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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 5 June 1992

on the harmonized provision of a minimum set of packet-switched data services (PSDS) in accordance with open network provision (ONP) principles

(92/382/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision ⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas Council Directive 90/387/EEC considers, *inter alia*, the principles for the application of open network provision (ONP) to the areas of packet and circuit-switched data services;

Whereas Directive 90/387/EEC provides in point 3 of Annex III for the adoption of a recommendation on the supply of technical interfaces, conditions of usage and tariff principles applying to the provision of packet-switched data services (PSDS) complying with open network principles;

Whereas packet-switched public data networks are the most common networks through which packet-switched data services (PDS) are made available in all Member States;

Whereas packet-switched public data networks have developed on a national basis and the availability in each Member State of packet-switched public data networks with equivalent capabilities and providing full interconnectivity is important to meet the requirements of pan-European data networking for value-added services provision;

Whereas PSDSs are important in supporting value added services at a European-wide level;

Whereas Directive 90/387/EEC calls for the availability in each Member State of a harmonized PSDS;

Whereas Member States should notify to the Commission those organizations whose provision of PSDSs enables Member States to comply with the provisions of point 3 of Annex III to Council Directive 90/387/EEC; whereas other organizations may offer PSDSs in accordance with this recommendation;

Whereas, pursuant to the principle of non-discrimination, PSDSs shall be available and provided on request without discrimination to all users; whereas, therefore, the terms and conditions which apply to telecommunication organizations when using PSDSs for the provision of services for which no special or exclusive rights may be maintained should be equivalent to the terms and conditions which apply to other users;

Whereas, in accordance with Directive 90/387/EEC, the conditions of ONP may not restrict access to and use of PSDSs except in the application of essential requirements as defined in the said Directive; whereas these restrictions must be objectively justified, follow the principle of proportionality and not be excessive in relation to the aim pursued;

Whereas, in accordance with Article 3 (5) of Directive 90/387/EEC, the Commission will determine the rules for uniform application of the essential requirements in accordance with the procedure laid down in Article 10 of that Directive;

Whereas usage conditions for PSDSs must be derived from essential requirements compatible with Community law and

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 1.

are to be imposed through regulatory means and not through technical restrictions;

Whereas, in accordance with Commission Directive 90/388/EEC ⁽¹⁾, Member States may make the supply of packet- or circuit-switched data services subject to licensing or declaration procedures which are aimed at compliance with essential requirements, or trade regulations relating to conditions of permanence, availability and quality of service, or measures to safeguard the task of general economic interest which they have entrusted to a telecommunications organization for the provision of switched data services, if the performance of that task is likely to be obstructed by the activities of private service providers;

Whereas, in accordance with Directive 90/387/EEC, the Commission has published in the *Official Journal of the European Communities* ⁽²⁾ the list of packet-switched public data networks standards suitable for ONP; this list may be amended by further publication;

Whereas common ordering procedures, one-stop-ordering and one-stop billing and maintenance are desirable in order to encourage the use of PSDSs and the development of competition in the provision of value added services throughout the Community and have been requested by users; whereas any cooperation between organizations in that area is subject to compliance with Community competition law; whereas, in particular, such procedures should not result in price fixing or market sharing; whereas, these procedures are to be established through commercial arrangements, e.g. through memoranda of understanding;

Whereas the implementation of one-stop ordering and one-stop billing procedures by telecommunications organizations must not prevent offers by service providers other than telecommunications organizations;

Whereas, in order to promote European-wide operation by service providers using PSDSs, it is desirable to allow for a system where the called party pays for the calls on the basis of the number called, allowing the offering of free-of-charge calls to the subscriber accessing the service offered by the provider (green number type arrangements);

Whereas, in order to promote the use of PSDSs by small- and medium-size providers of value-added services, it is desirable that billing arrangements which facilitate such operations across the Community are established; whereas such billing arrangements should allow for a system where the cost of the value-added service and the cost of the call are combined in a single bill collected by the organization supplying PSDSs ('kiosk type arrangement');

Whereas it is important in this context that appropriate allocation of harmonized numbering capacity is made to allow the establishment of such service arrangements across

the Community; whereas such allocation should be made in accordance with the principles of transparency and equal treatment;

Whereas quality of service as perceived by the users is an essential aspect of packet-switching; whereas information for users should allow for a comparison between achieved performance and typical or target values;

Whereas, in accordance with Directive 90/387/EEC, tariffs must be based on objective criteria, taking into account that, in a competitive environment, tariffs will align with cost; whereas they must be transparent and properly published and sufficiently unbundled in accordance with the competition rules of the Treaty; whereas they must be non-discriminatory and must guarantee equal treatment;

Whereas Member States may restrict use and provision of PSDSs to the extent necessary to ensure compliance with the regulations on the protection of data, including protection of personal data, the confidentiality of information transmitted or stored and the protection of privacy compatible with Community law;

Whereas other offerings provided by organizations supplying PSDSs in addition to those provided in accordance with the provisions of this recommendation shall not impede the provision of the minimum set;

Whereas, in accordance with the principle of separation of regulatory and operational functions and pursuant to the principle of subsidiarity, the national regulatory authority of each Member State should play an important role in the application of this recommendation;

Whereas, to enable the Commission to monitor effectively the application of this recommendation, it is necessary that Member States provide the relevant information requested by the Commission;

Whereas the Committee referred to in Articles 9 and 10 of Directive 90/387/EEC should play an important role in the application of this recommendation,

HEREBY RECOMMENDS:

1. That Member States ensure that on their territory a minimum set of packet-switched data services (PSDSs) with harmonized technical characteristics in accordance with Annex I is provided, taking into account market demand.
2. That modifications necessary to adapt Annex I to new technical developments and to changes in market demand be determined by the Commission in accordance with the procedure laid down in Article 10 of Directive 90/387/EEC, taking into account the state of development of the national networks.

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 10.

⁽²⁾ OJ No C 327, 29. 12. 1990, p. 19. List of standards reference — Packet-switched public data networks.

3. That Member States take the necessary steps so that, in respect of the PSDSs provided in accordance with point 1, information is published on technical characteristics, supply and usage conditions, tariffs, licensing and/or declaration conditions and the conditions for the attachment of terminal equipment, in accordance with the presentation given in Annex II.
4. That the supply conditions referred to in point 3 include at least:

- information concerning the ordering procedure,
 - the typical delivery periods, which are the periods counted from the date when the user has made a firm request for the service in question and in which 80 % of the requests for each type of PSDSs have been put through to the users.
- Each period will be established on the basis of the actual delivery periods for each type of PSDSs during a recent time interval of reasonable duration. The calculation must not include cases where late delivery periods were requested by users. For new types of PSDSs, a target delivery period shall be published in place of the typical delivery period,
- contractual periods, which include periods generally prescribed for contracts and the minimum contractual periods which the user is obliged to accept for each type of PSDSs,
 - typical repair times, which are the periods, counted from the time when a failure message has been given to the responsible unit within the organization supplying PSDSs up to the moment in which 80 % of all PSDSs of the same type have been re-established and, in appropriate cases, notified as back in operation to the users. For new types of PSDSs a target repair time period shall be published in place of the typical repair time. Where different classes of quality of repair are offered for the same type of PSDSs, the different typical repair times shall be published,
 - any refund procedure,
 - target values for the indicators of quality of service established in accordance with point 6.

5. That Member States, taking into account the work of the European Conference on Postal and Telecommunications Administrations (CEPT)⁽¹⁾, encourage the establishment, in accordance with the procedural and substantive rules of competition of the Treaty and in consultation with users, of harmonized

procedures for user access to PSDSs, provided in accordance with the provisions of this recommendation, in particular via the establishment of the following procedures:

- a common ordering procedure for PSDSs throughout the Community, i.e. an ordering procedure for the procurement of intra-Community PSDSs which ensures that there is commonality, across the organizations supplying PSDSs, in the information which has to be supplied by the user and the organization supplying PSDSs and the format in which the information is presented,
- a one-stop ordering procedure for PSDSs, to be applied where requested by the user, i.e. a system whereby all transactions involving a user which are required for the procurement of intra-Community PSDSs supplied by more than one organization to a single user can be completed at one location between the user and a single organization supplying PSDSs,
- a one-stop-billing procedure for PSDSs, to be applied where requested by the user, i.e. a system whereby the billing and payment transaction for intra-Community PSDSs supplied by more than one organization to a single user can be completed at one location between the user and a single organization supplying PSDSs, and
- a one-stop-maintenance procedure for PSDSs, to be applied where requested by the user, i.e. a system whereby the reporting of faults for intra-Community PSDSs supplied by more than one organization to a single user can be done at one location between the user and a single organization supplying PSDSs, which will coordinate the restoration of services.

The inclusion of the provision of Community-wide charging and billing procedures, allowing notably facilities which enable the called party to pay for the calls⁽²⁾ or the combination in a single bill for the charge for the calls and the charge for the value-added service used⁽³⁾, is to be envisaged, taking into account its technical and administrative feasibility and commercial viability.

These harmonized procedures are to be established through commercial arrangements, e.g. through memoranda of understanding.

6. That common indicators and common measurement methods be adopted for the network performance aspects of the quality of service by organizations

⁽¹⁾ One-stop shopping service Specific Schedule for PSPDN, CAC October 1990.

⁽²⁾ Green number type arrangements.

⁽³⁾ Kiosk type arrangements.

supplying PSDSs in accordance with this recommendation, notably for those indicators in Annex III, in order to allow for the determination of a representative sample of the performance of the PSDSs as well as the statistical end-to-end performance achieved by the network as a whole.

7. That national regulatory authorities take the necessary steps so that annual statistical information showing achieved performance in relation to the quality of service indicators identified in Annex III is made publicly available.

The first annual period should run from 1 January to 31 December 1993.

8. That tariffs be transparent, based on objective criteria and independent of the type of application implemented by the users of the PSDSs, where the same type of offerings is used.

9. That tariffs for PSDSs normally contain the following elements:

- an initial connection charge,
- a periodic rental charge,
- a usage charge,

Where other tariff elements are applied, these must be in accordance with point 8.

10. That Member States inform the Commission before 31 December 1992 of those organizations whose provision of PSDSs enables Member States to comply with the provisions of point 3 of Annex III to Council Directive 90/387/EEC and, thereafter, of any changes to this information.

11. That national regulatory authorities prepare annual summary reports in particular with regard to the availability of PSDSs provided in accordance with point 1 of this recommendation. These summary reports should be sent to the Commission no later than five months after the end of each calendar year, this requirement being reviewed by the Commission in consultation with the ONP Committee in accordance with Article 9 of Directive 90/387/EEC during 1995. The Commission will transmit these summary reports to the ONP Committee.

12. That national regulatory authorities keep available and submit to the Commission on request data on the application of the supply conditions under points 3 and 4 and the statistical information under point 7.

13. That national regulatory authorities establish simple procedures for users of PSDSs which may be invoked in the event of any difficulties encountered in relation to the application of this recommendation.

14. That the Commission, in consultation with the ONP Committee, examine the results of the application of this recommendation, with a view to the fulfilment of the objectives of Directive 90/387/EEC, on the basis of the summary reports provided under point 11.

Done at Luxembourg, 5 June 1992.

For the Council
The President

Joaquim FERREIRA DO AMARAL

ANNEX I

DEFINITION OF A COMMUNITY-WIDE MINIMUM SET OF PACKET-SWITCHED DATA SERVICES WITH HARMONIZED TECHNICAL CHARACTERISTICS IN ACCORDANCE WITH POINT 1 AND RECOMMENDED TIMETABLE FOR THEIR AVAILABILITY

A. GENERAL CONSIDERATIONS

The recommendation aims at the harmonized provision by the organizations notified in accordance with point 10 of a minimum set of PSDSs in accordance with open network provision principles to users in order to facilitate the development of European-wide services.

These services should:

- (i) be made available on an adequately unbundled basis in order to give users maximum flexibility;
- (ii) be structured in the following way (on a service basis):

ONP core offering:

- access/feature set(s) which must be offered by all the networks,
- user selects (one) set in order to have the basic service,
- set to be tariffed as a bundle.

ONP user options:

- feature offered by all networks on an individual basis,
- feature which may be selected by user,
- may in specific cases substitute core offerings features;

- (iii) take into account technological development and the growth in availability of features not considered in the proposed service.

B. STANDARDS TO BE UTILIZED

The standards applicable for this minimum set of PSDSs with harmonized technical characteristics are in particular those in the indicative list of packet-switched public data networks standards suitable for ONP published in the *Official Journal of the European Communities*, in accordance with the procedure in Article 5 (1) of Directive 90/387/EEC. The initial indicative list of PSDS standards suitable for ONP already published in the *Official Journal of the European Communities* will be amended/updated by further publication in the *Official Journal of the European Communities*.

C. TECHNICAL CHARACTERIZATION OF EACH SERVICE AND RECOMMENDED TIMETABLE FOR IMPLEMENTATION

C.1. Offerings to be provided at the latest by 31 December 1992

SERVICE	OFFERING
X.25	CORE OFFERING
	access link data rates: 2 400, 4 800, 9 600 bit/s
	layer 3 for VC (one logical channel)
	USER OPTIONS
	additional logical channels at least to a total of 32 for 9 600 bit/s
	options indicated ⁽¹⁾ in CEPT T/TE 08-02 ⁽²⁾ as E or EA

SERVICE	OFFERING
X.28 ⁽³⁾ dial-in only	CORE OFFERING access link data rate 300 bit/s (V.21 modem), 1 200 bit/s (V.22 modem) X.28 standard terminal profiles USER OPTIONS NUI additional standardized profiles selection ⁽⁴⁾ reverse charging ⁽⁴⁾
X.32 Unidentified service	CORE OFFERING for national use at least one of the two sets: 1. 2 400 bit/s (V.22 bis or V.32 modem) 2. 4 800, 9 600 bit/s (V.32 modem) one or more logical channels reverse charging VC operation
X.32 Identified service dial-in only	CORE OFFERING data rates and modems as per unidentified case identification by NUI or XID support of DTEs as per unidentified case one or more logical channels, VC operation

⁽¹⁾ Except: Call redirection within a network with the same DNIC

International use of CUG facilities
International use of reverse charging facilities
Hunt group
Called line address modified notification
Extended interrupt
CCITT specified DTE facilities

⁽²⁾ Interworking aspects of packet-switched public data networks.

⁽³⁾ The X.28 messages are not intended for automatic DTE operation and as a consequence may be nationally dependent. The progressive implementation of X.3 (1988) and X.28 (1988) will allow to set an X.3 parameter to determine whether CCITT standardized or national messages shall be used at the interface.

⁽⁴⁾ For national use.

C.2. Offerings to be provided in addition to those in C.1 at the latest by 30 June 1993

SERVICE	OFFERING
X.25	CORE OFFERING access link data rate 48 000 bit/s or 64 000 bit/s
	USER OPTIONS additional logical channels at least to a total of 128 for 48 000 or 64 000 bit/s Hunt group call redirection within a network with the same DNIC extended interrupt CCITT specified DTE facilities intra-community use of CUG facilities called line address modified notifications

C.3. Offerings to be provided in addition to those in C.1 and C.2 at the latest by 31 December 1993

SERVICE	OFFERING
X.25	USER OPTIONS intra-community use of reverse charging facilities
X.28 dial-in only	CORE OFFERING access link data rate: 2 400 bit/s (V.22 bis modem)
	USER OPTIONS intra-community use of reverse charging facilities
X.32 Unidentified service	CORE OFFERING intra-community use of the service

ANNEX II

**PUBLICATION PRESENTATION FOR THE INFORMATION TO BE PROVIDED IN RESPECT OF
PACKET-SWITCHED DATA SERVICES IN ACCORDANCE WITH POINT 3**

The information referred to in point 3 of the recommendation should follow the presentation given below.

A. TECHNICAL CHARACTERISTICS

The technical characteristics include the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point, without prejudice to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾. Clear reference shall be made to the standards implemented.

B. SUPPLY CONDITIONS

The supply conditions include at least the elements identified in point 4.

C. USAGE CONDITIONS

The conditions resulting from the application of essential requirements.

D. TARIFFS

In accordance with point 9, tariffs will normally include an initial connection charge, a periodic rental charge and a usage charge. Usage charge will normally include:

- (a) a fixed per-call charge, based either on a minimum time and/or volume charge or on a call set-up charge;
- (b) a volume related charge based on the use of an integral number of segments⁽²⁾,
- (c) a duration charge based on time intervals sufficiently short to avoid discrimination against short-type transactions.

Clear indication of other charges, e.g. charges related to quality of service, or bulk provision, should be available.

E. LICENSING AND/OR DECLARATION CONDITIONS FOR USE OF PSDs, WHERE APPLICABLE

This should include information on any licensing conditions which have to be met by the user or by its customers.

F. CONDITIONS FOR THE ATTACHMENT OF TERMINAL EQUIPMENT

Conditions approved by the national regulatory authority, in accordance with the provisions of Directive 91/263/EEC⁽³⁾.

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

⁽²⁾ A segment is up to 64 octets (or bytes) of user data where the octet is 8 bits.

⁽³⁾ OJ No L 128, 23. 5. 1991, p. 1.

ANNEX III

INDICATORS FOR THE NETWORK PERFORMANCE ASPECTS OF THE QUALITY OF SERVICE OF PSDSs

Indicators for the network performance aspects of the quality of service of PSDSs and measurement methods should be based on the ongoing work in CEPT, and notably on recommendations T/CAC 2 ⁽¹⁾, T/CAC 3 ⁽²⁾, T/CAC 4 ⁽³⁾.

For each of the above performance criteria, indicators should be chosen which are representative of the service:

Availability	Unsuccessful network congestion (NC) calls ratio (UNCR), Service availability,
Dependability	Mean time between NC disconnections (MTNC),
Speed of service	Transmitted throughput (TTP), Received throughput (RTP), Round trip delay (RTD), Call set-up delay (CSD).

⁽¹⁾ Indicators for the network performance aspects of the quality of service of international packet-switched services.

⁽²⁾ Monitoring of network performance aspects of quality of international packet-switched service using internally derived indicators.

⁽³⁾ Monitoring of network performance aspects of quality of international packet-switched service using externally derived indicators.

COUNCIL RECOMMENDATION

of 5 June 1992

on the provision of harmonized integrated services digital network (ISDN) access arrangements and a minimum set of ISDN offerings in accordance with open network provision (ONP) principles

(92/383/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision ⁽¹⁾,

Having regard to the proposal from the Commission,

Whereas Directive 90/387/EEC considers, *inter alia*, the application of the principles of open network provision (ONP) to the integrated services digital network (ISDN);

Whereas the full establishment of a Community-wide market in telecommunications services will be promoted by the rapid introduction of ONP principles to ISDN, as provided for in Directive 90/387/EEC; whereas ONP conditions should ensure transparency and equal access and be based on objective criteria; whereas applying ONP principles to ISDN means harmonizing the conditions for open and efficient access to and use of ISDN;

Whereas recommendation 86/659/EEC ⁽²⁾ calls for the coordinated introduction of the ISDN in the European Community;

Whereas resolution 89/C 196/04 ⁽³⁾ calls for strengthening of the further coordination of the ISDN in the European Community up to 1992;

Whereas in 1989 several telecommunications organizations signed a memorandum of understanding (MoU) for the phased and harmonized implementation of European ISDN services; whereas within the framework of this MoU, a range of services has been recognized as commercially valid for ISDN and agreement has been reached on a minimum ISDN service offering to be introduced by 31 December 1993 at the latest; whereas other services will be introduced on the basis of harmonized standards according to market need;

Whereas ISDN can be considered a natural development of the telephone network; whereas it will allow, via a single access, using the existing subscriber line, the transmission of

voice telephony, text, data and images in the form of a multitude of more efficient or new services;

Whereas Member States should notify to the Commission those organizations whose provision of ISDN offerings enables Member States to comply with the provisions of point 4 of Annex III to Directive 90/387/EEC; whereas other organizations may offer certain ISDN services in accordance with the recommendation;

Whereas, in accordance with Directive 90/387/EEC, voice telephony means the commercial provision for the public of the direct transport of real time speech via the public switched network or networks such that any user can use equipment connected to a network termination point to communicate with another user of equipment connected to another termination point;

Whereas Commission Directive 90/388/EEC ⁽⁴⁾ applies;

Whereas, in accordance with Directive 90/388/EEC, Member States may make the supply of certain services subject to a licensing or declaration procedure aimed at compliance with the essential requirements and in that case they shall ensure that the conditions for the granting of licenses are objective, non-discriminatory and transparent, that reasons are given for any refusal and that there is a procedure for appealing against any such refusal; whereas the Commission will carry out an overall assessment of the situation in the telecommunications sector, in connection with the aims of this Directive in 1992;

Whereas ISDN is a means to support both services provided under special or exclusive rights and services for which no such rights may be maintained;

Whereas, pursuant to the principle of non-discrimination, access to ISDN should be available and provided on request without discrimination to all users; whereas therefore, the terms and conditions which apply to telecommunication organizations using ISDN for the provision of services for which no special or exclusive rights may be maintained should be equivalent to the terms and conditions which apply to other users;

⁽¹⁾ OJ No L 192, 24. 7. 1990, p. 1.

⁽²⁾ OJ No L 382, 31. 12. 1986, p. 36.

⁽³⁾ OJ No C 196, 1. 8. 1989, p. 4.

⁽⁴⁾ OJ No L 192, 24. 7. 1990, p. 10.

Whereas cross-subsidization between services provided by telecommunications organizations (TOs) under special and exclusive rights and services for which no such rights may be maintained, provided by TOs, may be incompatible with Community competition rules;

Whereas Article 4 (4) (b) of Directive 90/387/EEC provides for a period for public comment on the reports on the detailed analysis on the application of ONP to specific areas; whereas public comments on the analysis report on the application of ONP to ISDN were invited by notice in the *Official Journal of the European Communities* ⁽¹⁾;

Whereas it became evident from public comments that users are requiring a high degree of transparency in the provision of ISDN offerings; whereas users are requiring further access arrangements to be considered, such as M- and U-type interfaces;

Whereas the European Telecommunications Standards Institute (ETSI) is developing standards for ISDN; whereas the Commission has given a special study and investigation mandate to ETSI to study the technical implications of the specification of M- and U-type interfaces in ISDN; whereas the Commission will also carry out studies on the economic and market impact related to the provision of these interfaces;

Whereas Community policy in relation to the coordinated introduction of ISDN is given in recommendation 86/659/EEC and resolution 89/C 196/04; whereas a broad range of services to be provided are defined in the abovementioned documents;

Whereas ISDN networks have developed on a national basis and the availability in each Member State of an ISDN with equivalent capabilities and providing full interconnectivity is important to meet the requirements of pan-European provision of telecommunications services;

Whereas users have stressed the value of the availability in all Member States of a minimum set of harmonized offerings;

Whereas Member States should encourage their telecommunications organizations to provide ISDN offerings in addition to the minimum set, both in response to market demand;

Whereas, however, such additional offerings should in no way impede the provision of the minimum set;

Whereas interoperability between ISDN and existing public network services should be ensured, in particular with the public voice telephony service and the public packet switched data service?

Whereas adequate and efficient interoperability between ISDN networks is essential for the provision of Community-wide services;

Whereas Directive 90/387/EEC provides, in point 1 of Annex III, for the adoption of a specific directive on voice telephony;

Whereas ISDN provides for the opportunity to offer voice telephony in an efficient way; whereas, therefore, the provision of voice telephony service by means of ISDN should meet the relevant requirements of ONP applied to voice telephony;

Whereas Directive 90/387/EEC provides, in point 3 of Annex III, for the adoption of a recommendation on the supply of technical interfaces, conditions of usage and tariff principles applying to the provision of packet-switched data services (PSDSs) complying with open network principles; whereas the Council has adopted a recommendation on the harmonized provision of a minimum set of PSDSs in accordance with ONP principles ⁽²⁾;

Whereas ISDN may be used to provide packet-switched data services (PSDSs); whereas, therefore, the provision of data services by means of ISDN should in principle meet the relevant requirements of ONP applied to PSDSs;

Whereas, in accordance with Directive 90/387/EEC, the Commission has published in the *Official Journal of the European Communities* ⁽³⁾ the list of ISDN standards suitable for ONP; whereas this list may be amended by further publication;

Whereas common ordering procedures, one-stop-ordering and one-stop billing and maintenance are desirable in order to encourage the use of ISDN and the development of competition in the provision of value-added services throughout the Community and have been requested by users; whereas any cooperation between organizations in that respect is subject to compliance with Community competition law; whereas, in particular, such procedures should not result in any price fixing or market sharing; whereas these procedures are to be established through commercial arrangements, e.g. through memoranda of understanding;

Whereas the implementation of one-stop-ordering and one-stop-billing procedures by telecommunications organizations must not prevent offers by service providers other than telecommunications organizations;

Whereas, in order to promote European-wide operation by service providers using ISDN, it is desirable to allow for a system where the called party pays for the calls on the basis of the number called, allowing the offering of free of charge calls to the subscriber accessing the service offered by the provider ('green number/freephone');

⁽²⁾ See page 1 of this Official Journal.

⁽³⁾ OJ No C 327, 29. 12. 1990, p. 19. List of standards reference — ISDN.

⁽¹⁾ OJ No C 38, 14. 2. 1991, p. 12. (Notice No 91/C 38/21).

Whereas, in order to promote the use of ISDN by small- and medium-size providers of value-added services, it is desirable that billing arrangements which facilitate such operations across the Community are established; whereas such billing arrangements should allow for a system where the cost of the value-added service and the cost of the call are combined in a single bill ('kiosk type arrangement');

Whereas it is important in this context that appropriate allocation of harmonized numbering capacity is made to allow the establishment of such service arrangements across the Community; whereas such allocation should be made in accordance with the principles of transparency and equal treatment; whereas numbering issues at a national and European level, including the area of ISDN, will play a major role in the future worldwide telecommunications environment;

Whereas quality of service — including delivery time and repair time — as perceived by the users is an essential aspect of the service provided; whereas information for users should allow for a comparison between achieved performance and typical or target values;

Whereas the quality of service indicators, as identified in other ONP measures, will apply where appropriate to services provided by means of ISDN;

Whereas, in accordance with Community law and in particular Directive 90/387/EEC, usage conditions for ISDN should be compatible with Community law and should be imposed through regulatory means and not through technical restrictions;

Whereas, without prejudice to Article 3 of Directive 90/388/EEC, restrictions on the use of ISDN may be based only on infringement of special or exclusive rights compatible with Community law, or on the conditions generally applicable to the connection of terminal equipment as laid down in Directive 91/263/EEC⁽¹⁾, or on essential requirements, in particular on the basis of data protection; whereas Member States may restrict use of ISDN to the extent necessary to ensure compliance with regulations on the protection of data, including protection of personal data, the confidentiality of information transmitted or stored, as well as the protection of privacy compatible with Community law; whereas those restrictions should be objectively justified, follow the principle of proportionality and not be excessive in relation to the aim pursued; whereas open access to ISDN via the proposed access arrangements should not jeopardize ISDN network integrity and security requirements;

Whereas, in accordance with Directive 90/387/EEC, tariffs must be based on objective criteria and, especially in the case of services and areas subject to special or exclusive rights, must in principle be cost-oriented; whereas they must be

transparent and properly published, sufficiently unbundled in accordance with the competition rules of the Treaty and non-discriminatory and must guarantee equal treatment;

Whereas the availability of itemized billing will enable ISDN users to check their bills;

Whereas, in accordance with the principle of separation of regulatory and operational functions and pursuant to the principle of subsidiarity, the national regulatory authority of each Member State should play an important role in the application of this recommendation;

Whereas, to enable the Commission to monitor effectively the application of this recommendation, it is necessary that Member States provide the relevant information requested by the Commission;

Whereas implementation of harmonized ONP conditions for access to and use of ISDN are dependent on the state of network development and market demand in Member States;

Whereas the Committee referred to in Articles 9 and 10 of Directive 90/387/EEC should play an important role in the application of this recommendation.

HEREBY RECOMMENDS:

1. That, in line with previous Council measures on integrated services digital network (ISDN), and taking into account market demand, Member States:
 - (a) ensure that, on their territory, the telecommunications organizations notified in accordance with point 15 provide an ISDN with harmonized access arrangements and a minimum set of offerings in accordance with Annex I, together with adequate and efficient interoperability between ISDNs in order to allow for Community-wide operation. Where no dates are indicated in Annex I, Member States should encourage telecommunications organizations to publish target dates for the availability of these features;
 - (b) encourage the harmonized provision by the same organizations of additional offerings as identified in Annex II. This additional provision should be in accordance with international standardization and in response to market demand but should not endanger or delay the provision of the minimum set referred to in subparagraph (a).
2. That modifications necessary to adapt Annex I to new technical developments and to changes in market demand be determined by the Commission in accordance with the procedure laid down in Article 10 of Directive 90/387/EEC, taking into account the state of development of the national networks.

⁽¹⁾ OJ No L 128, 23. 5. 1991, p. 1.

3. That Member States take the necessary steps so that, in respect of the ISDN offerings provided in accordance with point 1, information is published on technical characteristics, supply conditions, contractual conditions, usage conditions, tariffs, licensing and/or declaration conditions and conditions for the attachment of terminal equipment, in accordance with the presentation given in Annex III.

Information on changes in existing offerings should be published as soon as possible and not later than two months before the implementation, unless the national regulatory authority agrees otherwise.

4. That the supply conditions referred to in point 3 include at least:

- information concerning the ordering procedure,
- typical delivery periods, which are the periods, counted from the date when the user has made a firm request for an ISDN offering, in which 80 % of all requests for each type of ISDN offerings have been put through to the users. Each period will be established on the basis of the actual delivery periods of ISDN offerings during a recent time interval of reasonable duration. The calculation must not include cases where late delivery periods were requested by users.

Until actual data are available, a target delivery period shall be published in place of the typical delivery period,

- typical repair times, which are the periods, counted from the time when a failure message has been given to the responsible unit within the organization supplying ISDN up to the moment in which 80 % of all ISDN offerings of the same type have been re-established and, in appropriate cases, notified as back in operation to the users.

Until actual data are available, a target repair time shall be published instead of the typical repair time.

Where different classes of quality of repair are offered for the same type of ISDN offerings, the different typical repair times shall be published:

- contractual periods, which include the periods generally provided for in the case of contracts and the minimum contractual periods which the user is obliged to accept for each type of ISDN offering,
- any refund procedure,
- target values for the indicators of quality of service identified in point 6.

5. That the supply of ISDN offerings be based on a contract specifying the elements of the ISDN offerings to be provided.

6. That, by 1 January 1995, at least for the bearer services identified in Annex I, common indicators and common measurement methods be adopted for the network performance aspects of the quality of service, by organizations supplying ISDN offerings in accordance with this recommendation, notably for those indicators in Annex IV.

7. That the common indicators and measurement methods referred to in point 6 be based on appropriate standards adopted by ETSI allowing for the determination of a representative sample of the performance of the ISDN offerings as well as the statistical end-to-end performance achieved by the network as a whole.

8. That national regulatory authorities take the necessary steps so that annual statistical information showing achieved performance in the following areas is made publicly available:

- delivery periods,
- repair times,
- quality of service indicators, where possible those identified in Annex IV.

The first annual period should run from 1 January to 31 December 1994.

9. That Member States encourage the establishment, in accordance with the procedural and substantive rules of competition of the Treaty and in consultation with users, of harmonized procedures for user access to ISDN, in particular via the establishment of the following procedures:

- a common ordering procedure for ISDN throughout the Community, i.e. an ordering procedure for the procurement of intra-Community ISDN offerings which ensures that there is commonality across the organizations supplying ISDN offerings, in both the information which has to be supplied by the user and the organization supplying ISDN offerings and the format in which the information is presented,
- a one-stop-ordering procedure for ISDN, to be applied where requested by the user, i.e. a system whereby all transactions involving a user, required for the procurement of intra-Community ISDN offerings supplied by more than one organization to a single user, can be completed at one location between the user and a single organization supplying ISDN offerings,
- a one-stop-billing procedure for ISDN, to be applied where requested by the user, i.e. a system whereby the billing and payment transaction for intra-Community ISDN offerings supplied by more than one organization to a single user can be completed at one location between the user and a single organization supplying ISDN offerings, and

- a one-stop-maintenance procedure for ISDN, to be applied where requested by the user, i.e. a system whereby the reporting of faults for intra-Community ISDN offerings supplied by more than one organization to a single user can be done at one location between the user and a single organization supplying ISDN offerings, which will coordinate the restoration of services.

It is envisaged that, taking into account technical feasibility and commercial viability, these procedures should include Community-wide charging and billing procedures, allowing for the capability where:

- the called party pays for the calls (green number/freephone),
- the cost of the value-added service and the cost of the call are combined in a single bill collected by the organization supplying ISDN offerings, or other arrangements equally effective for users ('kiosk type arrangements').

These harmonized procedures are to be established through commercial arrangements, e.g. through memoranda of understanding.

10. That ISDN numbering plans be controlled by the national regulatory authority, in order to provide for fair competition. In particular, procedures for the allocation of individual numbers for specific services should be transparent, equitable and timely.
11. That Member States take the necessary steps so that usage conditions for ISDN are subject to scrutiny by the national regulatory authority.
12. That tariffs be transparent, based on objective criteria, independent of the type of application implemented by users where the same type of offerings is used and in principle oriented towards cost. Each ISDN offering should in principle be tariffed on an individual basis. Offerings should be sufficiently unbundled, in accordance with Community law. In addition, the tariff principles of recommendation 86/659/EEC should be taken into due account.
13. That tariffs for ISDN offerings normally contain the following elements:
 - an initial connection charge,
 - a periodic rental charge,
 - a usage charge.

Where other tariff elements are applied, these should be approved by the national regulatory authority and must be in accordance with point 12.

14. That under the control of national regulatory authorities targets are set and published for the provision of itemized billings as a facility available on users' request, subject to technical feasibility. The level of detail given in itemized bills may be subject to relevant law relating to the protection of personal data and privacy.
 15. That Member States notify to the Commission before 31 December 1992 those organizations whose provisions of ISDN enables Member States to comply with the provisions of Annex III, point 4, of Directive 90/387/EEC and thereafter any changes to this information.
 16. That national regulatory authorities prepare annual summary reports covering the availability of ISDN offerings, including level of penetration, provided in accordance with point 1. These summary reports should be sent to the Commission no later than five months after the end of the calendar year, this requirement being reviewed by the Commission in consultation with the ONP Committee in accordance with Article 9 of Directive 90/387/EEC during 1995. The Commission will transmit these summary reports to the ONP Committee.
- The execution of this requirement fulfils corresponding requirements of recommendation 86/659/EEC.
17. That national regulatory authorities keep available, and submit to the Commission on request, data on the application of the supply conditions under points 3 and 4 and the statistical information under point 8.
 18. That national regulatory authorities establish simple procedures for users of the ISDN offerings to invoke with regard to any difficulties encountered in relation to the application of this recommendation.
 19. That the Commission, in consultation with the ONP Committee, examine the results of the application of this recommendation, in view of the fulfilment of the objectives of Directive 90/387/EEC, on the basis of the summary reports provided under point 16.

Done at Luxembourg, 5 June 1992.

For the Council
The President

Joaquim FERREIRA DO AMARAL

ANNEX I

DEFINITION OF THE HARMONIZED ISDN ACCESS ARRANGEMENTS AND THE MINIMUM SET OF ISDN OFFERINGS IN ACCORDANCE WITH POINT 1, AND RECOMMENDED TIMETABLE FOR THEIR AVAILABILITY**GENERAL CONSIDERATIONS**

This Annex describes the harmonized ISDN access arrangements and the minimum set of ISDN offerings which are to be made available in all Member States.

The ISDN offerings are structured in two parts: Part A contains the minimum set of offerings which are to be made available in all Member States by 1 January 1994; Part B contains those offerings which are to be made available in all Member States according to published target dates.

The CCITT distinctions of bearer services, supplementary services and teleservices ⁽¹⁾ are used. The bearer services and supplementary services in Part A are those indicated as the minimum service offering in the ISDN memorandum of understanding (MoU) of June 1991, and the date for implementation is in accordance with the commitment given by the signatories of the MoU.

Implementation of these offerings should take account of relevant legislation concerning data protection and privacy.

STANDARDS TO BE UTILIZED

In accordance with the procedure in Article 5 (1) of Directive 90/387/EEC, reference to relevant ISDN standards will be published in the *Official Journal of the European Communities*.

The initial indicative list of ISDN standards suitable for ONP already published in the *Official Journal of the European Communities* will be amended/updated by further publication in the *Official Journal of the European Communities*.

PART A.**Offerings to be made available in all Member States by 1 January 1994****A.1 Access arrangements**

Access arrangements concerning the interfaces at CCITT defined reference points.

Basic rate access (2B + D) at the S/T reference point

Primary rate access (30B + D) at the S/T reference point

A.2. Bearer service

Circuit mode 64 kbit/s unrestricted bearer service

Circuit mode 3.1 kHz audio bearer service

A.3. Supplementary services

Calling line identification presentation (CLIP)

Calling line identification restriction (CLIR)

Direct dialling in (DDI)

Multiple subscriber number (MSN)

Terminal portability (TP)

A.4. Teleservices

Telephony (3.1 kHz bandwidth).

⁽¹⁾ Appropriate associations between access arrangements, bearer services and supplementary services are given in CCITT Recommendation I.250.

PART B.

Offerings to be provided in all Member States, according to published target dates and the availability of international standards

Dates for the implementation of these offerings will depend on market demand in each Member States. In accordance with point 1 (a), telecommunications organizations are to be encouraged to publish targets for the availability of each of these offerings.

B.1. Access arrangements

Future access arrangements to be included in the minimum set are subject to further study by ETSI and the Commission.

The situation will be reviewed at the latest by 31 December 1992, after completion of a study and investigation mandate given to ETSI on the technical implications of the M- and U-type interfaces, and completion of an economic and market assessment. Consideration should be given to the inclusion of these access arrangements into the minimum set in accordance with the procedure given in point 2 of this recommendation.

B.2. Bearer services

Circuit mode 64 kbit/s unrestricted bearer service on reserved or permanent mode

Packet mode bearer service provided over the B and/or D channels (see Note 1)

B.3. Other services

Call transfer services

Call forwarding services

Closed user group

User to user signalling

Malicious call identification

Reverse charging

Green number (freephone) for voice and non-voice applications

Kiosk billing or equivalent features, for voice and non-voice applications.

Note 1

When ISDN is used for the provision of packet-switched data services, users should, where feasible, have equivalent functionality to users of the dedicated packet network, as defined in Council recommendation 92/382/EEC ⁽¹⁾ on the harmonized provisions of a minimum set of packet switched data services in accordance with ONP principles.

⁽¹⁾ See page 1 of this Official Journal.

ANNEX II

**ADDITIONAL OFFERINGS WHICH MAY BE IMPLEMENTED, IN ACCORDANCE WITH PROGRESS IN
INTERNATIONAL STANDARDIZATION****I. Supplementary services**

Advice of charge (AOC) services

Number identification services (COLP, COLR)

Call waiting (CW)

Completion of calls to busy subscribers (CCBS)

Conference services

Sub-addressing (SUB)

Three party service (3PTY)

II. Network management services ⁽¹⁾

Note: These supplementary services are covered by the ISDN MoU.

⁽¹⁾ The Commission has given ETSI a mandate to study network management standards.

ANNEX III

PUBLICATION PRESENTATION FOR THE INFORMATION TO BE PROVIDED IN RESPECT OF ISDN OFFERINGS IN ACCORDANCE WITH POINT 3

The information referred to in point 3 should follow the presentation given below.

A. Technical characteristics

The technical characteristics include the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point, without prejudice to Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations⁽¹⁾. Clear reference shall be made to the standards implemented.

B. Supply conditions

The supply conditions include at least the elements identified in point 4.

C. Contractual conditions or terms of subscription**D. Usage conditions**

The conditions resulting from the application of essential requirements and from the exercise of exclusive or special rights.

E. Tariffs

In accordance with point 13, tariffs will normally include an initial connection charge, a periodic rental charge and a usage charge.

- (a) The initial charge for connection to the ISDN network may depend on the type of access and offerings.
- (b) The periodic subscription charge will vary according to the type of access and range of ISDN capabilities provided.
- (c) The usage charges will normally include a call duration charge and supplementary services usage charges and may also include a call-set-up charge and, in the case of packet mode bearer services, there may also be a volume related usage charge. These charges may depend on time and/or day.

Clear indication of other charges, e.g. charges related to different levels of quality of service, or bulk provision, should be available.

F. Licensing and/or declaration conditions for use of ISDN service, where applicable

This should include information on any licensing conditions which have to be met by the user or by its customer.

G. Conditions for the attachment of terminal equipment

Conditions approved by the national regulatory authority, in accordance with the provisions of Directive 91/263/EEC.

⁽¹⁾ OJ No L 109, 26. 4. 1983, p. 8.

ANNEX IV

INDICATORS FOR THE NETWORK PERFORMANCE
ASPECTS OF THE QUALITY OF SERVICE OF ISDN BEARER SERVICES ⁽¹⁾

IV.1. Indicators for all bearer services

Availability of access, defined as the average, for all connections of a given type, of the number of hours in a reasonable period for which service was available to a user, divided by the total number of hours in the period.

Mean time between interruptions, defined as the average time duration between the end of one interruption and the beginning of the next. An interruption is defined as the temporary inability of a service to be provided persisting for more than a given time duration characterized by a change beyond given limits in at least one parameter essential for the service.

Bit error ratio, defined as the ratio of the number of bit errors to the total number of bits transmitted in a given time interval (for non-speech bearer service).

IV.2. Indicators for circuit mode switched bearer services

Connection processing delay, as defined in CCITT recommendation I.352.

Network transit delay, defined as the time which elapses between the initial offering of a unit of user data to an ISDN network by a transmitting terminal equipment and the complete delivery of that unit to the receiving terminal equipment (a unit of user data may be a bit, byte, packet, etc.).

Average figures for national calls and for intra-Community calls should be considered.

Unsuccessful calls ratio, defined as the ratio of unsuccessful calls to the total number of calls in a specified time period.

IV.3. Indicators for packet-mode bearer services

The indicators for packet-mode bearer services should in principle be the same as those featuring in the proposal for a recommendation 92/382/EEC on the harmonized provision of a minimum set of packet-switched data services in accordance with ONP principles.

⁽¹⁾ The Commission has given ETSI a mandate to develop standards covering definitions for the above quality of service indicators and appropriate measurement methods.

COUNCIL DECISION

of 22 June 1992

concerning the conclusion of an Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden on civil aviation

(92/384/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas the Council decided at its meeting of 18 and 19 June 1990 that negotiations with Norway and Sweden should not be further delayed and authorized the Commission to open negotiations with these two countries, using as a basis the negotiating directives drafted for the purpose of the negotiations between the Community and the European Free Trade Association (EFTA) States;

Whereas the Commission has conducted all the negotiations in close coordination and consultation with the Member States;

Whereas the Agreement permits the creation, in the area covered by the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden, of a set of rules applicable to civil aviation, thus permitting the establishment of a uniform system of rules concerning market access, airline capacity as well as price setting in that field;

Whereas finally the agreed text resulting from the negotiations meets the negotiating directives for the conclusion of an Agreement between the Community and EFTA States on air transport;

Whereas the Agreement should be approved,

Article 1

The Agreement between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden on civil aviation is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall carry out the necessary formalities as provided for in Article 23 of the Agreement.

Article 3

The Commission, assisted by representatives of the Member States, shall represent the Community in the Joint Committee set up by Article 13 of the Agreement.

Article 4

This Decision shall be published in the *Official Journal of the European Communities*.

It shall take effect on the day of its publication.

Done at Luxembourg, 22 June 1992.

For the Council

The President

Joaquim FERREIRA DO AMARAL

⁽¹⁾ OJ No C 94, 13. 4. 1992.

⁽²⁾ OJ No C 40, 17. 2. 1992, p. 20.

AGREEMENT

between the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden
on civil aviation

THE CONTRACTING PARTIES,

DESIRING to set out rules for civil aviation within the area covered by the European Economic Community, the Kingdom of Norway and the Kingdom of Sweden, rules which are without prejudice to those contained in the EEC Treaty and in particular to existing Community competence under Articles 85 and 86 of the EEC Treaty and the competition rules derived therefrom;

AGREEING that it is appropriate to base these rules on the legislation in force within the European Economic Community;

DESIRING to prevent, in full deference to the independence of the courts, divergent interpretations and to arrive at as uniform an interpretation as possible of the provisions of this Agreement and those provisions of Community legislation which are substantially reproduced in this Agreement;

WHEREAS this Agreement shall not prejudice the outcome of the negotiations between the Community and the EFTA countries on the European economic area, and in particular in respect of the rules of competition and State aid and shall be terminated on the date on which an agreement between the EC and the EFTA countries on the said European economic area enters into force,

HAVE AGREED AS FOLLOWS:

CHAPTER 1

Article 1

1. This Agreement sets out rules for the Contracting Parties in the field of civil aviation. These rules are without prejudice to those contained in the EEC Treaty, and in particular to existing Community competence under Articles 85 and 86 of the EEC Treaty and the competition rules derived therefrom.

2. For this purpose the provisions laid down by the Regulations and Directives specified at any time in the Annex shall apply under the conditions set out hereafter. The interpretations of the said provisions shall be in accordance with the interpretations provided by the Court of Justice of the European Communities or the European Commission (hereafter called the 'Commission') applicable to Articles 4 to 6, to the corresponding Articles of the EEC Treaty and to those Regulations and Directives. Such interpretations handed down after the signature of this Agreement shall be communicated to Norway and Sweden.

At the request of a Contracting Party the Joint Committee shall exchange views pursuant to Article 13 on the implications of such interpretations for the proper functioning of this Agreement.

3. The Parties to this Agreement shall take all appropriate measures whether general or particular, to ensure fulfilment of the obligations arising out of this Agreement and shall refrain from any measure which would jeopardize attainment of the objectives of this Agreement

Article 2

Any service covered by this Agreement, operated by the Scandinavian Airlines System (SAS) between one of the States

in which the parent companies are registered and another State within the Community shall be considered as a third or fourth freedom service.

CHAPTER 2

Article 3

The provisions in Articles 4 to 6 and the Annex shall apply to the extent that they concern air transport or an associated matter mentioned in the Annex.

Article 4

1. The following shall be prohibited as incompatible with this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the area covered by this Agreement, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertaking concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 5

Any abuse by one or more undertakings of a dominant position within the area covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with this Agreement in so far as it may affect trade between Contracting Parties.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 6

1. Save as otherwise provided in this Agreement, any aid granted by Norway or Sweden or by a Member State or through State resources in any form whatsoever which

distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with this Agreement.

2. The following shall be compatible with this Agreement:

- (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
- (b) aid to make good the damage caused by natural disasters or exceptional occurrences.

3. The following may be considered to be compatible with this Agreement:

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
- (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Contracting Party;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

Article 7

1. The rules laid down in Article 6 shall be enforced:

- as regards Norway and Sweden, by application of the provisions of paragraphs 2 to 6 and the appropriate national rules and regulations of those States,
- as regards the Community, under the Treaty of Rome.

2. With regard to aids granted by Norway and Sweden the Commission shall, in cooperation with Norway and Sweden, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of this Agreement.

3. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by one of those States or through State resources is not compatible with this Agreement having regard to Article 6, or that such aid is being misused, it shall inform the State concerned and shall request that such aid be abolished or altered within a period of time to be determined by the Commission.

4. Unless the State concerned notifies the other Contracting Parties that it is not in agreement with the action requested, it shall take the necessary measures and inform the Commission thereof.

5. If the State concerned is not in agreement with the action requested by the Commission the matter shall be submitted within 21 days to the Joint Committee referred to in Article 13 which shall meet within 14 days of the date of submission.

6. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with this Agreement having regard to Article 6, it shall without delay initiate the procedure provided for in paragraph 3. The State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

CHAPTER 3

Article 8

1. Norway and Sweden shall ensure that the Commission is given the information foreseen in the Annex in respect of the application of the rules in Articles 4 and 5 and the Annex.

2. In instances where the Commission may obtain information directly from undertakings as provided for in the Annex to this Agreement Norway and Sweden shall upon request provide the Commission with such information and/or arrange, if requested, for a direct visit on a specified date and invite the Commission to participate, while respecting the relevant procedural guarantees laid down by national law.

Article 9

1. Norway and Sweden shall ensure that Articles 4, 5 and 6 and the provisions of the Regulations and Directives specified in the Annex are applied in their territories and enforced with the same effect as in the Community.

2. If there is a disagreement between Contracting Parties as to the proper implementation or enforcement in Norway or Sweden of Articles 4, 5 or 6 or the other provisions mentioned in paragraph 1, the matter shall be submitted to the Joint Committee referred to in Article 13 which shall meet within 14 days of the date of submission.

3. The Contracting Parties shall ensure that the rights which devolve from Articles 4, 5, 6, 7 and the abovementioned Regulations and Directives may be invoked before the national courts.

Article 10

All questions concerning the validity of decisions of the institutions of the Community, pursuant to Articles 4, 5, 6, 7

and the Regulations and Directives specified in the Annex to this Agreement shall be within the exclusive competence of the Court of Justice of the European Communities.

Article 11

1. Whenever a decision contains a request for action to be taken by Norway and/or Sweden pursuant to the Regulations and Directives specified in the Annex then, unless the State concerned notifies the other Contracting Parties that it is not in agreement with the action requested, it shall take the necessary measures and inform the Commission thereof.

2. If the State concerned is not in agreement with the action requested by the Commission the matter shall be submitted within 21 days to the Joint Committee referred to in Article 13 which shall meet within 14 days of the date of submission.

CHAPTER 4

Article 12

1. This Agreement shall be without prejudice to the right of each Contracting Party, subject to compliance with the principle of non-discrimination and the provisions of this Article and of Article 13, paragraph 2, unilaterally to amend its domestic legislation on a point regulated by this Agreement.

2. As soon as a Contracting Party has adopted an amendment to its domestic legislation it shall inform the other Contracting Parties via the Joint Committee referred to in Article 13, eight days after adoption at the latest. The Joint Committee shall within 14 days thereafter hold an exchange of views on the implications of such an amendment for the proper functioning of this Agreement.

3. The Joint Committee shall:

- either adopt a decision revising the provisions of this Agreement so as to integrate therein, if necessary on a basis of reciprocity, the amendments made to the legislation in question, or
- adopt a decision to the effect that the amendments to the legislation in question shall be regarded as in accordance with this Agreement, or
- decide any other measures to safeguard the proper functioning of the Agreement.

Article 13

1. A Joint Committee is hereby established which shall be responsible for the administration of this Agreement and shall ensure its proper implementation. For this purpose it shall make recommendations and take decisions by

unanimity. The decisions of the Joint Committee shall be put into effect by the Contracting Parties in accordance with their own rules.

2. For the purpose of the proper implementation of this Agreement, the Contracting Parties shall exchange information and, at the request of any Party, shall hold consultations within the Joint Committee.

3. The Joint Committee shall adopt its own rules of procedure at the latest 21 days after the entry into force of this Agreement.

4. The Joint Committee shall consist of one representative each of Norway, Sweden and the Community.

5. Norway or Sweden and the Community shall preside in turn over the Joint Committee in accordance with the arrangements to be laid down in its rules of procedure.

6. The chairman of the Joint Committee shall convene meetings at least once a year in order to review the general functioning of this Agreement and whenever special circumstances so require, at the request of any Contracting Party.

7. The Joint Committee shall, in addition, meet in conformity with Articles 1, 7, 9, 11 and 12. In the case of disagreement the decision shall be referred to a subsequent meeting of the Joint Committee to be held within two months from the date of referral in accordance with the conditions to be laid down in its rules of procedure.

8. The Joint Committee may decide to set up any working party that can assist it in carrying out its duties.

Article 14

1. A decision of the Joint Committee shall be binding upon the Contracting Parties.

2. If, in the view of one of the Contracting Parties, a decision of the Joint Committee is not properly implemented by another Contracting Party concerned, the former may request that the issue be discussed by the Joint Committee. If the Joint Committee cannot resolve the issue within two months of its referral, this Agreement shall cease to be in force.

3. The decisions of the Joint Committee shall be published in the *Official Journal of the European Communities*. Each decision shall state the date of its implementation in the three Contracting Parties and any other information likely to concern economic operators. The decisions shall be submitted if necessary for ratification or approval by the Contracting Parties in accordance with their own procedures.

4. The Contracting Parties shall notify each other of the completion of this formality. If upon the expiry of a period of 12 months after adoption of a decision by the Joint Committee such notification has not taken place, paragraph 5 shall apply *mutatis mutandis*.

5. If the Joint Committee does not take the decisions pursuant to Articles 1 (2), 7 (5), 9 (2), 11 (2) and 12 (3) within six months of the date of referral, this Agreement shall cease to be in force.

6. As regards legislation covered by Article 12 between the signing of this Agreement and its entry into force, of which the other Contracting Parties have been informed, the date of referral in paragraph 5 shall be taken as the date on which the information was received. The date on which the Joint Committee shall reach a decision cannot be earlier than two months after the date of entry into force of this Agreement.

CHAPTER 5

Article 15

The Contracting Parties shall consult each other, at the request of any party, in accordance with the procedures laid down in Articles 16, 17 and 18:

- (a) on air transport questions dealt with in international organizations; and
- (b) on the various aspects of developments which have taken place in relations between Contracting Parties and third countries in air transport, and on the functioning of the significant elements of bilateral or multilateral agreements concluded in this field.

The consultations shall be held within one month of the request and as soon as possible in urgent cases.

Article 16

1. The main aims of the consultations provided for in Article 15 (a) shall be:

- (a) to determine jointly whether the questions raise problems of common interest; and
- (b) depending upon the nature of such problems:
 - to consider jointly whether Contracting Parties' action within the international organizations concerned should be coordinated, or
 - to consider jointly any other approach which might be appropriate.

2. The Contracting Parties shall as soon as possible exchange any information of relevance to the aims described in paragraph 1.

Article 17

1. The main aims of the consultations provided for in Article 15 (b) shall be to examine the relevant issues and to consider any approach which might be appropriate.

2. For the purpose of the consultations referred to in paragraph 1, each Contracting Party shall inform the other Contracting Parties of developments which have taken place

in the field of air transport and of the operation of bilateral or multilateral agreements concluded in that field, if it considers this likely to contribute to the identification of problems of common interest.

Article 18

1. The consultations provided for in Articles 15, 16 and 17 shall take place within the framework of the Joint Committee.

2. The information and consultations provided for in Articles 15, 16 and 17 shall be covered by professional secrecy.

CHAPTER 6

Article 19

1. This Agreement shall remain in force unless denounced by one of the Contracting Parties.

2. Each Contracting Party may denounce this Agreement by notifying the other Contracting Parties. This Agreement shall cease to be in force one year after the day of notification.

3. This Agreement shall cease to be in force from the date an agreement between the Community and the EFTA countries on the European economic area enters into force.

Article 20

This Agreement shall be reviewed at the request of any Contracting Party and at any event one year after its entry into force.

Article 21

Norway and Sweden shall bring their legislative and administrative provisions into conformity with this Agreement before the entry into force of this Agreement.

Article 22

This Agreement shall supersede the relevant provisions of bilateral arrangements in force between Norway and/or Sweden on the one hand and Community Member States on the other hand.

Article 23

1. This Agreement shall be subject to approval or ratification in accordance with the Contracting Parties' own procedures and the Parties shall notify each other of the completion of the procedures necessary for that purpose.

2. This Agreement shall enter into force on the date on which the last instrument of ratification has been deposited.

3. This Agreement and the instruments of ratification shall be deposited in the archives of the Secretariat of the Council of the European Communities, which shall deliver a certified copy thereof to each Contracting Party.

Article 24

This Agreement is drawn up in all the official languages: Danish, Dutch, English, French, German, Greek, Italian, Portuguese, Spanish of the Community as well as in the Norwegian and Swedish languages, all these texts being equally authentic.

ANNEX

For the purposes of this Agreement Norway and Sweden shall be considered as falling within the terms 'Member States' and 'Community' referred to in the following Community Directives and Regulations.

1. (EEC) No 2343/90

Council Regulation of 24 July 1990 on access for air carriers to scheduled intra-Community air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States.

Articles 1, 2, 3 paragraph 1, 4 to 10, 11 with the exception of paragraph 2, 12 to 14, 17.

2. (EEC) No 2342/90

Council Regulation of 24 July 1990 on fares for scheduled air services.

Articles 1 to 11, 14.

3. (EEC) No 294/91

Council Regulation of 4 February 1991 on the operation of air-cargo services between Member States.

Articles 1, 2, 3 paragraph 1, 4 to 11.

4. (EEC) No 17/62

Council Regulation of 6 February 1962 implementing Articles 85 and 86 of the Treaty, as amended by Regulation 59, by Regulation 118/63/EEC and by Regulation 2822/71/EEC.

Articles 1 to 9, 10 paragraphs 1 and 2, 11 to 14, 15 with the exception of paragraph 3, 16 paragraphs 1 and 2, 17 to 24.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 6 of this Agreement respectively.

5. (EEC) No 3975/87

Council Regulation of 14 December 1987 laying down the procedures for the application of the rules on competition to undertakings in the air-transport sector.

Articles 1 to 7, 8 paragraphs 1 and 2, 9, 10, 11, 12 with the exception of paragraph 3, 13 with the exception of paragraph 3, 14 to 20.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

6. (EEC) No 3976/87

Council Regulation of 14 December 1987 on the application of Article 85 (3) of the Treaty to certain categories of agreement and concerted practices in the air transport sector.

Articles 1 to 5, 7, 9.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

7. (EEC) No 2344/90

Council Regulation of 24 July 1990 amending Regulation (EEC) No 3976/87 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air-transport sector.

Articles 1, 2.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

8. (EEC) No 82/91

Commission Regulation of 5 December 1990 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices concerning ground handling services.

Articles 1 to 5.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

9. (EEC) No 83/91

Commission Regulation of 5 December 1990 on the application of Article 85 (3) of the Treaty to certain categories of agreements between undertakings relating to computer reservation systems for air-transport services.

Articles 1 to 13.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

10. (EEC) No 84/91

Commission Regulation of 5 December 1990 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices concerning joint planning and coordination of capacity, consultations on passenger and cargo tariff rates on scheduled air services and slot allocation at airports.

Articles 1 to 6.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

11. (EEC) No 295/91

Council Regulation of 4 February 1991 establishing common rules for a denied-boarding compensation system in scheduled air transport.

Articles 1 to 10.

12. (EEC) No 2299/89

Council Regulation of 24 July 1989 introducing a code of conduct for computer reservation systems.

Articles 1 to 22.

13. 80/1266/EEC

Council Directive of 16 December 1980 on future cooperation and mutual assistance between the Member States in the field of air accident investigation.

Articles 1 to 2.

14. 80/51/EEC

Council Directive of 20 December 1979 on the limitation of noise emissions from subsonic aircraft, as amended by Council Directive 83/206/EEC.

Articles 1 to 8.

15. 89/629/EEC

Council Directive of 4 December 1989 on the limitation of noise emission from civil subsonic jet aeroplanes.

Articles 1 to 7.

16. 90/314/CEE

Council Directive of 13 June 1990 on package travel, package holidays and package tours.

Articles 1 to 9.

17. (EEC) No 4064/89

Council Regulation of 21 December 1989 on the control of concentrations between undertakings.

Articles 1 to 8, 9 paragraphs 1 to 8, 10 to 18, 19 paragraphs 1 and 2, 20 to 23, 25.

Any reference to Articles 85 or 86 in this Regulation shall be understood to mean Articles 4 or 5 of this Agreement respectively.

18. 80/723/EEC

Commission Directive of 25 June 1980 on the transparency of financial relations between Member States and public undertakings, as amended by Commission Directive 85/413/EEC of 24 July 1985.

Articles 1 to 8.

19. (EEC) No 2367/90

Commission Regulation of 25 July 1990 on the notifications, time limits and hearings provided for in Council Regulation 4064/89.

Articles 1 to 20.

20. No 4261/88

Commission Regulation of 16 December 1988 on the complaints, applications and hearings provided for in Council Regulation 3975/87.

Articles 1 to 15.

PROTOCOL 1

THE CONTRACTING PARTIES,

CONSIDERING that whereas the Agreement envisages the incorporation of future legislation in civil aviation,

WHEREAS the Community has already announced legislative action in a number of areas;

WHEREAS such action should not lead to future difficulties,

ARE AGREED THAT action *inter alia* in the following areas:

- consultation between airports and users,
 - mutual acceptance of licences and harmonization,
 - slot allocation,
 - licensing of air carrier and allocation of route rights,
 - common specifications for ATC equipment,
 - cabotage,
 - value-added tax,
 - abolition of tax free sales between the Contracting Parties,
 - relations with third countries,
 - predatory practices,
- shall be considered under Article 12 for inclusion in the Agreement.
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PROTOCOL 2

THE CONTRACTING PARTIES,

CONSIDERING that the Agreement must be implemented in the same way for all the Contracting Parties,

WHEREAS the Council and the European Commission have already given important indications for the implementation of specific articles,

ARE AGREED THAT:

1. In applying the matching provisions of Article 3 (5) of Regulation (EEC) No 2342/90 mentioned in point 2 of the Annex in respect of non-scheduled air fares it is the product which is in the market which must be equivalent in terms of quality and conditions. Elements of importance for the assessment would be the inclusion or not of additional services such as accommodation and also whether the non-scheduled product is legally on the market in a regular way according to the definition in Article 2 (b) (iii) (2) of that Regulation while the Commission may need to assess matching of fares with respect to the rules concerning predatory behaviour;
2. Member States which benefit from the special conditions under paragraph 3 of Article 10 of Regulation (EEC) No 2343/90 mentioned in point 1 of the Annex will not, on pain of losing such special conditions which they have, grant new rights regarding the airports concerned, on terms which would put their Community partners at a disadvantage by comparison with carriers from third countries outside the Community.

and that

3. In a situation where Article 12 (2) of Regulation (EEC) No 2343/90 mentioned in point 1 of the Annex is invoked, the Commission will examine, in addition to capacity utilization, the marketing efforts and the products of air carriers from the Member State with the lower market share and will consider whether a higher market share should normally be expected. If this is the case, the Commission will further consider whether the possibilities of the air carriers concerned of competing in the market are reduced by virtue, in particular of difficulties experienced by congestion at airports, market structure and/or the direct impact of the large presence of non-scheduled traffic.

In arriving at a decision to reduce the 7,5 percentage points, the Commission will be guided by the following relationships:

<i>Market share</i>	<i>Reduced growth rate</i>
— between 30 and 25 %	5
— less than 25 %	4

PROTOCOL 3**THE CONTRACTING PARTIES,**

- AFFIRM the need for continuation and intensification of the work in Eurocontrol to tackle and resolve the problems of air traffic congestion in Europe,
 - NOTE that accession to the Eurocontrol Convention of all Member States should be seriously considered,
 - INVITE Member States to cooperate to ensure that more airspace is made available for civil traffic and that it is used more flexibly and rationally,
 - WELCOME the efforts made in the relevant fora to make progress in establishing compatible technical and performance specifications for air traffic control systems and equipment.
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