

21 MARCH 1991.—Law relating to the reform of certain economic public companies¹

BAUDOUIN, King of the Belgians,
To all presents Come to whom these Greetings.
The Chambers have adopted and We hereby affirm the following:

TITLE I Autonomous public companies

CHAPTER I Classification of certain public interest bodies among the autonomous public companies

Art. 1

(1). Every public-interest agency which requires management autonomy in a given industrial or commercial sector may, after legal adaptation of its organic act [*statut organique*] to the provisions of this Title, obtain such autonomy by concluding a management contract with the State under the terms of this law.

(2). The King, by decree deliberated in the Council of Ministers, hereby deletes from Article I of the Law of 16 March 1954 on the supervision of certain public-interest bodies, replaced by Royal Decree No. 431 of 5 August 1986, modified by Royal Decree No. 429 of 5 August 1986, completed by the order of 23 April 1986, modified by Royal Decree No. 526 of 31 March 1987 and by the order of 13 July 1988, any agency referred to in (1), as of the date its first management contract comes into force, if the agency concerned was subject to the Law of 16 March 1904 referred to.

(3). By decree deliberated in the Council of Ministers, the King hereby classifies, as of the date its first management contract comes into force, any agency referred to in (1) among the autonomous public companies. These are listed in (4)) below.

(4)). The bodies classified in accordance with (3) among the autonomous public companies are :

(1) [*R.D. 19/08/92, art. 2, par. 2 - BELGACOM*;²

¹1989-1990 Session. House of Representatives. *Parliamentary documents*. — Government bill, No. 1287/1.

1990-1991 Session. House of Representatives. *Parliamentary documents*. — Amendments, No. 1287/2. — Opinion of the Council of State, No. 1287/3. — Amendments, No. 1287/4 to 8. — Errata, No. 1287/9.— Report, No. 1287/10.—Amendments, No. 1287/11.

Parliamentary annals.— Discussion and adoption. Sessions of 19 and 20 December 1990.

Senate. *Parliamentary documents*. — Bill transmitted by the House of Representatives, No. 1173/1. — Report, No. 1173/2.— Amendments, No. 1173/3 to 5.

Parliamentary annals.—Discussion and adoption. Session of 7 March 1991.

(2) [*R.D. 14/09/92, art. 12 - the Société nationale des chemins de fer belges - the Belgian National Railway Company*];

(3) [*R.D. 30/09/92, art. 3 - THE POSTAL SERVICE*]

Art. 2

(1). Notwithstanding Article 1, (1), the King may, in the decree approving the first management contract of an agency referred to in (2 below, repeal, complete, modify or replace the legislative provisions which regulate the constitution, financing and positioning of the agency concerned in order to make the rules they contain compatible with the provisions of this law.

In the decree referred to in the first paragraph, the King may coordinate the legislative provisions regulating the bodies referred to in (2 as well as the provisions which will have expressly or implicitly modified them when this coordination is established. For this purpose, He may :

- (1) modify the order, the numbering and, in general, the presentation of the provisions to be coordinated;
- (2) modify the references contained in the provisions to be coordinated, so as to harmonize them with the new numbering;
- (3) modify the wording of the provisions to be coordinated in order to ensure that they are harmonized and unify their terminology, without affecting the principles set down in these provisions other than based on the first paragraph;
- (4) incorporate the provisions of this law into the coordinated text, in the order and with the numbering which He determines;
- (5) establish the Title of the coordination.

(2. The first section applies to the following public bodies :

- (1) the *Régie des voies aériennes* [Belgian Aviation Authority];
- (2) the *Société nationale des chemins de fer belges* [the Belgian National Railway Company];
- (3) the *Régie des postes* [Postal Services System] ;
- (4) the *Régie des télégraphes et des téléphones* [the Telegraph and Telephone Authority].

CHAPTER II The management contract

Section I Definition and contents

Art. 3

(1). The special rules and conditions according to which an autonomous public company exercises public service tasks entrusted to it by law, are laid down in a management contract concluded between the State and the public company concerned.

(2). The management contract regulates the following matters:

- (1) the tasks which the public company assumes in order to execute its public service tasks, hereinafter referred to as the «public service tasks»;

² Cf. Royal Decree of 19/08/92 (MB 04/09/92) relating to approval of the first management contract of the Telegraph and Telephone Authority and establishing measures in order to class this administration among the autonomous public companies.

(2) the principles governing the rates for services provided within the framework of public service tasks, hereinafter referred to as the « services provided under public service obligation »;

(3) rules of conduct vis-à-vis the users of the services provided under public service obligation;

(4) the setting, calculation and terms of payment for any subsidies to be paid from the State's general expenditures budget which the State agrees to allocate to cover the charges resulting for the public company from its public service tasks, taking into account the costs and revenues specific to these tasks and the operating conditions imposed by or based on the Law, or by the management contract and, in respect of staff costs, the comparable salary increases within the State administrations;

(5) the setting, calculation and terms of payment of any compensations to be paid by the public company to the State, especially in respect of the advantages related to any exclusive rights held by the public company and, should the case arise, the rights of use granted by the State to the public company on State assets;

(6) should the case arise, matters of strategic economic interest for which the conclusion of contracts is subject to approval, depending on amount, by the Minister competent for the public company or by the competent Ministerial Committee, as well as determination of the amount referred to;

(7) should the case arise, objectives relating to the financial structure of the public company;

(8) should the case arise, rules on the distribution of the net profits;

9° the elements which the business plan must contain and the time periods for its communication and the deadline beyond which authorization is presumed to have been given;

10° should the case arise, the setting of an amount in respect of the real estate transcompaigns subject to prior authorization by the Minister competent for the public company and, should the case arise, the setting of a time period at the expiration of which the authorization is presumed to have been granted;

1(1) the penalties in case a party fails to comply with its commitments resulting from the management contract.

(3). Any explicit resolutive clause in the management contract will be regarded as not having been written. Article 1184 of the Civil Code does not apply to the management contract. The party vis-à-vis whom an obligation in the management contract is not performed may only pursue performance of the obligation, and, should the case arise, may demand damages without prejudice to the application of any special pain provided for in the management contract.

(4)). Any general financial obligations of the State vis-à-vis an autonomous public company are limited to those resulting from the provisions of the management contract concluded with the company concerned. The particular legal subsidy programs existing in favor of the public company no longer apply as of the effective date of the public company's classification among the autonomous public companies.

(5)). The management contract does not constitute an act or regulation as referred to in Article 14 of the Laws on the Council of State, coordinated on 12 January 1973. All its clauses are deemed to be contractual.

Section II Conclusion, approval, end and renewal

Art. 4

(1). During the negotiation and conclusion of the management contract, the State is represented by the Minister competent for the public company.

(2). During the negotiation of the management contract, the public company is represented by its Management Committee. The management contract is subject to approval by the Board of Directors, deciding by a two-thirds' majority of the votes cast.

The draft of the management contract or draft modifications to the management contract are submitted for discussion to the Joint Committee [*commission paritaire*].

The Joint Committee is periodically invited by its chairman to give its opinion, stating the reasons on which it is based, about the progress of the negotiations.

(3). The management contract will come into force only after it has been approved by the King, by decree deliberated in the Council of Ministers, and on the date set by this decree.

Art. 5

(1). The management contract is reassessed every year and, should the case arise, adapted to modifications in market conditions and technical developments by applying objective parameters provided for in the management contract.

Nevertheless, any other adaptation proposed by one or both of the parties will be carried out in accordance with Article 4.

(2). The management contract is concluded for a period of at least three years and at most five years.

(3). At the latest six months prior to the expiration of a management contract, the Management Committee will submit to the Minister competent for the public company the draft of a new management contract.

If, upon expiration of a management contract, a new management contract has not yet entered into effect, the contract is prolonged ipso jure until a new management contract has come into effect. This prolongation is published in the *Belgian Official Gazette* by the Minister competent for the public company.

If, one year after the prolongation referred to in the preceding paragraph, a new management contract has still not come into effect, the King may, by decree deliberated in the Council of Ministers, establish the temporary rules concerning the matters referred to in Article 3, (2). These temporary rules will be regarded as equivalent to a new management contract and will apply until a new management contract, concluded in accordance with Article 4, comes into effect.

Art. 6

The decrees relating to the approval of a management contract or its adaptation, as well as the decrees laying down the temporary rules are published in the *Belgian Official Gazette* [*Belgian Official Gazette*].

The provisions of the management contract or, should the case arise, of the temporary rules, are published in an

annex to the Royal Decree, except for those containing industrial or commercial secrets.

CHAPTER III *Autonomy*

Art. 7

The autonomous public companies are free to develop, within the limits of this law, all activities compatible with their business goals. They may set up branch offices or bodies in Belgium and abroad upon decision of their Board of Directors.

Art. 8

The acts of the autonomous public companies are regarded as commercial in nature.

However, the autonomous public companies are not subject to the provisions of Book III of the Commercial Code. They enjoy immunity from implementation for the assets which are wholly or partially allocated to implementation of their public service tasks.

Art. 9

The autonomous public companies are subject to the price control laws.

They freely determine the rates and the rate structures for the services they provide, other than for the services provided under public service obligation.

They determine the rates and the rate structures for the services provided under public service obligation within the limits of the principles concerning rates contained in the management contract. Nevertheless, the maximum rates, or the formulas for calculating them, which are not regulated in the management contract, are subject to approval by the Minister competent for the public company.

Art. 10

(1). The autonomous public companies freely decide, within the limits of their business goals, about the acquisition, use and transfer of their tangible and intangible assets, about the constitution or elimination of real rights on these assets, and about the implementation of such decisions.

Notwithstanding paragraph 1 and without prejudice to the application of Article 167 of the Program Law of 30 December 1988, the management contract may determine an amount beyond which any decision to acquire, build or transfer a building or a property right will be subject to prior authorization by the Minister competent for the public company and, should the case arise, within the time limit set in the management contract.

(2. The autonomous public companies entrust the competent building acquisition committee to :

(1) draw up authentic deeds of transfer, declaration or creation of real rights on buildings;

(2) introduce and pursue building expropriation procedures decided by the public company in accordance with the law.

(3). The State may, under the terms laid down in the Royal Decree relating to the approval of the first management contract, especially in respect of any consideration, transfer to an autonomous public company the ownership

of movables or real estate which it owns and which are allocated, on the date the contract in question comes into effect, to the implementation of services provided under public service obligation assumed by the company concerned.

Art. 11

(1). [L. 24 December 1993, art. 46 - The autonomous public companies are subject to the application of the Law of 24 December 1993 (relating to public procurement contracts and certain contracts for works, supplies and services) only for the public procurement contracts relating to their public service tasks. This is not prejudicial to the opening to competition within the framework of the European Community of certain contracts which do not relate to these same tasks, but instead to one of the activities referred to in Book II of this law.³]

(2. Contracts of works, supplies and services are concluded by or based on a decision of the Board of Directors of the public company. The Board of Directors determines which contracts will fall under the sole ability of the Management Committee and those contracts for which the Committee may delegate the decision-making. Notwithstanding the first paragraph, the management contract may, for contracts dealing with the implementation of public service tasks, designate matters which are of strategic economic interest and for which the decision to conclude the contract is subject, depending on the amount of the contract, to approval by the Minister competent for the public company or the Ministerial committee competent for public investments.

If the decision of the Minister or the Ministerial Committee does not conform to the proposal of the public company concerned and this results in additional cost for said public company, this additional cost must be covered by an equivalent intervention to be paid from the State's general expenditure budget.

Art. 12

(1). The autonomous public companies freely decide, within the limits of their business goals and, should the case arise, in accordance with the provisions of their management contract concerning the financial structure, extent, techniques and terms of their external financing.

(2. The autonomous public companies whose loans are ipso jure subject to State guarantee by or based on a law, may, notwithstanding any provision to the contrary, choose whether or not to call upon the State guarantee for the loans which they contract.

Starting on the date as of which a public company is classified among the autonomous public companies :

(1) the limitations and terms of control imposed by the above-mentioned laws apply only to the loans contracted by the public company concerned with the guarantee of the State;

(2) the public company concerned is or remains subject to Royal Decree No. 517 of 31 March 1987 establishing an annual premium on the new State-guaranteed obligations of certain public-sector institutions.

(3). The autonomous public companies freely decide, within the limits of their business goals, on the investment

³The date of entry into effect still has to be set by the King. The earlier version of this Article contained only the first sentence of the modified Article.

of their disposable funds in Belgian francs. Foreign-exchange investments are subject to prior authorization by the Minister of Finance, with the exception of the foreign-exchange transcampaigns covering commercial operations.

(4)). With the exception of the temporary coverage of cash requirements, the autonomous public companies will not use funds deriving from Government subsidies or income from services provided under public service obligation, to develop, finance or run activities other than within the framework of their public service tasks.

Art. 13

(1). The autonomous public companies may, under the terms specified below, acquire direct or indirect shareholding interests in public-law or private-law companies, associations and institutions whose purpose is compatible with their business goals; such entities are hereinafter referred to as the « subsidiaries ».

(2). The Board of Directors decides by simple majority of the votes cast on any acquisition of shareholding interests in accordance with (1), provided that the shareholding interest in its entirety:

(1) represents less than 25 % of the capital of the subsidiary concerned; and

(2) does not exceed a percentage of the shareholders' equity of the public company concerned determined in the Royal Decree relating to approval of the first management contract.

The King may, by decree deliberated in the Council of Ministers, reduce the limit laid down in the preceding paragraph (1) to less than 25 % and modify the limit referred to in the preceding paragraph (2) for the autonomous public companies He designates.

The Board of Directors may decide, by a two-thirds' majority of the votes cast, to acquire a shareholding interest which exceeds one or all of the limits determined in the first paragraph.

(3). The King may, by decree deliberated in the Council of Ministers, authorize, should the case arise, under the special conditions He determines, an autonomous public company to associate a subsidiary in the implementation of its public service tasks, provided that the direct or indirect shareholding interest of the public authorities in the subsidiary concerned exceeds 50 % of the capital and entitles them, under the By laws, to more than 75 % of the votes and mandates in all the bodies of the subsidiary concerned.

Any transfer of shares representing the capital, after which the direct or indirect shareholding interest of the public authorities referred to in the preceding paragraph would not exceed 50 %, is ipso jure null and void unless this shareholding interest is increased to over 50 % within three months of said transfer by a capital increase wholly or partially subscribed by the public authorities.

The terms concerning the shareholding interest of the public authorities determined by the first and second paragraphs are not applicable to international cooperation projects whose field of application extends beyond the territory of the Kingdom.

For the application of this Article, 'public authority' should be understood as one or several of the authorities referred to in Article 42.

(4)). The King may, in the decree referred to in (3), first paragraph, classify among the autonomous public

companies the subsidiary constituted in accordance with Belgian law, should the case arise, for a period He determines. In this case, the subsidiary and the autonomous public company concerned are severally responsible to the State for the implementation by the subsidiary of public service tasks with which the subsidiary is associated, until the entry into effect of a management contract with the subsidiary.

In the absence of classification in accordance with the preceding paragraph, the autonomous public company concerned remains responsible to the State for the implementation by the subsidiary of public service tasks with which the latter is associated.

The preceding paragraph is not applicable to international cooperation projects whose field of application extends beyond the territory of the Kingdom.

(5)). The King may, in the decree referred to in (3), first paragraph, transfer or allocate exclusive legal rights from the autonomous public company to a subsidiary of this company insofar as such a transfer or allocation is necessary for the development of the subsidiary. In this case, the King may classify the subsidiary concerned among the autonomous public companies in accordance with (4)).

(6)). This Article also applies to the formation of companies, associations or institutions by an autonomous public company.

An autonomous public company may itself incorporate limited liability companies [*sociétés anonymes*]. In this case, Article 13ter, paragraph 1, (4) of the Coordinated Laws on Commercial Companies will not apply, likewise Article 104(a), second paragraph of the same laws, as long as the founding company is the sole shareholder.

Art. 14

An autonomous public company may enter into settlements and compromises. Nevertheless, any arbitration agreement concluded with natural persons before the dispute arises is null and void.

CHAPTER IV Administration

Section I Principles

Art. 15

Autonomous public companies are managed by a Board of Directors and a Management Committee.

However, within the Belgian National Railway Company, the Select Committee referred to in Article 7(a) of the Law of 23 July 1926 relating to the creation of the Belgian National Railway Company exercises the responsibilities conferred upon it by the Board of Directors, without prejudice to the responsibilities of the Management Committee based on Article 19.

Art. 16

In the autonomous public companies whose public service tasks cover the entire Kingdom, the Board of Directors and the Management Committee will have as many French-speaking members as Dutch-speaking members, possibly with the exception of the Chairman of the Board of Directors and of the Managing Director, respectively.

Section II The Board of Directors

Art. 17

(1). The Board of Directors is authorized to carry out all acts necessary or useful to achieve the purpose of the public company.

The Board of Directors supervises the management performed by the Management Committee. The Management Committee reports regularly to the Board. The Board, or its Chairman, without prejudice to the powers conferred upon it by Article 18, (5)), may at any time ask the Management Committee for a report on all or some of the company's activities.

(2). The Board of Directors may delegate to the Management Committee all or part of the responsibilities referred to in (1), with the exception of :

- (1) approval of the management contract or any modification thereof ;
 - (2) drafting of the business plan and definition of the general policy;
 - (3) supervision of the Management Committee, in particular in respect of implementation of the management contract;
 - (4) other responsibilities which are allocated to the Board of Directors by this Title and, if the public company has the form of a *société anonyme de droit public* [a limited liability company under public law], by the Coordinated Laws on Commercial Companies.
- (3). If the public company does not have the form of a *société anonyme* under public law, Accordance⁵⁴, second paragraph, 60, first paragraph, 61, 62, 63(a) and 67 of the Coordinated Laws on Commercial Companies are applicable by analogy to the Board of Directors.

Art. 18

(1). The Board of Directors is made up of at most eighteen members, including the members of the Management Committee, who are Board members ipso jure.

The number of ordinary members of the Board of Directors is twice the number of Management Committee members.

(2). If the public company does not have the form of a *société anonyme* under public law, the King, by decree deliberated in the Council of Ministers, will determine the number of directors and appoint the ordinary directors. If the public company does have the form of a *société anonyme* under public law, the number of members of the Board of Directors is determined by the general meeting of shareholders. The King appoints, by decree deliberated in the Council of Ministers, a number of ordinary members proportional to the voting rights pertaining to the shares held by the State. The other ordinary members are then appointment by the other shareholders.

Among the ordinary members of the Board of Directors of the Belgian National Railway Company to be appointment by the King, two are appointment at the proposal of the Minister competent for the National Company, acting at the proposal of the two most representative trade unions sitting on the National Joint Committee [*Commission paritaire nationale*] within this company.

The ordinary members of the Board of Directors appointment by the King may only be dismissed by Royal Decree deliberated in the Council of Ministers, upon pertaining opinion of the Board of Directors, stating the

reasons on which it is based, and approved by a two-thirds' majority of the votes cast.

(3). Ordinary members of the Board of Directors are appointment for a renewable six-year term.

(4)). If a director's position is vacated, the remaining directors are authorized to fill it temporarily until a definitive appointment is made in accordance with Article 18 or 20.

(5)). The King appoints, by decree deliberated in the Council of Ministers, the Chairman of the Board of Directors from among the ordinary members.

In case of a tie vote in the Board of Directors, the vote of the Chairman will be preponderant.

The Chairman may, at any time, inspect without moving the books, correspondence, minutes and generally all documents and all written material of the public company. He may require members of the Management Committee, agents and employees of the public company to provide all explanations or information and conduct any verifications he deems necessary for the performance of his mandate. He may enlist the aid of an accountant designated by himself. The accountant's remuneration will be paid by the public company.

Section III The Management Committee

Art. 19

The Management Committee is in charge of the day-to-day management and representation in respect of this management, as well as implementation of decisions of the Board of Directors and negotiation of the management contract.

The members of the Management Committee form a panel. They may divide the tasks amongst themselves. With the exception of those referred to in the Articles 4, (2) and 11, (2), the Management Committee may delegate some of these responsibilities to on or more of its members or to members of the staff. It may authorize the sub-delegation thereof.

If the public company does not have the form of a *société anonyme* under public law, Articles 60, first paragraph, 61, 62, 63, third paragraph, 63(a) and 67 of the Coordinated Laws on Commercial Companies are applicable by analogy.

Art. 20

(1). The Management Committee is made up of the Managing Director and the manager-directors. The Management Committee is presided over by the Managing Director.

(2. The King appoints the Managing Director by decree deliberated in the Council of Ministers for a renewable six-year term. The Managing Director will have a different mother tongue than that of the Chairman of the Board of Directors. He may only be dismissed by Royal Decree deliberated in the Council of Ministers, upon pertaining opinion, stating the reasons on which it is based, of two-thirds of the ordinary members of the Board of Directors.

(3). To complete the Board of Directors, the ordinary members of the Board of Directors appoint, at the proposal of the Managing Director, the other members of the Management Committee for a renewable six-year term. These members of the Management Committee have the title of manager-director. Their appointment is subject to

approval by the Minister competent for the public company.

An ordinary member of the Board of Directors may not at the same time be a member of the Management Committee.

The manager-directors may only be dismissed by a decision of two-thirds of the ordinary members of the Board of Directors. The dismissal is subject to approval by the Minister competent for the public company.

(4)). The Managing Director and the manager-directors carry out full-time duties within the company or on its behalf.

Section IV The director's mandate

Art. 21

(1). The rights, including remuneration, and mutual obligations of the Managing Director and the manager-directors, on the one hand, and of the public company, on the other, are regulated in a special agreement between the concerned parties. During negotiation of this agreement, the public company is represented by the ordinary members of the Board of Directors.

The Managing Director or the manager-director who, at the time of his appointment, stands in a statutory relation with the State or any other institution of public law answerable to the State is ipso jure placed on mission leave according to the provisions of the regulations in question for the duration of his mandate. However, during this period, he maintains his claims to promotion and salary increases.

When the Managing Director or a manager-director, at the time of his appointment, stands in a contractual relation with the State or with any other institution of public law answerable to the State, the contract concerned is suspended ipso jure for the entire period of his mandate. However, during this period, he maintains his claims to promotion and salary increases.

(2). The King or, if the public company has the form of a *société anonyme* under public law, the general meeting, determines the remuneration of the members of the Board of Directors by virtue of their director's mandate.

(3). The remunerations referred to in ((1) and 2 are paid by the public company. If the remunerations concerned include a variable element, the base assessment may not include the elements in the nature of an operating charge.

Art. 22

(1). Without prejudice to other limitations provided by or based on a law or in the organic act of the autonomous public company, the director's mandate is incompatible with the mandate or positions of a :

- (1) member of the European Parliament;
- (2) member of the Legislative Chambers;
- (3) Minister or Secretary of State;
- (4) member of the Council or the Executive of a Community or Region;
- (5) governor of a province or member of the permanent delegation of a provincial council;
- (6) staff member of the concerned public company in respect of the ordinary members of the Board of Directors; this latter incompatibility does not apply to members of the Board of Directors of the Belgian National Railway Company.

In addition, the manager-director's mandate is incompatible with the mandate of mayor, alderman or chairman of the public social assistance center of a municipality having more than 30,000 inhabitants.

- (2). When a director infringes the provisions of (1), he is obliged to resign from the mandates or positions in question within three months. If he fails to do so, he will be considered, upon expiration of this time limit, to have resigned ipso jure from his mandate within the public company, without this being prejudicial to the legal validity of the acts he accomplished or the deliberations in which he participated during the period concerned.
- (3). The director's mandate expires ipso jure at age 65.

CHAPTER V Administrative supervision and auditing

Section I Administrative supervision

Art. 23

(1). The autonomous public company is subject to the control of the Minister competent for it. This control is exercised via the intervention of a Government Auditor, who is appointed and dismissed by the King at the proposal of the Minister concerned.

The Minister competent for the public company designates a substitute in case the Government Auditor is unable to fulfill his duties.

The King regulates the exercise of the tasks of the Government Auditors [L. 12 December 1994, art. 1 - and their remuneration. This remuneration will be paid by the public company concerned.]

(2). The Government Auditor makes sure that the law, the organic act of the public company and the management contract are complied with. He sees to it that the policy of the public company, in particular that conducted in implementation of Article 13, is not prejudicial to the implementation of public service tasks.

The Government Auditor reports to the Minister competent for the public company. He reports to the Budget Minister on all decisions of the Board of Directors or the Management Committee which have an impact on the State's general expenditure budget.

(3). The Government Auditor is invited to all the meetings of the Board of Directors and the Management Committee, and has an advisory vote there. He may at any time examine without moving the books, correspondence, minutes and generally all documents and all written material of the public company. He may require the directors, agents and employees of the public company to provide any explanations or information and conduct any verifications he deems necessary for the performance of his mandate.

The public company provides the Government Auditor with the human and material resources necessary for the performance of his mandate.

(4). The Government Auditor may, within four clear days, appeal to the Minister competent for the public company against any decision he deems contrary to the law, the organic act or the management contract.

This time period starts as of the day of the meeting at which the decision was made, provided that the Government Auditor had been invited to it in a regular

manner and, otherwise, as of the day on which he learned of the decision. Appeal shall be suspensive.

In case of impact on the State's general expenditure budget, the Minister competent for the public company will request the consent of the Budget Minister.

If, within eight clear days starting the same day as the time period referred to in the first paragraph, the Minister competent for the public company has not declared it null and void, the decision will become final, without prejudice to the provisions of the latter paragraph. The Minister concerned notifies the nullification to the management body.

If the Budget Minister and the Minister competent for the public company cannot revery agreement within the eight days referred to in the preceding paragraph, a ruling is made within thirty clear days starting the same day as the time period referred to in the first paragraph, according to the procedure laid down by the King.

(5). Every year, the Board of Directors reports to the Minister competent for the public company on the accomplishment by the public company of its public service tasks.

(6). Every year, the Minister competent for the autonomous public company reports to the Legislative Chambers on the application of this Title.

Art. 24

When compliance with the Law, the organic act or the management contract so requires, the Minister competent for the autonomous public company or the Government Auditor may require the competent management body to deliberate, within a time period he draws up, on any question which he determines.

Section II Auditing

Art. 25

(1). The auditing of the financial situation, the annual accounts and the regularity, with regard to the Law and the organic act, of the transcompaigns noted in the annual accounts, is entrusted in every autonomous public company, to a four-member panel of auditors. The members of the board have the title of auditor.

(2). The King may, by decree deliberated in the Council of Ministers, specify the mission, the means of action and the regulations of the auditors.

(3). If the public company does not have the form of a *société anonyme* under public law, two members of the panel of auditors are appointment by the *Cour des Comptes* [State Audit Office] and two members are appointment by the Minister competent for the public company.

In the public companies which do have the form of a *société anonyme* under public law, the State Audit Office appoints two members. The other members are appointment by the general meeting of the shareholders. The members appointment by the State Audit Office are appointment from among the members of the State Audit Office. The other members are appointment from among the members, whether natural persons or legal entities, of the Institute of Company Auditors [*Institut des réviseurs d'entreprises*] proposed in accordance with Article 15ter of the Law of 20 September 1948 relating to the organization of the economy, added by the Law of 21

February 1985, with the Joint Committee fulfilling the role of the works council.

(4). The auditors are appointment for a renewable six-year term. Under pain of damages, they may be dismissed during their mandate only for just cause. Absent serious personal reasons, an auditor may resign from his positions only after of submission of his report on the annual accounts and after having reported in writing the reasons for his resignation to the Minister competent for the public company and, should the case arise, to the general meeting.

(5). The King or, if the public company has the form of a *société anonyme* under public law, the general meeting, determines the auditors' remuneration. This remuneration will be paid by the public company concerned.

(6). Articles 64, (1), fourth paragraph, 64(a), 64ter, 64(e), 64(g) and 65 of the Coordinated Laws on Commercial Companies are applicable to the panel of auditors by analogy in the public companies which do not have the form of a *société anonyme* under public law. The report referred to in Article 65 of the Coordinated Laws on Commercial Companies is sent to the Board of Directors and to the Minister competent for the public company.

(7). The State Audit Office exercise its control exclusively on the base Article 27, (3). The accountants of the autonomous public companies are not subject to the Law of 29 October 1846 relating to the organization of the State Audit Office.

CHAPTER VI Business plan

Art. 26

Every year, the Board of Directors of every autonomous public company draws up a business plan setting the medium-term objectives and strategy of the public company.

The elements of the business plan concerning the performance of public service tasks are communicated to the Joint Committee within the autonomous public company for its information. These elements are submitted for approval by the Minister competent for the public company for evaluation in respect of the provisions of the management contract. The other elements are communicated to the Minister concerned for his information.

CHAPTER VII Accounting and annual accounts

Art. 27

(1). The autonomous public companies are subject to the Law of 17 July 1975 on accounting and the annual accounts of companies. They establish their accounts per calendar year. They establish a separate system of accounts for activities dealing with their public service tasks, on the one hand, and for their other activities, on the other.

The notes to the annual accounts contains a summary of the accounts relating to public service tasks and comments on this subject. The King may adopt general or specific rules relating to the form and the content of this summary and these comments.

(2). Every year, the Board of Directors performs an inventory and draws up the annual accounts and a management report. The management report contains the information referred to in Article 77, fourth paragraph, of the Coordinated Laws on Commercial Companies. Subject to the special rules adopted based on Article 10, (2), second paragraph, of the Law of 17 July 1975 on accounting and the annual accounts of companies, added by the Law of 1 July 1983, the annual accounts, the management report and the panel of auditors' report are published in the manner specified in Article 80 of the Coordinated Laws on Commercial Companies. Article 80(a) of the same laws is applicable by analogy.

(3). The Board of Directors communicates the annual accounts, accompanied by the management report and the panel of auditors' report, to the Minister competent for the public company and to the Budget Minister, before April 30th of the year following the financial year concerned. The annual accounts of the public companies which do not have the form of a *société anonyme* under public law and the appropriation of the profits proposed therein are subject to approval by the Minister competent for the public company.

Before May 31st of the year following the financial year concerned, the Minister competent for the public company communicates the documents referred to in the first paragraph to the State Audit Office for verification. The State Audit Office may, by intervention of its representatives on the panel of auditors, organize an on-site audit of the accounts and transcommissions dealing with the performance of public service tasks. The Audit Office may publish the accounts in its Book of Observations. Before the same date, the Minister competent for the public company communicates the documents referred to the first paragraph to the Legislative Chambers.

Art. 28

The organic act of the autonomous public company regulates the appropriation of the net profits. If the public company does not have the form of a *société anonyme* under public law, and the organic act does not regulate the appropriation of profits, this appropriation is regulated in the management contract.

If the autonomous public company has not yet taken the form of a *société anonyme* under public law, every year a minimum of twenty percent is deducted from the net profits and allocated to form a reserve fund; this deduction ceases to be obligatory when the reserve fund has attained an amount specified in the organic act.

CHAPTER VIII Staff

Section I Principles governing the staff regulations and trade union regulations

Art. 29⁴

(1). The members of the staff of an autonomous public company are recruited and employed based on the framework and staff regulations adopted by the Board of Directors or, should the case arise, the King, in accordance with this Title.

However, an autonomous public company may recruit and employ staff based on an employment contract subject to the Law of 3 July 1978 on employment contracts, in order to :

- (1) meet exceptional and temporary staff needs, whether these involve the implementation of short-term campaigns or an unusual surge in workload;
- (2) perform tasks requiring highly-qualified knowledge or experience;
- (3) replace members of the statutory or contractual staff during periods of partial or total temporary absence;
- (4) carry out auxiliary or specific tasks.

The members of the staff of an autonomous public company are appointment or hired by or based on a decision of the Board of Directors.

(2). The relations between an autonomous public company and the trade unions representing its staff are regulated in the trade union regulations adopted by the Board of Directors or, should the case arise, the King, in accordance with this Title.

Section II The Joint Committee

Art. 30

(1). An Joint Committee [*commission paritaire*] is created within every autonomous public company.

(2). The Joint Committee is competent in respect of:

- (1) consultation with and general information of the staff, including, for the matters referred to in Article 34, (2), the regulations which the Joint Committee has not designated, by a two-thirds' majority of the votes cast, as basic regulations;
- (2) negotiation with the representative trade unions on the subject of establishing the staff regulations and trade union regulations, in accordance with Article 33 or 35;
- (3) matters concerning the health and safety of the workers, as well as safety at work and the work environment, in accordance with Article 36, (2);

⁴ L. 20 December 1995, art. 85 - In respect of BELGACOM, the King may, by decree deliberated in the Council of Ministers, modify Article 29, (1), paragraph 2 of the same proposed law formulated by the Board of Directors of BELGACOM after consultation with the trade unions representing its staff.

L. 20 December 1995, art. 86 - (1). The powers accorded to the King by Article 85 expire on 31 December 1996. After that date, the decrees adopted by virtue of these powers may only be repealed, completed, modified or replaced by a law.

(2. The draft decrees referred to in Article 85 form the object of a report to the King and are subject to the opinion of the legislation section of the Council of State.

(4) examining the economic and financial information concerning the public company and its affiliated companies, as referred to in Article 15, first paragraph, letter b, and second paragraph of the Law of 20 September 1948 relating to the organization of the economy, modified by the Law of 17 February 1971, as specified and completed in the collective agreements concluded within the National Labor Council;

(5) consultation with the representative trade unions on the subject of concluding the management contract, in accordance with Article 4, (2);

(6) establishment and modification of labor regulations, in accordance with Article 11 of the Law of 8 April 1965 establishing the labor regulations, with the Joint Committee exercising the tasks of the works council.

(3). The King sets the number of members of the Joint Committee, with a maximum of eighteen, not including the Chairman.

The Joint Committee is presided over by the Chairman of the Board of Directors; the Chairman has a consultative vote.

(4)). One-half of the members of the Joint Committee are appointment by the Board of Directors. The other half are appointment by the Board of Directors upon pertaining opinion of the representative trade unions. A substitute is appointment for every member of the Joint Committee. Every representative trade union proposes a number of members proportional to the number of its dues-paying members among the total number of members of the staff of the public company who are members of a representative trade union.

(5)). The following are considered representative for sitting on the Joint Committee of a public company :

(1) any trade union referred to in Article 8 (1), (1) of the Law of 19 December 1974 organizing the relations between the public authorities and the unions of agents coming under these authorities, as modified by Article 51, (3) of this Law;

(2) without prejudice to (1), a trade union which, at the same time :

- a) defends the interests of all categories of the staff;
- b) is affiliated with a trade union constituted centrally at the national level or forming part of a trade union federation constituted on the same level;
- c) includes the greatest number of dues-paying members among the trade unions other than those referred to in (1) and the number of whose dues-paying members represents at least 10 % of the workforce of the public company concerned.

The representativeness of the trade unions is monitored by the committee referred to in Article 14, (1) of the Law of 19 December 1974 organizing the relations between the public authorities and the unions of agents coming under these authorities. Every six years, the committee referred to sets for every representative trade union the number of members of the Joint Committee to be appointment by the union, in accordance with (4)), second paragraph.

(6)). This Article does not apply to the Belgian National Railway Company. The responsibilities attributed by this Title to the Joint Committee referred to in (1) are exercised by the National Joint Committee referred to in Article 13 of the Law of 23 July 1926, relating to the creation of the Belgian National Railway Company, as modified by Article 163 of this law.

(7). For the application of this Title, the terms « dues-paying member », « member of the staff » and « workforce

» are understood as defined based on Article 14, (3), of the aforementioned Law of 19 December 1974.

(8)). The King regulates the terms of application of this Article.

Section III The Public Companies Committee

Art. 31

(1). An Joint Committee is created for the autonomous public companies which is competent for all autonomous public companies, hereinafter referred to as the “Public Companies Commission”.

(2. The Public Companies Commission is competent in respect of :

(1) the recourse referred to in Article 35, (3).(1);

(2) the opinion referred to in (3);

(3) the conclusion of the collective agreements referred to in (4)).

(3). Every draft bill or draft decree regulating the staff regulations or the trade union regulations of more than one autonomous public company is subject to the opinion of the Public Companies Commission. The Commission has a period of one month as of the date of the communication of the draft to give its opinion.

It expresses its opinion by a two-thirds' majority of the votes cast.

(4)). Within the Public Companies Commission, by unanimity of its members present, collective agreements may be concluded relating to the staff regulations and trade union regulations of the autonomous public companies, without prejudice to :

(1) legal and regulatory provisions;

(2) in every autonomous public company, provisions of the staff regulations and trade union regulations which are more advantageous for the staff.

The collective agreements bind all the autonomous public companies and trade unions which are represented in the Public Companies Commission, as well as the members of the staff of these companies.

The King may, at the proposal of the Ministers competent for the autonomous public companies concerned, make a collective agreement compulsory for all public companies not represented in the Public Companies Commission, the trade unions and the members of the staff of these companies.

(5)). The Public Companies Commission is presided over by a person chosen for his particular responsibilities in industrial relations matters.

The King appoints the Chairman, at the proposal of the Prime Minister, by Royal Decree deliberated in the Council of Ministers.

(6)). The Public Companies Commission has eighteen members, not including the Chairman.

The Board of Directors of every autonomous public company, with the exception of autonomous public companies which are subsidiaries of another autonomous public company, proposes at least three candidates. The King appoints, at the proposal of the Prime Minister, by decree deliberated in the Council of Ministers, nine members from among the candidates proposed by the Boards of Directors. He appoint at least two members at the proposal of every Board of Directors.

Nine members are appointment by the Ministers competent for the public companies concerned, at the proposal of the representative trade unions. Every representative trade union proposes a number of members proportional to the number of its dues-paying members among the total number of the members of the staff of all autonomous public companies who are members of a representative trade union.

A substitute is appointment for every member of the Public Companies Commission in accordance with the preceding paragraphs.

Any trade union which meets all of the following requirements is considered representative to sit on the Public Companies Commission :

- (1) has a number of dues-paying members representing at least 10 % of the total number of the members of the staff of all the autonomous public companies;
- (2) exercises its activity at the national level;
- (3) defends the interests of all categories of the staff of the autonomous public companies;
- (4) is affiliated with a trade union represented in the National Labor Council.
- (7). A member of an Joint Committee may not be appointment member of the Public Companies Commission.
- (8)). The King regulates the terms of application of this Article.

Section IV Establishing the staff regulations and trade union regulations

Art. 32

With the exception of the provisions introduced by Articles 50, 51, ((2 and 3, and 53 of this law, the legal and regulatory provisions which regulate the staff regulations and trade union regulations remain applicable to an autonomous public company until a related regulation comes into effect in a staff regulations or in a trade union regulations, adopted in accordance with this Title.

Art. 33

(1). The Board of Directors draws up, without prejudice to the provisions of this Title, the first staff regulations and the first trade union regulations, upon pertaining opinion of the Joint Committee.

The Joint Committee expresses the opinion pertaining to a two-thirds' majority of the votes cast.

The Government Auditor may attend the works of the Joint Committee relating to the establishment of the first staff regulations and the first trade union regulations. The King may, without prejudice to the provisions of this Title, by decree deliberated in the Council of Ministers, repeal, complete, modify or replace legal provisions relating to the staff regulations and trade union regulations in order to make them compatible with the provisions of the first staff regulations and the first trade union regulations adopted in accordance with the first paragraph.

(2. If a first staff regulations or trade union regulations has not been adopted in accordance with (1), first paragraph, within one year as of the date the classification of the company among the autonomous public companies comes into effect, the King may, within an additional

period of three months, establish the first staff regulations and the first trade union regulations by decree deliberated in the Council of Ministers, without prejudice to the rights of the staff in respect of job security, pension and remuneration.

The King may, in the decree referred to in the first paragraph, repeal, complete, modify or replace legal provisions, without prejudice to :

- (1) the rights of the staff in respect of job security, pension and remuneration;
- (2) the provisions of this Title;
- (3) the rules relating to the formation and composition of the National Joint Committee referred to in Article 13 of the Law of 23 July 1926, relating to the creation of the Belgian National Railway Company.

Regulations in the first regulations decreed by the King will remain applicable until the establishment of a related regulation by the Board of Directors, in accordance with the procedure referred to in Article 34, (1) or 35.

Art. 34

(1). Once the first regulations is established in accordance with Article 33, and at the latest upon expiration of a fifteen-month period after the classification of the organization among the autonomous public companies comes into effect, the staff regulations and trade union regulations will be established by the Board of Directors, without prejudice to the legal and regulatory provisions regulating the regulations concerned. However, in respect of the basic regulations designated in accordance with (2, the Board will decide in accordance with the procedure referred to in Article 35.

(2. The following regulations of the staff regulations, or the trade union regulations, which were designated in advance by the Joint Committee, deciding by a two-thirds' majority of the votes cast, either as basic regulations, or as general principles as referred to in Article 35, (3),(1), are established in accordance with the procedure referred to in Article 35 :

A) The basic regulations relating to the administrative regulations of the statutory staff, dealing with :

- (1) recruitment, admission to training and appointment;
- (2) rights, duties and responsibility of the staff;
- (3) disciplinary system;
- (4) administrative positions, in particular active service, leave and availability;
- (5) rules applicable in respect of leave;
- (6) calculation of seniority;
- (7) permanent retirement;
- (8) maximum working hours;
- (9) system relating to work accidents, accidents en route to or from work, and occupational illnesses.

B) The basic regulations relating to the pecuniary regulations of the statutory staff, dealing with :

- (1) the right to salary and to salary increases;
- (2) salary, remuneration, wages, including the setting of wage scales and the calculation of their amounts, including the periods which come into consideration for setting them;
- (3) pecuniary seniority;
- (4) salary payment intervals;
- (5) guaranteed salary;
- (6) salary protection;
- (7) compensations, allowances, bonuses and in-kind benefits;

- (8) possible profit-sharing schemes.
- C) The basic regulations relating to the pension scheme of the statutory staff, dealing with :
- (1) field of application;
 - (2) different categories of rightful claimants;
 - (3) retirement age;
 - (4) conditions giving entitlement to a pension;
 - (5) calculation of the pension amount;
 - (6) pension protection;
- D) The basic regulations on collective labor relations, dealing with :
- (1) approval of the trade unions of the staff;
 - (2) approval of the trade union delegates, responsible leaders and permanent representatives of the trade unions;
 - (3) prerogatives of the representative trade unions and the approved trade unions;
 - (4) organization and responsibilities of the Joint Committees at the local level;
 - (5) benefits granted to members of the representative trade unions and the approved trade unions.
- E) The basic regulations relating to the organization of any social services, dealing with :
- (1) general framework of the tasks of the social services;
 - (2) functioning, management and control;
 - (3) determination of the beneficiaries;
 - (4) financing.
- F) The basic regulations relating to the following matters in respect of the statutory staff:
- (1) determination, distribution, classification and equivalence of grades, jobs or positions;
 - (2) the professional assessment of the staff;
 - (3) the organization of a recourse against decisions in matters relating to discipline, permanent appointment, professional assessment and dismissal for professional unfitness;
 - (4) staff careers;
 - (5) procedure relating to measures of order, including transfers in the interest of the service;
 - (6) the reassignment of surplus or unfit staff;
 - (7) interruption of professional career;
 - (8) establishment of the staff framework;
 - 9° training and retraining; preparation for career exams;
 - (10) work clothing;
 - (11) staff reception;
 - (12) work schedules;
 - (13) staff safety;
 - (14) working conditions;
 - (15) incompatibilities;
 - (16) tasks outside the public company in question;
 - (17) the physical aptitudes required;
 - (18) the industrial medicine organization.
- G) In respect of the contractual staff :
- (1) the type or categories of positions open to the contractual staff;
 - (2) the basic regulations relating to the rights and obligations of the contractual staff.

Art. 35

- (1). The Board of Directors or the delegation of a representative trade union sitting on the Joint Committee submits every proposal relating to the establishment or modification of the basic regulations of the staff regulations or the trade union regulations, designated in accordance with Article 34, (2, to the Joint Committee.

(2). The Board of Directors is bound by any regulation adopted by the Joint Committee by a two-thirds' majority of the votes cast concerning matters forming the object of a proposal.

(3). In the absence of a regulation binding the Board of Directors adopted by the Joint Committee within one month after the proposal is communicated to the Chairman of the Joint Committee :

- (1) the Board of Directors or the delegation of a representative trade union sitting on the Joint Committee may submit the proposal to the Public Companies Commission, if the proposal seeks to enact or modify one of the basic regulations referred to in Article 34, (2, subsections B, C, D and E, or one of the general principles of the basic regulations referred to in subsection A;
- (2) the Board of Directors may decide on the proposal by a two-thirds' majority of the votes cast, for all other propositions.

In the case referred to in (1) of the first paragraph, the one-month time period is extended by an additional month if the Board of Directors or the delegation of a representative trade union sitting on the Joint Committee entrusts the Chairman of the Public Companies Commission with a preliminary reconciliation mission.

(4). In the event of a petition as referred to in (1) of the first paragraph of (3), the Board of Directors is bound by any regulation adopted by the Public Companies Commission by a two-thirds' majority of the votes cast on matters forming the object of the proposal at the origin of the petition.

In the absence of a regulation binding the Board of Directors within one month after the petition is communicated to the Chairman of the Public Companies Commission, the Board of Directors may decide on the proposal by a two-thirds' majority of the votes cast. The Government Auditor communicates the decision to the Minister competent for the autonomous public company. The Minister has eight clear days to cancel the decision. This period starts as of the day of the meeting at which the decision was made, provided that the Government Auditor was invited to it in a regular manner and, otherwise, as of the day he learned of the decision.

(5). (3) and 4 are not applicable to the Belgian National Railway Company. No modification may be made to the basic regulations designated in accordance with Article 34, (2), except in accordance with a regulation binding the Board of Directors, adopted by the National Joint Committee within this Company.

Section V Language use; specific responsibilities of the Joint Committee

Art. 36

- (1) The autonomous public companies, as well as their subsidiaries which they associate with the implementation of their public service tasks and in which the shareholding interest of the public authorities exceeds 50 %, are subject to the provisions of the laws on the use of languages in administrative matters, coordinated on 18 July 1966.
- (2). Autonomous public companies are subject to the Law of 10 June 1952 concerning workers' health and safety, as well as safety at work and of the work environment, it being understood that the Joint Committee carries out the tasks and is endowed with the responsibilities of the

committee on workplace safety, hygiene and enhancement. The Joint Committee organizes the tasks and attributions of the safety, hygiene and enhancement bodies in accordance with the provisions of the General Regulations on Labor Protection.

(3). The Board of Directors of every autonomous public company communicates to the Joint Committee the economic and financial information referred to in Article 15, first paragraph, letter b, and second paragraph of the Law of 20 September 1948 relating to the organization of the economy. Article 15(a) of the above-mentioned Law of 20 September 1948 is applicable to autonomous public companies. Article 30 of the same Law is applicable to members of the Joint Committee and their substitutes.

CHAPTER IX Transformation into a société anonyme under public law

Section I The transformation

Art. 37

The autonomous public companies may adopt the form of a *société anonyme* under public law. In this case, the public company concerned is subject to the legal and regulatory provisions of commercial law which are applicable to *sociétés anonymes* for anything not expressly provided for otherwise by or based on this Title, or by or based on any specific law.

Art. 38

- (1). The decision to transform into a *société anonyme* under public law is made by the Board of Directors. The Board justifies its decision in a report. To this report is attached a summary statement of the assets and liabilities, drawn up not more than three months earlier and indicating the amount of the authorized capital after the transformation. This amount may not be greater than the net assets as they result from the above-mentioned summary statement. An auditor, designated by the Minister competent for the public company, will make a report on this statement and indicate in particular whether it completely, truly and accurately reflects the situation of the public company.
- (2). The memorandum and By laws of the public company in its new form are established by the Board of Directors.
- (3). The transformation only becomes effective after approval by the King, by decree deliberated in the Council of Ministers, of the transformation decision and the memorandum and By laws.
- (4). Articles 170 and 171, first paragraph, of the Coordinated Laws on Commercial Companies are applicable by analogy to the transformation.
- (5). Should the case arise, Article 118 of the Income Tax Code is not applicable to the transformation. Notwithstanding Article 115 of the *Code des droits d'enregistrement, d'hypothèque et de greffe* [Code of Registration, Mortgage and Registry Fees], the transformation is exempted from the proportional registration fee.
- (6). The General Director of the Value-Added Tax, Registration and Estates Administration, or his deputy, is

authorized to authenticate the deed of transformation and the memorandum and By laws.

(7). Notwithstanding (1), first paragraph, and (3), the King may, in the decree relating to approval of the first management contract, decide on the transformation under the terms and with the By laws He determines. (1), third paragraph, 4, 5 and 6 are applicable to such a transformation. The conclusions of the auditor referred to in (1), third paragraph, are included in the report to the King.

The King applies the provisions of the preceding paragraph to the Belgian National Railway Company in the decree classifying said Company among the autonomous public companies.

Section II Shares

Art. 39

(1). All shares issued after of the transformation into a *société anonyme* under public law are allocated to the State.

The first paragraph is not applicable to the shares issued by the Belgian National Railway Company which do not represent the shareholding interest of the State.

The State may only transfer the shares which are allocated to it after of the transformation to those public authorities designated by the King, by decree deliberated in the Council of Ministers, on the terms He determines and in an amount not exceeding one-half.

(2). The shares allocated to the State after of the transformation, as well as the shares subscribed by a public authority after of a capital increase, are registered.

(3). New shares or convertible bonds or bonds with right of subscription may not be subscribed by persons other than the public authorities if, following such a subscription, the direct shareholding interest of the public authorities in the capital, at the time of the subscription, would no longer exceed 50 %.

(4). Any transfer by a public authority, other than the State, of shares representing the capital must be notified by the public authority concerned to the autonomous public company. Such a transfer following which the direct shareholding interest of the public authorities would no longer exceed 50 % is null and void ipso jure, unless this shareholding interest is raised to more than 50 % within three months of said transfer by a capital increase wholly or partially subscribed by the public authorities.

(5). The shares held by the public authorities entitle, in their entirety, ipso jure to more than 75 % of the votes and mandates in all the bodies of the autonomous public company. The voting rights and mandates of the other shareholders are reduced proportionally.

Art. 40

(1). Any issue of new shares or convertible bonds or bonds with subscription rights is subject to prior authorization by the King, by decree deliberated in the Council of Ministers.

(2). Notwithstanding Article 34(a), (1), first paragraph, of the Coordinated Laws on Commercial Companies, shares to be subscribed in cash are offered preferentially to the State, then to the other public authorities designated in the decree referred to in (1), and finally, without prejudice to

(3), to the other shareholders who would then exercise their preferential right in accordance with said Article. (3). In case of subscription of shares referred to in (2) by persons other than the public authorities, a part of the issue is offered preferentially to members of the staff of the public company issuing the shares.

The members of the staff exercise their preferential subscription right before the other shareholders. This preferential right is not negotiable.

The shares subscribed by members of the staff, based on this Article, limiting the preferential right of shareholders other than the State, carry no voting rights, except in the case referred to in Article 71 of the Coordinated Laws on Commercial Companies.

The King determines in the decree referred to in (1) :

- (1) the part of the issue which will be offered to the members of the staff;
- (2) the terms for exercising the preferential subscription right of members of the staff;
- (3) the terms of the issue of shares without voting rights.

Section III Miscellaneous provisions

Art. 41

(1). Articles 13ter, paragraph 1, (4), 75, second paragraph, 76 and 104(a), second paragraph, of the Coordinated Laws on Commercial Companies are not applicable to the autonomous public companies which have the form of a *société anonyme* under public law.

(2). The Minister competent for the public company or his deputy, represents the State at the general meeting.

(3). All deeds, invoices, ads, publications, correspondence, purchase orders and other documents stemming from the public company will bear the mention « *société anonyme* under public law ».

(4)). A modification of the By laws will only become effective after approval by the King, by decree deliberated in the Council of Ministers.

(5)). The dissolution of an autonomous public company which has adopted the form of a *société anonyme* under public law may only be declared by or based on a law. The law will regulate the method and the conditions of the liquidation.

Art. 42

For application of Article 13 and chapter IX of this Title, “public authority” means :

- (1) the State;
 - (2) the public-interest bodies, companies, institutions or associations under public law which are answerable to the State, including the autonomous public companies;
- The King may, by decree deliberated in the Council of Ministers, for the public company or companies He designates, limit the notion of “public authority” to one or several of authorities referred to in the first paragraph.

CHAPTER X Protection of users

Section I The responsibilities of the mediation service

Art. 43

(1). Within every autonomous public company, or, should the case arise, within every group of affiliated autonomous public companies, a mediation service will be created which is competent for matters concerning users.

The preceding paragraph is only applicable to autonomous public companies whose users are mainly natural persons and which are designated as such by the King, by decree deliberated in the Council of Ministers.

(2). The mediation service is made up of two members, every having a different mother tongue.

The mediation service acts as a panel.

(3). The mediation service has the following tasks :

- (1) to examine all user complaints involving activities of the public company;
- (2) to intervene in order to facilitate an amicable resolution of disputes between the public company and the users;
- (3) to express an opinion to the public company if an amicable resolution cannot be reverified; a copy of the opinion is sent to the complaining party;
- (4) to express its opinion as arbitrator in any dispute which the public company and the user submit to such arbitration by agreement concluded after the dispute arises.
- (4). The mediation service may, within the framework of a complaint brought before it, examine without moving the books, correspondence, minutes and generally all documents and all written material of the public company dealing directly with the object of the complaint. It may require the directors, agents and employees of the public company to provide all explanations or information and conduct all verifications it deems necessary for its examination. The information thus obtained is handled confidentially by the mediation service whenever disclosure could harm the company generally.
- (5)). The public company will justify its decision if it does not follow the opinion referred to in (3), (3). The decision, stating the reasons on which it is based, is sent to both the complaining party and the mediation service.

Art. 43(a)

(1). A telecommunications mediation service shall be established within the Belgian Institute of Postal Services and Telecommunications created under Article 71 of this law from the 1st January 1998. This mediation service shall have the power to adjudicate on all matters relating to the end users of telecommunications services and directories.

The authority of the telecommunications mediation service shall extend to the end users and the following enterprises:

- (1) Any telecommunications service provider operating under an individual authorization issued by the Minister responsible for telecommunications.
- (2) Any telecommunications service provider required to make a declaration under Article 90 of this law and having

an annual turnover in respect of those activities subject to the authority of the mediation service in excess of 50 million Belgian Francs.

(3) Any other telecommunications service provider entering into an agreement with the mediation service in order to extend its authority.

(4) Any publisher of directories.

(2. The mediation service consists of two members, every drawn from a different linguistic background.

The mediation service acts as a body. It can, however, delegate its powers subject to the approval of the Minister responsible for telecommunications.

(3). The mediation service is charged with the following responsibilities:

(1) To examine all complaints from end users in regard to the activities of the enterprises defined in paragraph (1) of this Article.

Complaints from end users will not be heard until the complainant has made his complaint known to the enterprise concerned. The mediation service may refuse to hear a complaint when that complaint has been made to the enterprise concerned more than one year previously.

(2) To intervene in order to facilitate an amicable settlement of the disputes between the enterprises defined in paragraph (1) of this Article and the end users.

(3) To make recommendations to the enterprises defined in paragraph (1) of this Article in those cases where an amicable settlement cannot be reveryed. A copy of this recommendation shall be addressed to the complainant.

(4) To provide an arbitration decision in relation to any dispute between the enterprises defined in paragraph (1) of this Article and the end users, in accordance with an arbitration agreement concluded between the mediation service and the enterprises concerned, providing that the end user accepts the submission of the dispute to arbitration after the dispute arises.

The mediation service can only arbitrate in disputes relating to sums in excess of 100 000 Belgian Francs indexed.

(5) To provide advice on how to proceed to any end users contacting the mediation service orally or in writing.

(6) To provide advice relating to its responsibilities, on request, to the Minister responsible for telecommunications, the Belgian Institute of Postal Services and Telecommunications and the Telecommunications Consulting Committee.

(7) To examine requests from all persons claiming to be the victim of malicious calls for the names and addresses of the holders of the numbers from which the calls originated. The mediation service shall accede to such a request on the following conditions:

a) the facts in the case appear to be established.

b) the request makes reference to specific dates.

(4)). The mediation service may, during the investigation of any complaint that it has received, inspect on site any books, correspondence, reports and, in general, any documents and written material belonging to the enterprise or enterprises concerned that are relevant to the complaint received. It may request any explanation of information from the directors and employees of the enterprise or enterprises concerned and it may apply any such tests to this information as are necessary for the purposes of its examination.

Any information so obtained shall be treated by the mediation service as confidential if it is likely to be generally damaging to the enterprise concerned.

Subject to the extent of its powers, the mediation service is not subject to the instructions of any authority.

In the exercise of its responsibilities, the mediation service may call on the assistance of experts.

The examination of a complaint shall come to an end if it becomes the subject of legal action.

(5)). The enterprise concerned has a period of fifteen days in which to justify its decision if this is not in accordance with the recommendation referred to in paragraph (3).(3) of this Article. The reasons for the decision shall be sent to the complainant and to the mediation service.

Section II Composition and functioning of the mediation service

Art. 44

(1). The members of the mediation service are appointment by the King, by decree deliberated in the Council of Ministers, for a renewable five-year term. The member candidates are invited, by a notice published in the *Belgian Official Gazette*, to submit their candidacies.

A member of the mediation service who, at the time of his appointment, stands in a statutory relation with the State or any other legal entity of public law answerable to the State, will be ipso jure placed on mission leave according to the provisions of the regulations in question for the entire period of his mandate. However, during this period, he maintains his claims to promotion and salary increases. When a member of the mediation service, at the time of his appointment, stands in a contractual relation with the State or any other institution of public law answerable to the State, the contract concerned is suspended ipso jure for the entire period of his mandate. However, during this period, he maintains his claims to salary increases.

(2). To be able to be appointment a member of the mediation service, the candidate must :

- (1) have Belgian nationality;
- (2) display impeccable conduct and be in full possession of his civil and political rights;
- (3) hold a diploma qualifying him for level 1 positions in the State administrations;

(4) not have exercised a mandate or function during a period of three years prior to his appointment within:

- a) The public enterprise concerned, or in any associated enterprise affected by the activities of the public enterprises mediation service.
- b) Any enterprise as defined in paragraph (1) of Article 43 (a) of this law, or in any associated enterprise affected by the activities of the members of the telecommunications mediation service.

(3). The function of member of the mediation service is incompatible with :

- 1° a remunerated public mandate;
- (2) a public mandate conferred by elections;
- (3) the profession of attorney-at-law;
- (4) the function of notary public, magistrate or bailiff;
- (5) a mandate or function within:

a) The public enterprise concerned, or in any associated enterprise affected by the activities of the public enterprises mediation service.

b) Any enterprise as defined in paragraph (1) of Article 43 (a) of this law, or in any associated enterprise affected

by the activities of the members of the telecommunications mediation service.

(4)). [*repealed by L. 6 August 1993, art. 89*]

(5)). The members of the mediation service may only be dismissed for just cause, by Royal Decree deliberated in the Council of Ministers.

Art. 44(a)

[*L. 6 August 1993, art. 88 - (1)*. The King draws up the administrative and pecuniary regulations of the members of the mediation service.

(2. The members of the mediation service are subject to the provisions which, for agents of the State, govern :

(1) leave;

(2) availability for illness;

(3) holiday allowance.

(3). The members of the mediation service are subject in the health care sector to the system of compulsory insurance against illness and disability.

(4)). The Law of 3 July 1967, on compensation for damages resulting from accidents at work, accidents en route to or from work and occupational illnesses in the public sector, is applicable to the members of the mediation services created within the autonomous public companies and to the members of the telecommunications mediation service.

[*L. 20 December 1995, art. 54 -* The pensions and compensations, as well as the procedural expenses, unless the request is inappropriate and damaging, will be paid by the public company. In the case of the telecommunications mediation service, these costs will be borne by the Belgian Institute of Postal Services and Telecommunications established under Article 71 of this law.]

(5)). The autonomous public companies and the Belgian Institute of Postal Services and Telecommunications grant directly to the respective members of their mediation service and the telecommunications mediation service the family allowances, birth allowances and the adoption premium provided for by the coordinated laws on family allowances for salaried employees. The amount and the conditions for granting these allowances and premium are at least as favorable as those of allowances distributed obligatorily by the Family Allowance Compensation Funds.

Art. 44ter

[*L. 6 August 1993, art. 88 - (1)*. The autonomous public companies are obliged to ensure a retirement pension to the members of their mediation service. The rules which govern the conditions for granting and the method for calculating the pensions of officials of the general administration of the Kingdom are applicable to this pension. Every autonomous public company will bear the cost of the pensions granted to the members of its mediation service.

The Belgian Institute of Postal Services and Telecommunications will bear the costs of pensions granted to the members of the telecommunications mediation service in respect of those years of service to the telecommunications mediation service only.

(2). The rightful claimants of the persons referred to in (1) may claim a survivor's pension to be paid by the public Treasury according to the rules which govern the granting

and the method of calculating the pensions of rightful claimants of officials of the general administration of the Kingdom. This pension is financed by a personal contribution paid by the members of the mediation service equal to that provided by Article 60 of the Law of 15 May 1984 relating to measures to harmonize the various pension systems. This contribution is subject to the rules laid down by Articles 61 and 61(a) of the above-mentioned Law of 15 May 1984.]

(3). Insofar as the pension rights and the pension calculations referred to in paragraphs (1) and (2) are concerned, only service in the capacity as a member of the mediation service is taken into account.

This service cannot be taken into account in claiming the right to any other public sector pension or in the calculation of such a pension.

Art. 45

The King determines, by Royal Decree deliberated in the Council of Ministers, the human and material resources which the autonomous public company must allocate to its mediation service. The operating costs of the mediation service will be paid by the public company. However, the King may make access to the mediation service contingent upon paying a contribution to the costs.

Art. 45 (a)

(1). The King determines, by Royal Decree deliberated in the Council of Ministers, and on the advice of the Institute, the human and material resources which the Belgian Institute of Postal Services and Telecommunications must allocate to its telecommunications mediation service.

The operating costs of the telecommunications mediation service will be paid by the Belgian Institute of Postal Services and Telecommunications.

(2). In order to fund the services provided by the telecommunications mediation service, the enterprises defined in paragraph (1) of Article 43 (a) of this law shall make an annual subscription payment to the Belgian Institute of Postal Services and Telecommunications. This payment shall be based on the costs of financing the telecommunications mediation service and shall be called the "mediation subscription".

(3). Every year, the Institute shall fix the amount of the mediation subscription due from every of the enterprises defined in Article 43 (a) of this law.

(4)). The enterprises defined in paragraph (1) of Article 43 (a) of this law shall, by the 30th June every year, inform the Belgian Institute of Postal Services and Telecommunications of their annual turnover in every of the business areas falling under the authority of the mediation service.

(5)). The amount of the mediation subscription shall correspond to the financial sum allocated to the operations of the mediation service in the annual budget of the Belgian Institute of Postal Services and Telecommunications, set on the advice of the Inspector of Finances and the Telecommunications Consulting

Committee, multiplied by a co-efficient equal to the proportion of the turnover of the enterprise concerned in the total turnover of all enterprises for the previous year in respect of the business areas falling under the authority of the mediation service.

The first 50 million Belgian Francs of turnover are not taken into account when calculating the mediation subscription.

(6)). The mediation subscription shall be paid, not later than the 30th September of the relevant year, into a numbered bank account to be notified by the Belgian Institute of Postal Services and Telecommunications.

Any payment not received by the due date shall give rise to an interest charge, defined in law and non-negotiable, at 2% above the legally defined rate. This interest charge is calculated on a pro-rata basis according to the number of calendar days by which the payment is delayed.

The Institute shall notify all the enterprises defined in Article 43 (a) of this law of the amount of subscription due at least one month before the due date.

(7). The mediators shall, every year, submit the draft budget for the telecommunications mediation service to the Telecommunications Consulting Committee for their comments. The budget of the telecommunications mediation service shall form an integral part of the budget of the Belgian Institute of Postal Services and Telecommunications.

Art. 46

Every year, the mediation service will prepare a report on its activities, in particular listing the different complaints or types of complaints and the response given to these complaints, without directly or indirectly identifying the complaining party. The report is communicated to the public company, to the Minister competent for the public company and to the Legislative Chambers.

In the case of the telecommunications mediation service, the report is sent to the Belgian Institute of Postal Services and Telecommunications, the enterprises defined in paragraph (1) of Article 43 (a) of this law, to the Minister responsible for telecommunications, and to the Legislative Chambers.

It is also made available to the public.

Art. 46 (a)

(1). The employees seconded to the Belgacom mediation service and who appear on the list issued by the Minister responsible for telecommunications, shall be transferred, subject to their consent, to the Belgian Institute of Postal Services and Telecommunications with effect from the 1st January 1998 in accordance with the conditions set down by the King.

(2). Those employees given definitive statutory regulations by Belgacom shall become employees of the Belgian Institute of Postal Services and Telecommunications.

Those employees benefiting from an open-ended contract of employment and who are transferred to the Institute, shall be granted an open-ended contract of employment under Article 73, (2 of this law.

(3). In calculating the pension rights of employees transferred under the provisions of this Article, pension rights in respect of those years of service relating to Belgacom shall remain to the charge of Belgacom.

(4)). The positions occupied by transferred employees shall be added to the organizational structure of the Belgian Institute of Postal Services and Telecommunications as set by Article 1 of the Royal Decree of 18th March 1993 defining the organizational structure of the said Institute.

CHAPTER XI Consulting committee

Art. 47

(1). A consulting committee is created within every autonomous public company designated in the Royal Decree referred to in Article 43, (1), second paragraph. The King regulates, by decree deliberated in the Council of Ministers, the composition and functioning of the Committee.

(2). The consulting committee expresses its opinion on any issue relating to the services provided by the public company.

The committee is consulted on the provisions of the management contract which concern the users. The committee expresses its opinion at the request of the public company, at the request of the Minister competent for the public company, or on its own initiative.

(3). The consulting committee prepares an annual report on its activities for the public company and for the Minister competent for the public company.

CHAPTER XII Temporary and modifying provisions

Section I Formation and responsibilities of new bodies within certain bodies

Art. 48

(1). As soon as this law come into effect, there will be formed a Board of Directors, a Management Committee (and, in respect of the Belgian National Railway Company, a Select Committee) within every agency referred to in Article 2, (2), in accordance with Articles 15, 18 and 20, which apply by analogy. At least one member of the first Management Committee is appointment from among the members of the staff of the agency.

The mission of the persons thus appointment is to negotiate and conclude the first management contract in accordance with Article 4.

In addition, they will take up the responsibilities of the corresponding management bodies, as they exist on the date this law comes into effect, and exercise them every as a panel. The mandates of the members of the

corresponding management bodies referred to will cease ipso jure on the date of the appointments in accordance with the first paragraph.

(2). If, upon the expiration of a period of six months after the appointments in accordance with (1), a management contract has still not come into effect, the King may, by decree deliberated in the Council of Ministers, establish temporary rules on the matters referred to in Article 3, (2). These temporary rules will be regarded as equivalent to a first management contract and will apply until a management contract concluded in accordance with Article 4 comes into effect.

(3). The persons appointment in accordance with (1), first paragraph, assume the position of member of the first Board of Directors as of the effective date of the classification of the agency among the autonomous public companies. The mandate of one-half of the ordinary members, on the one hand, and of the manager-directors, on the other hand, designated in the appointment decree, will expire three years after the date referred to. The mandates of the other members will expire six years after the same date.

Art 49

(1). As soon as this law comes into effect, there will be formed within every agency referred to in Article 2, (2, with the exception of the Belgian National Railway Company, an Joint Committee [*commission paritaire*] in accordance with Article 30, which applies by analogy. The sole mission of the members of this commission is to exercise the responsibilities referred to in Article 4, (2), second paragraph, and Article 33, (1), which apply by analogy and to the exclusion of any other negotiating body. They will assume the position of member of the first Joint Committee as of the date the classification of the agency among the autonomous public companies comes into effect.

For the Belgian National Railway Company, the National Joint Committee formed in accordance with Article 13 of the Law of 23 July 1926, exercises the responsibilities referred to the preceding paragraph.

(2). For application of Article 30, (5), the Joint Committee referred to in (1), first paragraph, is formed on the base the data established by the committee referred to in Article 14, (1), of the Law of 19 December 1974 organizing the relations between the public authorities and the unions of the agents coming under these authorities, which are available on the date this Law comes into effect.

Afterwards, the composition of the Joint Committee will be adapted to the data established by said commission within thirty days after they are notified to the agency or the autonomous public company concerned.

(3). The first of the six-year periods referred to in Article 30, (5)), begins in 1996, on a date to be set by the King. As of the year 1996 inclusive, the Joint Committee will be composed on the base data pertaining to the first of January of the year of its renewal.

However, the National Joint Committee with the Belgian National Railway Company continues to be composed in accordance with Article 13 of the Law of 23 July 1926, with it understood that, as of the year 1996 inclusive, it will be renewed every six years, on a date set by the King, on the base the data pertaining to the first January of the year of its renewal.

(4)). The King regulates, by decree deliberated in the Council of Ministers, the terms of application of this Article.

Section II Modifying provisions

Art. 50

Article 51, (1), subsection B of the Law of 28 December 1973 relating to the 1973-1974 budget proposals, modified by the Law of 2 July 1981, is hereby supplemented as follows :

« (7) the autonomous public companies classified in Article 1, (4)) of the Law of 21 March 1991 relating to the reform of certain economic public companies. »

Art. 51

(1). Article 1, (3) of the Law of 19 December 1974 organizing the relations between the public authorities and the unions of the agents coming under these authorities, is supplemented by a (3), worded as follows :

« (3) the other autonomous public companies classified in Article 1, (4)) of the Law of 21 March 1991 relating to the reform of certain economic public companies. »

(2. Article 2, (2 of the same law is supplemented as follows :

« If the draft law also affects the autonomous public companies classified in Article 1, (4)) of the Law of 21 March 1991 relating to the reform of certain economic public companies, the committee in question will request the opinion of the Public Companies Committee referred to in Article 31 of the aforementioned law, before beginning the negotiations. »

(3). Article 8, (1), (1) of the same law, modified by the Law of 19 July 1983, is replaced by the following provision :

« (1) any trade union sitting on the national, community and regional public services committee and which has a number of dues-paying members representing at least 10 % of the combined staffs of :

a) public services referred to in Article 1, (1), (1) and 20, and the services of the Executives of the Communities and the Regions, to the members of whose staff this Law was made applicable;

b) the public companies referred to in Article 1 (3), (3);

c) as of 1996, on a date to be set by the King, the Belgian National Railway Company. »

Art. 52

An Article 34(a), worded as follows, is inserted into the Law of 23 December 1974 relating to the 1974-1975 budget proposals :

« Art. 34(a). - Articles 32 and 34 are not applicable to the autonomous public companies classified in Article 1, (4)) of the Law of 21 March 1991 relating to the reform of certain economic public companies. »

Art. 53

An Article 17(a) is inserted into Royal Decree No. 56 of 16 July 1982 relating to recruitment in certain public services, worded as follows :

« Art. 17(a). - This decree does not apply to the autonomous public companies classified in Article 1, (4))

of the Law of 21 March 1991 relating to the reform of certain economic public companies. »

Art. 54

In Article 87, (1), paragraph 1 of the Law of 1 August 1985 relating to fiscal and other measures, the words « with the exception of the autonomous public companies classified in Article 1, (4)) of the Law of 21 March 1991 relating to the reform of certain economic public companies », are inserted between the words « public interest bodies » and the words « that the King ».

TITLE II Reform of the *Régie des télégraphes et des téléphones* [Telegraph and Telephone Authority]

CHAPTER I Name

Art. 55

Without prejudice to the provisions of Article 119 of this law, the words « *Régie des télégraphes et des téléphones* » and “*Régie*” when referring to the *Régie des télégraphes et des téléphones*, have been replaced by the word « BELGACOM » in all laws and regulations.

CHAPTER II Business goals

Art. 56

Paragraphs 2, 3 and 4 of Article 1 of the Law of 19 July 1930 creating the Telegraph and Telephone Authority, as modified by the single Article of the Law of 7 December 1984, have been replaced by the following provision : « BELGACOM has as its business goals :

- (1) developing services, inside or outside the country, in the field of telecommunications;
- (2) performing all operations intended to promote directly or indirectly its activities or to allow optimal use of its infrastructure;
- (3) acquiring shareholding interests in bodies, companies or associations, whether public or private, existing or to be created, Belgian, foreign or international, which can contribute directly or indirectly to the achievement of its business goals. ”

Art. 57

Article 1, paragraph 5 of the Law of 19 July 1930 creating the Telegraph and Telephone Authority is repealed.

CHAPTER III Public service tasks

Art. 58

Public service tasks of BELGACOM consist of the provision of the public telecommunications service referred to in Article 82.

Notwithstanding the provisions of Article 3, the management contract between the State and Belgacom applies solely to those responsibilities in the general interest referred to in Article 82, (3).

CHAPTER IV Administration

Art. 59

Without prejudice to the provisions of Article 22 of this law, the mandate of director, in the capacity of

representative of the public authorities referred to in Article 42 of this law, is incompatible with the exercise of any function whatsoever in the Belgian Institute of Postal Services and Telecommunications referred to in Article 71 or in a private or public establishment which provides telecommunications goods or services for profit.

Art. 59/1

[L. 12 December 1994, art. 2 - In Article 37 of this law, the words « of this Title » have been replaced by the words « of this law ».]

Art. 59/2

[L. 12 December 1994, art. 3 - (1). Apart from the application of the provisions referred to in ((1), 2 and 3 of Article 38, the King may, by decree deliberated in the Council of Ministers, decide to transform the autonomous public company BELGACOM into a *société anonyme* under public law, under the terms and with the memorandum and By laws which He determines. ((4)), 5 and 6 are applicable to such a transformation. A company auditor, designated by the Minister competent for BELGACOM, will report on a statement summarizing the assets and liabilities and indicating the amount of the authorized capital after the transformation. This amount may not be greater than the net assets, as they result from the above-mentioned statement which is established by the Board of Directors. The conclusions of the auditor are included in the report to the King.⁵

(2. Notwithstanding Article 18, (1), paragraph 1, the Board of Directors of BELGACOM is made up of at most eighteen members, including the Managing Director and the members of the Management Committee who are members of it.

Article 18, (1), paragraph 2 does not apply to BELGACOM.

[L. 20 December 1995, art. 81, (1) - The By laws of BELGACOM may depart from Article 18, (3).]

(3). On the day the Royal Decree referred to in (3) of the Article 38 or (1) of this Article comes into effect, the positions of the members of the Board of Directors expire ipso jure.⁶

(4)). In respect of BELGACOM, the representation for the day-to-day management, the powers of the Managing Director, [L. 20 December 1995, art. 81, (2) - and, should the case arise,] the role and functioning of the Management Committee as well as the appointment and dismissal of the members of the Management Committee, other than the Managing Director, will be determined by the By laws. These Articles may depart from Articles 19 and 20.

[L. 20 December 1995, art. 81, (3) - In respect of BELGACOM, in Article 17, ((1) and 2, the words “Management Committee” have been replaced by the words “Managing Director”.]

In respect of BELGACOM, the words « manager-director » have been replaced by the words « member of the Management Committee » in Articles 20, 21 and 22.]

⁵ Cf. Royal Decree of 16/12/94 (MB 22/12/94) relating to the transformation of BELGACOM into a *société anonyme* under public law and establishing the memorandum and By laws.
⁶ibid.

Art. 59/3

[L. 12 December 1994, art. 4 - Apart from the application of Article 18, (5)), the terms for informing, verifying and supervising may be defined by the By laws of BELGACOM.]

Art. 59/4

[L. 12 December 1994, art. 5 - (1). Notwithstanding Articles 18, (2, latter paragraph, and 20, (3), third paragraph, the Chairman and the members of the Board of Directors of BELGACOM appointment by the King may only be dismissed by Royal Decree deliberated in the Council of Ministers.

(2. Notwithstanding Article 20, (2, the Managing Director of BELGACOM may only be dismissed by Royal Decree deliberated in the Council of Ministers.]

Art. 59/5

[L. 12 December 1994, art. 6 - Apart from the application of Articles 22, (1), and 59, the By laws of the company define additional incompatibilities in respect of the mandates of director of BELGACOM, its subsidiaries and sub-subsidiaries.]

Art. 59/6

[L. 21 December 1994, art. 205 - In accordance with Article 22 of the Law of 19 July 1930 creating the Telegraph and Telephone Authority and with the provisions of Royal Decree No. 117 of 27 February 1935 establishing the pension regulations of the staff of the autonomous public establishments and of the Authorities [régies] created by the State, the King may authorize BELGACOM to create a pension fund possessing legal personality, subject to the tax on legal entities as well as to the Law of 9 July 1975 on the supervision of insurance companies, with the exception of its Article 9, subject to the final responsibility of BELGACOM to bear the charges deriving from payment of the retirement pensions of the statutory members and former statutory members of its staff.

The statutes of the pension fund, the investment regulation, the management agreement established between BELGACOM and the pension fund and the terms of supervision by a Government Auditor, as well as their later modifications, are subject to approval by the Minister competent for BELGACOM and the Minister of Pensions.]

[L. 20 December 1995, art. 55 - The King draws up the remuneration of the Government Auditor.]

Art. 59/7

[L. 20 December 1995, art. 82 - Article 3, (2, (6), (8) and 10°, Article 10, (1), paragraph 2, Article 11, (2, paragraphs 2 and 3, and the second sentence of Article 12, (3) are not applicable to BELGACOM.]

Art. 59/8

[L. 20 December 1995, art. 83 - In Article 13, (3), paragraph 1, the words “and entitles in accordance with the Articles to more than 75 % of the votes and mandates in all the bodies of the subsidiary concerned” are not applicable to BELGACOM.]

Art. 60

In the Law of 19 July 1930 creating the Telegraph and Telephone Authority, are repealed :

- (1) Article 3, modified by Royal Decree No. 91 of 11 November 1967;
- (2) Article 8, paragraphs 2 and 3 and paragraph 4, modified by Royal Decree No. 91 of 11 November 1967;
- (3) Article 10, (1), (2), (4) and (5), modified by the Law of 18 January 1962;
- (4) Articles 11, 12 and 14;
- (5) Article 14 (a), added by the Law of 18 January 1962;
- (6) Article 15, modified by the Law of 23 December 1937;
- (7) Article 16;
- (8) Article 18, replaced by the Law of 23 December 1937;
- 9° Article 19;
- 10° Article 20, replaced by the Law of 23 December 1937.

[CHAPTER IV(a) Shares issued by BELGACOM

Art. 60/1

[L. 12 December 1994, art. 7 - (1). [L. 20 December 1995, art. 84, (1) - Article 39, (1), paragraph 3, (2 and (5)), and Article 40, (2, are not applicable to BELGACOM.]

(2. All the shares representing the capital are registered, provided that they are held by a public authority as understood in Article 42.

(3). [L. 20 December 1995, art. 84, (2) - The State may only transfer the shares which are allocated to it after of the transformation or to which it subscribes during a later capital increase to persons designated by the King, by decree deliberated in the Council of Ministers, under the terms which He determines and provided that the direct shareholding interest of the public authorities does not fall below 50 percent of the shares plus one share.]

(4). [L. 20 December 1995, art. 84, (3) - Without prejudice to Article 39, (3), in case of subscription of shares by persons other than public authorities, a part of the issue may be offered preferentially to the members of the staff of BELGACOM and of the staff of its subsidiaries under terms which may depart from those provided in Article 52(f), (1), paragraph 1, and (2, (4), of the laws on the commercial companies, coordinated on 30 November 1935.]]

CHAPTER V Supervision

Art. 61

In the same law, the following are repealed :

- (1) Article 9, brought back into effect by the Royal Decree of 18 November 1957 and modified by Royal Decree No. 91 of 11 November 1967;
- (2) Article 9(a), added by Royal Decree No. 91 of 11 November 1967.

CHAPTER VI Means

Art. 62

(1). In this law, the following are repealed :

- (1) Article 2;
 - (2) Article 4, modified by Royal Decree No. 237 of 31 December 1983;
 - (3) Articles 5, 6 and 7;
 - (4) Article 13, modified by Royal Decree No. 91 of 11 November 1967;
 - (5) Article 23, modified by the Law of 13 October 1930 and by the Law of 30 July 1979;
 - (6) Article 26.
- (2. Five percent of the annual profits, before deduction of the corporate income tax, will be paid to the executives and to the staff.

CHAPTER VII Staff

Art. 63

In the Law of 19 July 1930 creating the Telegraph and Telephone Authority, Article 21, modified by Royal Decree No. 91 of 11 November 1967, is repealed.

CHAPTER VIII Liability

Art. 64

(1). In respect of damages caused to users as a result of the failure or malfunction of the public telecommunications infrastructure or deficiencies in the provision of reserved services, BELGACOM may be held liable only for damages caused as a result of :

- (1) death or bodily injury;
- (2) violation of the provisions of Articles 111 or 112, second paragraph, committed by members of its staff during the exercise of their position;
- (3) faulty management or control of data concerning users of reserved services.

The limitation of liability provided for in paragraph 1 will not apply if the damages derive from BELGACOM's own campaigns or negligence, either committed with the intent to cause such damage, or recklessly, in the knowledge that such damage would probably result.

The King may, by decree deliberated in the Council of Ministers, at the proposal of the Institute, determine maximum amounts for the indemnification referred to in the first paragraph.

(2. The King may, by decree deliberated in the Council of Ministers, at the proposal of the Institute and after obtaining the opinion of the consulting committee, modify the limitation or the exclusion from liability deriving from the failure or malfunction of the public telecommunications infrastructure or from deficiencies in the provision of reserved services.

(3). Any other limitation or exclusion from liability in respect of the activities in the field of public telecommunications is null and void.

Art. 65

Article 24 of the Law of 19 July 1930 creating the Telegraph and Telephone Authority is repealed.

CHAPTER IX Temporary provisions and provisions coming into effect

Art. 66

The first Board of Directors and the first Management Committee of BELGACOM, established in accordance with Article 48 of Title I of this law, will exercise a dual mission until BELGACOM is classified among the autonomous public companies, notwithstanding the provisions of chapter IV of the above-mentioned Title I : on the one hand, negotiating and concluding the first management contract and, on the other hand, assuming the powers of the General Administration of the Telegraph and Telephone Authority within the framework of the Law of 19 July 1930.

Art. 67

The provisions of this Title will come into effect on the date that BELGACOM is classified among the autonomous public companies, in accordance with Title I of this law, with the exception of :

- (1) Articles 59 and 66, which come into effect on the day of publication in the *Belgian Official Gazette*;
- (2) Article 63, which comes into force on the effective date of the first staff regulations and the first trade union regulations established in accordance with Article 33.

TITLE III Telecommunications

CHAPTER I Definitions

Art. 68

For the application of this Law, the terms below are to be interpreted as follows :

- (1) Minister : the Minister or Secretary of State competent for matters relating to telecommunications;
- (2) Institute : the Belgian Institute of Postal Services and Telecommunications, abbreviated « I.B.P.T. », referred to in Article 71;
- (3) BELGACOM : the public-interest agency referred to in Article 58 of this law;
- (4) Telecommunications : any transmission, emission or reception of signs, signals, written material, images, sounds or data of any nature, by wire, radio-electricity, optical signaling or other electromagnetic systems;
- (5) Telecommunications network: the transmission systems and, where appropriate, the switching equipment and other resources used to carry signals between the defined termination points by wire, electromagnetic radiation, optical techniques, or by any other electromagnetic technique.
- (5)(a) Public telecommunications network: A telecommunications network used wholly or in part to supply telecommunications services available to the public.
- (6) Network termination point: The point at which the end user makes a connection to a telecommunications network;
- (7) Terminal device : equipment designed to be connected to a public telecommunications network, i.e. :
 - a) to be directly connected to a network termination point on a public telecommunications network, or
 - b) to inter-operate with a public telecommunications network by being connected directly or indirectly to a network termination point on a public telecommunications network, for the transmission, processing or reception of information, whether the connection system consists of metal wires, radio links, optical systems or other electromagnetic systems];
- (8) Leased line: A service consisting of the supply of a telecommunications system providing a transparent transmission capability between network termination points without switching according to demand;
- 9° Data switching service : telecommunications service offered to the public whose positions are limited to the transfer and switching of data by packet-switching or by circuit, including the positions necessary for its operation;
- 10° Voice telephony service: A service offered to the public for the commercial exploitation of the direct transport in real time of voice signals over a public switched network, and allowing every user to make use of equipment connected to a network termination point to communicate with another user of equipment connected to another network termination point;
- 1(1) Telex service : telecommunications service designed for the direct transport and switching of telex messages from and to termination points, provided that it include only the positions necessary to its operation;

1(2) Technical specifications : the specifications appearing in a document defining the characteristics required of a product such as the quality level required, the mode of use, safety aspects and dimensions, and including any requirements applicable to the product in respect of terminology, symbols, tests and test methods, packaging, marking and labeling;

1(3) Section 13 has been deleted;

1(4) Approval : the confirmation that a specific type of terminal device conforms to the required technical specifications and may be connected to a public telecommunications network;

1(5) Advertising : any form of communication disseminated with the direct or indirect intent to promote :

a) the sale, rental, loaning or providing, in any manner whatsoever, of terminal devices;

b) the use of a telecommunications service.

1(6) [L. 20 December 1995, art. 87, A)] - Universal service : provision of telecommunications services allowing access to a minimum set of defined services of a given quality to all users, independent of their geographical location and at an affordable price.]

1(7) [L. 20 December 1995, art. 87, B)] - Cost of universal service : the net real cost paid by the provider of said service as calculated by the Institute in order to provide the universal service.]

1(8) [R.D. 28 October 1996, art. 2] - Numbering space : set of the numbers, addresses and names used in order to identify the operators, providers of services and end users of telecommunications and terminal equipment.

19° Telecommunications service: A service consisting wholly or in part of the transmission and routing of signals over a telecommunications network, with the exception of radio and television broadcasting.

20° Users: Persons using or requesting public telecommunications services.

2(1) End users: Persons using or requesting a telecommunications service for their own requirements.

2(2) Powerful organization: An organization holding a significant position in the market and designated as such by the Institute in accordance with Article 105unodecies of this law.

2(3) Operators: Persons or companies holding an individual authorization issued under Articles 87, 89 (1) and (2, and 92 (a) of this law, or having made a declaration under Article 88 of this law.

2(4) Interconnection: A link made between telecommunications networks used by the same or different persons in order to allow the users of the services or networks of one person to communicate with users of the services or networks of the same person or of another person, or to access services provided by another person.

2(5) Interconnection point: The point at which the installations of one person supplying telecommunications networks or telecommunications services makes interconnection access to the installations of another person supplying telecommunications networks or telecommunications services.

2(6) Directory: A book, list or file containing principally or exclusively data concerning the end users of a voice telephony service and the end users of a mobile telephony service offered to the public and made available to the public with a view, either principally or exclusively, to the identification of the calling numbers of the end users.

2(6) Cryptography: A branch of science including the principals and methods of processing data with the aim of

hiding its semantic content, establishing its authenticity, making apparent any alteration to it, preventing its repudiation and preventing any unauthorized use of it.

CHAPTER II General provisions

Art. 69

All the activities in telecommunications matters are unrestricted, without prejudice to the provisions of this Title.

Art. 70

(1). When the public safety or defense of the Kingdom so require, the King may, by decree deliberated in the Council of Ministers, wholly or partially prohibit during the period established by Him :

- (1) the provision of a public telecommunications service;
- (2) the provision of a telecommunications service;
- (3) the use or possession of a telecommunications installation.

The King may, for this purpose, prescribe any measures He deems useful, especially the sequestering of equipment or its deposit in a determined place.

The measures referred to in this Article do not give rise to the awarding of any compensation.

(2. In the case of an exceptional situation arising, leading to either the non-availability or the congestion of the civil and military telecommunications systems and preventing the normal operation of these systems, the King may, by decree deliberated in the Council of Ministers, issue an emergency decree imposing any measures that He considers to be necessary, including the total or partial requisition of the telecommunications capabilities of the operators in order to re-allocate them to the use of services or calling numbers with national priority. Should this requisition exceed a period to be defined by Him, the King may specify a compensation scheme in respect of these requisitions.

Art. 70(a)

[L. 21 December 1994, art. 202 - The King draws up, by decree deliberated in the Council of Ministers, the technical means by which BELGACOM and the operators of the non-reserved services which He designates must permit, should the case arise, possibly jointly, the locating, wiretapping, monitoring and recording of private telecommunications under the conditions provided for by the Law of 30 June 1994 on the protection of privacy against wiretapping, monitoring and recording of private communications and telecommunications.]⁷

⁷L. 21 December 1994, art. 204 - Articles 203 and 204 of this law will enter into effect on the date of entry into force of the Law of 30 June 1994 relating to the protection of privacy against wiretaps, monitoring and recording of private communications and telecommunications. (n.d. D7 : no doubt one should read « 202 and 203 » and not « 203 and 204 »)

CHAPTER III Belgian Institute of Postal Services and Telecommunications

Art. 71

A public-interest agency is hereby created, having legal personality, under the name « Belgian Institute of Postal Services and Telecommunications » abbreviated « I.B.P.T. ».

The Institute is subject to the rules laid down for the bodies referred to in Article 1, paragraph 1, A of the Law of 16 March 1954 on the supervision of certain public-interest bodies.

The Institute has its headquarters in the Brussels-Capital Region.

Art. 72

The Institute is represented and managed by the Minister. The Minister is competent to perform all acts of management.

The day-to-day management of the Institute is handled by a managing official. The Minister determines what powers will be delegated to him.

Art. 73

(1). The administrative and pecuniary regulations of the staff of the Institute is established during the year following the date this Article comes into effect.

(2. The King determines, by decree deliberated in the Council of Ministers, the grades corresponding to specialized positions, and the specific administrative and pecuniary regulations relating to these grades.

Notwithstanding the administrative and pecuniary regulations of the staff of public-interest bodies, the Institute may recruit and employ staff based on an employment contract subject to the Law of 3 July 1978 on employment contracts, in order to :

- (1) meet exceptional and temporary staff requirements, whether these involve the implementation of short-term campaigns or an extraordinary surge in workload;
 - (2) perform tasks requiring highly-qualified knowledge or experience;
 - (3) replace members of the statutory or contractual staff during periods of partial or total temporary absence;
 - (4) carry out auxiliary or specific tasks.
- (3). The administrative and pecuniary situation of a member of the Institute's statutory staff may never be less favorable than that of an agent with an equivalent grade of the Telegraph and Telephone Authority on the date preceding the entry into effect of this Article.

In this section, 'pecuniary situation' means everything dealing with remuneration broadly conceived, including salary, holiday allowance, allowances, compensations, bonuses and social benefits of any kind.

Art. 74

During a period of [L. 10 November 1993, art. 1 - ten months] starting on the date of publication in the *Belgian Official Gazette* of the administrative and pecuniary regulations of the staff and the staff organization plan [*cadre organique*] and the linguistic plan [*cadre linguistique*] of the Institute, the King may proceed,

notwithstanding Royal Decree No. 56 of 16 July 1982 relating to recruitment in certain public services, for the positions indicated for this purpose in the staff organization plan, with the first appointments by calling on permanently-appointment statutory agents [i.e. civil servants] from the Postal Authority, the Telegraph and Telephone Authority, the Ministry of Economic Affairs and the Ministry of Communications.

These appointments are free of all priority rights. They will be the subject of a call for candidates through a notice published in the *Belgian Official Gazette*, mentioning, in particular, the open positions, the conditions of eligibility and the deadlines and terms for submitting candidacies.

To be appointment to the Institute at a grade above their grade in their original administration, or to be appointment to a level above their level in their original administration, the candidates must fulfill all the conditions, especially in respect of seniority and qualifications, which would allow them to accede to such a grade or level in the administration they are seeking to leave.

Art. 75

(1). The Institute gives an opinion, stating the reasons on which it is based, in the cases and the forms provided for by or based on this Title, including in the cases where the Institute possesses jurisdiction based on the laws mentioned in Article 119.

The Institute may, on its own initiative, express to the Minister its opinions, stating the reasons on which they are based, on any issue relating to telecommunications.

The Institute gives a prior opinion to the Minister on the definition of telecommunications development strategies.

(2). The Minister may request advice from the Institute on any aspect of this law.

(3). The Institute is charged with the general responsibility for monitoring and overseeing the provisions of Chapter X of Titles I, and Titles III and IV of this law.

(4)). In addition to the responsibilities defined in this law, and in the law of 30th July 1979 relating to radio communications, the Institute may also be entrusted with the following tasks :

- (1) conducting research and studies relating to telecommunications;
- (2) studying the application and transfer of rules enacted by the European Community in telecommunications matters.
- (5)). The Institute assists the Consulting Committee referred to in Article 80 in performing its tasks and provides its secretariat.
- (6)). The Institute handles the publication of the common technical specifications promulgated by the European Community.
- (7). The Institute publishes an annual report on its activities. This report also contains a financial report and the annual accounts of the universal service fund, together with a report covering the management of this fund.
- (8)). [*L. 20 December 1995, art. 88* - In the event of disputes between persons operating telecommunications networks or offering telecommunications services, at the request of one of the parties to the dispute or if a regulatory provision expressly provides for it, the Institute will render an opinion tending to reconcile the parties. This opinion will have compulsory effect if the parties have agreed to it.

The King shall define the structure of this procedure on the advice of the Institute.

For this mission, the Institute may call upon an external expert opinion.]

(9). The Institute shall oversee the implementation of decisions taken by the “Chamber for Interconnection, Special Access and Shared Usage” referred to in Article 79(b) of this law.

(10). The Institute shall collaborate in the activities of the mixed Telecommunications Commission

Art. 76

The Institute may not exercise any commercial activity.

Art. 77

With the agreement of the Minister, the Institute may call upon the collaboration of third parties.

The call upon the collaboration of third parties for the exercise of the tasks of supervision prescribed by this Law is only authorized for those referred to by the provisions mentioned in Article 119.

Art. 78

The Institute has as resources :

- (1) the credits taken over from the general expenditure budget;
- (2) the bequests and donations in its favor;
- (3) the occasional grants and income;
- (4) all other legal and regulatory receipts related to its activity and the compensations for services.
[*L. 12 December 1994, art. 8* - The King draws up, by decree deliberated in the Council of Ministers and after obtaining the opinion of the Institute, the amount, the method of collection, the period and the scheme for distributing the compensations due to the Institute for its interventions and services in the international bodies, to be paid by the providers of goods and services and operators active in the telecommunications sector and in the postal sector in Belgium.]
- (5) Funds provided for the universal telecommunications service intended to cover the costs of monitoring the universal service and managing the funds.
- (6) The mediation subscriptions due from the persons referred to in Article 43 (a) of this law.
- (7) The various subscriptions due under this heading with the exception of the single concession right referred to in Article 89 (1) c.

Art. 79

The Institute is assimilated to the State for application of the laws and regulations relating to direct taxes, duties, dues and fees of the State, the provinces, the municipalities and agglomerations of municipalities.

Art. 79 (a)

(1). In fulfilling the responsibilities assigned to it, the Institute shall obtain all the requisite information from the enterprises and the associations of enterprises. It shall set the time periods within which this information shall be provided.

Whenever the Institute requests information from an enterprise or an association of enterprises, it shall specify

the legal basis on which the request is founded together with the reason for the request.

(2. Without prejudice to the specific law guaranteeing the confidentiality of declarations, the public administrations are required to co-operate fully with the accredited operatives of the Institute in the performance of their duties.

Art. 79 (b)

(1). A body shall be created within the Institute to be known as the “Chamber for Interconnection, Special Access and Shared Usage”, hereinafter referred to as “the Chamber”. This body shall comprise three members, designated from among the level 1 officers of the Institute. “The Chamber” shall be constituted by the chief officer of the Institute every time it is needed.

The operation of “the Chamber” and the procedures to be followed shall be decreed by the King on the advice of the Institute.

“The Chamber” shall receive no instructions seeking to influence its decisions on the disputes submitted to it.

(2. In the case of disputes relating to interconnection, special access or shared usage, “the Chamber” shall, at the request of one or other of the parties, take steps to settle the dispute within six months of receiving such a request. The settlement of the dispute shall represent an equitable balance between the legitimate interests of the parties.

(3). “The Chamber” shall issue a reasoned administrative decision taking particular account of:

- the interests of the user.
- any obligations or constraints imposed on every of the parties by the applicable regulations.
- the requirement to encourage new entrants into the market and to provide users with a wide range of telecommunications services.
- the existence of viable technical and commercial solutions that could replace the interconnection requested.
- the requirement to guarantee the provisions relating to equality of access.
- the need to maintain the integrity of the public telecommunications networks and the interoperability of telecommunications services.
- the nature of the request in relation to the resources available to respond to it.
- the relative positions of the parties in the market.
- the public interest, including the protection of the environment.
- the maintenance of an undistorted market structure.
- the requirement to maintain the universal service.

(4)). In the case of a serious and immediate attack on the regulations relating to the telecommunications sector, “the Chamber” may, after having heard the dispositions of the parties involved, order conservation measures to be taken in order to guarantee the continued operation of telecommunications services.

(5)). “The Chamber” shall publish its findings, subject to the protection of secrets provided for by law. It shall notify its decisions to the parties involved.

CHAPTER IV Consulting Committee

Art. 80

(1). Notwithstanding Article 47 of this Law, a Consulting Committee for telecommunications is created within the Institute.

(2. This Committee expresses, either on its own initiative or at the request of the managing official of the Institute or of the Minister, opinions on any question concerning telecommunications or application of this law. It may work together with the Institute.

The Committee is consulted on the provisions of the management contract which affect users, the general conditions applicable to suppliers of voice telephony services, and the strategy relating to the universal service.

This Committee publishes an annual report on the evolution of the telecommunications sector and on its own activities.

To this end, the enterprises active in the telecommunications sector shall make the necessary information available to the Institute.

Art. 81

(1). The King draws up, by decree deliberated in the Council of Ministers, the composition and the terms of operation of this Committee.

The Committee will always include representatives of the universal service providers, telecommunications service providers, residential and professional users, telecommunications equipment manufacturers and persons designated because of their scientific ability in telecommunications matters.

(2. The Committee adopts its own internal regulations.

(3). The Committee’s operating costs will be paid by the Institute.

CHAPTER X The Public Telecommunications Service

Art. 82

The public telecommunications service is provided in accordance with the principles of equality, continuity and adaptability.

It includes:

(1) The universal telecommunications service as defined in Articles 84 to 86 of this law.

(2) The obligatory telecommunications services in order to provide universal access as defined in Article 86 (a) of this law.

(3) The general interest responsibilities in the telecommunications area as defined in Article 86 (b) of this law.

Art. 83

(1). BELGACOM is required to guarantee the supply of a public telecommunications service throughout the Kingdom.

(2. Any other single operator, or group of operators, may request the right to provide the universal service. This service must be supplied across the entire territory of the Kingdom.

The King may, by decree deliberated in the Council of Ministers and at the instigation of the Institute, grant an authorization to provide the universal service.

Art. 84

(1). The service to be provided under the heading of the universal service are:

(1) The availability throughout the territory, and to any requesting it, of access to the basic fixed network allowing the provision of a basic voice telephony service, communication by Group I, II and III facsimile in accordance with ITU series T recommendations and the transmission of data in the voice band by the use of modems with data rates of at least 2400 bits / sec. In accordance with the ITU series V recommendations, the user will have access through one or more numbers taken from the national numbering plan.

(2) Free of charge access for emergency calls.

(3) The availability of a subscriber help service.

(4) The availability of a subscriber information service.

(5) The continuing provision of the following basic elements of the voice telephony service in case of non-payment of bills:

- The ability to be called by another subscriber, with the exclusion of reversed charge calls.

- The ability to make emergency calls as defined in Article 8 of appendix 1.

(6) The establishment and maintenance of public payphones.

(7) The publication of a universal directory in those areas where none of the persons defined in Article 113 of this law publish such a directory.

(8) The provision of a basic voice telephony service at prices allowing access to the service by persons defined in points 1, 2, 3 and 4 of appendix B to appendix 1 of this law.

(2. In the context of section (7) of the previous paragraph, a single supplier is designated by Royal Decree deliberated in the Council of Ministers and at the instigation of the Institute.

(3). The services provided under the heading of the universal service shall be provided at an affordable price under the technical and financial conditions specified in appendix 1 to this law.

The King may, by decree deliberated in the Council of Ministers, at the instigation of the Institute, and in accordance with the procedure described in Article 122 (2 and (3) of this law, modify the appendix 1 referred to above in order to take account of technological or social developments or of changes in the structure of the market. These modifications cannot reduce the level of obligation provided for in appendix 1 to this law.

(2. Appendix 1 to this law is also attached to the law of 21st March 1991 as appendix 1 to that law.

Art. 85

(1). The method of calculating the cost of the universal service is specified in Chapter 2 of appendix 2 to this law. The King may, by decree deliberated in the Council of Ministers, at the instigation of the Institute, and in

accordance with the procedure described in Article 122 (2 and (3) of this law, modify the Chapter 2 of appendix 2 referred to above in order to take account of technological or social developments.

Notwithstanding the provisions of (3) of this Article, at the request of the Institute and within the time period specified by the Institute, BELGACOM and any other operators providing a universal service, shall calculate the annual cost of the universal service. The calculation of this cost is verified and approved by the Institute.

(2. In order to comply with the provisions of the preceding paragraph, BELGACOM and any other operators providing the universal service shall provide the Institute or its authorized representatives with such information as it considers to be necessary.

If this information is not provided within the time period specified, or if it is incomplete, or if the calculation of costs is not approved by the Institute, then BELGACOM and any other operators providing the universal service cannot lay claim to any provision of funds.

(3). Under no circumstances shall BELGACOM or any other operators providing the universal service be able to lay claim to any financing of the universal service prior to the date set by the King, by decree deliberated in the Council of Ministers, and at the instigation of the Institute, and in any event not earlier than the 1st January 2000.

(2. Appendix 2 to this law is also attached to the law of 21st March 1991 as appendix 2 to that law.

Art. 86

(1). In order to provide for the financing of the universal service, a fund shall be created to be called "the fund for the universal telecommunications service".

(2. The following shall be required to contribute to this fund as a proportion of the net cost of the service as specified in Article 84 (1) of this law by the 1st January 2000 at the earliest:

(1) Persons operating a public telecommunications network or

(2) Persons providing a voice telephony service.

(3) In application of the regulations and directives of the European Union, persons providing any other telecommunications service to the public or those preparing, selling or distributing a directory of the type specified in Article 113 of this law, may if under certain circumstances be required to contribute to this fund at a date and under conditions to be defined by the King, by decree deliberated in the Council of Ministers, at the instigation of the Institute, and in accordance with the procedure described in Article 122 (2 and (3) of this law.

These persons are required to contribute to this fund in proportion to their turnover in the sector concerned and in relation to services provided to persons whose head office, permanent address, home or place of habitual residence is located in Belgium, as defined by the methods specified in Article 7 of appendix 2 to this law.

Only those persons whose turnover as defined in Article 7 of appendix 2 to this law exceeds 500 million Belgian Francs will be required to make a contribution to the fund.

(3). Without prejudice to the provisions of paragraph (1), the method of calculating the level of contributions together with the conditions relating to the payment of

funds for the provision of the universal telecommunications service and intended to cover the cost of the universal telecommunications service are defined in Chapter 4 of appendix 2 to this law.

The King may, by decree deliberated in the Council of Ministers, at the instigation of the Institute, and in accordance with the procedure described in Article 122 (2 and (3) of this law, modify the Chapter 2 of appendix 2 referred to above. The Institute shall, every year, calculate the amount of the contributions to the fund for the universal telecommunications service any payments to be made from it.

The fund is administered by the Institute.

The King may, by decree deliberated in the Council of Ministers, and on the advice of the Institute, define the structure of the fund.

This fund shall be a legal entity in its own right.

Art 86 (a)

(1). In order to provide universal access to a basic telecommunications network, BELGACOM is required to provide throughout the territory of the Kingdom, and in accordance with the technical, commercial and financial conditions defined by the King on the advice of the Institute:

- a) Access to a collection of ONP quality lines as defined in the European Union directives relating to the provision of open networks.
- b) A switched data service.
- c) Access to an Integrated Services Digital Network together with a collection of services based on such a network.
- d) A Telex and telegram service.

(2. The King may, on the advice of the Institute, require any other powerful organization to provide all or part of the services defined in paragraph (1) of this Article.

Art 86 (b)

(1). BELGACOM is required to participate in:

- collaboration with the Civil Defence authorities within the framework of the National Committee for Civil Defence Planning.
- collaboration with the mixed Telecommunications Commission created by Royal Decree on the 10th December 1957 and modified by the Royal Decree of the 24th September 1993.
- making available all the leased lines required by the telecommunications networks operated on behalf of the institutions defined in Article 91 (2 of this law. The quality and capacity of the leased lines concerned, together with the payment for them, shall be specified in the management contract agreed between the BELGACOM and the Federal State, or in another document in the case of other operators.

All the other operators may participate, either singly or together, and under equivalent conditions, in the provision of general interest services as defined in this paragraph under conditions to be specified by the King on the advice of the Institute.

(2. BELGACOM shall make available, at an affordable price in respect of the connection charge, call charges and the line rental, a line allowing interaction in order to provide access to data networks, and the Internet in

particular, in response to the specific social requirements of hospitals, schools and public libraries.

These lines shall be made available under the conditions described in appendix 3 to this law.

The King may, by decree deliberated in the Council of Ministers, at the instigation of the Institute, and in accordance with the procedure described in Article 122 (2 and (3) of this law, modify the appendix 3 referred to above in order to take account of technological or social developments.

All the other operators may participate, either singly or together, and under equivalent conditions, in the provision of general interest services as defined in this paragraph under conditions to be specified by the King on the advice of the Institute.

(3). BELGACOM may, by decree deliberated in the Council of Ministers, be charged with other responsibilities in the general interest.

All the other operators may participate, either singly or together, and under equivalent conditions, in the provision of general interest services as defined in this paragraph under conditions to be specified by the King on the advice of the Institute.

(4)). Appendix 3 to this law is also attached to the law of 21st March 1991 as appendix 3 to that law.

CHAPTER VI Other telecommunications services

Art 87

(1). The provision of a voice telephony service is subject to prior individual authorization from the Minister at the instigation of the Institute. BELGACOM shall be the only body authorized to provide the voice telephony service until the 31st December 1997.

(2. The King shall, by decree deliberated in the Council of Ministers, and on the advice of the Institute, define the required specification for the voice telephony service, together with the procedure to be used when granting every authorization including the fee to be paid for the analysis of applications.

Every specification may contain:

- a) The conditions relating to the economic capacity and the technical ability of the applicant.
- b) The conditions in relation to meeting the applicable essential requirements as specified in Article 107 of this law.
- c) The nature and characteristics of the coverage area of the service concerned.
- d) The minimum conditions relating to the durability, quality and availability of the service
- e) The conditions relating to the protection of subscribers and data.
- f) The minimum technical standards and specifications to be met.
- g) The numbering plan, together with the rights, obligations and procedures to be followed in selecting a carrier.
- h) The fees due in respect of issuing, managing and monitoring the authorization.
- i) The provision of the information required to prepare the universal directory.

- j) The obligations imposed on the operator in order to monitor conformance to the authorization.
- k) The rights and obligations in respect of interconnection.
- l) The conditions necessary in order to guarantee the interoperability of services, the equality of treatment and user information, in particular the contractual conditions applying to the provision of the service and the accordance to the relevant obligations on the part of the persons who are marketing these services
- m) The duration, termination conditions and renewal conditions applicable to the authorization.
- n) The sanctions to be applied in case of violation of the conditions of the authorization, including withdrawal of the authorization,
- o) The measures guaranteeing compliance with Chapters IX (b) and X of this Title.
- p) The obligations in relation to the universal service.
- q) The free connection of emergency calls and the mechanism for collaborating with the emergency services, including the communication of identity and address information relating to callers to these services.
- r) Collaboration with the mediation service.
- s) Contribution to scientific research in the field of telecommunication and the obligations in relation to making information technology available to small and medium sized enterprises and to young people and other social groups vulnerable to market developments, in particular through improving access to the market without exclusions in order to facilitate the provision of telecommunications services.
- t) Conditions necessary to ensure the equitable treatment of international operators.

Every authorization shall specify the conditions for providing the service concerned. These conditions may not be less constraining than the requirements contained in the applicable specifications.

(2. Belgacom shall ensure that a line with a capacity which enables interactivity in regard of the provision of access to data networks, and specifically the Internet, is made available at an affordable price as regards initial connection charge, costs of connections and standing charges, in order to meet the particular needs of hospitals, schools and public libraries.

Such a line shall be made available in accordance with the conditions stipulated in Schedule 3 of this law. On the opinion of the Institute, the King may amend Schedule 3 of this law by means of decree deliberated in the Council of Ministers in accordance with the procedure laid down in Article 122 ((1) and 2 of this law in order to take account of technological and social developments.

Within the conditions stipulated by the King and on the opinion of the Institute, all other operators may participate under equivalent conditions either individually or jointly in services in the public interest as stated in this paragraph.

(3). Belgacom may be charged with other comtasks in the public interest by decree deliberated in the Council of Ministers.

Within the conditions stipulated by the King and on the opinion of the Institute, all other operators may participate under equivalent conditions either individually or jointly in services in the public interest as stated in this paragraph.

(4)). Schedule 3 of this law is added as « Schedule 3 » to the law of 21 March 1991.

Art. 88

The provision of a leased line service is subject to a declaration sent to the Institute by registered letter at least four weeks prior to the start of commercial operation of the said service.

(2. The King shall, on the advice of the Institute, define the required specification setting out the conditions under which the service may be operated.

Every specification may contain:

- a) The conditions in relation to meeting the applicable essential requirements as specified in Article 107 of this law.
- b) The conditions relating to the supply of the information needed for the Institute to verify that this Title and the ratified Royal Decrees are being complied with.
- c) The conditions relating to the prevention of anti-competitive practices and, in particular, the measures to be taken to ensure that the prices are not discriminatory and do not lead to a distortion of competition.
- d) Protection for users in the form of a prior approval of the standard user contract by the Institute.
- e) The availability of detailed and accurate billing information.
- f) The collaboration with the mediation service.
- g) The publication of the conditions relating to access to the service, including prices, quality and availability, together with an appropriate means of notifying any changes to these conditions.

Art. 89

(1). The King shall, by decree deliberated in the Council of Ministers, at the instigation of the Minister, and on the advice of the Institute, define the required specification for every category of mobile telephony service and radio messaging service offered to the public, together with the procedure to be used when granting every authorization including the fee to be paid for the analysis of applications.

In addition to the points referred to in Article 87 (2 a) to t), every specification may contain conditions relating to:

- a) The use of the allocated frequencies.
 - b) The recurring licence fee to be paid in respect of the use of these frequencies and the monitoring of frequencies.
 - c) In the case of a mobile telephony service offered to the public, the minimum one-off concession fee to be paid for the right to establish a network and to offer the service concerned.
 - d) If applicable, the compensation to be paid to the previous users of the frequency band concerned.
- The Minister, at the instigation of the Institute, shall, for every category of service, submit to the Council of Ministers a list of proposals from those seeking to provide the services referred to in this paragraph. The King shall, by decree deliberated in the Council of Ministers, grant the authorization or authorizations to establish and operate the said network.

Every authorization shall specify the conditions for establishing the network, including the conditions referred

to in Article 92 (a) of this law and the conditions relating to the provision of the service concerned.

These conditions cannot be less constraining than the requirements contained in the relevant specification, taking account of the proposal or proposals accepted.

(2. In the case of the other mobile telecommunications services offered to the public, the provision of such a service is subject to prior authorization from the Minister at the instigation of the Institute. The King shall, on the advice of the Institute, decree and define the required specification for every category of service, together with the procedure to be used when granting every authorization including the fee to be paid for the analysis of applications.

Every specification shall include conditions relating to the points referred to in Article 87 (2 a) to t) and Article 89 (1) a), b) and d).

Every authorization shall specify the conditions for establishing the network, including the conditions referred to in Article 92 (a) of this law and the conditions relating to the provision of the service concerned.

These conditions cannot be less constraining than the requirements contained in the relevant specification.

(3). In the case of mobile telephony services not offered to the public, the provision of such a service is subject to prior authorization from the Minister at the instigation of the Institute. The King shall, on the advice of the Institute, decree and define the required specification for every category of service, together with the procedure to be used when granting every authorization including the fee to be paid for the analysis of applications.

Every specification shall include conditions relating to the points referred to in Article 87 (2 a) to c), f), h), j), m) and n), and Article 89 (1) a), b) and d).

Every authorization shall specify the conditions for establishing the network, including the conditions referred to in Article 92 (a) of this law and the conditions relating to the provision of the service concerned. These conditions cannot be less constraining than the requirements contained in the relevant specification.

(4)). If a person submits a request to provide a mobile telecommunication service for which no applicable specification exists for such a service, the Minister shall, within six weeks of such a request and on the advice of the Institute, decree the provisional conditions allowing the provision of the service to commence, or shall refuse the request. In the case of refusal, the reasons for such refusal shall be communicated to the applicant. If the Minister authorizes the provision of the service on provisional conditions, the King shall, within three months of such authorization, decree a specification in accordance with (2 and (3) depending on the type of service concerned. The authorization granted on the base the provisional conditions shall, if necessary, be modified in order to conform to the specification.

Art. 90

(1). Any person wishing to operate any other telecommunications service, whether or not it is to be offered to the public, shall submit a declaration to that effect to the Institute by registered letter at least four weeks prior to the start of commercial operation of the said service.

Services provided to one or more closed user groups are not regarded as services offered to the public.

(2. The King shall, on the advice of the Institute, decree the service categories for which the operating conditions must be specified. These conditions, decreed by the Minister on the advice of the Institute, shall include conditions relating to the points a) to c) referred to in Article 88 of this law.

(3). In addition to the provisions of paragraph (2 of this Article, in respect of services offered to the public, the King shall, on the advice of the Institute, decree the service categories for which the operating conditions must be specified. These conditions, decreed by the Minister on the advice of the Institute, may include conditions relating to the points d) to g) referred to in Article 88 of this law and, if applicable, to the measures to be taken with regard to combating illicit content and the measures to be taken to identify harmful content.

(4)). Operators of public payphones must ensure that users of these payphones can contact the emergency services without having to use any means of payment.

(5)). If it is apparent from the declaration of service that the service envisaged should be subject to the operating conditions referred to in paragraphs (2 and (3), the Institute shall inform the declarer and shall define provisional conditions within six weeks of receipt of the declaration. Within three months of the declaration, the definitive conditions shall be defined in accordance with paragraphs (2 and (3).

Any provisional conditions not replaced by definitive conditions shall be repealed.

Art. 90 (a)

The Minister shall, at the instigation of the Institute and on the advice of the Telecommunications Consulting Committee, define the declaration procedure.

The transfer of a telecommunications service, the operation of which is subject to a declaration, is unrestricted, except for the requirement that a declaration, in the form defined by the Minister, at the instigation of the Institute and on the advice of the Telecommunications Consulting Committee, must be made to the Institute by registered letter at least seven clear days before the transfer takes place.

The King shall define the declaration fee to be paid to the Institute by any person required to submit a declaration as referred to in Article 90 of this law and in this Article.

CHAPTER VII Telecommunications installations

Art. 91

The provisions of this chapter are not applicable to the special installations established and operated exclusively for military, public safety or emergency purposes by the departments under the Minister of National Defense or the Minister of the Interior, by the North Atlantic Treaty Organization (NATO) and by the Allied Forces.

The list of installations shall be defined by the King, by decree deliberated in the Council of Ministers, and at the joint instigation of the Minister and the relevant Minister.

Art. 92

(1). The establishment and operation of non-public telecommunications networks is unrestricted provided that a declaration is sent to the Institute at least four weeks prior to the start of commercial operation of the said service, and that the conditions decreed by the King are complied with.

These conditions may make reference to:

a) The conditions in relation to meeting the applicable essential requirements as specified in Article 107 of this law.

b) The conditions relating to the supply of the information needed for the Institute to verify that this Title and the ratified Royal Decrees are being complied with.

The Minister shall, at the instigation of the Institute and on the advice of the Telecommunications Consulting Committee, define the declaration procedure.

(2). The declaration referred to in paragraph (1) of this Article does not grant any dispensation from the requirement to obtain any necessary authorizations with regard to radio communications in the case where the establishment of such a network involves the use of radio frequencies.

The transfer of a telecommunications network, the operation of which is subject to a declaration, is unrestricted, except for the requirement that a declaration, in the form defined by the Minister, at the instigation of the Institute and on the advice of the Telecommunications Consulting Committee, must be made to the Institute by registered letter at least seven clear days before the transfer takes place.

The King shall define the declaration fee to be paid to the Institute by any person required to submit a declaration as referred to in this Article.

Art. 92(a)

(1). The establishment and operation of public telecommunications networks are subject to the granting of an individual authorization from the Minister at the instigation of the Institute.

The King shall, by decree deliberated in the Council of Ministers, on the instigation of the Minister and on the advice of the Institute, define the conditions under which the Minister may grant such an individual authorization.

These conditions, in the form of a specification, may contain:

a) The conditions relating to the economic capacity and the technical ability of the applicant.

b) The conditions in relation to meeting the applicable essential requirements as specified in Article 107 of this law.

c) The nature and characteristics of the coverage area of the service concerned.

d) The minimum conditions relating to the durability, quality and availability of the network.

e) The conditions relating to the protection of subscribers and data.

f) The minimum technical standards and specifications of the network to be met.

g) The numbering plan.

h) The fees due in respect of issuing, managing and monitoring the authorization.

i) The conditions of access to public areas and private property.

j) The obligations imposed on the operator in order to monitor conformance to the authorization.

k) The rights and obligations in respect of interconnection.

l) The conditions necessary in order to guarantee the interoperability of networks, the equality of treatment and user information, in particular the contractual conditions applying to access to the network.

m) The sanctions to be applied in case of violation of the conditions of the authorization, including withdrawal of the authorization,

n) The conditions relating to the prevention of anti-competitive practices and, in particular, the measures to be taken to ensure that the prices are not discriminatory and do not lead to a distortion of competition.

o) The obligations in relation to the universal service.

p) The mechanism for collaborating with the emergency services, including the communication of identity and address information relating to callers to these services.

q) Contribution to scientific research in the field of telecommunication and the obligations in relation to making information technology available to small and medium sized enterprises and to young people and other social groups vulnerable to market developments.

r) Conditions necessary to ensure the equitable treatment of international operators.

The individual authorization shall be valid for an indefinite period.

Every authorization shall specify the conditions for providing the service concerned. These conditions may not be less constraining than the requirements contained in the applicable specifications.

The authorization may be transferred, modified, suspended, or revoked by the Minister under the terms and conditions as defined by the King by decree deliberated in the Council of Ministers on the advice of the Institute.

In the case where a network is shared between telecommunications services and radio and television broadcasting, no interference must be caused to the radio or television programmes carried by the network.

In all cases, the provisions of Title III of this law shall apply.

(2). The authorizations granted to the operators of telecommunications networks under paragraphs (1) and (2) of Article 89 of this law shall, if applicable, also refer to the conditions specified in paragraph (1) of this Article.

Art. 92ter

The King shall decree the conditions under which use may be made of satellite links in establishing all or part of a telecommunications network as referred to in either Article 92 or Article 92 (a) of this law, or under which telecommunications services using these satellite links may be offered.

Art. 92(c)

At the instigation of the Institute, the Minister shall define, for every public telecommunications network that he designates, the termination points concerned as defined in Article 68 (6) together with the technical specifications relating to it. These technical specifications shall be based on the technical specifications of the network as defined in the conditions attached to the individual authorization to

establish and operate a public telecommunications network.

These termination points and technical specifications shall be defined in such a sufficient manner that a third party may design, manufacture and market terminal equipment that may be connected to the termination points of the public telecommunications network, subject to the approval of such terminal equipment.

CHAPTER VIII Terminal equipment

Art. 93

Anyone may provide terminal equipment, connect it to a public telecommunications network, put it into operation and maintain it.

Art. 94

(1). Terminal equipment must be approved by the Minister, at the proposal of the Institute, unless they have been subject to a accordance evaluation and have been granted the EC mark of accordance provided for by Directive 91/263/EEC of the Council of 29 April 1991 concerning harmonization of the laws of the Member States on telecommunication terminal equipment, including the mutual recognition of their accordance modified by Directive 93/68/EEC of the Council of 22 July 1993 or by Directive 93/97/EEC of the Council of 29 October 1993, supplementing Directive 91/263/EEC in respect of ground station equipment for satellite communications.

Any equipment able to be connected to a public telecommunications network without being intended for such use must be subject to a declaration from the manufacturer or provider to the Institute, in accordance with the model established by the Minister, when its first marketing within the European Union occurs in Belgium.] (2. The approval procedures, the technical specifications, [L. 12 December 1994, art.11, (1) - [L. 20 December 1995, art. 94 - the contractual and technical conditions of the services of installation, maintenance, intervention and repair in case of breakdown or disruptions of the switching units],] the rules on accreditation and inspection of the laboratories entrusted with performing the preliminary tests, the rules relating to the issuance of certificates of accordance and to technical accreditation of the terminal equipment installers and repairers are laid down by the Minister at the proposal of the Institute.

(3). The Minister issues, at the proposal of the Institute, the accreditations referred to in (2.

(4)). The Minister may delegate to an Institute official his power to grant or revoke the approvals and accreditations referred to in ((1) to 3 of this Article.

The accredited laboratories will issue the certificates of accordance according to the rules laid down in (2.

(5)). [L. 12 December 1994, art.11, (2) - The King draws up the amount of the fees to be paid to the Institute by applicants for approvals, certificates of accordance and of accreditation of the installers to cover the expenditures resulting from the examination of these requests, as well as the amount of the fees to be paid to the Institute by users of the installations of the domestic switching units to cover the expenditures generated by the verification of these installations.]

Art. 95

The Minister may, at the proposal of the Institute, revoke an approval or prohibit maintenance of a connection to a public telecommunications network when it is shown that that :

- (1) the terminal equipment of an approved type no longer corresponds to the equipment approved initially;
 - (2) the terminal equipment no longer complies with the technical specifications in effect;
 - (3) the terms on which the approval was issued and concerning the use for which the terminal device was approved, are not complied with;
 - (4) the terminal equipment is a source of disruptions, causes damage to a public telecommunications network, or entails a danger for the users or for the operating staff.
 - (5)[L. 21 December 1994, art. 203 - the terminal device renders ineffective the means permitting, under the terms provided in Articles 88(a) and 90ter to 90(i) of the Code of Criminal Procedure, the locating, wiretapping, monitoring and recording of private telecommunications.]⁸
- The approval may be revoked according to the forms and terms determined by the Minister, at the proposal of the Institute.

Art. 96

It is prohibited :

- (1) [R.D. 22 December 1994, art. 5, A - to advertise terminal equipment without mentioning its approval and the use for which it is approved, or, for equipment capable of being connected to a public telecommunications network, without being intended for such a use, without mentioning the lack of approval];
- (2) to sell, lease, loan or otherwise provide, to offer for sale or rent on Belgian territory or with Belgium as destination, any terminal equipment, without indicating its approval on the terminal equipment [... *deleted by R.D. 22 December 1994, art. 5, B*] according to the forms determined by the Minister, at the proposal of the Institute.
- (3) [R.D. 22 December 1994, art. 5, C - to sell, lease, loan or otherwise provide, to offer for sale or rent on Belgian territory or with Belgium as destination, any equipment capable of being connected to a public telecommunications network without being intended for such use, unless it is accompanied by a declaration from the manufacturer or the provider, in accordance with the model issued by the Minister on the advice of the Institute, and without indicating the lack of approval according to the forms determined by the Minister on the advice of the Institute.]

⁸L. 21 December 1994, art. 204 - Articles 203 and 204 of this law will enter into effect on the date of entry into force of the Law of 30 June 1994 relating to the protection of privacy against wiretaps, monitoring and recording of private communications and telecommunications. (n.d. D7 : no doubt one should read « 202 and 203 » and not « 203 and 204 »)

CHAPTER IX Cables, overhead lines and related equipment

Art. 97

(1). On the terms laid down in this chapter, every operator of a public telecommunications network is authorized to make use of the public domain and properties to set up the cables, overhead lines and related equipment and to perform all works pertaining to them, in compliance with their destination and the legal and regulatory provisions governing their use.

Such works include those necessary to maintain, modify, repair, remove and inspect the cables, overhead lines and related equipment.

(2. The cables, overhead lines and related equipment thus set up remain the property of the public telecommunications network operator concerned.

Art. 98

(1). Before setting up the cables, overhead lines and related equipment on the public domain, every operator of a public telecommunications network shall submit the plan of the sites and the layout characteristics for approval by the authority responsible for the public domain.

This authority will rule within two months starting from the date on which the plan is submitted and will notify the public telecommunications network operator concerned of its decision. Beyond this time limit, the authority's silence will be equivalent to approval.

In the event of persistent opposition, a ruling will be made by Royal Decree.

(2. For this right of use, the authority may not impose on the public telecommunications network operator concerned any tax, fee, toll, retribution or compensation of any kind whatsoever.

Every operator of a public telecommunications network also holds a free right of way for the cables, overhead lines and related equipment in the public or private structures located in the public domain.

(3). The authority has the right to have the installation or layout plan of the cables, overhead lines and related equipment modified after of works which it wishes to carry out in the public domain it manages. It must inform the public telecommunications network operator concerned of this by registered letter at least two months before starting implementation of the works. The costs generated by modifying the cables, overhead lines and related equipment will be paid by the public telecommunications network operator concerned.

When these works in the public domain are not undertaken, or when the authority has requested modification of the cables, overhead lines and related equipment for the benefit of another person, the public telecommunications network operator concerned may charge the modification costs to the authority.

Art. 99

(1). Every operator of a public telecommunications network is entitled free of charge, for setting up the cables, overhead lines and related equipment, to permanently attach supports on walls and façades facing the streets, to make use of open, unbuilt grounds, and to cross or enter properties without attachment or contact.

(2. When an operator of a public telecommunications network intends to set up, remove or perform work on cables, overhead lines and related equipment, it should revery an agreement as to the place and method of implementation of the works with the person whose property is being used for support, entered or crossed.

In the absence of an agreement, the public telecommunications network operator concerned will send by registered letter a clear description of the planned location and the method of implementation of the works to the person whose property is being used for support, entered or crossed. Within eight clear days of receipt of this letter, the person whose property is being used for support, entered or crossed may file a complaint, stating the reasons on which it is based, with the Institute. Filing the complaint suspends implementation of the intended work. The Institute hears both parties and makes a decision, stating the reasons on which it is based, within one month after receiving the complaint.

(3). Implementation of these works entails no dispossession.

The owner or the rightful claimant providing the easement preserves the right to execute all other works on the private property, on condition that he not take any measure intended exclusively to modify or move the cables, overhead lines and related equipment.

He must inform every public telecommunications network operator concerned by registered letter at least two months before starting any works which involve modifying or moving the cables, overhead lines and related equipment. The costs of modifying or moving the cables, overhead lines and related equipment will be paid by every public telecommunications network operator concerned .

Except in case of *force majeure*, if the works envisaged have not started within one year dating from this notification, every public telecommunications network operator concerned may charge the costs generated by modifying the cables, overhead lines and related equipment to the owner or rightful claimant and also reestablish the original situation at the expense of the latter, if this proves necessary.

Art. 100

The establishment and implementation of all other works on the cables, overhead lines and related equipment, in, against and on buildings and in and on the adjoining grounds, for the purpose of connections to the infrastructure in these buildings, must be tolerated by the owner and the rightful claimant, unless they have accepted to bear the additional cost of a counter-proposal.

Art. 101

(1). When branches or roots reasonably constitute an obstacle for the establishment, maintenance and functioning of the cables, overhead lines and related equipment, the owner or the rightful claimant must cut them at the request of the public telecommunications network operator concerned.

If the owner or the rightful claimant fails to act on such request within one month, the public telecommunications network operator concerned may cut them itself.

(2 The cutting costs will be paid by :

(1) the owner or the rightful claimant if the trees or plants are on his private property and their branches or roots

constitute an obstacle or cause disruptions to the cables, overhead lines and related equipment :

- a) located in or above the public domain;
- b) located in or above his private property and being used to connect him;

(2) The public telecommunications network operator concerned, in other cases.

Art. 102

When the presence of a water, gas, electricity, radio or television cable distribution or any other public utility installation hinders the implementation of work on the cables, overhead lines and related equipment, every public telecommunications network operator concerned will pay the costs caused by modifying, at its request, the public utility installation.

This modification shall be carried out solely by the operator of the public utility installation concerned, or by the public telecommunications network operator concerned, with every modifying his own installation. Except in case of application of Articles 98, (3), and 99, (3), the administrator of a public utility installation as referred to in paragraph 1 will bear the costs caused by modifying, at his request, the cables, overhead lines and related equipment whose presence impedes the implementation of works on its installation. This modification shall be carried out solely by the public telecommunications network operator concerned or by the operator of the public utility installation concerned, as referred to in the first paragraph.

The modifications referred to in the first and second paragraphs may only be demanded in case of absolute necessity.

The provisions referred to in the first and second paragraphs may be departed from by mutual agreement between every public telecommunications network operator concerned and the administrator of the public utility installation.

When a person requests modification of the cables, overhead lines and related equipment in other cases than those referred to in the second paragraph and in Articles 98, (3), and 99, (3), the public telecommunications network operator concerned may perform this modification on condition that it not harm the normal use of the public telecommunications and that the requesting party bear the costs.

Art. 103

(1). When the public telecommunications network operator performs the works referred to in Articles 97 through 102, it is obliged to return the property to its original condition as quickly as possible, with the work performed, depending on the case, either by itself or by an intermediary.

The provision of the first paragraph may be departed from by agreement between the public telecommunications network operator concerned and the owner or the rightful claimant of the property.

(2. The provisions of (1), paragraph 1, are not applicable to the damage inevitably caused to a property when the public telecommunications network operator performs work necessary for the connections of the owner or the rightful claimant of this property.

Art. 104

The manager of electrical or other installations located above, in, against or on a public domain or a private property and which, by their proximity, physical or technical characteristics, or conditions of use, have or may have a harmful effect on the telecommunications network, on persons working on this infrastructure, or on users of this network, must take, at his own expense, all the measures necessary for preventing this harmful effect. The manager of electrical or other installations located above, in, against or on a public domain or a private property must, at the specific request of every public telecommunications network operator concerned, at his expense shut down these installations or take or have taken all measures necessary so that the works on the public telecommunications network may be performed safely.

The owner or the rightful claimant of a property must take all measures to allow unimpeded implementation of all works on the cables, overhead lines and related equipment.

Art. 105

{Deleted ...

[Chapter IX(a) Management of the national numbering space]

[Added by R.D. 28/10/96, art. 12]

Art. 105(a).

[Added by R.D. 28/10/96, art. 13]- The Institute is responsible for managing the national numbering space, in particular with establishing (and possibly modifying) the national numbering plans and the allocation of numbering capacity so as to ensure adequate availability. The King may, for the services which He designates, lay down the principles and the basic structure which the Institute must take into account when drawing up the numbering plans in question.

The Institute will allocate numbering capacity in an objective, transparent and non-discriminatory manner.

At the proposal of the Institute, the King draws up the form and the conditions for allocating and revoking numbering capacity.

The King draws up the fees which must be paid to the Institute by those applying for numbering capacity for processing their file.

The King also draws up the annual fees which must be paid to the Institute by those who obtain numbering capacity for the use of the numbering capacity.

[Added by R.D. 28/10/96, art. 13]

By the 31st July 2000 at the latest, those operators of voice telephony services that use geographical numbers must allow the transfer of those numbers within the geographical area. The transfer of numbers may only be refused if compliance with this obligation is technically impossible and if this refusal has previously been approved by the Institute.

The King shall define, at the instigation of the Institute, the methods of application, the overall cost, and the distribution of this cost between the parties concerned.

In the period prior to the capability to transfer numbers as defined in paragraph 6 becoming effective, the operators of voice telephony services with geographical numbers shall provide a mechanism to intercept calls to the numbers of ex-customers. If a number is changed following a change to another operator providing a voice telephony service, this mechanism must inform callers to the previous number of the called party's new number. This service must be provided by all operators at a common price set by the Institute and based on the cost of providing such a service.

The Institute shall define the regulations required for this to be implemented.

CHAPTER IXter The Protection of Users

Art. 105ter

Every operator of voice telephony services classified as a powerful organization shall not modify the prices for the provision of a voice telephony service without giving notice of 15 working days in the case of price increases and one working day in the case of price reductions unless a dispensation is granted by the Institute within five working days of notification.

Art. 105(c)

The prices for value added services provided in addition to a connection to the public fixed telephone network provided by a powerful organization and the provision of a voice telephony service provided by a powerful organization shall be sufficiently unbundled as to ensure that the user is not compelled to pay for value added services which are not necessary for the level of service requested.

Art. 105(d)

The prices for the provision of a voice telephony service from powerful organizations shall include, as a minimum, the following elements made available to the user:

- (1) An initial charge for connection to the public fixed telephone network and to the voice telephony service.
- (2) A recurring line rental charge based on the type of service and value added services chosen by the user.
- (3) Call charges that may take account of, among other factors, the fact that the call was made during a busy period or during a quiet period.

If other pricing elements are included, they must be transparent and non-discriminatory, and they must be based on objective criteria.

Art. 105(e)

(1). The operators of voice telephony services, together with the operators of those services authorized under Article 89 (1) shall publish adequate and up to date information with regard to the access for users to their public network and to their public service, together with the use of these networks and these services. The Minister shall define, on the advice of the Institute, a list of the items of information to be published.

(2). Without prejudice to the provisions of Article 105ter of this law, those operators of voice telephony services classified as powerful organizations shall publish any alterations to the existing services that they offer and information relating to any new services to be offered five working days before these modifications come into effect.

(3). The persons referred to in paragraphs 1 and 2 of this Article shall communicate the information referred to in paragraphs 1 and 2 to the Institute. The Institute shall make reference to this information in the Belgian Official Gazette.

(4). Without prejudice to the regulations governing the universal service, the Minister may, at the instigation of the Institute, define target time-scales for the provision of service and the results in relation to the quality of the voice telephony service. The definitions, methods of measurement, and the degree to which these targets have been achieved shall be published annually by the Institute. The Institute shall make reference to this publication in the Belgian Official Gazette. The definitions, methods of measurement, and the targets shall be reviewed every three years.

Art. 105(f)

The King shall decree, on the advice of the Institute, the methods by which shall be published the information to be brought to the attention of users in compliance with this Title.

Art. 105(g)

(1). The operators of voice telephony services shall show in their general conditions the general rules for establishing arrangements for compensation or reimbursement in the case of non-compliance with the service quality levels provided for in the said general conditions. Any exception to this rule must be previously approved by the Institute within five working days of notification.

(2). In order to ensure compliance with the provisions contained in this Chapter, the Institute shall have the power to require modifications to be made to the contractual conditions and to the compensation and reimbursement schemes.

(3). In order to ensure compliance with the provisions contained in this Chapter, the general conditions imposed by the operators of voice telephony services shall include a summary of the mechanisms by which disputes shall be resolved.

(4). Without prejudice to the regulations in respect of the universal service, the operators of voice telephony services shall publish in their general conditions the measures that shall be taken in the event of unpaid bills and any suspension of service or disconnection that may result. These measures shall specify that any suspension of service shall only apply to the service in question, insofar as this is technically feasible, and that the user shall be notified beforehand.

(5). If a powerful organization, in response to a given request, considers that it is unreasonable to provide a connection to the public fixed telephone network under the conditions of price and provision that they have published, it is required to obtain the consent of the Institute in relation to any modification of the said conditions in this case.

The Institute shall give its consent within five working days of notification.

Art. 105(h)

(1). The operators of voice telephony services shall provide on demand a detailed invoice showing, subject to the applicable legislation with regard to the protection of personal and private data, a breakdown of the elements invoiced. At the instigation of the Institute, the Minister shall define targets for detailed invoices based on the state of development of the network and the requirements of the market. Free calls, including calls to the emergency services, shall not be shown on detailed invoices. In this regard, a number of different levels of detail may be offered to users at reasonable prices.

Art. 105(i) A

(1). An "Ethics Commission for Information Services and Telecommunications" shall be established. The King shall decree, on the advice of the Institute, the composition and operating procedures of this Commission. It shall be made up of representatives of family interests, of every of the Communities, a representative of the Minister of Justice, a representative of the Minister and a president nominated by the Minister. Members of the Commission shall serve for a period of five years.

The secretariat is provided by the Institute.

(2). At the instigation of this Commission, the King shall decree a Code of Conduct. Persons who offer a information services through the medium of a voice telephony service or a mobile telephony service are required to conform to this Code of Conduct.

The Ethics Commission for Information Services and Telecommunications shall ensure that the Code of Conduct is complied with.

(3). Violations of this Code of Conduct shall be punished by an administrative fine of between 5000 and 100 000 Belgian Francs or a suspension of activities of between one and 30 days. In determining the level of fine or suspension to be imposed, the Commission shall take account of the seriousness of the offence and whether or not it was committed intentionally.

Art. 105(i) B

The King may, by decree deliberated in the Council of Ministers, at the instigation of the Institute and on the advice of the Telecommunications Consulting Committee, alter the responsibility incumbent on the operators of public telecommunications networks and on the operators of voice telephony services under the heading of the non-operation or defective operation of a public telecommunications network, or under the heading of shortfalls in the provision of a voice telephony service.

Art. 105undecies

The Institute shall prepare and publish every year a list of the organizations providing a public telecommunications network and or telecommunications services offered to the public, and which are considered to be powerful organizations in the markets concerned and are also considered to be powerful organizations endowed with the specific rights and obligations in relation to interconnection and special access under the provisions of

this Chapter and considered to be powerful in the markets concerned.

Any operator holding a market share greater than 25% in the market concerned shall be considered as being powerful in that market.

However, in determining whether or not a particular operator shall be considered powerful, the Institute may take into consideration any other parameters that it sees fit such as the turnover of the operator in relation to the size of the market, its control over the means of access to the end user, its access to financial resources, its experience, or the ability of the operator to influence market conditions.

CHAPTER X Measures to preserve fair competition

Art. 106

(1). The powerful organizations are required to conform to the principle of cost-based pricing in respect of the following services:

- (1) The voice telephony service.
- (2) Leased lines.
- (3) Interconnection.
- (4) Special access.

Before any price increases can be applied to these services in which these operators are considered to be powerful, the powerful organizations must inform the Institute, in accordance with the procedures defined by the King, on the advice of the Institute, of the factors supporting their contention that such increases are compatible with the applicable regulatory constraints.

(2). Without prejudice to the provisions of Article 105ter, those powerful organizations which, in accordance with the law of 14th July 1991 relating to commercial practices and the protection of the consumer, wish to offer a price reduction linked to the bundling of products or services, must make a declaration to that effect to the Institute by registered letter within five working days of the declaration referred to above. The Institute may oppose the price reduction offer proposed. In this respect, the Institute shall take account of the necessity of maintaining an undistorted market structure.

If, before the expiry of the time period referred to in the previous paragraph, the applicant has not received from the Institute, by registered letter, a reasoned decision to forbid the proposed reduction linked to the bundling of products or services, the applicant may grant such a reduction.

(3). Operators of a voice telephony service shall notify the Institute prior to the introduction of any special prices for the voice telephony service provided linked to specific projects and for a limited period.

Art. 107

(1). Every powerful organization in the leased lines market shall provide equal access to the leased lines that it offers to all users in similar situations.

(2). Without prejudice to the rules defined in paragraph (1), every powerful organization in the leased lines market shall provide equal access to leased lines to any person operating a telecommunications service or network,

including lines supplied to itself or to a subsidiary or partner.

(3). The King shall decree the obligations incumbent on any powerful organization in the leased lines market in carrying out the provisions of paragraphs (1) and (2). These obligations shall conform to a number of basic principles. These principles shall be that the obligations:

- (1) Shall be based on objective criteria.
- (2) Shall be transparent and published.
- (3) Shall not be discriminatory.

Access to the linked lines offered by a powerful organization in the leased lines market may only be refused for essential reasons. These essential reasons are:

- (1) The safety and operation of the network.
- (2) The maintenance of the integrity of the network.
- (3) The interoperability of services and networks in justified cases.
- (4) The protection of transmitted data in justified cases.
- (5) The application of regulations in relation to the protection of the environment and planning regulations in justified cases.
- (6) The rational use of the radio frequency spectrum in justified cases.
- (7) The prevention of any harmful interference between radio telecommunications systems and other earth or space technical systems in justified cases.

Art. 108

The Institute publishes the precise technical characteristics making it possible to use the services provided by voice telephony operators and the powerful organizations providing leased lines.

The King may, on the advice of the Institute, impose technical characteristics in order to ensure equal access to the telecommunications services offered by the powerful organizations.

Where modifications are made, the voice telephony operators and the powerful organizations providing leased lines must give prior notice to the Institute.

The King decrees the terms and time limits required for application of this Article.

Art. 109

(1). No subsidy is permitted, within a powerful organization, from one telecommunications service where this organization holds a dominant position to any other telecommunications service.

Every powerful organization shall so arrange its accounting procedures, that the income from the operation of the various telecommunications services in which it holds a dominant position in the market concerned shall appear separately from that resulting from other telecommunications services.

(2). In order to monitor compliance with the obligations of this chapter, the King will decree, on the opinion of the Institute, the accounting principles which the service provider must apply. Within this framework, the provider will furnish the Institute or its agents with all necessary information. The Institute guarantees the confidentiality of this information.

Art. 109(a)

No subsidization is permitted from a sector in which a person enjoys exclusive or reserved rights or a dominant position towards telecommunications services.

Any person wishing to offer non-reserved telecommunications services and enjoying exclusive or reserved rights or a dominant position elsewhere is obliged to maintain separate accounts for its telecommunications activities in the same way as if these activities were undertaken by legally independent companies, or establish a structural separation for its telecommunications activities in such a way as to identify, in addition to the bases of their calculations and the detailed posting methods applied, all elements of expenditure and income in relation to their telecommunications activities, including a breakdown by entry of all capitalisations and structural expenditure. In order to monitor compliance with the obligations of this Article, the Minister decrees, on the opinion of the Institute, the accounting principles which must be applied. The transfer of assets, including the transfer of funds and equipment from activities subject to exclusive or reserved rights to other telecommunications activities shall be carried out in accordance with market conditions.

In the absence of a market price, a cost calculation shall be performed, including a return on investment calculated on a market basis.

Where joint production facilities are used, the prices shall be set at the level of the market prices.

Within this framework, the Institute or its agents will have access to all accounting documents of the persons referred to in paragraph 1 and may demand the production of all documents and request any information which the Institute deems necessary for such verification. The Institute guarantees the confidentiality of this information.

Art. 109ter A

(1). The King shall define, on the advice of the Institute, the time-scales and general principles applicable to commercial negotiations carried out with a view to concluding interconnection agreements.

(2). The King draws up by decree deliberated in the Council of Ministers the technical means by which Belgacom and the managers of the non-reserved services appointment by Him, where applicable, must be responsible, possibly jointly, for enabling the tracing, tapping, inspection and recording of private telecommunications under the conditions laid down by the law of 30 June 1994 for the protection of personal privacy against the tracing, inspection and recording of private communication and telecommunication.

(2). Every provider of a public telecommunications network or of telecommunications services offered to the public, and who controls the means of access to the end user, shall be required to negotiate with other providers of public telecommunications networks or telecommunications services offered to the public when they make a request for interconnection.

The following shall also be subject to the rights and obligations defined in the previous paragraph:

- (1) Operators providing leased lines.
- (2) Operators authorized by a member State of the European Union to provide telecommunications circuits

between the European Union and a third country and which have exclusive rights in this regard.

(3) Voice telephony operators.

The Institute may decide, on a case by case basis, to limit this obligation temporarily if the requested interconnection can be replaced by solutions that are technically, financially and commercially viable, and if the requested interconnection is not consistent with the resources available to respond to the request.

This decision shall be published in the Belgian Official Gazette and in the annual report referred to in Article 75 (7) of this law.

(3). Every powerful organization in the market for public fixed telecommunications networks or the market for telecommunications services offered to the public is required to respond in a non-discriminatory manner to all reasonable requests for interconnection and connection, and in particular for access at points other than the connection points offered to the majority of end users.

Every powerful organization in the interconnection market shall provide equal access, without discrimination, to the interconnection services, including access provided to itself or to one of its subsidiaries or partners who operate a telecommunications service.

(4)). Every powerful organization in the market for public fixed telecommunications networks or the market for telecommunications services offered to the public is required to publish, in accordance with the procedures defined by the King, at the instigation of the Institute, a proposal for interconnection including both technical and price information that has previously been approved by the Institute. This proposal must be sufficiently unbundled for the interconnection applicant referred to not to be obliged to subscribe to services that he does not require. The Institute shall be the judge of whether or not the proposal is sufficiently unbundled. The interconnection prices must be based on costs. The Institute has the authority to ensure that this provision is complied with.

The publication of this proposal shall not preclude requests to negotiate interconnections not provided for in the proposal.

The proposal referred to in the first section of this paragraph shall contain different conditions according to whether it is addressed to providers of:

- (1) Public telecommunications networks.
- (2) Other telecommunications networks.
- (3) Voice telephony services.
- (4) Other telecommunications services.

The Institute shall specify the conditions and the degree to which they may be modified according to the category into which the applicant requesting interconnection falls.

The Institute may impose such modifications to the proposal for interconnection as it considers to be essential. Where providers of public telecommunications networks or telecommunications services offered to the public have not interconnected their networks or services and the Institute considers that it is essential in the interests of the users that such an interconnection should be implemented, the Institute may require such an interconnection to be implemented.

In this case, it shall define the conditions of interconnection, subject to the right of the parties to conclude an agreement in accordance with paragraph (5)) of this Article.

(5)). The interconnection shall form the object of an agreement between the parties concerned. This agreement shall define the technical and financial conditions relating to the interconnection. The King shall decree, on the advice of the Institute, the minimum conditions that must be agreed in an interconnection agreement. The entire interconnection agreement shall be communicated to the Institute.

If it is essential in order to guarantee the equality of competition or interoperability conditions, the Institute may request alterations to agreements already concluded.

To this end, the Institute shall define the time period within which the parties shall amend their agreement in order to include the modifications requested by the Institute.

The new agreement shall be submitted to the Institute for approval. If the parties cannot agree, or if the agreement is not approved by the Institute, the Institute may impose such modifications as it considers to be essential.

(6)). Subject to the international obligations entered into by Belgium, a foreign operator shall not have greater rights in respect of interconnection or special access than a Belgian operator would enjoy in his country of origin.

(7). In order to permit the verification of the application of this Article by the Institute, operators of public fixed telephone networks and providers of leased line services who are considered to be powerful organizations shall maintain separate accounts for their interconnection activities which shall allow the identification of interconnection services provided to third parties and interconnection services provided internally.

Art. 109ter B

The persons referred to in Article 87 and in Article 89 (1) are required to make subscriber data available on request to those persons preparing, selling or distributing a directory under technical, financial and commercial conditions that are equitable, reasonable and non-discriminatory. The price of this subscriber data must be based on costs.

These conditions shall be approved by the Institute prior to publication.

CHAPTER X(a) - The confidentiality of calls and the protection of privacy

Art. 109ter C

When providing the end user information needed for the preparation of directories, the operators referred to in Article 87 of this law shall, in accordance with the technical and financial procedures decreed by the King on the advice of the Institute, omit the end user information in respect of those persons who have requested not to be listed in any directory.

When providing the end user information needed for the preparation of directories, the operators referred to in Article 89 (1) of this law shall, in accordance with the technical and financial procedures decreed by the King on the advice of the Institute, omit the end user information in respect of those persons who have requested not to be listed in any directory.

Without charge to the end users, the operators referred to in Article 87 of this law shall omit from the lists of end user information all end user information relating to those persons who have agreed to such information appearing in the directories, but who have requested that such information should not be included in any lists used for a purpose other than those of providing the telecommunications service to which they have subscribed and preparing directories.

Without charge to the end users, the operators referred to in Article 89 (1) of this law shall omit from the lists of end user information all end user information relating to those persons who have agreed to such information appearing in the directories, but who have requested that such information should not be included in any lists used for a purpose other than those of providing the telecommunications service to which they have subscribed and preparing directories.

Art. 109ter D

Subject to the authorization of every person directly or indirectly concerned in the information, identification or data referred to below, any person, whether acting in their own right or through the agency of a third party, is forbidden:

(1) To become aware in a fraudulent manner of the existence [deleted by L 30 June 1994 Art 13 (2 (1)] signs, signals, written messages, images, sounds, or data of whatever nature transmitted over a telecommunications system from and to other persons.

(2) [deleted by L 30 June 1994 Art 13 (2 (2)] To alter or delete in a fraudulent manner, by whatever technical process, the information referred to in (1) or to identify the other persons involved.

(3) To become aware intentionally of any telecommunications data relating to another person.

(4) To reveal or make use of, alter or delete any information, identification or data of whatever nature as referred to in paragraphs (1), (2) or (3) , whether obtained intentionally or not.

Art. 109ter E

(1). The provisions of Article 109ter D of this law and Article 314 (a) of the Penal Code do not apply if:

(1) The law permits or requires the performance of the campaigns referred to.

(2) The campaigns referred to are performed with the exclusive intention of verifying the correct operation of the network and to ensure the correct provision of a telecommunications service.

(3) The campaigns are performed in order to facilitate the response of the emergency services to a request for assistance made to them.

Any information, identification or data obtained under paragraphs (1) and (2) may only be revealed for the same reasons.

(2)⁹ The King shall determine, after getting advice from the Commission on Privacy, based on a decision deliberated in the Council of Ministers, the technical means by which operators of telecommunication networks and providers of telecommunication services, if the need arises, shall be jointly responsible for making the

⁹ Gewijzigd door de wet van 10 Juni 1998 (BS 22/09/98)

investigating, locating, listening, noting and recording of private telecommunications possible subject to conditions determined by Articles 88(a) and 90(b) up to and including 90(i) of the Rules of Criminal Procedure.

He shall also determine the extent of investment, operational and maintenance costs of these means which shall be borne by the operators of telecommunication networks and by the providers of telecommunication services.

Art. 109ter F

The use of encryption is not restricted.

The provision of encryption services to the public, as determined by the King, is subject to a prior declaration to the Institute. This declaration must be delivered by registered letter at least four weeks before the start of activities.

CHAPTER XI - [Penalties, surveillance, secrecy and penal provisions¹⁰]

Art. 109(c)

(1). Without prejudice to the provisions of Article 114 (2, in case of infringement of the obligations imposed by or based on this law, the Institute may address a formal notice, stating the reasons on which it is based, to the infringing parties.

(2. If the infringing parties do not comply with the formal notice referred to in the preceding paragraph, the Institute may, after having heard the person concerned, impose an administrative fine of between 10 000 Belgian Francs minimum and 100 000 Belgian Francs maximum on any individual who does not conform to the obligations imposed by this Title, or an administrative fine of between 0.5% minimum and 5% maximum of the turnover in the sector concerned on any organization who does not conform to the obligations imposed by this Title.

(3). If the infringing parties continues not to comply with the formal notice after the imposition of such a fine, the Institute may, after having heard the person concerned, suspend their connection to the public telecommunications infrastructure.

Art. 110

(1). The King may confer the capacity of criminal investigator [*officier de police judiciaire*] upon agents of the Institute whom He entrusts with investigating infracompaings of this law and the decrees enacted in implementation thereof.

These agents have priority over other criminal investigators, with the exception of the *procureur du Roi* [public prosecutor] and the *juge d'instruction* [examining magistrate]. Their reports have force of law until proven otherwise.

(2. The agents referred to in (1) may, in the exercise of their criminal investigation mission :

¹⁰ Title modified by L. 20 December 1995, art. 98.

(1) enter the buildings, workshops and outbuildings during opening or working hours, when this is necessary for performing their duties;

(2) conduct all useful investigations, demand and confiscate documents, papers, books and objects necessary for the inquiry and findings.

(3) confiscate all documents, papers, books and objects necessary to stop the infraction.

If these compaigns have the nature of a search, they may only be conducted by the agents referred to in (1) in application of Articles 87 to 90 of the Criminal Investigations Code.

(3). The agents referred to in paragraph (1) of this Article, and designated by the Minister, have the power to seek for such information as they may consider useful and to make such enquiries as they consider necessary in order to apply the provisions of this Title. In carrying out their duties to seek out and enquire into infrcompaigns, they are subject to the supervision of the *procureur général*. They may receive such information, statements and testimonies, written or oral, or require to be given up by whoever holds them any documents or items of information as they consider to be necessary to the performance of their duties, make copies of such information, and make the necessary enquiries at the scene.

They have powers of search in:

- the homes of managing directors, board members, managers, directors and other employees, and to the homes and business premises of individuals and organizations, internal or external, responsible for commercial, accounting, administrative, fiscal and financial management between the hours of 8:00 am and 6:00 pm with the prior authorization of an examining magistrate.

- the buildings, vehicles and other premises belonging to businesses where they have reason to believe they may find documents or items of information that they consider to be necessary in the performance of their duties and of which they may take copies.

They may call upon the assistance of the police and other forces in the performance of their duties.

(4). Without prejudice to the specific laws guaranteeing the confidentiality of declarations, the public administration departments are required to assist the authorized agents of the Institute in the performance of their duties.

Art. 111

Deleted.

Art. 112

Deleted.

Art. 113

The King shall decree, on the advice of the Institute, the conditions under which directories may be prepared, sold and distributed.

Persons wishing to prepare, sell or distribute a directory are required to make a declaration to the Institute.

This declaration shall be made at least four weeks before the start of activities.

The King shall decree, at the instigation of the Institute, the the content and form of such a declaration.

Art. 114

(1). The following persons will be punished by a fine of 26 to 500 francs :

(1) whoever, except in the event of *force majeure*, carries out or has carried out, without informing the operator of the telecommunications network concerned at least eight days in advance by registered letter, any works which might damage the infrastructure or endanger its functioning;

(2) whoever, when carrying out or having carried out work as referred to in (1), does not comply with the directives prescribed by the operator of the telecommunications network concerned in order to protect the infrastructure.

(2. Whoever violates Articles 79 (a), 86 (b), 86 (c), 87, 88, 89, 92, 92 (a), 92 (b), 94 (1), 95, 96, 97 (1), 98 (1), 99 (2 and (3), 104, 105 (b), 105 (c), 105 (d), 105 (e), 105 (f), 105 (g) (1), (3) (4) and (5)), 105 (h), 106, 107 (1) and (2, 109 (1), 109 (a), 109 (b) (2 and (3), 109 (b) B, 109 (b) C, 109 (b) D, 109 (b) F and 113 will be punished by a fine of 50 to 50 000 francs.

(3). Whoever involuntarily, by negligence or carelessness, damages or causes to deteriorate part of a public telecommunications network or impedes or prevents its functioning, will be punished by a fine of 600 to 5 000 francs.

When one of these acts is done by a person in the service of a third party, the pain is imposed on the employer or the person responsible for the work, depending on whether the former or the latter neglected to inform the worker in question about the presence of a public telecommunications network or the directives provided by the operator of the public telecommunications network concerned to protect this infrastructure.

(4). Whoever voluntarily performs the acts referred to in (3) will be punished by a fine of 2 500 to 25 000 francs.

(5). Whoever has been convicted on the base (3) and who involuntarily, by negligence or carelessness, repeats his offense within one year of the date of the verdict or of the date on which the decision has become final, will be punished by a fine of 1000 to 10 000 francs or three to six months of imprisonment.

(6). Whoever has been convicted on the base (3) and who voluntarily repeats one of the acts provided for in that section within one year of the date of the verdict or of the date on which the decision has become final will be punished by a fine of 5 000 to 50 000 francs or six months to one year of imprisonment.

(7). Whoever, personally or via another person, subject to the application of Article 109 (b) E, violates the provisions of the Article 109 (b) C will be punished by a fine of 100 to 5 000 francs and three months to one year of imprisonment, or by one of these penalties alone.

The penalties are doubled when the person convicted on the base the provisions of paragraph 1, repeats one of these offenses within five years from the date of the verdict or of the date on which the decision became final.

(8)). The following persons will be punished by a maximum fine of 500 to 50 000 francs and one to four years of imprisonment, or by one of these penalties alone :

(1) whoever fraudulently conducts telecommunications by means of a telecommunications network in order to obtain for himself or others an illegal benefit;

(2) whoever uses a telecommunications network or service or other means of telecommunications in order to bother his correspondent or to cause damage.

(9. The installation of any device intended to commit one of the infracompaings referred to in ((7) and 8, as well as an attempt to commit such a violation will lead to the application of the penalties provided for in the same sections.

Art. 115

Articles 269 to 274 of the Criminal Code are applicable to agents of the Institute acting in the exercise of their positions.

Art. 116

Any obstruction of the implementation of the mission of the agents referred to in Article 110 will be punished by a fine of two hundred to ten thousand francs and imprisonment of three months to one year, or by one of these penalties alone.

Art. 117

In the event of conviction, recordings of conversations, messages or data obtained illegally and objects that were used to commit an offense referred to in Articles 96, 113, 114, ((7), 8 and 9 may be confiscated.

Confiscation may be ordered even if the recordings or objects do not belong to the convicted party.

Article 8, (1) of the Law of 29 June 1964 on suspension, delay and probation is not applicable to a confiscation ordered on the base this Article.

Art. 118

The provisions of book I of the Criminal Code, including chapter VII and Article 84, are applicable to the violations of this law and the decrees enacted in implementation thereof.

CHAPTER XII Miscellaneous provisions

Art. 119

The King may, by decree deliberated in the Council of Ministers, on the advice of the Institute and in accordance with the provisions of Article 122 (3) and (3) of this law, adapt and coordinate to the provisions of this law concerning telecommunications, the provisions of the law of 30th July 1979 in order to form a "Telecommunications Code".

For this purpose, He may only :

- 1° modify the order, the numbering and, in general, the presentation of the provisions to be coordinated;
- (2) modify any references which are contained in the provisions to be coordinated in order to harmonize them with the new numbering;
- (3) modify the wording of the provisions to be coordinated in order to ensure their agreement and to unify their terminology without affecting the principles set down in these provisions except where necessary in order to give effect to the directives referred to in Article 122 of this law.

Art. 120

(1). All information communicated to the Institute is confidential. The Institute may only depart from this principle as a result of an individual reasoned decision. The information communicated to the Institute may not be made public except for specific purposes, and in a way that is not incompatible with those purposes. While taking account of these purposes, only sufficient and relevant information shall be published within reasonable limits. In the absence of an agreement with regard to the confidential nature of certain information, the Institute shall hear the views of the person concerned before any information is made public.

(2. With the exception of information treated as confidential under the provisions of paragraph 1 of this Article, all information communicated to the Institute may be communicated to third parties, either by the Institute or, at the request of the Institute, by the operator from whom it originated.

Art. 121

An approval of a terminal device which was issued before the chapter VIII of this Title came into effect by the Telegraph and Telephone Authority, is assimilated to an approval issued by the Minister in accordance with the provisions of this law.

Art. 122

(1). The King may, by decree deliberated in the Council of Ministers [before the 31st December 1999] delete, complete, modify or replace the provisions of this law in order to take the measures necessary for the implementation of the obligations which, in matters of mutual recognition of approvals of telecommunications terminal equipment, provision of open networks and of free competition on the markets for telecommunications services and terminals, result from the EC regulations and directives in effect.

(2. The draft decree referred to in (1) of this Article is submitted for the opinion of the Legislative Section of the Council of State.

This opinion is published at the same time as the report to the King and the related Royal Decree.

(3). The Royal Decree enacted in implementation of (1) of this Article will be repealed if it has not been confirmed by law within one year following its publication in the *Belgian Official Gazette*.

Art. 123

The Law of 13 October 1930 coordinating the various legislative provisions on telegraphy and wire telephony is hereby repealed.

Art. 124

Article 55 of the Law of 14 July 1971 on the commercial practices is completed as follows :

« the infracompaings and violations of the provisions of Title III of the Law of 21 March 1991 relating to the reform of certain economic public companies ».

Art. 125

[Repealed by R.D. 28/10/96, art. 14]

Art. 126

Notwithstanding Article 89, (2 and 3, the non-reserved services offered on the date this Article comes into effect are authorized ipso jure for a period of seven months after the effective date of this Article, on condition that a declaration is made to the Institute, in accordance with Article 89, no later than two months after this Article comes into effect. For these services, the time limit referred to in Article 89, (3) is raised to three months. Notwithstanding Article 89, (2, the King temporarily draws up, by decree deliberated in the Council of Ministers and after notification of the project to the Commission of the European Communities, public service specifications referred to in this Article.

Art. 127

Article 1, A of the Law of 16 March 1954 relating to supervision of certain public-interest bodies, is supplemented by : « Belgian Institute of Postal Services and Telecommunications ».

Art. 128

Articles 71 through 79 come into force on the day of their publication in the *Belgian Official Gazette*.

The other provisions of this Title will come into effect after :

- (1) BELGACOM has been classified among the autonomous public companies; and
- (2) a period of three months after publication in the *Belgian Official Gazette* of the administrative and pecuniary regulations of the staff and the organic framework and the linguistic framework of the Institute has passed.

Art. 134

(1). On the advice of the Institute, the King shall define the conditions and procedure applicable to the approval of the miscellaneous equipment intended for use by, and under the control of, the POSTAL SERVICE in carrying out the responsibilities with which it has been entrusted. The Institute shall issue approvals for such equipment. [L 12 December 1994 Art. 14 - The King shall define the amount of any fee to be paid to the Institute by applicants for approvals and certificates of accordance.]

(2. The sale such equipment, whether new or previously used, is forbidden unless the approval referred to in this Article has been obtained, or if such an approval has been withdrawn before the sale or has been suspended. The use of such equipment fraudulently in contravention of the rights of the POSTAL SERVICE is forbidden.

Art. 136

(1). The King may confer the capacity of criminal investigator [*officier de police judiciaire*] upon agents of the Institute in order to allow them to make enquiries and investigate the infracomplaints referred to under this Title. These agents have priority over other criminal investigators, with the exception of the public prosecutor and the examining magistrate. Their reports are legally valid until proven otherwise.

(2. The agents referred to in (1) may, in the exercise of their criminal investigation mission:

(1) enter buildings, workshops and outbuildings during opening or working hours, when this is necessary for performing their duties;

(2) conduct all useful investigations, demand and confiscate documents, papers, books and objects necessary for the investigation and evidence.

(3) confiscate all documents, papers, books and objects in so far as this is necessary to stop the offence.

If these campaigns have the nature of a search of premises, they may only be conducted by the agents referred to in (1) with due observance of Articles 87 to 90 of the Penal Code.

(3). The officials referred to in (1) of this Article and designated by the Minister are authorized to investigate all information and to make all useful investigations in regard of the application of this Title. In the performance of the duties assigned to them they are subject to the supervision of the procurator general.

They collect all information, take all written or verbal statements or testimony, demand to be shown all documents or given all information held by any persons whatsoever which they [deem] necessary [and] which they may copy, and carry out the necessary investigations *in situ*.

They may carry out a search of premises:

- in the residences of the heads of enterprises, managing directors, business managers, directors and other members of staff and also in the residences and rooms used for professional purposes of natural and legal persons, both internal and external, charged with the commercial, accounting, administrative, fiscal and financial management, providing that this is carried out between the hours of 8 a.m. and 6 p.m. and with a prior warrant from the examining magistrate;

- in the enterprise's rooms, means of transport and other locations where they can reasonably expect to find documents or data which they deem necessary for the accomplishment of their duties and which they may copy.

They may call on the public authorities for the completion of their duties.

(4). Notwithstanding the special laws guaranteeing the confidentiality of information, the civil administrations must provide assistance to the authorized officials of the Institute in the performance of their duties.

Art. 136(a)

Any hindrance of the officials referred to in Article 136 in the performance of their duties shall be punished by a fine of from two hundred to ten thousand BEF and a prison sentence of eight to fourteen days or by only one of these punishments.

Art. 152

(1). The following Articles in the Law of the 26th December 1956 relating to the Postal Service are repealed:

- (1) Article 1.
- (2) Article 4.
- (3) Article 7.
- (4) Article 8.
- (5) Article 9.
- (6) Article 10.
- (7) Article 11.
- (8) Article 15.
- 9° Article 25.

10° Article 33.

1(1) Article 35.

1(2) Article 37.

(2. Article 18 of the same law is modified as follows:

“Art. 18. In the case of the loss, spoilage or damage to a registered package, and provided that the packaging was considered sufficient to protect the contents of the package against the risk of accidental spoilage or damage, the sender has the right to compensation corresponding, in principle, to the actual amount of the damage, to the exclusion of indirect damages or consequential losses. In no case shall this compensation exceed the maximum amount defined by the King.”

(3). Article 26 of the same law is amended as follows:

“Art. 26. Violations of Article 14 of this law and [B.G. 20/07/91, Errata - of Article 141,A] of the law of 21 March 1991 relating to the reform of certain economic public companies shall be punished by a prison sentence of eight to fourteen days and by a fine of from two hundred BEF to ten thousand BEF or by only one of these punishments.”

(4). Article 32 of the same law is amended as follows:

“Art. 32. Customs staff are authorized to investigate freight drivers and transport entrepreneurs, to examine their material, and to confiscate those consignments which are the subject of the criminal offences referred to [B.G. 20/07/91, Errata - in Article 141,A] of the law of 21 March 1991 relating to the reform of certain economic public companies.

In the case of a violation an immediate report shall be prepared showing items seized and any delivery destination. The said report shall be sent to the destination office together with the confiscated items with a double postage charge paid.

The agents of the Institute referred to in Article 136 have the right to require mail to be opened if it is suspected that it contains values or items which are forbidden.

They have the right to require mail to be opened:

- for foreign mail, if it is suspected that it contains items which are subject to dues or fees, restrictions or inspection measures;
- for domestic mail, if it is suspected that it contains items which are subject to excise duty.

Mail is opened and where appropriate confiscated in the presence of the sender or of the addressee. If it impossible to obtain the co-operation of such a person, either because he refuses or for other reasons, the opening and if necessary the subsequent confiscation *ex officio*.

These formalities are required only for sealed mail.”

TABLE OF MODIFICATIONS	
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R.D. 28/10/96 (MB 10/12/96)	68, 83, 88, 89, 92, 92(a), 107, 105, 105(a), 125.
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