG (Telecommunications User Group)
- ETNO (European Telecommunications Network Operators)

The first interim report was presented to the Licensing Project Team on 2 May 1995 in order to check the information regarding national situations and to reach an agreement on a work-plan. The report was then sent to the Commission in June 1995. This report was carried out in parallel with the setting up of the One-Stop-Shopping scheme carried out by ETO, launched on 8 November 1995.

The second interim report was presented to the Project Team on Licensing in April 1996 in order to obtain their comments on this study, mainly on aspects of harmonisation (points 2 and 3 mentioned above), and to work out a final report. The report was sent to the Commission on 15 May 1996.

The draft final report, discussed with the Project Team on Licensing on 10 June 1996, was sent to ECTRA members for the ECTRA Plenary meeting in July 1996 in order to obtain their approval and comments from countries that wanted to stress their views on specific points in the report. This final report received ECTRA members' approval at the ECTRA Plenary meeting on 3 July 1996.

The approved final report was sent to the Commission in August 1996. A minor modification to the version of the report sent to the Commission was introduced in November 1997.

A Workshop, during which ETO presented this report to telecommunications operators and service providers, was organised in October 1996. The results of the discussion arising during the Workshop are summarised by ETO in Annex 5 to this report.

CHAPTER 2 - BACKGROUND: THE EXISTING SITUATION

The services studied in this report are the fixed telecommunications services liberalised by the "Service Directive" 90/388/EC. These services ("other liberalised services") mainly concern all services "other than voice telephony offered to the public" with the exception of Bearer Data Services which are studied in another report carried out by ETO for the Commission (work Order n.48 265).

In this chapter we present the existing situation in European countries with regard to other liberalised services, mainly focusing on those countries which have signed the arrangement on the One-Stop-Shopping procedure. The licensing regimes presented in this chapter are those in force as of 13 June 1996. As many European countries are in the process of issuing new telecommunications regulations, changes may occur in the following months. These changes are not reflected in the core of this report, but they will be described in annexes.

Different definitions and different licensing procedures exist in all European countries for Other liberalised services. However, in paragraph 2.1 a common definition of these services, compatible with existing national definitions and more or less acceptable to these countries, is given. In the same paragraph the procedures regulating Other liberalised services in European countries are illustrated. The four types of licensing procedures which have been identified in European countries are described in detail.⁵ Paragraph 2.1 also tries to indicate the procedure in force for Other liberalised services in each of the countries that have signed the arrangement on the One-Stop-Shopping procedure on licensing. Information on the situation in countries which have not signed the arrangement on the One-Stop-Shopping procedure is also given when available.

Paragraph 2.2 presents the conditions to be respected by a service provider in order to be qualified as an "authorised" service provider (Qualification conditions) and the conditions to be respected while operating the authorised service (Conditions of operating).

Paragraph 2.2.1 presents the "Qualification Conditions" while paragraph 2.2.2 illustrates the "Conditions of operating"

The final paragraph (2.3) analyses some other important issues of licensing procedures: authorities granting licences, duration of licences, fees, withdrawal of licences, and appeal procedures.

2.1 - Existing types and regimes of other liberalised services in Europe⁶

⁵ The same four licensing procedures have been also identified for Bearer Data Services in the above-mentioned report (Work Order n. 48 265)

⁶ For the purpose of this study, countries are divided into two categories:

2.1.1 - Definition of other liberalised services

According to article 1 of the Service Directive, liberalised services are "telecommunications services other than voice telephony". Voice telephony is defined as follows: "Voice telephony means the commercial provision for the public of the direct transport and switching of speech in real-time between public switched network termination points, enabling any user to use equipment connected to such a network termination point in order to communicate with another termination point."

The above definition of voice telephony contains four important elements, each of which must be satisfied in order for a service to be considered as "voice telephony". A telecommunications service is a "voice telephony" service when it includes all four elements at the same time. If only one of them is not met, then the service is "other than voice telephony; it is therefore liberalised and falls within the scope of our study. The following analysis of the 4 elements will help us in defining the scope of this report.

Voice telephony means:

1- the commercial provision **for the public**: There has been no general agreement on a definition of "public", but it is generally accepted that a service provided to a Closed User Group (CUG) is not offered to the public.

2- of the direct **transport and switching** of speech: This means that Value Added Services, i.e. services which "add" additional features or functions to the basic "direct transport and switching" have to be considered as services "other than voice telephony". Examples of these services will be given in the following paragraphs.

3-**in real-time**: Services which are not "speech in real-time", but are based on the technology of stored speech, can be considered as services "other than voice telephony".

4-**between public switched network termination points**: Only services which are provided over connections to the PSTN at both ends can be considered "voice telephony" services. Services which are provided over connections to the PSTN at one end only must be considered as services "other than voice telephony".

-CEPT COUNTRIES PARTICIPATING IN OSS: Belgium, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, The Netherlands, Norway, Spain, Sweden, Switzerland and The United Kingdom.

-OTHER CEPT COUNTRIES: Albania, Austria, Bosnia, Bulgaria, Croatia, Cyprus, Czech republic, Estonia, Greece, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Poland, Portugal, Romania, Russian federation, San Marino, Slovak republic, Slovenia, The former Yugoslav Republic of Macedonia, Turkey, Ukraine, Vatican City.

From the above four points, we can conclude that the scope of this report includes:

- services adding value to the basic direct transport and switching of speech;
- services based on the technology of stored speech;
- services provided to CUGs;
- services provided over connections to the PSTN at one end only.

A number of different national definitions of Other liberalised services have been identified and analysed by ETO and the ECTRA Project Team on Licensing (PTL). However, there was general agreement among ECTRA members on the use of the following definitions:

OTHER LIBERALISED SERVICES: All fixed telecommunications services other than voice telephony for the public, telex and bearer data services, liberalised by Directive 90/388/EEC. These are services based on the transmission or switching of signals and consisting of the completion, storage, modification or other processing (adding value) of information intended to be transmitted on a public switched network or on leased lines.

Since some European countries have specific licensing regimes for Premium Rate Services and for Services Not Provided to the Public, these services are defined separately from the Other liberalised services, even if they belong to the same group of services.

Premium Rate Services (shared-cost or shared revenue): PRSs are value added services involving a billing function which has the aim of sharing the cost of the service or of earning extra revenues. This billing function is managed by a third party independent from the service provider who may be the network operator or a specific company. Because of this specific billing system, PRSs have to be considered a special kind of Value Added Services.

Services Not Provided to the Public Services not provided to the public are for example telecommunications services provided within Closed User Groups⁷ and services provided over connections of leased lines to the PSTN at one end.

Some examples of Other liberalised services are:

- *Value Added data Services (VASs Data)*, i.e. Telefax service, Teletex services, E-Mail, X.400 service (message handling system), X.500 service (global electronic directory).
- *Value Added voice Services (VASs Voice)*, i.e. Storage and Voice-Mail services, audiotex, videoconferencing, re-forwarding of messages via PSTN (private switching), video-phone, enquires

⁷ According to the definition given by the European Commission in the "Communication by the Commission to the European Parliament and the Council on the Status and Implementation of Directive 90/388/EEC on Competition in the Markets for Telecommunications Services" (April 1995), Closed User Groups are "Entities, not necessarily bound by economic links, but which can be identified as being part of a group on the basis of a lasting professional relationship among themselves, or with another entity of the group, and whose internal communications needs result from the common interest underlying this relationship. In general, the link between the members of the group is a common business activity."

2.1.2 - Regimes for other liberalised services in Europe

The systems described in this paragraph reflect the regimes in force in European countries, but the description of each given here does not necessarily coincide with actual national definitions. National regimes with similar characteristics have been grouped together for analytical purposes only. The result of this exercise is the same as in the Bearer Data Services report and has led to the identification of the four licensing systems presented in the following pages. A description of the type of procedure in force in each of the countries participating in the One-Stop-Shopping procedure is provided. The NRAs have checked the information concerning their own countries. Information contained in this report is included in the ETO database on licensing and is continuously updated.

For services not provided to the public it has to be noted that:

In **Finland** and **Denmark**, no specific regulation exists for telecommunications services which are provided to CUGs. Each service is subject to the same regulation, irrespective of whether or not it is provided to the public.

a) FREE REGIME.

Under this regime, the potential service provider need not take any action. The legal form which regulates the authorisation is general law, for example, on data protection and competition rules, or telecommunications legislation.

Information required

No information is required from the service provider.

OSS signatory countries with free regime

OTHER LIBERALISED SERVICES: Denmark, Finland, France (on PSTN), Luxembourg, the Netherlands, Norway, Sweden, Switzerland

-PREMIUM RATE SERVICES: Finland, France, Luxembourg, the Netherlands, Norway, Sweden, Switzerland

-SERVICES NOT PROVIDED TO THE PUBLIC: France, Luxembourg, the Netherlands, Norway, Sweden, Switzerland

b) CLASS LICENCE

Under this regime, the potential service provider need not take any action. The legal form which regulates the authorisation is called a Class Licence and it is issued on the basis of telecommunications legislation. All persons belonging to a pre-defined class are subject to certain conditions set out in the Class Licence itself. Breaches of these conditions may lead to revocation. General law remains applicable. The service provider need not await a formal decision from the NRA before opening the service and does not receive any authorisation document. Nevertheless, checks may be carried out a posteriori.

Information required:

Service providers are not required to submit any information before they begin operating under the Class Licence. They may, however, be required by the NRA to supply information which will enable it to check that the conditions of the Class Licence are being observed.

OSS signatory countries with Class Licence:OTHER LIBERALISED SERVICES: **the UK**-PREMIUM RATE SERVICES: **the UK**-SERVICES NOT PROVIDED TO THE PUBLIC: **Denmark (for voice telephony on national leased lines), Germany (for CUGs of consolidated enterprises), the UK**c) REGISTRATION AND OTHER SIMILAR REGIMES

This procedure requires that potential service providers make a declaration to the NRA of their intention to offer their services. In this declaration, applicants have to submit a list of required information to the NRA. The legal form which regulates registration is telecommunications legislation. General law remains applicable.

In Belgium, Italy and Spain⁸ the service can be opened a certain period of time (2 months in Belgium and Italy; 3 months in Spain) after the declaration if no answer is given by the NRA, unless the NRA decides otherwise before the deadline. In Denmark, France and Germany, the procedure is slightly different - the service provider can start to operate the service immediately after the declaration.

Information required

A list of the type of information required is provided in paragraph 2.2.

OSS signatory countries with Registration and other similar regimes:OTHER LIBERALISED SERVICES: **Belgium, France (on leased lines with access capacity <34 Mbit/s), Germany, Italy (PSTN), Spain**-SERVICES NOT PROVIDED TO THE PUBLIC: **Belgium, Denmark (for international leased lines when used for voice telephony), Spain**-PREMIUM RATE SERVICES: **Belgium, Denmark, Germany, Italy, Spain**d) INDIVIDUAL LICENCE

Under this regime, the potential service provider is obliged to send an individual application to the NRA, asking for an individual authorisation to provide the service. In this application form, the applicant has to give the NRA a list of required information. This regime is regulated by general law, telecommunications law and a document called Individual Licence which allows an individual service provider to provide the service.

NRAs issue the individual licence and have the power both to reject the demand and to withdraw the individual licence if the service provider does not respect certain conditions.

If the demand is rejected, the NRA has to justify its position with regard to its national legislation.

Information required

A list of the type of information required is provided in paragraph 2.2.

⁸ Although an individual licence is formally required in Spain, in practice the regime involved bears a closer resemblance to Registration, due to the fact that the service can be opened after three months after the declaration if no negative answer is given by the NRA.

OSS signatory countries with individual licence:

OTHER LIBERALISED SERVICES: France (on leased lines with access capacity >34 Mbit/s), Hungary, Ireland, Italy (on leased lines), Spain (on their own networks)

-SERVICES NOT PROVIDED TO THE PUBLIC: Denmark (for international simple resale of voice telephony), Germany (pre-designated CUGs), Finland, Hungary, Ireland, Italy

-PREMIUM RATE SERVICES: Hungary, Ireland

Other CEPT/ECTRA countries with individual licence:

Bulgaria, Croatia, Czech R, Greece, Poland, Portugal, Romania, Russia, Slovak Rep, Slovenia and the 3 Baltic countries.

The situation in East and Central European Countries is often one of "individual licence" but the conditions are not precisely defined or are often carried out case by case. Further discussions and investigation are needed in these countries in order to establish a transparent licensing framework.

2.2 - Conditions that the service provider has to respect

The licensing regimes described above are based on two kinds of conditions which have to be respected by service providers:

1) **QUALIFICATION CONDITIONS:** Conditions to be respected by the service provider in order to be authorised to provide the service.

These conditions has been divided into:

- a) Service provider's qualifications
- b) Information requested from the service provider

2) **CONDITIONS OF OPERATING:** Conditions/rules to comply with while operating the authorised service.

These conditions are a set of Obligations and Rights. Some of them have to be respected by providers of all types of services, while others create a framework applicable to the operation of a specific service.

This paragraph provides a description of the conditions in the different European countries.

2.2.1 - Qualification conditions

In some countries the authorisation to provide a service is granted only to a service provider complying with certain requirements which can be considered as pre-conditions of service provision. Some of these pre-conditions involve the actual qualifications of the service provider while others consist of actions to be taken by the service provider, e.g. he has to fill out a declaration or an application form in which he is obliged to provide certain information to NRAs.

-Service provider's qualifications

The following are some examples of the service provider's qualifications which are considered as pre-conditions for qualifying as an "authorised" service provider in European countries.

a) NATIONALITY OF THE LICENSEE

In some countries restrictions are placed on licences or on the granting of licences by virtue of the nationality of the licensee. In general, this refers to foreign participation in the service provider's capital which cannot exceed a certain share. The applicant has to prove his compliance with this requirement by attaching the company statute. Only one of the Union countries requests this information at the moment, but the restriction only applies to entities outside the EU and could disappear in the near future. The restriction does exist in some East European countries.

b) LEGALLY REGISTERED REPRESENTATIVE

The service provider needs to be either registered (in the National Trade Register, at the Chamber of Commerce or equivalent bodies) or to have a legally registered representative in the country where he wishes to provide the service. Compliance with this requirement must be proved by attaching a copy of the business registration document. This pre-condition is in force in two of the Union countries and in almost all East and Central European countries

-Information requested from the service provider in the application/declaration form

In countries where the licensing regime is Individual Licence and Registration, a pre-condition that the service provider has to fulfil in order to be authorised to provide an other liberalised service is the provision of certain information to the NRA.

All the information listed in this paragraph is generally needed for applying for a new service in at least one of the European countries.

In general, the applicant is requested to submit this information in the application form for individual licences or in the declaration form for registration, but in some cases information can also be requested a posteriori. No distinction will be made between the information which must be provided in the application form for licences and which that must be provided in the declaration form for registration since the same information can be requested in the application form of one country and in the declaration form of another. Moreover, some countries have exactly the same form for both application and declaration.

a) SERVICE PROVIDER IDENTIFICATION

The service provider must provide identification in all the countries, giving his name, trading name, address and telephone number. When the service provider is a company, the name and the function of a contact person is also asked.

The identification of the applicant also includes the business registration number, the country of registration and the name of the body where the company is registered (e.g. Chamber of Commerce, Trade Register). In certain cases, a copy of the business registration document has to be provided.

Two European countries request an identity card or passport number when the service provider is an individual, not a company.

In one of the Union countries, the social objective/main activity of the company is also requested, since the licence can only be granted to a corporate body having within its objectives the pursuance of a telecommunications activity.

b) DESCRIPTION OF THE SERVICE

This essentially means the definition of the service and its commercial name. This information is requested by all European countries and it is of fundamental importance in identifying the service for which the service provider is applying.

c) TRANSMISSION MEANS

This information aims at identifying whether the service is provided via the PSTN, via leased lines or via another type of system. It is generally requested by countries having different licensing regimes for the same service when provided via different transmission means.

-One of the Union countries has a specific question in the application form on whether the service involves the use of leased lines. If the service in question involves the use of leased lines, the applicant has to attach a map of the leased lines showing the network architecture and in particular the overall access capacity of the leased lines system and the connection points to the public network. This information is useful in determining the regime regulating the service. When an "other liberalised service" is provided on the PSTN, it is regulated by a Free Regime; when it is provided on leased lines with an overall capacity below 34Mbit/s, it is under a Registration regime; when it is provided on leased lines with an overall capacity exceeding the limit of 34Mbit/s, it is under an Individual Licence regime. The applicant also needs to specify whether the service involves the connection of leased lines to the public switched network at one or at both ends in order to determine whether or not it is provided to the public.

-In another of the Union countries, two different application forms exist, one for Registration of other liberalised services provided on the PSTN, and one for Individual Licence for other liberalised services provided on leased lines.

d) GEOGRAPHICAL AREA IN EACH COUNTRY

This information is requested by very few European countries for national services which are not planned to be offered throughout the country, but only in one or more areas within the country. The most common way of providing this information is to attach a map of the country showing the areas covered by the service concerned

e) DESCRIPTION OF THE SYSTEM

This information can be considered as extra information on the service. At least six of the Union countries require that the service provider provide a network plan which consists of the configuration and topology of the network, but one of them requires this only when the service is provided on leased lines. One of these countries requires that

all documents concerning the detailed description of the technical project be provided and three of them also ask for information on the terminal equipment which can be used. One of these three also asks for more specific information, e.g. the location of the central switch (host) and of the control centres, a description of the routing and of the interconnections with other networks.

Another Union country, in the case of voice telephony provided on international leased lines and international simple resale of voice telephony, requires a description of the international leased lines used to provide the service. This country's regulation on voice telephony provided on international leased lines and international simple resale of voice telephony is within the scope of this report for services provided to CUGs when the members of the CUG are located in different countries.

f) TARIFFS AND DELIVERY TERMS OR SUPPLY CONDITIONS.

This information is requested by only two countries, the aim of which is to verify that the tariffs, delivery terms and supply conditions of the service conform with competition rules. The applicant must indicate where this information will be made available to customers.

Special regulations with regard to tariffs and delivery terms or supply conditions apply to Premium Rate Services, but this is not mentioned in the application form. This issue will be dealt with in paragraph 2.2.3 which concentrates on special regulation for Premium Rate Services.

g) MARKET INFORMATION

This information can refer to (i) the target customer-sector/segment or to (ii) the estimated turnover of the service in its first three years. Only one European country requests the (i) in its declaration form and only one other requests (ii).

Special regulations with regard to this and other market information apply to Premium Rate Services, but this is not mentioned in the application form. This issue will be dealt with in paragraph 2.2.3 which concentrates on special regulation for Premium Rate Services.

-Information requested from the service provider in the application/declaration form when applying for Premium Rate Services

In certain countries, the following information in the application/declaration form is requested specifically for Premium Rate Services:

h) NATURE AND CHARACTER OF THE PREMIUM RATE SERVICE

At least two of the Union countries require information on the nature and character of the service in the application/declaration form for Premium Rate Services.

One of these two countries requires the following information: category of the service according to categories defined by Order; whether the service is provided exclusively by means of an answering machine or other automatic equipment; a short description of the substance of the service.

In the other country, when applying for an authorisation for Premium Rate Services, the applicant has to provide, in annex to the application form, a description of the substance of the service in accordance with a detailed list prepared by the NRA.

-Information requested from the service provider when applying for services provided to CUGs

The issue of services provided to CUGs is quite a delicate one for many countries, due to its nature and the necessity to distinguish between these services and voice telephony provided to the public. In general, no action or information is required from the service provider in countries having a class licence or a free regime for services provided to CUGs; nonetheless, in countries with a registration or an individual licence regime, the service provider must provide the NRA with specific information on the CUGs to which the service is provided.

The following is a description of the present situation with regard to services provided to CUGs in the signatory countries of the OSS procedure. Definitions of CUGs used in national regulations in European countries are given in Annex 3 to this report.

-Six countries (France, Luxembourg, the Netherlands, Norway, Sweden and Switzerland) have a free regime and no action or information is required from the service provider;

-The United Kingdom has a class licence and no action or information is required from the service provider;

-In Denmark there is no specific regime for services provided to CUGs. CUGs can be offered telecommunications services under the same conditions as the public. Therefore, voice telephony on national leased lines is regulated by a class licence when it is offered to either the public or to CUGs. In this case no action needs to be taken or information given by the service provider. Voice telephony on international leased lines is regulated by a registration regime when offered to either the public or to CUGs; therefore a service provider wishing to provide services to international CUGs needs to fill out a registration form. International simple resale is regulated by an individual licence when it is offered to either the public or to CUGs; therefore, a service provider wishing to provide international simple resale to international CUGs needs to have an individual licence. As a definition of CUG does not exist, the applicant need not give any information on the CUGs to which the service is provided. However, in the declaration form for registration and in the application form for individual licence, the service provider must provide information on the expected date of launch of the service and must give a description of the international leased lines used to provide the service. The description must enable the NRA to identify the national part of the leased lines and must at the very least contain the following information: the foreign address of termination of the international leased lines; which types and how many leased lines make up the service; the national PTO's identification names of leased lines in question and information on the national addresses of termination. In the case of international simple resale, information on the countries in which the service provided will have a termination point must also be given;

-In Finland there is also no specific regime for services provided to CUGs. CUGs can be offered telecommunications services under the same conditions as the public. Therefore, a service provider wishing to provide voice telephony services to CUGs needs to apply for a service operator licence which is an individual licence.

-Germany has two different categories of CUGs regulated by two different licensing procedures and conditions. The NRA claims that when the CUG is a “consolidated enterprise”, services provided to this CUG are regulated by a class licence, but actually the service provider must make a declaration to the NRA within one month of opening the service as well as of any modification in or the cessation of this service. When the CUG is a “pre-designated group of subscribers” services provided to this CUG are regulated by an individual licence and the service provider has to fill out an application form in order to obtain it. The applicant must provide the NRA with all the documents necessary to prove that the relevant conditions have been adhered to: i.e. description of the service, description of the CUG and names and addresses of the individual members of the CUG;

-In Italy, voice telephony to CUGs is regulated by a two-step procedure. First, the service provider must fill out an application form to obtain an individual licence for services provided to CUGs. When he has obtained this licence and before starting to provide the service, he needs a specific authorisation for each CUG to which he wants to provide the service. In order to obtain this authorisation he must provide the NRA with the following information on each CUG: evidence of the interest which links the members of the group together, according to the given definition of CUG; a description of the group; a list of the group’s members; location of the terminal equipment, specifying if they are linked to public direct network connections (leased lines) or to public switched network connections. In the last case, subscriber numbers have to be provided;

-Belgium also has a two-step procedure, but its procedure is based on a registration regime. First, the service provider has to fill out a registration form declaring his intention to provide services to CUGs. If after 2 months he does not receive a negative response from the NRA, service provision is authorised. The service provider must then send the NRA accurate information on each CUG to which he provides the service: a list of the members of each CUG with their names, addresses, telephone numbers and specification of the professional or socio-economic link between the members. This information has to be updated every 6 months;

-In Ireland an individual licence regime regulates all liberalised services and therefore also regulates services provided to CUGs. If a service provider wishes to provide voice services to CUGs without connection by leased lines, he must obtain beforehand a specific authorisation for each such CUG. In this case, in order to assure the NRA that a pre-existing economic relationship exists between all members of the CUG which is extraneous to their telecommunications needs, the applicant must provide the following information: -a full list of members of each CUG concerned and the economic relationship between each member of the CUG;

-In Spain, voice telephony services provided to CUGs are considered value added services and are therefore regulated by the same “administrative authorisation” which regulates value added services. The NRA claims that this “administrative authorisation” is an individual licence, but under ETO’s definitions of licensing regimes it is in practice a regime similar to Registration. In fact Telecommunications Law states that the administrative authorisation may be assumed as granted if no specific decision is taken by the NRA within three months of the application form being presented.

The NRA may request, before or after issuing the authorisation, any information which it considers necessary for assuring that the provisions of the Decree regulating services provided to CUGs are fulfilled and that the principles of neutrality, non-discrimination and abuse of dominant position are respected.

2.2.2 - Conditions for operating the service

The service provider has to respect the “conditions of operating” when providing an authorised service. These conditions are composed of a set of **Obligations and Rights**; some of them are general rules that must be complied with by providers of any kind of services, while others create a framework which may apply to a specific service and refer to the interactions between the service provider and other market players, including end-users.

These conditions may be found in general legislation, both national and European, in class or individual licences. They may be mentioned in either class or individual licences as conditions to be respected without their being defined. If this is the case, a clear definition can be found elsewhere, e.g. in telecommunications regulations. With regard to these services and the EU, the Community Law is the main issue to be studied.

-Community Law and its impact on other liberalised services

Directive 388/90/EEC states that “Member States shall withdraw all special or exclusive rights for the supply of telecommunications services other than voice telephony and shall take all the measures necessary to ensure that any operator is entitled to supply such telecommunications services”. The directive provides for the liberalisation of fixed telecommunications services other than voice telephony. However, each individual country may make the provision of these services subject to a licensing or declaration procedure “ensuring compliance with the **essential requirements**” which are defined in the ONP Directive 90/387/EEC.

Other relevant sections of the Community law are those regarding: **competition rules and fair trading; data protection/privacy protection/confidentiality; free circulation of services** (art. 59 etc. of the Treaty on the European Union).

-Essential requirements

In Commission Directive 96/19/EC amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications market, essential requirements are defined as “the non-economic reasons in the general interest which may cause a Member State to impose conditions on the establishment and/or operation of public telecommunications networks or services. These reasons are security of network operations, maintenance of network integrity, and, in justified cases, interoperability of services, data protection, protection of the environment and town and country planning objectives as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio based telecommunications systems and other, space-based or terrestrial, technical systems.

Data protection may include protection of personal data, the confidentiality of information transmitted or stored as well as the protection of privacy.”

Sometimes these essential requirements are mentioned in national regulations, at other times they are regulated under specific regulation (e.g. Data Protection Act), and in certain cases they are specifically considered as conditions of an individual or class licence.

Only some CEPT countries have sent us information on how they have implemented the above essential requirements. Out of these:

-Many CEPT countries have a Data Protection Act implementing the requirement on data protection.

-2 EU countries mention the essential requirements in their telecommunications legislation and they also include them in the application/declaration form as a condition to be respected by the applicant. One of these 2 countries has defined a technical prescription for the application of interoperability conditions to E-mail services;

-2 other EU countries also mention the requirements in their telecommunications legislation, but do not refer to them in the application/declaration form;

-1 EU country has an Article in the telecommunications legislation stating that the equipment used to provide other liberalised services should conform with the technical specifications which reflect the essential requirements;

-1 other EU country does not have any specific rules, but essential requirements are reflected in the terms of subscription applying to a customer's connection to a service provided by the PTO;

-1 country states that essential requirements are not settled legally, but that the NRA can revoke a licence or authorise the PTO to reduce or cease leased line services for non-compliance with the essential requirements;

-1 EEA country has implemented the essential requirements in the regulation of telecommunications services and in type approval regulation.

-1 country states that its national telecommunications regulation does not take into account the essential requirements;

-4 East European countries have implemented the essential requirements, mentioning them either in their telecommunications legislation (which in some cases is still in its first draft) or in the licensing conditions for telecommunications network and services operators.

-2 Balkan republics have implemented the essential requirements in their telecommunications regulation, which for one of them is still a draft law.

A further investigation aimed at understanding how these requirements have been interpreted by different countries in particular with regard to other liberalised services has led to the following results:

-In general, most of the countries consider essential requirements as general statements or broad guidelines and do not give any further detailed specification.

-The first two essential requirements listed above refer to the network itself and not to any specific service.

-The essential requirement on Data Protection is regulated in general legislation in most of the countries, and therefore cannot be considered as specific to the telecommunications sector.

The European Commission and ETO have agreed to a new work order on Essential Requirements, the results of which should be presented to the Commission in Autumn 1997.

-Competition rules and fair trading

The relevant articles with regard to Community rules on competition are articles 85 and 86 of the Treaty on European Union. Article 85 deals with agreements, decisions and practices that might restrict competition and article 86 deals with abuse of a dominant position by one or more undertakings.

The Commission has also published guidelines on the application of the Community's competition rules (art.85 and 86) to the telecommunications sector. These guidelines, published in 1991, are mainly concerned with the dominant position of public operators having activities in both the monopoly and competition sector.

-Data protection/Privacy Protection/Confidentiality

A European Parliament and Council Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) was approved in July 1995 and was published in the Official Journal of the European Communities dated 24 October 1995.

- National law and its impact on the conditions of other liberalised service provision

- WAR, DEFENCE AND NATIONAL SECURITY REQUIREMENTS

A majority of countries allow access to the network, to the information or to transmitted messages in some exceptional cases due to war or national security requirements. Service providers have to comply with any request from the Department of Defence or the Department of Justice

- NATIONALITY RESTRICTION

This condition has already been analysed in paragraph 2.2.1 on "Qualification conditions".

- THE NEED TO HAVE A LOCAL PRESENCE

This condition has already been analysed in the paragraph on "Information requested from the service provider".

-NATIONAL LAWS ON COMPETITION AND ON CONSUMER PROTECTION

All European countries have laws on the protection of competition in their national legislation, which prevent restraints in competition, unfair competition, etc., and on the protection of consumers. In general, these laws also apply to the providers of other liberalised services when offered in a competitive market.

Special rules apply to Premium Rate Services with regard to national laws on competition and consumer protection. This issue will be dealt with in paragraph 2.2.3 which concentrates on special regulation for Premium Rate Services.

-Information for users (including other service providers)

In some countries, service providers are obliged to make public information on the general supply conditions of their service in order to ensure that the conditions under which services are provided are transparent. In some countries, breaches of this obligation may lead to the withdrawal of a licence. In one of the Union countries, for the purpose of improving customer information, parameters have been defined by order.

In one of the Union countries, the service provider is obliged to supply users with certain information only on request.

Special rules apply to Premium Rate Services with regard to information for users. This issue will be dealt with in paragraph 2.2.3 which is dedicated to special regulation for Premium Rate Services.

-Access to leased lines

In some countries it is stated, either in telecommunications regulation or in the licence itself, that the service provider has the right to be provided with leased lines by the public operator. In other countries, the telecommunications regulation or the licence of the public operator state that the public operator is obliged to provide leased lines to service providers.

-Access to numbers

Numbering is a key issue for the provision of services and specific studies in this area are currently being undertaken by ETO for the Commission on behalf of ECTRA. The results of these studies will be presented in separate reports and will deal with the following items:

- user-friendliness
- portability,
- non-discriminatory access.

ECTRA and ETO are currently undertaking studies on the establishment of a European Telephony Numbering Space; allocation of Euro-numbers is expected in early 1998.

- Interconnection

Interconnection must also be considered as a condition of operating. In this paragraph we take into consideration the work carried out by the ECTRA/APRII Project Team which resulted in an ECTRA document on Interconnection Regulation.

From the ECTRA-APRII document on Interconnection Regulation (art.3):

“Public telecommunications operators should be obliged to meet any reasonable request for interconnection from any other such operator in respect of the provision of public voice telephony and any other telecommunications service designated by the NRA concerned.

An operator is not liable to provide interconnection to the extent that it would restrict his ability to exploit his own operation, for example concerning the network capacity required to provide existing services. The grounds for refusal should be clearly stated.”

A second document which could be taken into consideration is the "Commission Proposal for a European Council and Parliament Directive on Interconnection in Telecommunications", but since this is only a proposal we will not deal with it in this paragraph which presents the actual situation in the CEPT countries. This document will be dealt with in chapter 4 of this report.

With regard to the present situation in European countries, ETO has addressed the question to the NRAs of CEPT countries in order to ascertain whether or not specific interconnection issues for other liberalised services exist which are not covered by the ECTRA/APRII document mentioned above.

2.2.3- Specific conditions for operating Premium Rate Services (PRSs)

Premium Rate Services require special attention and their provision is subject to additional regulations in almost all European countries.

In order to provide these services, Premium Rate Service providers must sign a contract with the PTO which contains the conditions for connecting Premium Rate Services to the PSTN and the specific numbers and access codes allocated to the service provider.

Providers of Premium Rate Services are then required to comply with the specific conditions for operating the service. These provisions are contained in regulations which in some countries are specific decrees, laws or class licences, while in other countries are "codes of conduct". These conditions regulate the content, marketing, advertising and pricing of all Premium Rate Services in accordance with a framework which differs from country to country, but which in general covers the following issues:

- Definition of services
- Responsibilities of the service provider and of the PTO
- Content of services
- Advertising/Marketing of services
 - Pricing information
 - Content of advertising
- Guardianship of minors and incapable persons
- Restrictions in access to services
- Time limitations of services

The regulation dealing with the above-listed issues also regulates, with specific regard to Premium Rate Services, some of the qualification conditions studied in paragraph 2.2.1 (tariffs and delivery terms or supply conditions; market information) and some of the conditions of operating studied in paragraph 2.2.2 (information for users; competition rules and consumer protection; privacy protection).

In some countries rules also exist which apply to particular categories of services. The following is a non-exhaustive list of these services:

- Children's services
- Competitions
- Sales promotion services
- Interactive entertainment services (Chat-lines, One-to-one)
- Erotic services and services of a sexual nature
- Advice services
- Employment opportunities
- Fund-raising

The above-listed issues have been analysed in detail and description of the situation in European countries is given in Annex 2. A summary of the description is contained in the following table.

Specific sanctions are imposed when service providers do not comply with regulations of Premium Rate Services described above.

-Definition of services

As already mentioned at the beginning of this report, a number of different national definitions of Premium Rate Services have been identified and analysed by ETO and the ECTRA Project Team on Licensing (PTL). However, there was general agreement among the members of the PTL on the use of the definition given in paragraph 2.1.1: PRSs are value added services involving a billing function which has the aim of sharing the cost of the service or of earning extra revenues. This billing function is managed by a third party which is independent from the service provider who may be the network operator or a specific company. Because of this specific billing system, PRSs have to be considered a special kind of Value Added Services.

Regulation of Premium Rate Services in European countries

	Responsibility of service provider	Content of services	Advertising/ Marketing of services	Minors and incapable persons	Restrictions on access to services	Time limitations of services
Belgium	To respect the provisions of the Ethics Code and to ensure that the same provisions are respected by third parties he has contracts with	Content regulated in detail by the Ethics Code. Services divided into two categories '0900' and '077' the last with a more serious and professional content	Regulated by the Ethics Code with the same rules as for the content of services	Services specifically targeting minors are regulated in terms of content, advertising, price and duration.	No restrictions are mentioned in the Ethics Code	Services '0900' are automatically cut off at the end of the service. Services targeting minors have a maximum duration of 10 minutes.
Denmark	To notify the NRA of his intention to provide the service; to comply with the Decree regulating PRSs	Services divided into three categories: I, II and III. Only the content of categories I and II are regulated	Regulated by Decree and by the Marketing Act	Categories I and II services must not be specifically aimed at children under 16	Cat. I: available to all Cat. II: available to exchanges offering the possibility of restriction Cat. III: available to those who request access	Connection has to be cut after a suitable length of time judged in relation to normal use of services. However, connection must be cut after 30 min.
Italy	The service provider is responsible for the content and the means of provision of the service	Strictly regulated by Decree.	Strictly regulated by Decree and by advertising rules	PRSs are destined to persons older than 18. Services specifically targeting minors exist and are strictly regulated	Access to PRSs is possible only upon written request from the telephone subscriber. The Ministry may however authorise the provisions of PRSs of a particular social interest	Time limitations are pre-determined and proportional to the tariff rate in which the service is categorised. No more than 4 min. for minors
Norway	The service provider is responsible for the content and the marketing of service	Regulated by Decree	Regulated by Decree	PRSs may not be aimed specifically at persons under 16	Cat. I and II: restriction may be request in writing Cat.III: access has to be request in writing	Connection has to be cut after a suitable length of time judged in relation to normal use of services. However, connection must be cut after 30 min. in cat.I; after 20 min. in cat. II; no limit in cat. III

Regulation of Premium Rate Services in European countries

	Responsibility of service provider	Content of services	Advertising/ Marketing of services	Minors and incapable persons	Restrictions on access to services	Time limitations of services
Spain	To assure that the content and promotion of services comply with code of conduct and general law	Regulated by a Code of Conduct	Advertisement have to comply with rules applicable to advertising	PRSS are destined to persons older than 18. Services specifically targeting minors exist and are strictly regulated	The code of conduct only provides for users to have a code of access for telephone messaging and closed videoconfer.	Time limitations are provided for certain services only and vary from service to service.
Switzerland	N.A.	Regulated	N.A.	Service provider cannot give the personal code to access erotic services to persons under 16	Provision of erotic services allowed only through a PIN code not given to persons under 16	N.A.
the UK	To comply with the provisions of the Codes of Practice. If providers of a "live" service, to make a contribution to one of the two compensation funds	Regulated by a general Code of Practice and by a specific Code of Practice for Live Conversation Services	Regulated in detail by the two Codes of Practice and by the British Code of Advertising and Sales Promotion	Specific rules for children's services can be found in the Codes of Practice	Adult Premium Rate Services may only be accessed by customers via a pre-arranged PIN code.	Not provided for in the Codes of Practice

2.3 - Other relevant elements of the licensing procedures

2.3.1 Authorities which grant the licence

The authority in charge of granting licences is in general the ministry in charge of telecommunications. In some cases, the ministry grants the licence through a specific regulatory agency, which in almost all Union countries exists within the ministry itself. In five of the European countries the regulatory agency is an entity independent from the ministry, but in only three of these does it grant licences.

In the East and Central European countries the ministry in charge of telecommunications grants licences.

2.3.2 Duration of the licence

In many European countries, licences for other liberalised services have an indefinite duration. However, it is possible to find individual or class licences with a limited duration: 10 years, 9 years and 25 years. In one of the EU countries, all licences are valid from their date of issue until 30 June 1999. In all East European countries, licences have a fixed duration. The length of time differs from country to country, ranging from a minimum of 2 years duration up to 25 years, 10 years being the most common time-period.

2.3.3 Fees

In some European countries, licence fees must be paid for other liberalised services, in general when the licensing regime in force is individual licence. This is the case in certain Western European countries and in all the East European countries. In some cases, the fee only covers the administrative costs of issuing the licence; in other cases it is a recurrent fee (in general, annual), elsewhere both are required.

However, in one of the Union countries where other liberalised services (provided on leased lines with global access capacity over a threshold defined by the NRA) are subject to an individual licence regime, no fee is required. On the other hand, in another country of the Union where Premium Rate Services and services provided to CUGs (on international leased lines) are subject to a registration regime, annual fees are required to cover documented administrative costs. In the same country, services provided to CUGs involving simple resale of transmission capacity on international leased lines are subject to an individual licence and a non-recurrent fee plus an annual fee for each termination point are required.

In some of the East and Central European countries, the recurrent fee is not a fixed amount, but is proportional to the revenues or the profits of the service provider.

Details on fees to be paid in European countries can be found in the ETO database on licensing.

2.3.4 Withdrawal of a licence

In general an authorisation to provide a service can be withdrawn in the case of serious and continuous non-respect of certain conditions. These conditions vary from country to country and, as we have seen in paragraph 2.2, can be included in the licence itself or in telecommunications legislation. In general, NRAs give service providers a certain period of time to make their position clear. If, after this time, the service provider continues to breach the requirements, the authorisation can be withdrawn. Other

sanctions, less harsh than the withdrawal procedure, can be imposed, depending on the seriousness of the infringement.

Special rules with regard to this issue apply for Premium Rate Services. When Premium Rate Service providers do not comply with or breach the specific regulation on these services, sanctions, varying from fines to disconnection of the service by the PTO, can be imposed. Service providers in breach of the regulation are normally given a certain period of time to rectify their position.

2.3.5 - Appeal procedures

Each country in Europe has a procedure for appealing against a decision of the body responsible for issuing a licence. In many countries, these procedures allow the service provider to make a first appeal to one body and, if necessary, a second appeal against the decision of this first body.

In six European countries, the first appeal against the decision of the body issuing the licence can be made to the ministry in charge of telecommunications, even if the ministry itself is the body which has made that decision. In four other countries, the appeal can be made to the competent administrative courts. Information on the remaining European countries is not available.

In East European countries, the ministry in charge of telecommunications and the courts are the appeal bodies. In some cases, appeals against a decision of the ministry are not contemplated.

CHAPTER 3 - RESULTS OF THE SECOND PHASE OF HARMONISATION

The first step in the establishment of the European internal market for telecommunications services has been achieved through the liberalisation of the telecommunications services in the Union countries. The next step towards the final goal consists of reviewing the regulations which were in force in the sector before liberalisation took place, not only at the level of national markets, but also at the level of the European internal market. With regard to licensing, the new regulation of the internal telecommunications market has to be the result of a harmonisation process for the procedures and conditions which regulate the individual national telecommunications markets. The aim of this harmonisation process is to find the appropriate procedures and “rights and obligations” which should apply to service providers.

Harmonisation in the area of other liberalised services, which is the purpose of this work, will be studied in this chapter on 2 levels.

1- **Harmonisation of conditions** to be respected by service providers

2- **Harmonisation of procedures** for telecommunications services.

Once a harmonised set of conditions is established, it will be necessary to develop licensing procedures which ensure that conditions will be respected by service providers.

A proposal for reducing the number of existing licensing procedures for other liberalised services will be presented within the course of this study.

The first part of our work on the two above-mentioned issues has led us to the conclusion that in order to develop a comprehensive harmonisation process it is necessary to consider another important topic. This is:

3- **Other relevant elements of licensing procedures**

This paragraph analyses other relevant elements of the licensing procedure which could be subject to harmonisation: Bodies in charge of granting licences, duration of licences, fees, withdrawal of licences, appeal procedures.

The organisation of this chapter is based on the three items listed above.

Paragraph 3.1 presents proposals for the **harmonisation of conditions**. The conditions presented in par.2.2 will be analysed in order to determine which are in fact relevant to the proposal for a harmonised set of conditions. The result will be a set of harmonised conditions which represent “the maximum level of conditions”⁹ that can be imposed on a provider of other liberalised services.

Paragraph 3.2 proposes the **harmonisation of procedures** on the basis of the harmonised set of conditions identified in paragraph 3.1.

⁹ The “maximum level of conditions” means an exhaustive list of conditions which can be imposed by NRAs on service providers. It should be noted that each NRA is free to decide if it wants to impose all conditions listed, only some of them or none at all.

Paragraph 3.3 endeavours to propose solutions for the harmonisation of some **other relevant elements of the licensing procedures** (see 2.3)

In paragraph 3.4 a table summarising the proposals for harmonisation is presented.

3.1 Harmonised conditions

A harmonised set of licensing conditions has to be established which allows for two important concepts:

In order to develop a free competitive environment, authorisation regimes should not impose undue burdens on service providers. The new regulatory framework should therefore be based on a set of conditions which do not encumber the service provider. In addition to this, the development of a free competitive environment must involve transparency, i.e. it is necessary to establish a clear set of rules published in advance in a manner which guarantees that all interested parties are aware of them.

As explained in the first part of this study, the conditions are a set of pre-conditions that service providers have to fulfil in order to be authorised to provide a service and a set of obligations and rights that must be adhered to while operating the service.

These conditions have been presented in paragraph 2.2 of this report as **Qualification conditions** and **Conditions of operating** (Rights and Obligations). These conditions will now be studied in this chapter in order to determine which are essential to ETO's proposal for a set of harmonised conditions representing the maximum level of licensing conditions which can be imposed on service providers.

3.1.1 Qualification conditions

- Nationality restriction and the need for a local presence

This item is presented in the above paragraph 2.2.1.

With regard to other liberalised services, as we have already seen, only one of the European Union countries requests such a condition.

There is no actual reason for imposing or allowing such a restriction for other liberalised services. Nationality restrictions prevent, restrict and distort competition and have the effect of limiting the development of domestic industry in the country imposing the restriction. Limited technological innovation affects the quality of the service provided, which is to the detriment of the user.

With regard to European Union countries, it is worth mentioning some requirements stemming from European Union Law. The rules of free provision of services (Art. 59 and following of the EC Treaty) require EU Member States to abolish any restrictions which are liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provides similar services. This requirement is binding for Union countries and has to be implemented by those countries willing to join the Union.

Moreover, at present many companies are providing services in countries other than their country of origin and this does not seem to be creating any significant problems. The European telecommunications market is becoming more and more populated by consortia from companies of different nationalities operating world-wide. It could be very difficult to impose a nationality restriction on these market actors.

Furthermore, this item is related to WTO issues and is not suitable for inclusion in licensing conditions. It is expected that after the 1 January 1998, this restriction will no longer apply to European companies nor for the same reason to the companies of CEPT countries.

Finally, discussions taking place at the moment at the EU level dealing specifically with the licensing of telecommunications services are clearly a step in the direction towards eliminating any residual nationality restrictions. In the "Proposal for a European Parliament and Council Directive on a Common Framework for General

Authorisations and Individual Licences in the Field of Telecommunications Services”, reference is made to the fact that authorisation regimes should not restrict undertakings, in particular those established in another Member State. The proposed Directive does not stop there; it also expresses the wish to see a balanced and multilateral agreement ensuring effective and comparable access for the Community operators in third countries.

In conclusion, ETO proposes that no nationality restrictions be imposed on providers of other liberalised services. Nationality restriction is a condition that should not be included in the set of harmonised pre-conditions.

With regard to the necessity for a legally registered representative in the country where the service is to be provided, this appears to be in conflict with Community Law. The rules on the free provision of services mentioned above (Art. 59 and following of the EC Treaty) imply, among other things, that a Member State is not entitled to oblige service providers to establish themselves in its territory before granting an authorisation to provide the service in question.

For this reason, ETO proposes that it should not be made necessary for other liberalised service providers to have a legally-registered representative in those countries where they wish to provide services.

- Information requested from service providers when offering other liberalised services

In par. 2.2.1 we have listed the information that a service provider has to provide to NRAs in the application or declaration form.

This list of information will be now analysed in detail in order to determine which parts of the list need to be included in the harmonised licensing conditions.

a) SERVICE PROVIDER IDENTIFICATION

As mentioned in par. 2.2.1, the service provider must provide identification, giving his name, trading name, address and telephone number. When the service provider is a company, the name of a contact person is also asked for.

Service provider identification must also include the business registration number, the country of registration and the name of the body where the company is registered (Chamber of Commerce, National Trade or Commercial Register, or equivalent body).

As this information is fundamental in identifying the service provider, ETO proposes that it be included in the harmonised set of conditions which can be imposed on a provider of other liberalised services, as information requested from the service provider.

b) DESCRIPTION OF THE SERVICE

The applicant has to give a short and concise description of the purposes of the other liberalised service and must state its commercial name.

As this information is essential for identifying the service to be provided by the service provider, ETO proposes that it be included in the harmonised set of conditions which can be imposed on a provider of other liberalised services, as information requested from the service provider.

c) TRANSMISSION MEANS

This information is required by some NRAs, i.e. in countries where the regime is different depending on whether the services are transmitted on the PSTN, leased lines or other systems.

If the service is provided on leased lines, some NRAs also request information on the number of connections of leased lines to the PSTN. In particular, when the service involved is voice, information on "the number of connections of leased lines to the PSTN" is required in order for the NRA to be sure that the service in question is not provided to the public.

ETO proposes that when the service in question is voice provided on leased lines, the information on "the number of connections of leased lines to the PSTN" should be included in the list of information to be given to the NRA because this information determines whether or not a voice service is provided to the public.

d) GEOGRAPHICAL COVERAGE OF THE SERVICE

This information is requested by some NRAs for services which are not planned to be offered throughout an entire country, but only in one or more areas within the country.

ETO proposes that it should not be included in the list of information to be given to the NRA since this information is of no real use to NRAs.

e) TECHNICAL DESCRIPTION OF THE SYSTEM

As mentioned in paragraph 2.2.1, some countries require a general description of the system but do not require any detailed information, while others require specific information on the equipment to be used and on the availability of standards for specific terminals. **This information can be considered as extra information regarding the service and is not essential for identifying the service itself. ETO therefore proposes that it not be included in the list of information to be given to NRAs.**

f) TARIFFS AND DELIVERY TERMS OR SUPPLY CONDITIONS.

Some NRAs request that the applicant indicate where this information is provided and how the customer can have easy access to it.

It is quite clear that the information on tariffs and delivery terms or supply conditions has to be provided to users, but this rule actually refers to consumer protection and not to specific telecommunications regulation. It is once again necessary to conclude that we are dealing with free competitive markets where the consumer is free to select what he considers the best offer on the market in terms of quality, availability and permanence of the service. In the case of fraudulence or deception, he can always register a complaint with one of the authorities in charge of consumer protection, which is not connected to the telecommunications NRAs. **ETO proposes that the obligation to inform NRAs of where this information will be made available for easy access by customers should not be included in the list of information to be given to NRAs.**

Special regulations with regard to this issue apply to Premium Rate Services. This is not mentioned in the application form and is very often included in regulations which are not telecommunications-specific.

g) MARKET INFORMATION

Some NRAs request that the service provider provide information on the target customer segment or on the estimated turnover of the service in the first three years of its establishment.

Taking into consideration the request of service providers who prefer not to provide anyone with any market information, and considering that there is actually no reason for NRAs to collect this information which is of no use to them, **ETO proposes that this information not be included in the list of information to be given to NRAs.**

Special regulations with regard to this issue apply to Premium Rate Services. This is not mentioned in the application form and is very often included in regulations which are not telecommunications-specific.

- Information requested from service providers when offering Premium Rate Services

h) SERVICE PROVIDER IDENTIFICATION AND NATURE AND CHARACTER OF THE PREMIUM RATE SERVICE

Some NRAs request that service providers provide them with identification, i.e. name, address and telephone number, and with information on the nature and character of the Premium Rate Service they intend to provide. This information is required because, due the particular nature of these services, NRAs need to carry out special controls in order to ensure that the special conditions for operating Premium Rate Services are being respected. The fact that NRAs possess information on a Premium Rate Service and on the provider of this service means that, when necessary, they can immediately intervene and impose sanctions or ask the PTO to disconnect the service.

Since in certain cases timely intervention from NRAs with regard to Premium Rate Services is required, ETO proposes that service provider identification and nature and character of the service be included in the harmonised list of information to be given to the NRA for Premium Rate Services.

-Information requested from the service provider when offering services to CUGs

In order to establish a harmonised set of information to be submitted by service providers wishing to provide voice services to CUGs, it is first necessary to agree upon a harmonised concept of CUGs. Not all European countries have a definition of CUGs and some of them do not even recognise the concept in their national regulations. From the analysis of the concept of CUGs proposed by the European Commission and from definitions and concepts existing in certain European countries listed in Annex 3 of this report, it is possible to draw the following conclusion:-

The concept of CUGs is aimed at clearly identifying one of the possible "non-public" users of a voice service (another example of it is "connection of leased lines to the PSTN at one end"). Countries having the concept/definition of CUGs in their regulations make a clear distinction between voice services provided to the public and voice services provided to a circumscribed group of users linked together by a common interest/relationship which cannot be misinterpreted. The caller and the called person have to be members of the same CUG, they have to be linked together by a clearly identifiable common interest/relationship and it cannot be possible for them to call outside the CUG.

In summary,

- 1) the service in question is a voice service
- 2) the user is a clearly identified circumscribed group
- 3) members of the group have to be linked together by a common interest/relationship

In order for the NRA to have enough information on 1), 2), 3) listed above, **ETO suggests the following as the “maximum level of information” which NRAs may request from providers of voice services to CUGs:**

-Description of the service;

-Description of each CUG to which the service is provided and, if necessary, name, address and telephone number of each member of the group;

-Evidence of the relationship/interest which links the members of each CUG together.

It must be noted that “name, address and telephone number of each member of the group” mentioned above is an information which can be requested by NRAs only a posteriori for the purpose of checking and ensuring compliance with the applicable regulation. The information requested shall be reasonable and proportionate to the objective pursued.

For this reason, “name, address and telephone number of each member of the group” is not to be considered as information which can be requested by NRAs as a qualification condition for voice services not provided to the public and therefore will not appear in the harmonised list of qualifications conditions proposed by ETO for these services.

It is important to recall that “members of the CUG” are the subscribers to the service, meaning any natural or legal person who is party to a contract with the provider of the service to the CUG for the supply of such service. “Members of the CUG” are therefore not the users, meaning the individuals using or requesting the CUG service.

-Conclusion on qualification conditions:**QUALIFICATION CONDITIONS FOR OTHER LIBERALISED SERVICES****Information for NRAs**

Providers of other liberalised service may be asked to provide the NRA with the following information:

1-Service provider identification: name, trading name, address, telephone number; name of a contact person; business registration details

2-Description of the service

QUALIFICATION CONDITIONS FOR PREMIUM RATE SERVICES**Information for NRAs**

Premium Rate Service providers may be asked to provide the NRA with the following information:

1-Service provider identification: name, trading name, address, telephone number; name of a contact person; business registration details

2-Nature and character of the service

**QUALIFICATION CONDITIONS FOR VOICE SERVICES
NOT PROVIDED TO THE PUBLIC****Information for NRAs**

In addition to the qualification conditions identified for other liberalised services, providers of voice services on leased lines may be asked to provide the NRA with the following information:

1- Number of connections of leased lines to the PSTN

In addition to the qualification conditions identified for other liberalised services, providers of voice services to CUGs may be asked to provide the NRA with the following information:

1-Description of each CUG to which the service is provided

2-Evidence of the relationship linking the members of each CUG together

3.1.2 - Conditions of operating

-Essential requirements

Art.3 of the Services Directive (388/90/EEC) allows Member States to make the provision of liberalised services "subject to a licensing or a declaration procedure aimed at compliance with the essential requirements". Essential requirements are defined in Commission Directive 96/19/EC amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications market, as security of network operations, maintenance of network integrity, and, in justified cases, interoperability of services, data protection, protection of the environment and town and country planning objectives as well as the effective use of the frequency spectrum and the avoidance of harmful interference between radio-based telecommunications systems and other, space-based or terrestrial, technical systems.

As has been seen in chapter 2, most European countries consider essential requirements as general statements or broad guidelines and do not give any further detailed specification.

Nevertheless, almost all European countries consider non-respect of essential requirements as reason for the public operator to interrupt the service. Therefore, **essential requirements should be included in the list of harmonised conditions for other liberalised services.**

Further work on this issue will be carried out by ETO in the new work order proposed to the Commission on "Essential Requirements", the results of which should be presented to the Commission in Autumn 1997.

- Community rules on competition and fair trading

As stated in paragraph 2.2.2, the relevant articles of the Union Treaty are Articles 85 and 86 on agreements between undertakings that might restrict competition and on the abuse of a dominant position in the market. These two articles can be considered as general rules to be respected by any undertakings operating within the EEA, irrespective of their activity sector.

As this regulation is already dealt with in Community Law and must at any rate be respected, it is not necessary to include it again in specific regulation for the licensing of other liberalised services. **ETO therefore proposes that these two articles be considered general rules which must be respected by any provider of any service operating in the EEA and cannot be considered specific conditions for the provision of other liberalised services.**

Even if Art. 85 and 86 of the Treaty always remain applicable, they refer to a more general level, whereas the purpose of this analysis is to be more specific on some of these items with regard to other liberalised services. In addition to the Treaty, the Commission has also published guidelines on how to apply Community competition rules to the telecommunications sector. These guidelines, even if they are not binding regulations but merely give an indication of the actions to be followed, give some useful information on:

-cross subsidiary between activities in the monopoly and competition sector;

- package offer;
- interconnection duties;
- information for users;
- tariffs.

Two of these points must be considered when dealing with conditions for operating other liberalised services; the first is "information for users" and the second "interconnection duties". The three other points are related to the dominant position of public operators and should therefore not be dealt with in this report since they are specifically regulated in other parts of Community law. Further work on this issue will be carried out by ETO in the new work order proposed to the European Commission on "Regulating dominant operators", the results of which should be presented to the Commission in July 1997.

Information for users and interconnection will be dealt with at the end of this paragraph.

- Data protection, privacy protection and confidentiality

Data protection, privacy protection and confidentiality are regulated both at a European and national level.

A European Parliament and Council directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) was approved in July 1995 and was published in the Official Journal of the European Communities on 24 October 1995.

A directive on data protection, privacy protection and confidentiality, specifically targeting the telecommunications sector is currently under preparation.

Legislation on these issues already exists in a large number of countries but the administrative bodies in charge of applying and controlling these rules are often entities other than the telecommunications NRA. Therefore, it seems quite difficult to consider these rules as specific to other liberalised services. These conditions have to be respected by all market players dealing with the free circulation of personal data, independent of their sector of activity.

In conclusion, ETO proposes that rules on data protection, privacy protection and confidentiality be considered as general conditions, in other words, rules which have to be respected by all players, but which will not be included in the list of specific conditions of operating for other liberalised services. This general condition on data protection should be imposed on all parties including public operators, service providers and users. Nevertheless, since the directive on data protection specifically targeting the telecommunications sector which is currently under preparation might require the implementation of certain rules into telecommunications-specific regulations, it may be necessary to review this conclusion. Some of the telecommunications-specific rules on data protection might in fact be included in the list of specific conditions of operating for other liberalised services.

Special regulations with regard to this issue apply to Premium Rate Services, but this is very often included in regulations which are not telecommunications-specific.

- War, defence and national security requirements.

In some exceptional cases, due to war, defence and national security requirements, a majority of countries allow access to the network, to information or to transmitted messages. Service providers have to comply with any request from the Defence Department and/or the Court of Justice. This also refers to legal interception issues. Even though this condition needs to be respected by all operators, ETO believes that, due to its importance, it should be included in the list of conditions specific to other liberalised service providers.

ETO proposes that telecommunications-related war, defence and national security requirements be considered as a condition of operating for other liberalised services.

- National laws on competition and consumer protection

All countries have rules on the protection of competition, rules preventing competition restraints and unfair competition, as well as rules dealing with consumer protection. All these rules and laws apply to all players operating in a competitive environment and therefore also apply to providers of other liberalised service when operating in a liberalised market. In general, these rules do not specifically refer to telecommunications and the administrative bodies ensuring the respect of these rules are not the telecommunications NRAs. Therefore, **ETO proposes that where no specific telecommunications legislation exists on the subject, national laws on competition and consumer protection should be considered general conditions to be respected by all service providers and not as specific conditions of operating for other liberalised services.**

Further work on this issue will be carried out by ETO in the new work order proposed to the European Commission on "Consumer protection", the results of which should be presented to the Commission in autumn 1997.

Special regulations with regard to this issue apply to Premium Rate Services, but this is very often included in regulations which are not telecommunications-specific.

-Access to leased lines

From the service provider's point of view, the provision of leased lines is a right of operating. Provision of leased lines is not, however, a specific right of other liberalised service providers, but rather an obligation that the public operator has towards all service providers.

ETO therefore proposes that the provision of leased lines be considered as an obligation of the public operator and that it therefore be regulated in telecommunications regulation or in the public operator licence/concession.

- Information for users (including other service providers)

The information that NRAs request from service providers (analysed in paragraph 2.2.1) is more or less the same as that which has to be given to users by service providers in some countries. Therefore, the list presented in the above paragraph 2.2.1 as "information requested from the service provider" has also been studied in order to propose a harmonised list of information that service providers must give to clients, users and other service providers.

Concerning the manner in which information should be provided to users, the best solution is to demand that service providers provide updated information to users at their request and in a way which is easily accessible and intelligible.

Users may suffer due to the information provided being insufficient or incorrect. In this case they can either complain to any body or agency in charge of consumer protection or appeal to the Court.

In conclusion, **ETO proposes that the provision of information to users at their request be considered a condition of operating the service.**

Special regulations with regard to this issue apply to Premium Rate Services, but this is very often included in regulations which are not telecommunications-specific.

Conclusion on conditions for operating other liberalised services:

CONDITIONS OF OPERATING FOR OTHER LIBERALISED SERVICES

Service providers may be required to respect the following conditions:

1-Essential Requirements

2- Telecommunications related requirements on war, defence and national security.

3-Make available to users, at their request and in a way which is easily accessible and intelligible, all information necessary for them to choose the option which corresponds to their needs

The list of information to be made available to users is given in the following box.

—◆—
Information for users

Service providers have to provide users, at their request, with the following information:

- 1-Service provider's contact point: name, trading name, address, telephone number
- 2-Description of the service
- 3-Geographical coverage of the service
- 4-Availability of standards for specific terminals which can be used in the system
- 5- Tariffs, delivery terms, supply conditions

- Interconnection

Interconnection is presented in paragraph 2.2.2 of this report.

As stated in the above-mentioned paragraph, with regard to the present situation in European countries, ETO has addressed several questions to the NRAs of CEPT countries in order to find out if specific interconnection issues exist with regard to other liberalised services which are not covered by the ECTRA/APRII document on Interconnection Regulation or by any other work on the subject. Concerning this, as this chapter deals with future proposals for harmonised regulation, it is worth recalling that the European Commission has prepared a "Commission Proposal for a European Council and Parliament Directive on Interconnection in Telecommunications" which, when approved, will regulate the matter at the Community level. The CEPT countries were also asked to take this document into consideration when for the ETO consultation on interconnection matters.

From the proposed Directive on Interconnection in Telecommunications (art.4):

"Organisations authorised to provide public telecommunications networks and/or public telecommunications services as identified in Annex I shall have a right and, when requested

by organisations in that category, an obligation to negotiate interconnection with each other for the purpose of providing the services in question, in order to ensure the provision of these networks and services throughout the European Union. On a case by case basis, the national regulatory authority may agree to limit this obligation on the grounds that there are technically and commercially viable alternatives to the interconnection requested, and that the requested interconnection is inappropriate in relation to the resources available to meet the request. Any such limitation imposed by a national regulatory authority shall be fully reasoned and made public in accordance with the procedure in Article 14(2).

Organisations authorised to provide public telecommunications networks and public telecommunications services identified in Annex I which have significant market power shall meet all reasonable requests for interconnection, including requests from service providers for connection to the network at points other than the network termination points offered to the majority of end-users ('special network access')."

From the very few answers received by ETO from CEPT countries on questions about interconnection matters, it resulted that there are no interconnection issues specific to other liberalised services.

ETO therefore proposes that interconnection rights and obligations should not be included in the harmonised list of specific conditions of operating for other liberalised services since the issue will have been assessed as being fully regulated in the two above-mentioned documents.

3.1.3 Specific conditions for operating Premium Rate Services

The regulation of Premium Rate Services is very often not telecommunications-specific, is very detailed, is a very sensitive issue in many countries and widely differs from country to country. Therefore, **ETO suggests that proposals for harmonising regulation specific to PRSs are out of the scope of this report.**

Moreover, in addition to the conditions established for other liberalised services, providers of Premium Rate Services have to provide users with certain information on their services, but since this is also part of the specific regulation of PRSs, it is not dealt with in this report with regard to harmonisation.

Information on national regulations for PRSs in some European countries is attached in Annex 2 of this report.

3.2 A proposal for harmonised procedures

The list of harmonised licensing conditions for other liberalised services established in the above paragraph now leads us to the choice of a licensing procedure which ensures that the above conditions will be respected by service providers without imposing any undue burden on them.

The definitions of licensing procedures given in chapter 2 reflect the existing situation in Europe. All four procedures mentioned in that chapter, each referring to different kinds of services, can be in force at the same time in a single country.

At present, ECTRA members have not yet agreed upon a harmonised set of rules based on a single common procedure.

However, with regard to other liberalised services, ETO foresees the possibility of reducing the number of applicable licensing procedures from the four identified above to only two. The same proposal was made by ETO for bearer data services in another report for the Commission (work order n. 48 265) which was approved by the ECTRA-plenary in April 1996.

Having classified licensing procedures on the basis of the following parameters:

- 1- Licensing conditions to be respected by the service provider
- 2- Action to be taken by the potential service provider in order to obtain permission to provide a service
- 3- Legal form which regulates the authorisation
- 4- Tasks and powers of the National Regulatory Authorities (NRAs) ,

ETO proposes that other liberalised services be made subject to the two procedures described in the following boxes:

1- General authorisation: a regime under which service providers need not take any action and need not await any decision from the NRA before operating their service. The legal form which regulates this authorisation consists of a set of conditions (rights and obligations) which can be found in general law, telecommunications regulation, in a single document like a class licence order; or in all three. Breaches of these conditions may lead to NRAs imposing sanctions or withdrawing the permission to provide the service.

2- Registration: a regime which requires that service providers make a declaration to the NRA of their intention to provide a service. In this declaration, applicants must supply NRAs with a list of information clearly established and published in advance. This list should contain the “maximum level of information” that a NRA can request. The service provider can start to provide the service **X**¹⁰ weeks after the declaration. The legal form which regulates this authorisation consists of conditions (rights and obligations) set in general law and telecommunications regulation. Breaches of these conditions may lead to NRAs imposing sanctions or withdrawing permission to provide the service.

The above General authorisation is based on the idea that in order to allow free competition to develop, service providers should be free from any unnecessary restrictions imposed on them by authorisation regimes. The General authorisation proposed by ETO, in which the service provider is not required to take any action and the NRA cannot exercise any “a priori” control over the service provider, seems to be the most adequate procedure.

With regard to Individual Licence, as defined in chapter 2, there are no strong arguments to justify the use of this procedure, which actually imposes a regime of “a priori” control which is probably not necessary for other liberalised services. Moreover, conditions for other liberalised services identified in paragraph 3.1 are so “light” as not to need verification by NRAs. For this reason, ETO proposes that the use of Individual Licence regimes be avoided in a competitive environment .

¹⁰ The waiting period that the service provider is required to observe before he may start providing the service will be established in accordance with the waiting period provided for notification in the “European Parliament and Council Directive on a common framework for general authorisations and individual licences in the field of telecommunications services”, when approved. In its study on Bearer Data Services ETO proposed a waiting period of 2 weeks which has been considered too short by many countries.

Finally, Registration can be maintained as a regime for other liberalised services in order to give NRAs and users some clear information on services and service providers. As mentioned in chapter 2, in many countries the Registration procedure has to be followed by the applicant before being allowed to open the service. However, the fact that the NRA has to give an answer, be it tacit consent or a negative answer, can lead to this regime being confused with the Individual Licence regime. For this reason, the registration procedure under which it is not possible for NRAs to raise an objection, seems to be preferable. This proposal also takes into account service provider demand for a more automatic procedure.

This regime could apply to countries which are still in a transitional period and moving towards complete competition. As already stated, in a completely competitive environment, General authorisation is probably the most adequate regime, but where a completely competitive environment does not exist yet, the Registration procedure represents a form of light “a priori control” which can give more guarantees to new entrants onto markets in which public operators still have a strong dominant position.

The above-described Registration regime could also be maintained in those countries imposing certain licensing conditions on **Premium Rate Service** providers with the aim of controlling the provision of these services.

This regime could also be maintained in those countries which need to ensure that the provision of **voice services to non-public users** is really limited to CUGs or that it does not consist of a service provided on leased lines with double-end connection to the PSTN. A Registration regime, in fact, gives the NRA the opportunity to collect the necessary information regarding the service itself, the users to which the service is provided and the transmission means used.

Even if in 1998, voice services provided to the public are liberalised in EU countries, ETO believes that the distinction between “offered to the public” and “not offered to the public” will remain valid after the liberalisation. We can in fact expect that, at least in some European countries, conditions imposed on providers of voice services offered to the public will be different than those imposed on providers of voice services to non-public users. For this reason, when proposing harmonised conditions and procedures for other liberalised services, ETO has to acknowledge voice services not provided to the public.

3.3 Other relevant elements of licensing procedures

In this paragraph, the other relevant elements of the licensing procedures presented in par.2.3 are analysed in order to determine which of them should be considered essential to the harmonisation process.

3.3.1 *Body in charge of granting licences*

In most European countries, the body in charge of granting licences (NRA) is the ministry in charge of telecommunications, either directly or through a special regulatory agency. These agencies now formally exist in almost all Member States and will also soon be created in many non-EU ECTRA countries. In some other countries, this regulatory agency is an entity independent of the ministry and is the body in charge of granting the licences.

It is probably not necessary to obtain complete harmonisation of the bodies in charge of granting licences. **Each country can decide to give this power either to an agency or to the ministry, as long as the body granting the licence is maintained separate**

from the operation of the National Telecommunications Organisation in order to ensure equitable treatment of the various market players.

3.3.2 Duration of licences

As explained in par. 2.3.2, in some European countries the duration of licences for other liberalised services is indefinite, whereas in other Western European countries and in all Eastern Europe, licences are of a fixed duration, which varies from country to country.

ETO proposes that the licence for other liberalised services should be without fixed or specific duration.

3.3.3 Fees

In some countries the provision of other liberalised services is subject to the payment of licence fees (par. 2.3.3) which in general are used to cover administrative costs related to the authorisation.

ETO proposes that the provision of other liberalised services should be possibly free of charge, but that each country should be free to impose very low fees on service providers which have to be proportional to the NRA's costs of monitoring and checking the provision of other liberalised services. These costs should be made public in order to justify the fees imposed.

3.3.4 Withdrawal of licences

In general, a licence can be withdrawn in the case of serious and continuous non-respect of licensing conditions (par.2.3.4).

Taking into consideration the harmonised regimes proposed by ETO, under which licences are no longer granted by NRAs, it is probably more correct to say "withdrawal of permission to provide the service" rather than "withdrawal of a licence".

In principle, any breach of licensing conditions can lead to the withdrawal of permission to provide the service, but it must be possible to impose intermediate sanctions before taking the definitive measure of withdrawing the permission to provide the service.

ETO proposes the following: NRAs can impose sanctions up to withdrawal of permission to provide the service to service providers not respecting the licensing conditions of other liberalised services. NRAs must give service providers a certain period of time to make their position clear and/or to remedy.

Depending on the seriousness of the infringement, sanctions could consist, for example, of payment of fines, imprisonment, temporary suspension of the authorisation benefit, suspension of access to leased lines, confiscation of equipment.

In the case of serious and continuous non-respect of the licensing conditions, refusal to make the position clear and/or to remedy or non-respect of the above-mentioned sanctions, permission to provide the service may be withdrawn

3.3.5 Appeal procedures

Each European country has a procedure for appealing against NRA decision (2.3.5). Since complete harmonisation of the bodies responsible for issuing the licences has been deemed unnecessary, it is probably also unnecessary to harmonise appeal procedures.

Nonetheless, ETO proposes that service providers should have the right to appeal against decisions made by NRAs.

**CONDITIONS OF OPERATING FOR OTHER LIBERALISED SERVICES
(SERVICE PROVIDER'S RIGHT)**

Appeal procedure

Other liberalised service providers should have the right to appeal against decisions made NRAs.

3.4 Conclusion: summarising table

● MAXIMUM LEVEL OF LICENSING CONDITIONS

Providers of Other Liberalised Services may be asked to adhere to the following:

Qualification conditions:

-To provide the NRA with the following information:

- 1-Service provider identification
- 2-Description of the service

Conditions of operating:

- To respect essential requirements
- To respect telecommunications-related war, defence and national security requirements
- To provide the following information to users at their request:
 - 1-Service provider contact point
 - 2-Description of the service
 - 3-Geographical coverage of the service
 - 4-Availability of standards for specific terminals which can be used
 - 5-Tariffs, delivery terms, supply conditions
- The right to appeal against an NRA decision

In addition to the conditions listed above for Other Liberalised Services,
providers of Premium Rate Services may be asked to adhere to the following:

Qualification conditions:

-To provide the NRA with the following information:

- 1-Nature and character of the service

In addition to the conditions listed above for Other Liberalised Services,
providers of Voice Services not provided to the public may be asked to adhere to the following:

Qualification conditions:

-To provide the NRA with the following information:

a)when the service is provided on leased lines:

- 1-Number of connections to the PSTN

b)when the service is provided to Closed User Groups:

- 1-Description of each CUG to which the service is provided
- 2-Evidence of the relationship linking the members of each CUG together

CHAPTER 4 - CONCLUSIONS

This chapter presents the conclusions of the study carried out by ETO on behalf of ECTRA for the European Commission. The aim of the study was to propose harmonised licensing conditions and procedures for other liberalised services in European countries.

The conclusions reached are in line with the Commission Proposal for a European Parliament and Council Directive on a Common Framework for General Authorisations and Individual Licences in the field of Telecommunications Services.

The harmonised licensing regime (conditions and procedures) for other liberalised services proposed in this report has been approved by the ECTRA-plenary which has agreed to the report being sent to the Commission. There might be some differences among ECTRA countries in implementing the proposals in national regulations. Some ECTRA members' comments can be found in Annex 4 to this report.

The proposals have received the consensus of the European Union countries and have been considered as a guidance towards a future goal for the other CEPT/ECTRA countries which are not members of the Union. Nevertheless, some of the non-Union countries, -mainly Central and East European- despite having accepted the ETO's proposals, will maintain an individual licence regime for other liberalised services for a number of years to come. In consequence, service providers in these countries will have to respect conditions which may involve heavy burdens.

Proposal 1: Definition of Other Liberalised Services

All the fixed telecommunications services other than voice telephony for the public, telex and bearer data services, liberalised by Directive 90/388/EEC. These are services based on the transmission or switching of signals and consisting of the completion, storage, modification or other processing (adding value) of information intended to be transmitted on a public switched network or on leased lines.

Furthermore, because some European countries have specific licensing regimes for Premium Rate Services and for Services Not Provided to the Public, these services are defined separately from the Other liberalised services, even if they belong to the same group of services.

Premium Rate Services (shared-cost or shared revenue): value added services involving a billing function which has the aim of sharing the cost of the service or of earning extra revenues. This billing function is managed by a third party independent from the service provider who may be the network operator or a specific company. Because of this specific billing system, PRSs have to be considered a special kind of Value Added Services.

Services Not Provided to the Public: examples of these services are telecommunications services provided within Closed User Groups and services provided over connections of leased lines to the PSTN at one end.

Proposal 2: Typology of conditions

The licensing regimes identified are based on two kinds of conditions which have to be respected by service providers:

1) **Qualification conditions:** Conditions to be respected by the service provider in order to be authorised to provide the service.

These conditions has been divided into:

- a) Service provider's qualifications
- b) Information requested from the service provider

2) **Condition of operating:** Conditions/rules to comply with while operating the authorised service.

These conditions are a set of Obligations and Rights. Some of these conditions have to be respected by providers of all types of services, while others create a framework applicable to the operation of a specific service.

Proposal 3: Maximum level of licensing conditions for other services

A provider of other liberalised services may be asked to adhere to the following: -

a) **Qualification conditions:**

-To provide the NRA with the following information:

Service provider identification
Description of the service

b) **Conditions of operating:**

-To respect essential requirements

-To respect telecommunications-specific war, defence and national security requirements

-To provide the following information to users at their request:

Service provider contact point
Description of the service
Geographical coverage of the service
Levels of permanence, availability and quality of the service
Availability of standards for specific terminals which can be used
Tariffs, delivery terms, supply conditions

c) The right to appeal against a decision of the NRA, within the limitation of the NRA to impose sanctions

In addition to the conditions listed above for other liberalised services, providers of **Premium Rate Services** may be asked to adhere to the following:

1) qualification conditions:

- Provision of the following information to the NRA:**
Nature and character of the service

In addition to the conditions listed above for other liberalised services, providers of Voice Services not provided to the public may be asked to adhere to the following:

1) qualification conditions:

- Provision of the following information to the NRA:**

a)when the service is provided on leased lines:
Number of connections to the PSTN

b)when the service is provided to a Closed User Group (CUG):
Description of each CUG to which the service is provided
Evidence of the relationship linking the members of each CUG together

Proposal 4: Harmonised licensing procedures for other liberalised services

1- General authorisation: a regime where the service provider need not take any action and need not await any decision from the NRA before opening the service.

The legal form which regulates this authorisation consists of a set of conditions (rights and obligations) which can be found in general law, telecommunications regulation, in a single document like a class licence order or in all three¹¹. Breaches of these conditions may lead the NRA to impose sanctions or to withdraw the permission to provide the service.

2- Registration: a regime which requires that the service provider make a declaration to the NRA of his/her intention to provide the service. In this declaration, the applicant has to supply the NRA with a list of information clearly stated and published in advance. The service provider can start to provide the service X¹² weeks after the declaration. The legal form which regulates this authorisation consists of conditions (rights and obligations) set in general law and telecommunications regulation. Breaches of these conditions may lead the NRA to impose sanctions or withdraw the permission to provide the service.

¹¹ For the definitions of licensing regimes identified by ETO in the study (Free Regime; Class Licence; Registration and other similar regimes; Individual Licence), see chapter 2 of this report.

¹² The waiting period that the service provider is required to observe before he may start providing the service will be established in accordance with the waiting period provided for notification in the "European Parliament and Council Directive on a common framework for general authorisations and individual licences in the field of telecommunications services", when approved.

ANNEX 1 - WORK ORDER SIGNED BY ETO WITH THE EUROPEAN COMMISSION

1. Subject: Fixed telecommunications services other than voice telephony, telex or packet- or circuit-switched data services offered to the public

2. Purpose

To define harmonised conditions for the authorisation of fixed services other than voice telephony or packet- or circuit-switched data services offered to the public required for the creation of the internal market for such services including where appropriate the mutual recognition of national authorisations, and identify, if applicable where such harmonisation may not be necessary.

3. Justification

Different national conditions for the authorisation of such telecommunications services are creating a barrier to the creation of an internal market for these services. In order to overcome this barrier, the proposed Directive on the mutual recognition of licences and other national authorisations for telecommunications services¹³ provides for the harmonisation of conditions for authorisation and a procedure to determine categories of services for which such prior harmonisation is not necessary.

The results of the assessment of the service categories covered by this work order have to be agreed and available by the time of the expiration of the transposition period for this directive as finally agreed by the European Parliament and Council.

4. Work requirement

- (1) to identify, if necessary, different services and/or service elements within the category of services covered by the subject of this work order that have to be distinguished with regard to authorisations.
- (2) to propose harmonised licensing conditions as well as harmonised procedures for these services or service elements.
- (3) to identify areas where harmonisation cannot be achieved in the immediate future or where such harmonisation is not necessary for the creation of the internal market.

5. Execution

The final report on this task will be made available to the Commission, at the latest six months before the transposition of the proposed Directive on the mutual recognition of licences and other national authorisations for telecommunications services is due, as finally agreed by the European Parliament and Council.

¹³ OJ No C 108, 16.4.94, p. 11.

6. Deliverables

Two interim reports and one final report shall be delivered.

The first interim report shall be delivered during the course of the work, containing the identification of the relevant service categories and a workplan for the remainder of the work.

The second interim report shall contain the draft findings and proposals as they will be submitted to CEPT/ECTRA for approval.

The final report shall contain the findings and proposals, as approved by CEPT/ECTRA and will include any comments individual CEPT/ECTRA members have on the implementation in their respective national regimes.

All reports shall be made available in draft form one month before a liaison meeting discusses the results and approval can be given for their release.

The Commission shall receive three copies of the interim reports, while the approved final report shall be made available in 15 bound copies, one unbound copy and one copy on floppy disk in Word for Windows V2.0 format. Graphics shall be made available on separate hard copies.

7. Manpower

It is expected that this task can be accomplished in 9 man-months of effort at expert level including subcontracting.

8. Subcontracting

Subcontracts may be given to external experts for the execution of the parts of this contract, representing 1 man/months.

ANNEX 2 - SPECIAL REGULATION FOR PREMIUM RATE SERVICE

Premium Rate Services require special attention and their provision is subject to additional regulation in almost all European countries.

In order to provide these services, Premium Rate Service providers must sign a contract with the PTO which contains the conditions for connecting Premium Rate Services to the PSTN and the specific numbers and access codes allocated to the service provider. Providers of Premium Rate Services are then required to comply with the specific conditions for operating the service. These provisions are contained in regulations which in some countries are specific decrees, laws or class licences, while in other countries are "codes of conduct". These conditions regulate the content, marketing, advertising and pricing of all Premium Rate Services in accordance with a framework which differs from country to country, but which in general covers the following issues:

- Responsibilities of the service provider and of the PTO
- Content of services
- Advertising/Marketing of services:
 - Pricing information
 - Content of advertising
- Guardianship of minors and incapable persons
- Restrictions in access to services
- Time limitations of services

The issues listed above have been analysed in different European countries (those which made their regulation on Premium Rate Service available to ETO). The result of this analysis is presented in the following pages.

-Responsibilities of the service provider and the PTO

-In Belgium, Premium Rate Services are regulated by an Ethics Code the provisions of which apply to all signatories of contracts between the PTO and the service provider. Each contract contains a clause similar to the following: "it is believed that the contracting party knows and accepts the provisions of the Ethics Code. The service provider commits himself to making the same obligations being respected by third parties he has contracts with and he is considered responsible for breaches of the Ethics Code's provisions."

-In Denmark, where Premium Rate Services are regulated by Executive Order, it is the responsibility of the provider to ensure that notification of service provision is made to the NRA, that the conditions of supply and marketing as set out in the Executive Order are observed and that supply is made in accordance with the regulations on categorisation of Premium Rate Services contained in the Executive Order. All relations with the telephone subscribers concerning the provision of Premium Rate Services are the responsibility of the telephone companies which are also responsible for the registration of all calls provided by the service, for invoicing and collection of charges.

-In France, Premium Rate Services are covered by specific contractual dispositions relative to deontology and specific bodies regulate these services. The operator is neutral with regard to private mail and cannot refuse to transport a message because of

its content. The operator provides a kiosk billing system for these services, being in charge of the invoice and of collecting payments in the name of the service provider. The Supreme Telematic Council, created by decree in 1993, is in charge of deontologic matters and approves the "kiosk" contracts between the PTO and the service provider. Provisions regulating Premium Rate Services can be found in the "kiosk" contracts, in the law regulating secrecy of telecommunications correspondence, in the Penal Code, in the Code of Post and Telecommunications, in the law regulating the freedom of communications, in the law on audio-visual communications, in laws on consumer protection and in other regulations.

-In Italy, where Premium Rate Services are regulated by Decree, the service provider is responsible for content and means of provision of the service. The telephone network operator is only responsible for transport of information and for the invoicing and collection of charges according to the rules provided for in the telephone subscription regulation.

-In Norway, the telecommunications carrier is responsible for services to subscribers, i.e. signals transmission, lawful registration, invoicing and collection of payment for Premium Rate Services. The Premium Rate Service provider is responsible for the content and the marketing of the service.

-Spain has a "code of conduct" regulating the provision of Premium Rate Services, in which it is stated that service providers are responsible for ensuring that the content and promotion of their services comply with the provisions of the code of conduct and of general legislation.

-Switzerland: nothing is said about responsibility in the small amount of information made available to ETO so far.

-In the UK, the Premium Rate Service provider has a contract with the PTO, under the terms of which the PTO pays the service provider a specified amount of the revenues collected from Premium Rate Services callers. OFTEL, the UK telecommunications regulator, has a control power which is limited, in practical terms, to imposing controls on PTOs via their section 7 Telecommunications Act 1984 licences. There can be no direct regulatory control by OFTEL over service providers. In 1986 ICSTIS (Independent Committee for the Supervision of Standards of Telephone Information Services) was established as an independent, non-statutory body, funded by telephone companies. ICSTIS developed a Code of Practice for Premium Rate Services, the scope of which included Premium Rate Service promotion, supply conditions and content. During the following couple of years, problems developed within the Premium Rate Service industry, mainly caused by "live" services (especially chatlines). The main difficulties were in a lack of adequate control for customers over the types of services that could be accessed and the charges that might be incurred. These difficulties culminated in a reference made by OFTEL to the Monopolies and Merger Commission (MMC) in July 1988. In January 1989 the remedies identified by MCC were:

a) BT to provide itemised billing; notification when bills reach a pre-set limit; call barring for Premium Rate Services; and calling line identification - when feasible to do so; and that

b) in the interim, BT could provide live Premium Rate Services only in accordance with a Code of Practice for live services agreed between the Director General of Telecommunications, BT and the service providers. The Committee envisaged that the work of monitoring and enforcing the Code would be carried out by a regulatory body such as ICSTIS.

OFTEL thus took on a role in regulating live, but not recorded, Premium Rate Services. It does this by requiring PTOs which provide live Premium Rate Services to ensure that the service providers they contract with comply with a special Code of Practice recognised by OFTEL. A separate Live Services Code of Practice was drawn up by ICSTIS and duly recognised by OFTEL in August 1989.

Compliance with the Codes is currently regulated on a day-to-day basis by ICSTIS. However, the PTO licences make provisions for regulatory intervention by OFTEL.

Before a service provider can start providing any "live conversation services" he must make an initial contribution to either the Chatlines Compensation Fund or to the Live Conversation Services Compensation Fund and be capable in all other respects of complying with the terms of the Code of Practice for Live Conversation Services.

-Content of services

-Belgium divides Premium Rate Services into two categories identified by the prefixes '077' and '0900'. The following services are excluded from the '0900' group: services of an erotic or pornographic nature; leisure messaging services or live conversation services; dating services or services aimed at preparing and organising meetings between people.

The following services are excluded from the '077' group: services targeting minors; all services using or mentioning minors during the service or in its advertising; medical, psychological or social information services; services collecting funds or charity services.

Premium Rate Services cannot incite any person to engage in practices against the international conventions undersigned by Belgium or against law and regulation in force: they must not deceive people with incorrect, ambiguous, exaggerated or false information; they cannot favour racial, religious or political discrimination; induce people in practices which could damage physical or mental integrity of people or their security; they must not make an attempt against honorability of any person or group of people.

Premium Rate Services must include, at least every ten minutes, a message informing the caller of the time elapsed and of the cost of the call.

-Denmark divides Premium Rate Services into three categories (I, II, III) with different prices and different levels of restriction to the public in accessing the service. Only the content of services in category I and II is regulated: these services must not contain any elements of a sexual or erotic nature, contact procurement with a sexual purpose or any other elements of this nature; no description of violence of any kind; no games and/or competitions; the service must not be specifically aimed at children under 16 years and must not be unsuitable for children under 16 years.

-In Italy, Premium Rate Services must not contain incorrect or obsolete information and they must not mislead the user; they must not be misleading with regard to content and cost of information provided; they must not contain subliminal messages. Information contained in Premium Rate Services must not cause offence, induce or promote discrimination on the basis of race, sex or nationality or incite any form of violence; it must not cause offence to religious beliefs or ideals; it must not encourage or incite any person to engage in practices which are discriminatory or which endanger health, security and the environment; it must not cause moral or physical damage to minors. Information contained in Premium Rate Services must not incite any person to the use of alcohol, tobacco or drugs. This information must not be of an erotic,

pornographic or indecent nature. Information provided through Premium Rate Services must not result in any invasion of the user's privacy.

-In Norway, all Premium Rate Services must respect the following requirements:
The information provided must be legal. Premium Rate Services must not contain descriptions of any kind of violence, except that which is part of news services; they must not be aimed specifically at persons under the age of 16; they must not cause offence against decency, have a brutalising effect or be morally degrading; they must not provide contact services or chat-lines for the purpose of sexual encounters, or be conducted in a manner that could imply such purposes. Premium Rate Services must not deal with sexual or erotic matters, whether directly or indirectly, or be conducted in a manner which is suggestive of such matters. Information services provided on a medical or other justifiable professional basis are exempt from this prohibition. Chat-lines may not be restricted in such a way that a service provides direct contact among a limited group of users.

-In Spain, Premium Rate Services must not contain or promote any discrimination on the basis of sex, race or religion or any other offence of the essential rights or the public freedom; they must not induce or incite any person to engage in illegal practices; they must not contain incorrect or out-of-date information which can be misleading for the user; they must not induce an unacceptable sense of fear or anxiety; they must not encourage or incite any person to engage in dangerous practices or in practices which can result in mental or physical damage; they must not infringe the legal provisions and rules on secrecy of communications, copyright, privacy or any other rule applicable to the nature of the service; they must not be unreasonably prolonged or delayed.

-In Switzerland, providers of Premium Rate Services, like providers of any value added services in general, cannot provide unlawful messages on calls and cannot allow unlawful conversations or calls. In particular, the following are forbidden: representation of violence; recording and representation of pornography; incitement to violence. The provision of erotic information or allowing erotic conversations is permitted only to users holding a personal password.

-In the UK, all Premium Rate Services must not contain incorrect information and it should be clear to consumers when time-sensitive information was last updated and must not be unreasonably prolonged or delayed. No service shall enable a caller to receive a prize, reward or benefits, the value of which relates only or predominantly to the duration of the call. Services which themselves promote products or services must also comply with specific provisions, also contained in the Code of Practice. Where a service promotes other products or services, and such promotion exceeds 15 seconds, the advertised services must be provided before the promotion. Service providers must use all reasonable endeavours to ensure that all their services are of an adequate technical quality.

Providers of Live Conversation services must not provide any false, out-of-date or misleading information or communicate any information unlawfully. Service providers must use all reasonable endeavours not to allow any talk of a kind or do anything that is likely to encourage or incite any person to commit a criminal offence; cause grave offence by reason of sexual or violent content; involve the use of foul language; debase, degrade or demean; induce or promote racial disharmony; encourage, incite or suggest to any person the use of harmful substance; encourage or incite any person to engage in dangerous practices; induce an unacceptable sense of fear or anxiety; result in any unreasonable invasion of privacy; mislead any person with respect to the content

or cost of the service being offered; prolong or delay the service unreasonably. Providers of Live Conversation services must actively discourage callers from giving out or encouraging the giving out of surnames, places of work, addresses or telephone numbers, or arranging or attempting any meeting while connected to a Live Conversation Services; or failing to respond to Operators' enquires. Service Providers must ensure that Operators cut off any caller who does not comply with the requirements set out above.

-Advertising/Marketing of services (Content of advertising; Pricing information)

-In Belgium, advertising of Premium Rate Services cannot incite any person to engage in practices against the international conventions undersigned by Belgium or against law and regulation in force; they must not deceive people with incorrect, ambiguous, exaggerated or false information; they cannot favour racial, religious or political discrimination; induce people in practices which could damage physical or mental integrity of people or their security; they must not make an attempt to denigrate the respectability of any person or group of people. Moreover, the Penal Code totally prohibits advertising for sexual services by telecommunications means.

Price indication is compulsory in all advertisements related to a Premium Rate Service and it must be clearly visible or audible.

-In Denmark the service provider, through advertising and other forms of marketing, shall clearly indicate the price of a call to the line; whether the service implies the use of terminal equipment other than a telephone; that the service, if classified in categories II and II, cannot be used by all telephone subscribers. The name and address of the provider shall be clearly indicated if the provision is advertised in printed media or TV spots.

Advertising and other marketing of Premium Rate Service provision must be made in accordance with the principles of good marketing ethics contained in the Marketing Act.

-In Italy advertising of Premium Rate Services must respect the rules and limitations applicable to the advertising of any other good or service, and the content of advertising is regulated by more or less the same rules regulating the content of services (see above). In any case, advertising must include, in a way which is clear, easily perceivable, unmistakable and horizontally placed: the nature of the service, maximum duration and prohibitions for minors, if any; cost of the service per minute plus VAT; identification, name and address of the service provider; in the case of "chat-lines", advertising must also indicate a telephone number to be contacted in case of emergency; in the case of services related to competitions, advertising must also indicate details of the authorisation from the Ministry. TV and radio broadcasters are not allowed to advertise or promote interactive Premium Rate Services e.g. "direct line" for entertainment and conversation, "voice messaging", "one-to-one", and "hot-line" from 7 a.m. to 11 p.m.

-In Norway, the telecom carrier and the Premium Rate Service provider shall make available to the public in an unambiguous manner: the cost of using the service; name, address and telephone number of the Premium Rate Service provider; the right to complain and procedure for filing complaints in the event of any dispute concerning a Premium Rate Service. The telecom carrier must make available to the general public, information on how to restrict access to the service and how to request itemised bills. The telecom carrier must also provide information on prices to users of Premium Rate Services when a service is introduced.

-In Spain, the service provider must clearly specify information on prices in all promotional materials. The price of a Premium Rate Service has to be per minute and must include VAT. Advertisements have to comply with the rules applicable to advertising. Advertisements must not contain anything which is likely to cause widespread offence. An advertisement should always be designed and presented in a way that anyone who looks at it can see, without having to analyse it closely, that it is an advertisement for Premium Rate Services. The name of the service provider must be clearly stated in the promotional material. When the Premium Rate Service is a specialised service, advertising must clearly indicate the status and the experience of the person or organisation which provides the service involved.

-The UK: Providers of Premium Rate Services should take all reasonable steps to ensure that promotional material does not reach those for whom the service concerned may be inappropriate. Promotions transmitted by radio, television, teletext, telephone, facsimile or any other form of communications must observe the provisions on promotion in the manner most reasonable and appropriate to the technology employed. Service providers must also comply with the British Codes of Advertising and Sales Promotion which is supervised by the Advertising Standards Authority.

In all promotional material, the prefix number must be separate from the rest of the telephone number so that it can be readily identified as a Premium Rate or an international prefix. In the case of international service, the country of origin must also be clearly stated. For any promotion the identity and address of either the service provider or information provider must be clearly stated. In the case of services promoted in publications or other media which have a long shelf life, a statement should be included in the promotion to the effect that the information given is correct as at the date of publication and that date should also be stated. The service provider must ensure that the charge for calls for each service is clearly stated in all promotions. Prices must be noted in the form of a numerical price per minute, inclusive VAT, or the total maximum cost to the consumer of the complete message or service. In the case of promotions transmitted in television programme time, the pricing information must be spoken as well as being visually displayed if the maximum call cost exceed £2.00. Textual pricing information must be legible, prominent, horizontal and presented in a way that does not require close examination.

In addition, in the case of Live Conversation Services, the promotional material in relation to special services must indicate the current status and relevant professional experience of the persons involved in providing the relevant special service; the promotional material must not be misleading in relation to the service actually provided; should not encourage children or young people to call the services; no advertisement may be placed in publications directed primarily at persons under 18; the promotional material should state clearly that conversations are being constantly recorded.

Some other specific provisions apply to particular categories of services.

-Guardianship of minors and incapable persons

-In Belgium, the content of services targeting minors must be suitable to their age and respect their rights and interests. Services targeting minors and the promotion of these services must not contain information which can harm or exploit their natural credulity, lack of experience or discretion and they must not directly incite the minor to contact Premium Rate Services. The maximum price charged for each call must be explicitly mentioned in all advertising for these services. The maximum duration of these services is ten minutes.

-In Denmark, with reference to services categorised in category I and II, the Executive Order regulating Premium Rate Services states that the services must not be specifically aimed at children under 16 years of age and they must not be unsuitable for children under 16 years of age. In advertisements for these services there must be no reference to the target group being adults only.

-In Italy Premium Rate Services information and provisions are, as a rule, destined to persons older than 18 years, with the exception of those services specifically targeting minors. Information provided through Premium Rate Services targeting minors must not: have a content which can mentally or morally harm them or can represent a threat to their health, security or growth; abuse of their natural credulity, lack of experience and of their sense of loyalty; appeal to their needs of affection and protection. In particular, Premium Rate Services targeting minors must not: lead to the violation of rules of social behaviour generally accepted; lead to engage in dangerous practices and situations; invite to call back again the same or other Premium Rate Services. The cost of Premium Rate Services targeted to minors must not exceed a pre-determined level of tariffs and their duration must not be longer than four minutes. After four minutes, the line must be automatically disconnected by the service provider. Prize competition services lasting more than four minutes are forbidden. Minors are also mentioned in specific rules which apply to particular categories of services that cannot be provided to persons under 18 years and detailed procedures to be followed by the service provider in order to certify the age of the user are given. Premium Rate Service providers must not take advantage of people who, even if not incapable, are, even temporarily, in a situation of infirmity or physical deficiency or who are handicapped or for any other reason psychically vulnerable.

-In Norway the regulation on Premium Rate Services states that Premium Rate Services may not be aimed specifically at persons under the age of 16.

-Spain considers as "children's-juvenile" services those Premium Rate Services which are targeted to persons under 18. These services must not: contain any reference to practices which any reasonable father would not like his children to learn this way; use a vocabulary which a good father would not like his children to listen to; invite minors to call the same or other Premium Rate Services again; result in any way in an invasion of the minors' privacy; contain anything which can psychically or morally harm the minors, abuse of their natural credulity, lack of experience or of their sense of loyalty. Premium Rate Services targeted to minors must announce in advance the cost per minute and must not last longer than eight minutes. After eight minutes, the line must be automatically disconnected by the service provider. Those services lasting more than eight minutes must announce in advance in a clear way that the service must be used only with the consent of the person responsible for payment of the telephone bill. Premium Rate Services targeted to minors must only be available in hours when there presumably is a responsible person at home, i.e. from 18 to 24 in working days and from 12 to 24 in holidays. Minors are also mentioned in specific rules which apply to particular categories of services that cannot be provided to persons under 18 years. Premium Rate Services must not take advantage or impinge on the privacy of any person mentally incapable or unbalanced or any vulnerable person, taking into account the special protection that these people need.

-Switzerland: The only information available at the moment is that the service provider is not allowed to give the personal code necessary to access erotic services to persons under 16 years.

-In the UK there are special rules for children's services, which are those Premium Rate Services aimed, either wholly or in part, at persons under 18 years of age. No children's service may cost more than £3.00 and all children's services must be terminated by forced release. All children's services that can cost more than 50p must be prefaced by a short statement clearly stressing that the service should only be used with the agreement of the person responsible for paying the telephone bill. Promotional material for children's services must clearly state the maximum possible cost of the service and that it should only be used with the agreement of the person responsible for paying the telephone bill. Children's services, and any associated promotional material, should contain nothing which is likely to result in harm to children, or which exploits their credulity, lack of experience or sense of loyalty. Services must not be of a kind that might involve an invasion of privacy of any child. Direct appeals to buy must not be made to children unless the product or service is one likely to be of interest to them and one which they could reasonably be expected to afford for themselves. Children's services must not encourage children to ring to other Premium Rate Services or the same service again. Promotion must not encourage excessive use of Premium Rate Services. Children's services must not include anything that a reasonable parent would not wish their child to hear or learn about in this way.

In addition, in the case of Live Conversation Services, operators shall do everything practicable in accordance with the procedure set out in the Code of Practice to prevent persons under 18 years of age taking part in any Live Conversation Services. If an operator has reasonable grounds to suspect that the caller is under 18, he has to adopt the procedure set out in the Code of Practice in order to find out if the caller should be regarded as being under 18 and be cut off.

-Restrictions in access to services

-In Belgium, the Ethics Code regulating Premium Rate Services, does not contain any provision on restrictions in accessing services. However, the general conditions for prescription to telephone services foresees the possibility of restricting the access to 007 services after a single payment and to 0900 services through a payment of a monthly rate.

-In Denmark Premium Rate Services provisions of category I are available to the general public. This means that all telephone subscribers have access to these services. Services of category II are immediately available to telephone subscribers under those exchanges which offer the possibility of service restrictions. Services of category III are available only to those telephone subscribers who have requested their telephone companies to be given access to the line. However, category III services may be provided only to telephone subscribers under those exchanges which are technically equipped to give individual access to subscribers of category III services. Upon request in writing, the individual telephone subscriber may arrange for service restriction in accessing category II services. Upon request in writing, the individual telephone subscriber may have his telephone line activated for access to provisions of category III service.

-In Italy the activation of a telephone line for access to Premium Rate Service provisions is possible only upon written request from the telephone subscriber. Notwithstanding this rule, the Ministry of Telecommunications may authorise, with a motivated measure, the provisions of Premium Rate Services of a particular social interest, even of an informative nature only or exclusively cultural.

-In Norway Premium Rate Services are divided into three categories: general utility services (Category I); entertainment services, etc. (Category II and III); subscription services. Services in categories I and II may be offered via ordinary telephone services. Subscribers may request restrictions of access to these services by submitting a written request to the telecom carrier. Services in category III are offered only to those subscribers who submit a written request to have access to the service to the telecom carrier. Category III services can be provided only if the possibility exists for the subscriber to request invoices containing itemised specifications of the subscriber's use of the dialled number.

-In Spain, the code of conduct regulating Premium Rate Services only mentions the user's need to have a code of access for Voice Box services (telephone messaging services) and for "closed teleconferencing" services.

-In Switzerland, the only information available on this issue is that the provision of erotic information or allowing erotic conversations is permitted only to users holding a personal password e.g. a PIN code. The password is given by the service provider who must not give a password to persons under 16 years.

-The UK: Adult Premium Rate Services may only be accessed by customers via a pre-arranged PIN code

-Time limitations of services

-In Belgium, all '0900' services are automatically cut off at the end of the service by the service provider. Only games and competitions which are under seven minutes in length are admitted in the '0900' group. Services targeting minors which are not covered by this provision, have a maximum duration of 10 minutes.

-In Denmark the provider shall ensure that connection to a Premium Rate Service is cut after a suitable length of time seen in relation to the normal use of the service. However, the connection must be cut after a period not exceeding 30 minutes.

-In Italy the maximum duration of a Premium Rate Service cannot exceed the time limitations provided for in the existing contract between the public telecommunications operator and the service providers. These time limitations are pre-determined and proportional to the tariff rate in which the service is categorised. As already mentioned, services targeted at minors cannot last more than four minutes.

-In Norway a Premium Rate Service provider shall ensure that the dialled connections are cut after an appropriate length of time, depending on what may be deemed normal usage of the specific service. In any case, a connection must be cut after 30 minutes in category I services and 20 minutes in category II services. There is no connection time limit to category III services.

-In Spain, time limitations in the duration of services are provided for only for certain services and vary from service to service. As already stated, services targeted at minors have a maximum duration of eight minutes, with possible extensions. In the case of services aimed at the promotion of a product or service, the total duration of a call must not exceed five minutes. When the promotion is based on a competition, the service must not last longer than 3 minutes. "Leisure multi-conference" services must have a duration not exceeding 30 minutes, after which the service provider must automatically cut the connection.

-The UK: No time limitations are provided for in the Codes of Practice.

As it appears from the description given above, the regulation of Premium Rate Services is very often not telecommunications-specific, is very detailed, is a very sensitive issue in many countries and widely differs from country to country. Therefore, ETO suggests that proposals for harmonisation of specific regulations for PRSs are out of the scope of this report.

Moreover, in addition to the conditions established for other liberalised services, providers of Premium Rate Services have to provide users with certain information on their services, but since this is also part of specific regulations for PRSs, it is not dealt with in this report with regard to harmonisation.

ANNEX 3 - DEFINITIONS OF CLOSED USER GROUPS¹⁴

EUROPEAN UNION	<p>In the "Communication by the Commission to the European Parliament and the Council on the Status and Implementation of Directive 90/388/EEC on Competition in the Markets for Telecommunications Services" (April 1995):</p> <p>-Closed User Groups are "Entities, not necessarily bound by economic links, but which can be identified as being part of a group on the basis of a lasting professional relationship among themselves, or with another entity of the group, and whose internal communications needs result from the common interest underlying this relationship. In general, the link between the members of the group is a common business activity."</p> <p>An early definition of CUG includes:</p> <ul style="list-style-type: none"> -one company and its branches; -companies active in the same sector; -companies belonging to a "business community" constituted by one company, its employees, its branches, its main suppliers and customers.
BELGIUM	<p>Closed User Groups are " entities with clear socio-economic or professional links, pre-existing to the offering services and which are broader than simple necessity for mutual communications".</p>
DENMARK	<p>A definition of Closed User Groups does not exist and the concept is not recognised in national regulation</p>
FINLAND	<p>A definition of Closed User Groups does not exist and the concept is not recognised in national regulation</p> <p>ETSI definition of Closed User Groups is applicable. The Finnish Administration has defined "a customer": one corporation and its branches (capital relationship), public institutions and agencies under the same budget etc.</p>
FRANCE	<p>The notion of CUG is not defined by law. The DGPT broadly defines a CUG as:</p> <p>"Any group with a common interest pre-existent to the telecommunications service envisaged and sufficiently stable to be precisely identified".</p> <p>DGPT has defined a number of criteria which can help in better understanding the definition of CUG:</p> <ul style="list-style-type: none"> -a geographical area <u>does not</u> define a CUG; -a CUG may include staff members for teleworking applications; -a CUG <u>cannot include</u> individuals using the telecommunications service for private personal communications; -the existence of a legal link between members of the group is neither required nor sufficient to define a CUG.

¹⁴ Definitions of Closed User Groups in force in the countries signatories of the One-Stop-Shopping procedure presented in this table can also be found in the ETO database on licensing.

**FRANCE
(continuation)**

Examples of CUGs are:

- A firm and its subsidiaries when they operate in the same economic sector;
- Firms operating in a given economic sector and engaged in partnership;
- A firm and its franchise holders.

GERMANY

Two definitions of CUGs exist:

a) CUGs of consolidated enterprises, meaning corporations and partnership integrated by a capital relationship. Examples of consolidated enterprises are:

-Enterprises which are party to a control agreement between them in accordance with

§ 291 of the German Stock Corporation Law (AktG) or to a corresponding contractual arrangement. If an enterprise (dependent enterprise) subordinates its management to that of another enterprise (dominant enterprise) on the basis of a control agreement in accordance with § 291 of the German Stock Corporation Law (AktG) or to a corresponding contractual arrangement, the dependent enterprise, together with all other enterprises which are dependent on it, are regarded as consolidated; all these dependent enterprises are also considered consolidated with the dominant enterprise;

-Enterprises integrated into one another in accordance with § 319 of the German Stock Corporation Law or to a corresponding contractual arrangement. If several other enterprises are integrated in an enterprise (principal company) in accordance with § 319 of the German Stock Corporation Law or to a corresponding contractual arrangement, all these enterprises are regarded as consolidated with one another and with the principal company;

-Enterprises, in which one is a majority-owned enterprise and the other holds a controlling interest in it. If an enterprises has majority holdings in several other enterprises (majority interests), these other enterprises are all regarded as consolidated with one another and also with the enterprise holding the majority stakes. § 16 (2) and (4) of the German Stock Corporation Law are applicable to the calculation of the participation.

b) Predesignated group of subscribers, meaning a group characterised by the fact that its members are either interconnected or connected with one and the same member of this group by permanent relations either under company law or under a contract.

ITALY

CUG means a group of persons linked together by a stable common professional interest which can justify the creation of the closed users group with the aim of fulfilling internal communications requirements directly connected to the above-mentioned interest.

NETHERLANDS

The definition/interpretation of Closed User Group (CUG) is the following: "Companies belonging to the same economic entity and any group pre-existent to the telecommunications service envisaged, with a professional and stable relationship of economic or professional nature".

Criteria and examples which explain CUGs more clearly are the following:

-a single organisation encompassing distinct legal entities, such as a company and its subsidiaries or its branches in other Member States incorporated under the relevant domestic company law (often referred to as "corporate network");

-different institutions or services of international and intergovernmental organisations;

NETHERLANDS (continuation)

-a common activity network. In this case the link between the members of the group is a common business activity (in the broad understanding of the concept). Examples of activities likely to fall in this category are fund-transfers for the banking system, reservation systems for airlines, information transfers between universities involved in a common research project, inter-library activities, common design projects;

-an "integrated business community", or "business web", encompassing a corporation, partially owned subsidiaries, its employees working outside the company premises, major suppliers and customers (e.g. qualified users in support of another business objective as a technical help desk) or dealers.

SPAIN

A CUG consists of:

-an individual or a legal entity using the service for himself, in different cases than those considered in article 9.1, a) and b) of the Telecommunications Act;

-associations formed by a public territorial Administration - as listed in article 2 of Law 30/1992 of 26 November for Public administrations Legal Regime and for Common Administrative Procedure - and by the institutional Administration depending on each one of those;

-a group of companies, understood in the terms foreseen in article 42 of the code of Trade;

-groups formed by non-profit entities for communications among them or among their members in order to achieve common aims and projects;

-groups formed by subjects who develop a common activity, for the communications arising from this activity;

-groups formed by enterprises, their affiliate companies and employees working outside headquarters, as well as by their main suppliers and customers, for the communications developed in the frame of their industrial or commercial activity.

SWITZERLAND

A CUG is:

A - a company and its branches;

B - individual and legal entities linked together by stable business activities based on contracts or shareholdings. These relationships can exist between all participants or between one of them and all the others.

**The UNITED
KINGDOM**

A definition of Closed User Groups does not exist and the concept is not recognised in the national regulation

ANNEX 4 - COMMENTS FROM ECTRA MEMBERS

Some ECTRA members have requested the following comments to be included in annex to this report :-

Denmark:

We can inform ETO that ETO's report on other liberalised services is coherent with the former Danish regulatory system within telecommunications as far as these services are concerned.

However, the existing telecommunications regulation in Denmark has been amended by Laws adopted by the Danish Parliament on 31 May 1996. All telecommunications services including voice telephony as well as the related infrastructure have been liberalised as of 1 July 1996. However, the Executive Orders which have to carry out this liberalisation have not yet been issued. As far as the regulation on other liberalised services is concerned, the free regime is expected to be replaced by a general class licence covering all telecommunications services including voice telephony, bearer data services and other liberalised services (excluding premium rate services). It is foreseen that the general class licence will contain specific regulation on, inter alia, consumer protection. The relevant Executive Order is expected to come into force in the beginning of August 1996.

It can therefore not be excluded that Denmark might impose conditions - also on providers of other liberalised services - regarding competition issues and consumer protection in excess of the maximum level of licensing conditions which are contained in the conclusion of the ETO report.

Therefore we would like to draw your attention to the fact that if this happens the Danish telecommunications regulation on other liberalised services will not be coherent with ETO's report on other liberalised services.

(Source: National Telecom Agency - Denmark)

Finland:

We would like to inform ETO that the new telecommunications legislation will come into force on 1 August 1996 and there will be some changes in licensing procedures in Finland.

For operation of telecommunications (service and network provision) to Closed User Groups will be *Registration* needed.

Definition of Closed User Group:

A Closed User Group can be any group bound by economical, by professional or by business relationship and which has a need to communicate within the members of the group.

(Source: Ministry of Transport and Communications - Communications Department - Finland).

France:

The new French law on the regulation of telecommunications has been adopted and published at the "Journal Officiel" on 27 July 1996. It impacts the description of the existing situation in the ETO report, but not the conclusions since France is in conformity with them.

Services covered by the ETO report may now be provided in France without any registration or authorisation. They must comply with the essential requirements as well as the prescriptions on defence and public security. Technical prescriptions on the essential requirements may be defined in a decree. Other regulations still apply.

Therefore, the description of the procedures in order to be authorised in France is not updated any more in this report.

(Source: Ministry of Post and Telecommunications – France)

Portugal:

1-As known, the Portuguese telecommunications framework for the liberalised services is implemented as complementary services and value added services.

Therefore, and in our view in the present report some services can be qualified by "complementary" or "VAS".

We do think at this moment that the only way to characterise a service is through the description of the service and the description of the system.

With this element the NRA should be able to give a licence to the service provider, case by case.

2-We do think that this report is eventually supposed to be sent to the Commission as it stands, and we would like to state a general reserve about its contents.

In fact the substance of the report is touching a very sensitive area, which is at the moment in discussion at the Council level, where the juridical regimes of the Member States are decided.

Nevertheless we propose/comment the following:

Page 18 of the report -2.2.1 a): we would like to propose the contents of our legislation about the settlement of share capital.

"Direct or indirect participation of a public telecommunications operator in the share capital of another complementary telecommunications operator licensed for the provision of the same complementary telecommunications service shall be limited to 10%".

The limitation foreseen in the article 19 of Law n.88/89 of September are applicable. The article 19 of the above mentioned law says «foreign capital» - the direct or indirect participation of foreign individuals or collective bodies in the share capital of public service telecommunications operators as well as of complementary telecommunications operators may not exceed 25%.

Page 34 of the report -3.1.1 Nationality restrictions and need for a local presence: at this moment it is very difficult to accept the content of this point.

In Portugal we do not have a nationality restriction; what is required in our legislation Decree-Law n.346/90 of 3 November is the establishment in Portugal, as says the article n.5, 1.a) «to be legally incorporated and registered on the National Register of Corporate Bodies....».

It must be also reminded that about establishment there is a need to comply with Commercial Law.

We also emphasise that as we have been informing before it is not clear that the need for establishment for providing a service in Portugal is contrary to the Community Law; this is a subject that must be treated at the EU level.

And concerning the fact that the subject is in discussion at WTO/NGBT/GATT means that many countries are still dealing at the political level.

Page 35 of the report - second paragraph: we do not agree with the proposition of ETO.

We have been informing that our framework imposes the need of having a legally registered representative service provider.

Therefore about this subject we would like to state a general reserve.

Page 36 of the report - e): the information is needed, as NRAs have the obligation of fiscalisation, envisaging protection of the consumers and that is what is in force in Portugal.

Page 45 - 3.3.3: We would like to clear out that fees are supposed to cover the issue, management, enforcement and control of the authorisation/licence.

(Source: ICP - Instituto das Comunicações de Portugal)

ANNEX 5 – RESULTS OF THE WORKSHOP

MAIN OUTPUTS OF THE WORKSHOP ON HARMONISATION IN TELECOMMUNICATIONS LICENSING

Brussels, 7 October 1996

The Workshop, held in Brussels and attended by more than 70 participants, had the purpose of presenting to and discussing with the industry the two first ETO's studies on harmonisation of licensing procedures, the one on "Bearer Data Services" and the one on "Other Liberalised Services".

The logic of conducting a study on harmonising licensing conditions and dividing it into two separate reports comes from the Services Directive (90/388/EEC), which distinguished between the two sets of services.

The conclusion reached by ETO in its proposals for harmonisation for "Bearer Data Services" and "Other Liberalised Services" actually included a large part which was common to the two groups of services, even if some conditions which were specific to certain services had been identified. Premium Rate Services and Voice to Closed User Groups (both of them included in the study on Other Liberalised Services) may be made subject to some specific conditions which are not applicable to other services.

The two ETO's studies were very much welcome by the industry because of their quality and the usefulness of the details that were contained therein, and because they addressed one of the dangers existing in European telecommunications market. This is that the implementation of Directives could be so different in each country that the result could be 15 different European markets. Therefore harmonisation is of extreme importance.

General comments on the proposal for a Registration procedure

- It might be true that Registration is not a burden for a company wishing to provide a service in a single country, but it is definitively a burden when the company is a global service provider which would have to register in many different countries. This proposal might be a signal to regulators that there might be a usefulness or validity in having any kind of registration for liberalised services, which is definitely not seen by the industry.
- Concerns with regard to the justification that Registration could in some cases guarantee the service provider. Registration is not at all a guarantee, but it's an odour of gratuity scrutiny from the NRAs which is not required to protect consumers nor for essential requirements. This is especially true when the information request is only service provider's identification and service description, information which any serious operator gives to users. General authorisation must be encouraged most strongly in those jurisdictions which are in the process of preparing new regulation.

- Registration might be justifiable for voice services and for value added services in relation to voice, but there is no justification or real need for Registration in terms of data, either reselling or value added. As far as these services are concerned, Registration is unnecessary and General authorisation/Class licence, where the provider can simply start to provide the service, is the best solution and should be encouraged.
- Registration would really impose an administrative burden on operators willing to enter the market and it represents a form of a priori control which should not be in place in a competitive environment. The fact that NRAs can have the power of an a priori control creates a sort of hierarchy between NRAs and operators in which NRAs are the strongest part. This situation is very unusual for a liberalised market compared to other markets (other than telecommunications).
- Consumer organisations are of course not interested to impede that market forces work properly, so if it is the industry's opinion that General authorisation is the best solution, consumer organisations would be very much in favour. On the other hand, the Registration regime gives the consumer organisations the impression that users can obtain clearer information on prices, on contract terms and on conditions. So, from the consumers point of view, Registration is something which gives more assurance about consumer protection. Therefore, consumer organisations are in a sort of dilemma and would like to ask the Commission and ETO if they could give some indications on how much costs are involved in Registration, because costs in general affect consumers.

Detailed comments on ETO's proposals

- Concern was expressed on the statement, contained in ETO's reports, that the nationality of an operator asking for a licence is totally irrelevant. It should be considered important not only what's necessary to build the internal market, but also to ensure that Europe as a whole is able to get equal market access and as far as this is concerned, there are very few weapons. So, there should be at least some concern paid by the European Commission to the nationality of an operator seeking a licence when it is impossible or rather difficult for an European operator to get a licence in the home-country of such an operator.
- The proposals made in ETO's reports are quite liberal, and aimed at avoiding any undue market burdens on service providers. However, the proposal of a general authorisation where national general law remains applicable, should take into account the fact that national general laws often contain in themselves undue burdens.
- Some concern was expressed on the fact that the proposed harmonised set of conditions represent the "maximum level" of conditions which may be imposed. This does not reassure the industry because NRAs can always decide, just in case, to apply all of the listed conditions, which is the contrary of the idea of minimising and facilitating the working of the market. It would be preferable to see a minimum list of conditions which NRAs have to apply, not a maximum list.
- It is understandable, from a political point of view, that ETO always has to seek for a compromise in order to have a particular point of view approved, however in the interest of the industry ETO should always choose the lowest common denominator, that is really the minimum approach to regulation. If NRAs have a list of conditions from which to choose (a sort of "à la cart" option), this grant the NRAs the opportunity of engaging in

an asymmetric regulation which is sometimes perhaps punishing the incumbent operator in order to create new comers. That would be dangerous because would create market fragmentation. First of all, if NRAs can choose from a long list, the result could be 15 different examples. Secondly, giving NRAs this possibility of choice would result in regulators acting as a proxy. Surely regulation of telecommunications markets should be stricter, but simpler.

- In the ETO's proposal for harmonised information to be provided to NRAs when providing a voice service to Closed User Groups, it is mentioned "description of the Closed User Group". There are some concerns about the actual meaning of this condition: How precise should this description be? Should it contain details on all members of the group?

Comments on the scope of ETO's studies

- Bearer Data Services and Other Liberalised Services were liberalised many years ago and on that extent the two ETO's studies are a little late. There are now many service providers who already have a licence for these services under the current national regimes. They have adapted to this and it is probably not so interesting to focus now on these kind of services. It seems that it is more important to be forward looking. From 1 January 1998 voice and infrastructure will be liberalised, therefore there is a clear need to look at the licensing and at licensing conditions contained in the licences for voice telephony and infrastructure. There are things like licensing conditions and interconnection conditions which are keys of telecommunications organisations business plans and these plans are being formulated at the moment. It seems rather regrettable that ETO is not presenting or proposing a framework for the licensing of voice telephony, infrastructure and other main telecommunications services. It is difficult to understand why the workorders issued by the Commission were rather limited. The Commission should give mandate to ETO to study harmonisation of licensing conditions for voice telephony and infrastructure.