COUNCIL OF THE EUROPEAN UNION

Brussels, 16 February 2009 (OR. en)

16497/1/08 REV 1

Interinstitutional File: 2007/0248 (COD)

TELECOM 215
MI 503
COMPET 536
DATAPROTECT 101
CONSOM 203
CODEC 1688

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Common position adopted by the Council on 16 February 2009 with a view to the adoption of a Directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation

DIRECTIVE 2009/…/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Having regard to the opinion of the European Data Protection Supervisor[3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[4],

---

1 OJ C 224, 30.8.2008, p. 50.
2 OJ C 257, 9.10.2008, p. 51.
3 OJ C 181, 18.7.2008, p. 1.
4 Opinion of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Common Position of ... (not yet published in the Official Journal) and Position of the European Parliament of ....

Whereas:

(1) The functioning of the five directives comprising the existing regulatory framework for electronic communications networks and services (Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)[1], Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)[2], Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)[3], Directive 2002/22/EC (Universal Service Directive)[4] and Directive 2002/58/EC (Directive on privacy and electronic communications)[5] (together referred to as "the Framework Directive and the Specific Directives")) is subject to periodic review by the Commission, with a view, in particular, to determining the need for modification in the light of technological and market developments.

(2) In that regard, the Commission presented its findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services.

---

1 OJ L 108, 24.4.2002, p. 7.
2 OJ L 108, 24.4.2002, p. 21.
3 OJ L 108, 24.4.2002, p. 33.
4 OJ L 108, 24.4.2002, p. 51.
5 OJ L 201, 31.7.2002, p. 37.

(3) The reform of the EU regulatory framework for electronic communications networks and services, including the reinforcement of provisions for end-users with disabilities, represents a key step towards simultaneously achieving a Single European Information Space and an inclusive information society. These objectives are included in the strategic framework for the development of the information society as described in the Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 1 June 2005 entitled "i2010 – A European Information Society for growth and employment".

(4) For the sake of clarity and simplicity, this Directive only deals with amendments to Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications).

(5) Without prejudice to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity[1], and in particular the disability requirements laid down in Article 3(3)(f) thereof, certain aspects of terminal equipment, including equipment intended for disabled users, should be brought within the scope of Directive 2002/22/EC (Universal Service Directive) in order to facilitate access to networks and the use of services. Such equipment currently includes receive-only radio and television terminal equipment as well as special terminal devices for hearing-impaired end-users.

(6) Member States should introduce measures to promote the creation of a market for widely available products and services incorporating facilities for disabled end-users. One way among others of achieving this is, with reference to European standards, introducing electronic accessibility (eAccessibility) requirements for public procurement procedures and tendering services in accordance with legislation upholding the rights of the disabled end-users.

---

[1] OJ L 91, 7.4.1999, p. 10.

(7) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. an electronic communications service made available to the public for originating and receiving, directly or indirectly, national and/or international calls through a number or numbers in a national or international telephone numbering plan, whether such a service is based on circuit switching or packet switching technology. It is the nature of such a service that it is bidirectional, enabling both the parties to communicate. A service which does not fulfil all these conditions, such as for example a "click-through" application on a customer service website, is not a publicly available telephone service. Publicly available telephone services also include means of communication specifically intended for disabled end-users using text relay or total conversation services.

(8) It is necessary to clarify that the indirect provision of services could include situations where originating is made via carrier selection or pre-selection or where a service provider resells or re-brands publicly available telephone services provided by another undertaking.

(9) As a result of technological and market evolution, networks are increasingly moving to "Internet Protocol" (IP) technology, and consumers are increasingly able to choose between a range of competing voice service providers. Therefore, Member States should be able to separate universal service obligations concerning the provision of a connection to the public communications network at a fixed location from the provision of a publicly available telephone service (including calls to emergency services via the number "112"). Such separation should not affect the scope of universal service obligations defined and reviewed at Community level. Member States that use national emergency numbers besides "112" may impose on undertakings similar obligations for access to those national emergency numbers.

(10) In accordance with the principle of subsidiarity, it is for the Member States to decide on the basis of objective criteria which undertakings are designated as universal service providers, where appropriate taking into account the ability and the willingness of undertakings to accept all or part of the universal service obligations. This does not preclude that Member States may include, in the designation process, specific conditions justified on grounds of efficiency, including, inter alia, grouping geographical areas or components or setting minimum periods for the designation.

(11) National regulatory authorities should be able to monitor the evolution and level of retail tariffs for services that fall under the scope of universal service obligations, even where a Member State has not yet designated an undertaking to provide universal services. In such a case, the monitoring should be carried out in such a way that it would not represent an excessive administrative burden for either national regulatory authorities or undertakings providing such services.

(12) Redundant obligations designed to facilitate the transition from the regulatory framework of 1998 to that of 2002 should be deleted, together with other provisions that overlap with and duplicate those laid down in Directive 2002/21/EC (Framework Directive).

(13) The requirement to provide a minimum set of leased lines at retail level, which was necessary to ensure the continued application of provisions of the regulatory framework of 1998 in the field of leased lines, which was not sufficiently competitive at the time the 2002 framework entered into force, is no longer necessary and should be repealed.

(14) To continue to impose carrier selection and carrier pre-selection directly in Community legislation could hamper technological progress. These remedies should rather be imposed by national regulatory authorities as a result of market analysis carried out in accordance with the procedures set out in Directive 2002/21/EC (Framework Directive) and through the obligations referred to in Article 12 of Directive 2002/19/EC (Access Directive).

(15) Provisions on contracts should apply not only to consumers but also to other end-users, primarily micro enterprises and small and medium-sized enterprises (SMEs), which may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens for providers and the complexity related to the definition of SMEs, the provisions on contracts should not apply automatically to those other end-users, but only where they so request. Member States should take appropriate measures to promote awareness amongst SMEs of this possibility.

(16) As a consequence of technological developments, other types of identifiers may be used in the future, in addition to ordinary forms of numbering identification.

(17) Providers of electronic communications services that allow calls should ensure that their customers are adequately informed as to whether or not access to emergency services is provided and of any limitation on service (such as a limitation on the provision of caller location information or the routing of emergency calls). Such providers should also provide their customers with clear and transparent information in the initial contract and in the event of any change in the access provision, for example in billing information. This information should include any limitations on territorial coverage, on the basis of the planned technical operating parameters of the service and the available infrastructure. Where the service is not provided over a switched telephony network, the information should also include the level of reliability of the access and of caller location information compared to a service that is provided over a switched telephony network, taking into account current technology and quality standards, as well as any quality of service parameters specified under Directive 2002/22/EC (Universal Service Directive).

(18) With respect to terminal equipment, the customer contract should specify any restrictions imposed by the provider on the use of the equipment, such as by way of "SIM-locking" mobile devices, if such restrictions are not prohibited under national legislation, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost imposed in order to retain the equipment.

(19) Without imposing any obligation on the provider to take action over and above what is required under Community law, the customer contract should also specify the type of action, if any, the provider might take in case of security or integrity incidents, threats or vulnerabilities.

(20) In order to address public interest issues with respect to the use of communications services and to encourage protection of the rights and freedoms of others, the relevant national authorities should be able to produce and have disseminated, with the aid of providers, public interest information related to the use of communications services. This information could include public interest information regarding copyright infringement, other unlawful uses and the dissemination of harmful content, and advice and means of protection against risks to personal security, which may for example arise from disclosure of personal information in certain circumstances, as well as risks to privacy and personal data. The information could be coordinated by way of the cooperation procedure established in Article 33(3) of Directive 2002/22/EC (Universal Service Directive). Such public interest information should be updated whenever necessary and should be presented in easily comprehensible printed and electronic formats, as determined by each Member State, and on national public authority websites. National regulatory authorities should be able to oblige providers to disseminate this standardised information to all their customers in a manner deemed appropriate by the national regulatory authorities. When required by Member States, the information should also be included in contracts.

(21) The right of subscribers to withdraw from their contracts without penalty refers to modifications in contractual conditions which are imposed by the providers of electronic communications networks and/or services.

(22) Given the increasing importance of electronic communications for consumers and businesses, users should be fully informed of the traffic management policies of the service and/or network provider with which they conclude the contract. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them under Directive 2002/19/EC (Access Directive) to ensure that users' access to particular types of content or application is not unreasonably restricted.

(23) In the absence of relevant rules of Community law, content, applications and services are deemed lawful or harmful in accordance with national substantive and procedural law. It is a task for the Member States, not for providers of electronic communications networks or services, to decide, in accordance with due process, whether content, applications or services are lawful or harmful. The Framework Directive and the Specific Directives are without prejudice to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)[1], which, inter alia, contains a "mere conduit" rule for intermediary service providers, as defined therein.

---

[1] OJ L 178, 17.7.2000, p. 1.

(24) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users and consumers of electronic communications services should be able to easily compare the prices of various services offered on the market based on information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should be able to require from undertakings providing electronic communications networks and/or services greater transparency as regards information (including tariffs, consumption patterns and other relevant statistics) and to ensure that third parties have the right to use, without charge, publicly available information published by such undertakings. National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information where it has already been published and thus belongs in the public domain. In addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC (Directive on electronic commerce), undertakings should also, if required by Member States, provide subscribers with public interest information produced by the relevant public authorities regarding, inter alia, the most common infringements and their legal consequences.

(25) Customers should be informed of their rights with respect to the use of their personal information in subscriber directories and in particular of the purpose or purposes of such directories, as well as their right, free of charge, not to be included in a public subscriber directory, as provided for in Directive 2002/58/EC (Directive on privacy and electronic communications). Customers should also be informed of systems which allow information to be included in the directory database but which do not disclose such information to users of directory services.

(26) A competitive market should ensure that users enjoy the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over networks.

(27) In future IP networks, where provision of a service may be separated from provision of the network, Member States should determine the most appropriate steps to be taken to ensure the availability of publicly available telephone services provided using public communications networks and uninterrupted access to emergency services in the event of catastrophic network breakdown or in cases of force majeure, taking into account the priorities of different types of subscriber and technical limitations.

(28) In order to ensure that disabled end-users benefit from competition and the choice of service providers enjoyed by the majority of end-users, relevant national authorities should specify, where appropriate and in light of national conditions, consumer protection requirements to be met by undertakings providing publicly available electronic communications services. Such requirements may include, in particular, that undertakings ensure that disabled end-users take advantage of their services on the same terms and conditions, including prices and tariffs, as those offered to their other end-users, and charge equivalent prices for their services, irrespective of any additional costs incurred by them. Other requirements may relate to wholesale arrangements between undertakings.

(29) Operator assistance services cover a range of different services for end-users. The provision of such services should be left to commercial negotiations between providers of public communications networks and operator assistance services, as is the case for any other customer support service, and it is not necessary to continue to mandate their provision. The corresponding obligation should therefore be repealed.

(30) Directory enquiry services should be, and frequently are, provided under competitive market conditions, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services[1]. Measures concerning the inclusion of end-user data (held by undertakings that assign telephone numbers to subscribers) in databases should comply with the safeguards for the protection of personal data, including Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications). The cost-oriented supply of that data for the purposes of publicly available directory and directory enquiry services should be in place in order to ensure that end-users benefit fully from reasonable and transparent competitive conditions.

---

[1] OJ L 249, 17.9.2002, p. 21.

(31) End-users should be able to call and access the emergency services using any telephone service capable of originating voice calls through a number or numbers in national telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number "112" at least as expeditiously and effectively as calls to national emergency numbers. It is important to increase awareness of "112" in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware, when travelling in any Member State, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material, that "112" can be used as a single emergency number throughout the Community. This is primarily the responsibility of the Member States, but the Commission should continue both to support and to supplement initiatives of the Member States to heighten awareness of "112" and periodically to evaluate the public's awareness of it. The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, undertakings should make caller location information available to emergency services as soon as the call reaches that service, independently of the technology used.

(32) Member States should ensure that undertakings providing end-users with an electronic communications service designed for originating calls through a number or numbers in a national telephone numbering plan provide access to emergency services with such accuracy and reliability as is technically feasible for that electronic communications service. Network-independent service providers may not have control over networks and may not be able to ensure that emergency calls made through their service are routed with the same reliability as traditional integrated telephone service providers, as they may not be able to guarantee service availability, given that problems related to infrastructure are not under their control. Once internationally-recognised standards ensuring accurate and reliable routing and connection to the emergency services are in place, network-independent service providers should also fulfil the obligations related to access to emergency services at a level comparable to that required of other undertakings.

(33) Member States should take specific measures to ensure that emergency services, including "112", are equally accessible to disabled end-users, in particular deaf, hearing-impaired, speech-impaired and deaf-blind users. This could involve the provision of special terminal devices for hearing-impaired users, text relay services, or other specific equipment.

(34) Voice calls remain the most robust and reliable form of access to emergency services. Other means of contact, such as text messaging, may be less reliable and may suffer from lack of immediacy. Member States should, however, if they deem it appropriate, be free to promote the development and implementation of other means of access to emergency services which are capable of ensuring access equivalent to voice calls.

(35) Pursuant to its Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with "116" for harmonised numbers for harmonised services of social value,[1] the Commission has asked Member States to reserve numbers in the "116" numbering range for certain services of social value. The appropriate provisions of that Decision should be reflected in Directive 2002/22/EC (Universal Service Directive) in order to integrate them more firmly into the regulatory framework for electronic communications networks and services and to facilitate access by disabled end-users.

(36) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States and to access services using non-geographic numbers within the Community, including, among others, freephone and premium rate numbers. End-users should also be able to access numbers from the European Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN). Cross-border access to numbering resources and associated services should not be prevented, except in objectively justified cases, for example to combat fraud or abuse (e.g. in connection with certain premium-rate services), when the number is defined as having a national scope only (e.g. a national short code) or when it is technically or economically unfeasible. Users should be fully informed in advance and in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes.

---

[1] OJ L 49, 17.2.2007, p. 30.

(37) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications. It should be implemented with the minimum delay. In any case, the technical transfer of the number should not exceed one day. Competent national authorities may establish the global process of the porting of numbers, taking into account national provisions on contracts and technical feasibility, and, where necessary, appropriate measures ensuring that consumers are protected throughout the switching process. This protection may include the limitation of porting abuse and the setting of speedy corrective action.

(38) Legal "must-carry" obligations may be applied to specified radio and television broadcast channels and complementary services supplied by a specified media service provider. Member States should provide a clear justification for the "must carry" obligations in their national law so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, "must carry" rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. "Must carry" rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. Complementary services include, but are not limited to, services designed to improve accessibility for end-users with disabilities, such as videotext, subtitling, audio description and sign language.

(39) In order to overcome existing shortcomings in terms of consumer consultation and to appropriately address the interests of citizens, Member States should put in place an appropriate consultation mechanism. Such a mechanism could take the form of a body which would, independently of the national regulatory authority and service providers, carry out research into consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholder consultation. Furthermore, a mechanism could be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should, however, not allow for the systematic surveillance of internet usage.

(40) Universal service obligations imposed on an undertaking designated as having universal service obligations should be notified to the Commission.

(41) The processing of traffic data to the extent strictly necessary for the purposes of the detection, location and elimination of faults and malfunctions of network and information security, ensuring the availability, authenticity, integrity and confidentiality of stored or transmitted data, will help prevent unauthorised access and malicious code distribution, "denial of service" attacks and damage to computer and electronic communication systems.

(42) The liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public electronic communications networks. It is necessary to ensure that consumers and users are afforded the same level of protection of privacy and personal data, regardless of the technology used to deliver a particular service.

(43) In line with the objectives of the regulatory framework for electronic communications networks and services and with the principles of proportionality and subsidiarity, and for the purposes of legal certainty and efficiency for European businesses and national regulatory authorities alike, this Directive focuses on public electronic communications networks and services, and does not apply to closed user groups and corporate networks.

(44) Technological progress allows the development of new applications based on devices for data collection and identification, which could be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefit and thus make a powerful contribution to the internal market, if their use is acceptable to citizens. To achieve this aim, it is necessary to ensure that all fundamental rights of individuals, including the right to privacy and data protection, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC (Directive on privacy and electronic communications), including those on security, traffic and location data and on confidentiality, should apply.

(45) The provider of a publicly available electronic communications service should take appropriate technical and organisational measures to ensure the security of its services. Without prejudice to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[1], such measures should ensure that personal data can be accessed only by authorised personnel for legally authorised purposes, and that the personal data stored or transmitted, as well as the network and services, are protected. Moreover, a security policy with respect to the processing of personal data should be established in order to identify vulnerabilities in the system, and monitoring and preventive, corrective and mitigating action should be regularly carried out.

(46) Competent national authorities should monitor measures taken and disseminate best practices among providers of publicly available electronic communications services.

---

[1] OJ L 281, 23.11.1995, p. 31.

(47) A breach of security resulting in the loss or compromising of personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, as soon as the provider of publicly available electronic communications service becomes aware that such a breach has occurred, it should assess the risks associated with it, e.g. by establishing the type of data affected by the breach (including their sensitivity, context and the security measures in place), the cause and extent of the breach, the number of subscribers affected and the possible harm for subscribers as a result of the breach (e.g. identity theft, financial loss, loss of business or employment opportunities or physical harm). The subscribers concerned by security incidents that could result in a serious risk to their privacy (e.g. identity theft or fraud, physical harm, significant humiliation or damage to reputation) should be notified without delay in order to allow them to take the necessary precautions. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected. Notification of a security breach to a subscriber should not be required if the provider has demonstrated to the competent authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the security breach. Such technological protection measures should render the data unintelligible to any person who is not authorised to access it.

(48) National regulatory authorities should promote the interests of the citizens of the European Union by, inter alia, contributing to ensuring a high level of protection of personal data and privacy. To this end, they must have the necessary means to perform their duties, including access to comprehensive and reliable data about actual security incidents that have led to the personal data of individuals being compromised.

(49) When implementing measures transposing Directive 2002/58/EC (Directive on privacy and electronic communications), the authorities and courts of the Member States should not only interpret their national law in a manner consistent with that Directive, but should also ensure that they do not rely on an interpretation of it which would conflict with fundamental rights or general principles of Community law, such as the principle of proportionality.

(50) Provision should be made for the Commission to adopt recommendations on the means to achieve an adequate level of privacy protection and security of personal data transmitted or processed in connection with the use of electronic communications networks in the internal market.

(51) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by encryption or other means effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

(52) Software that surreptitiously monitors the actions of the user or subverts the operation of the user's terminal equipment to the benefit of a third party (so-called "spyware") poses a serious threat to the privacy of users. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs or USB keys. Member States should encourage end-users to take the necessary steps to protect their terminal equipment against viruses and spyware.

(53) Electronic communications service providers make substantial investments in order to combat unsolicited commercial communications ("spam"). They are also in a better position than end-users in that they possess the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore be able to initiate legal action against spammers, and thus defend the interests of their customers, as part of their own legitimate business interests.

(54) The need to ensure an adequate level of protection of privacy and personal data transmitted and processed in connection with the use of electronic communications networks in the Community calls for effective implementation and enforcement powers in order to provide adequate incentives for compliance. Competent national authorities and, where appropriate, other relevant national bodies should have sufficient powers and resources to investigate cases of non-compliance effectively, including powers to obtain any relevant information they might need, to decide on complaints and to impose sanctions in cases of non-compliance.

(55) The implementation and enforcement of the provisions of this Directive often require cooperation between the national regulatory authorities of two or more Member States, for example in combating cross-border spam and spyware. In order to ensure smooth and rapid cooperation in such cases, procedures relating for example to the quantity and format of information exchanged between authorities, or deadlines to be complied with, should be defined in recommendations. Such procedures will also allow the resulting obligations of market actors to be harmonised, contributing to the creation of a level playing field in the Community.

(56) Cross-border cooperation and enforcement should be reinforced in line with existing Community cross-border enforcement mechanisms, such as that laid down in Regulation (EC) No 2006/2004 (the Regulation on consumer protection cooperation)[1], by way of an amendment to that Regulation.

(57) The measures necessary for the implementation of Directive 2002/22/EC (Universal Service Directive) should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[2].

---

[1] OJ L 364, 9.12.2004, p. 1.
[2] OJ L 184, 17.7.1999, p. 23.

(58) In particular, the Commission should be empowered to adapt the Annexes to technical progress or changes in market demand. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2002/22/EC (Universal Service Directive) by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(59) Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications) should therefore be amended accordingly.

(60) In accordance with point 34 of the Interinstitutional Agreement on better law-making[1], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications) and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

---

[1] OJ C 321, 31.12.2003, p. 1.

Article 1

Amendments to Directive 2002/22/EC (Universal Service Directive)

Directive 2002/22/EC (Universal Service Directive) is hereby amended as follows:

1) Article 1 shall be replaced by the following:

"*Article 1*

Subject-matter and scope

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. The Directive also includes provisions concerning certain aspects of terminal equipment intended to facilitate access for disabled end-users.

2. This Directive establishes the rights of end-users and the corresponding obligations of undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory services.

3. The provisions of this Directive concerning end-users' rights shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EEC and 97/7/EC, and national rules in conformity with Community law.";

2) Article 2 shall be amended as follows:

(a) point (b) shall be deleted;

(b) points (c) and (d) shall be replaced by the following:

"(c) "publicly available telephone service" means a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan;

(d) "geographic number" means a number from the national telephone numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);";

(c) point (e) shall be deleted;

(d) point (f) shall be replaced by the following:

"(f) "non-geographic number" means a number from the national telephone numbering plan that is not a geographic number. It includes, inter alia, mobile, freephone and premium rate numbers.";

3) Article 4 shall be replaced by the following:

"*Article 4*
Provision of access at a fixed location and provision of telephone services

1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.

2. The connection provided shall be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

3. Member States shall ensure that all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in paragraph 1 that allows for originating and receiving of national and international calls are met by at least one undertaking.";

4) Article 5(2) shall be replaced by the following:

"2. The directories referred to in paragraph 1 shall comprise, subject to the provisions of Article 12 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)*, all subscribers of publicly available telephone services.

_____

* OJ L 201, 31.7.2002, p. 37.";

5) Article 7 shall be replaced by the following:

"*Article 7*
Measures for disabled end-users

1. Unless requirements have been specified under Chapter IV which achieve the equivalent effect, Member States shall take specific measures to ensure access to, and affordability of, the services identified in Article 4(3) and Article 5 for disabled end-users which is comparable to that enjoyed by other end-users. Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users.

2. Member States may take specific measures, in the light of national conditions, to ensure that disabled end-users can also take advantage of the choice of undertakings and service providers available to the majority of end-users.";

6) in Article 8, the following paragraph shall be added:

"3. When an undertaking designated in accordance with paragraph 1 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the national regulatory authority in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 6(2) of Directive 2002/20/EC (Authorisation Directive).";

7) Article 9(1), (2) and (3) shall be replaced by the following:

"1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4 to 7 as falling under the universal service obligations and either provided by designated undertakings or available on the market, if no undertakings are designated in relation to those services, in particular in relation to national consumer prices and income.

2. Member States may, in the light of national conditions, require that designated undertakings provide to consumers tariff options or packages which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing the network referred to in Article 4(1) or from using the services identified in Article 4(3) and Articles 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.

3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes or special social needs.";

8) Article 11(4) shall be replaced by the following:

"4. National regulatory authorities shall be able to set performance targets for those undertakings with universal service obligations. In so doing, national regulatory authorities shall take account of views of interested parties, in particular as referred to in Article 33.";

9) the title of Chapter III shall be replaced by the following:

"REGULATORY CONTROLS ON UNDERTAKINGS WITH SIGNIFICANT MARKET POWER IN SPECIFIC RETAIL MARKETS";

10) Article 16 shall be deleted;

11) Article 17 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

"1. Member States shall ensure that national regulatory authorities impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market in accordance with Article 14 of Directive 2002/21/EC (Framework Directive) where:

(a) as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), a national regulatory authority determines that a given retail market identified in accordance with Article 15 of that Directive is not effectively competitive; and

(b) the national regulatory authority concludes that obligations imposed under Articles 9 to 13 of Directive 2002/19/EC (Access Directive) would not result in the achievement of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive).";

(b) paragraph 3 shall be deleted;

12) Articles 18 and 19 shall be deleted;

13) Articles 20 to 23 shall be replaced by the following:

"*Article 20*
Contracts

1. Member States shall ensure that, when subscribing to services providing connection to a public communications network and/or publicly available electronic communications services, consumers, and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. The contract shall specify in a clear, comprehensive and easily accessible form at least:

(a) the identity and address of the supplier;

(b) the services provided, including in particular,

– information on the provider's traffic management policies,

– the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,

– the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

– any restrictions imposed by the provider on the use of terminal equipment supplied;

(c) where an obligation exists under Article 25, the subscriber's options as to whether or not to include his or her personal data in a directory, and the data concerned;

(d) details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any differences in costs due to payment method;

(e) the duration of the contract and the conditions for renewal and termination of services and of the contract, including:

– conditions regarding minimum contract duration related to promotions,

– any charges related to portability of numbers and other identifiers,

– any charges due on termination of the contract, including cost recovery with respect to terminal equipment;

(f) any compensation and the refund arrangements which apply if contracted service quality levels are not met;

(g) the means of initiating procedures for the settlement of disputes in accordance with Article 34;

(h) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.

Member States may also require that the contract include any information which may be provided by the relevant public authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data, referred to in Article 21(4)(a) and relevant to the service provided.

2. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed as to whether or not access to emergency services and caller location information is provided. Providers of electronic communications services shall ensure that customers are clearly informed in advance of the conclusion of a contract of any limitation on access to emergency services, and of any change to access to emergency services.

3. Member States shall ensure that subscribers have a right to withdraw from their contract without penalty upon notice of modification to the contractual conditions proposed by the undertakings providing electronic communications networks and/or services. Subscribers shall be given adequate notice, not shorter than one month, of any such modification, and shall be informed at the same time of their right to withdraw, without penalty, from their contract if they do not accept the new conditions. Member States shall ensure that national regulatory authorities are able to specify the format of such notifications.

Article 21

Transparency and publication of information

1. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications networks and/or services to publish transparent, comparable, adequate and up-to-date information, as set out in Annex II, on applicable prices and tariffs and standard terms and conditions in respect of access to, and use of, services provided by them to end-users and consumers. National regulatory authorities may specify additional requirements regarding the form in which such information is published to ensure transparency, comparability, clarity and accessibility for the benefit of consumers.

2. National regulatory authorities shall encourage the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities may make such guides or techniques available, in particular where they are not available, on the market free of charge or at a reasonable price. Third parties shall have a right to use, free of charge, the information published by undertakings providing electronic communications networks and/or services for the purposes of selling or making available such guides or techniques.

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

(b) inform subscribers of any change to the provider's traffic management policies;

(c) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(d) regularly inform disabled subscribers of details of products and services designed for them.

If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.

4. Member States may require that undertakings referred to in paragraph 3 distribute public interest information free of charge to existing and new subscribers, where appropriate. In such a case, that information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.

Article 22

Quality of service

1. Member States shall ensure that national regulatory authorities are, after taking account of the views of interested parties, able to require undertakings that provide publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-date information for end-users on the quality of their services and measures taken to ensure comparable access for disabled end-users. That information shall, on request, be supplied to the national regulatory authority in advance of its publication.

2. National regulatory authorities may specify, inter alia, the quality of service parameters to be measured and the content, form and manner of the information to be published, including possible quality certification mechanisms, in order to ensure that end-users have access to comprehensive, comparable, reliable and user-friendly information. Where appropriate, the parameters, definitions and measurement methods set out in Annex III may be used.3. In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

Article 23

Availability of services

Member States shall take all necessary measures to ensure the fullest possible availability of publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all necessary measures to ensure uninterrupted access to emergency services.";

14) the following Article shall be inserted:

"*Article 23a*

Ensuring comparable access and choice for disabled end-users

1. Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users:

   (a) have access to electronic communications services comparable to that enjoyed by the majority of end-users; and

   (b) benefit from the choice of undertakings and services available to the majority of end-users.

2. In order to be able to adopt and implement specific arrangements for disabled end-users, Member States shall encourage the availability of terminal equipment offering the necessary services and functions.";

15) Article 25 shall be amended as follows:

   (a) the title shall be replaced by the following:

   "Telephone directory enquiry services";

(b) paragraph 1 shall be replaced by the following:

"1. Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a) and to have their information made available to providers of directory enquiry services and/or directories in accordance with paragraph 2 of this Article.";

(c) paragraphs 3, 4 and 5 shall be replaced by the following:

"3. Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services. National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 5 of Directive 2002/19/EC (Access Directive). Such obligations and conditions shall be objective, proportionate, non-discriminatory and transparent.

4. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access in accordance with Article 28.

5. Paragraphs 1 to 4 shall apply subject to the requirements of Community legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications).";

16) Articles 26 and 27 shall be replaced by the following:

"*Article 26*

Emergency services and the single European emergency call number

1. Member States shall ensure that all end-users of the service referred to in paragraph 2, including users of public pay telephones, are able to call the emergency services free of charge and without having to use any means of payment, by using the single European emergency call number "112" and any national emergency call number specified by Member States.

2. Member States shall ensure that undertakings providing end-users with an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan provide access to emergency services.

3. Member States shall ensure that calls to the single European emergency call number "112" are appropriately answered and handled in the manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to the national emergency number or numbers, where these continue to be in use.

4. Member States shall ensure that access for disabled end-users to emergency services is comparable to that enjoyed by other end-users. Measures taken to ensure that disabled end-users are able to access emergency services whilst travelling in other Member States shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive), and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article.

5. Member States shall ensure that, to the extent technically feasible, undertakings concerned make caller location information available free of charge to the authority handling emergency calls as soon as the call reaches that authority. This applies to all calls to the single European emergency call number "112". Member States may extend this obligation to cover calls to national emergency numbers. Where undertakings referred to in paragraph 2 wish to claim that providing caller location information is not technically feasible, they shall bear the burden of proving this.

6. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States.

Article 27

European telephone access codes

1. Member States shall ensure that the "00" code is the standard international access code. Special arrangements for making calls between locations adjacent to one another across borders between Member States may be established or continued. End-users in the locations concerned shall be fully informed of such arrangements.

2. Member States shall ensure that all undertakings that provide publicly available telephone services allowing international calls handle all calls to and from the European Telephone Numbering Space (ETNS), without prejudice to the need for undertakings to recover their costs.";

17) the following Article shall be inserted:

"*Article 27a*

Harmonised numbers for harmonised services of social value, including the missing children hotline number

1. Member States shall promote the specific numbers in the numbering range beginning with "116" identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with "116" for harmonised numbers for harmonised services of social value*. They shall encourage the provision within their territory of the services for which such numbers are reserved.

2. Member States shall facilitate access by disabled end-users to services provided under the "116" numbering range. Measures taken to facilitate disabled end-users' access to such services whilst travelling in other Member States may include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

3. Member States shall ensure that citizens are adequately informed of the existence and use of services provided under the "116" numbering range, in particular through initiatives specifically targeting persons travelling between Member States.

4. Member States shall, in addition to measures of general applicability to all numbers in the "116" numbering range taken pursuant to paragraphs 1, 2, and 3, facilitate citizens' access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number 116000.

---

* OJ L 49, 17.2.2007, p. 30.";

18) Article 28 shall be replaced by the following:

"*Article 28*

Access to numbers and services

1. Member States shall ensure that, where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, relevant national authorities take all necessary steps to ensure that end-users are able to:

   (a) access and use services using non-geographic numbers within the Community; and

   (b) access all numbers provided in the Community, including those in the national numbering plans of Member States, those from the ETNS and Universal International Freephone Numbers (UIFN).

2. Member States shall ensure that the relevant authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues.";

19) Article 29 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

"1. Member States shall ensure that national regulatory authorities are able to require all undertakings that provide publicly available telephone services and/or public communications networks to make available to end-users the additional facilities listed in Part B of Annex I, subject to technical feasibility and economic viability.";

(b) paragraph 3 shall be replaced by the following:

"3. Without prejudice to Article 10(2), Member States may impose the obligations set out in points (a) and (e) of Part A of Annex I as a general requirement on all undertakings providing access to public communications networks and/or publicly available telephone services.";

20) Article 30 shall be replaced by the following:

"*Article 30*
Facilitating change of provider

1. Member States shall ensure that all subscribers with numbers from the national telephone numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Part C of Annex I.

2. National regulatory authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that direct charges to subscribers, if any, do not act as a disincentive for subscribers against changing service provider.

3. National regulatory authorities shall not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.

4. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, the time taken for the technical transfer of the number shall not exceed one day.

   Competent national authorities may establish the global process of porting of numbers, taking into account national provisions on contracts and technical feasibility, including where necessary measures ensuring that subscribers are protected throughout the switching process.

5. Member States shall ensure that contracts concluded between users and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months.

6. Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.";

21) Article 31(1) shall be replaced by the following:

"1. Member States may impose reasonable "must carry" obligations, for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcast channels. Such obligations shall only be imposed where they are necessary to meet general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of ...[+], except where Member States have carried out such a review within the previous two years.

Member States shall review "must carry" obligations on a regular basis.";

[+] The date referred to in Article 4(1).

22) Article 33 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

"1. Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users, consumers (including, in particular, disabled end-users), manufacturers and undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market.

In particular, Member States shall ensure that national regulatory authorities establish a consultation mechanism ensuring that in their decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services, due consideration is given to consumer interests in electronic communications.";

(b) the following paragraph shall be added:

"3. Without prejudice to national rules in conformity with Community law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities may promote cooperation between undertakings providing electronic communications networks and/or services and sectors interested in the promotion of lawful content in electronic communication networks and services. That cooperation may also include coordination of the public interest information to be provided pursuant to Article 21(4)(a) and Article 20(1).";

23) Article 34(1) shall be replaced by the following:

"1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services arising under this Directive and relating to the contractual conditions and/or performance of contracts concerning the supply of those networks and/or services. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.";

24) Article 35 shall be replaced by the following:

"*Article 35*
Adaptation of annexes

Measures designed to amend non-essential elements of this Directive and necessary to adapt Annexes I, II, III, and VI to technological developments or changes in market demand shall be adopted by the Commission in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).";

25) Article 36(2) shall be replaced by the following:

"2. National regulatory authorities shall notify to the Commission the universal service obligations imposed upon undertakings designated as having universal service obligations. Any changes affecting these obligations or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.";

26) Article 37 shall be replaced by the following:

"*Article 37*
Committee procedure

1. The Commission shall be assisted by the Communications Committee set up under Article 22 of Directive 2002/21/EC (Framework Directive).

2. Where reference is made to this paragraph, Article 5a (1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.";

27) Annexes I, II, III and VI shall be replaced by the text appearing in Annexes I and II to this Directive;

28) Annex VII shall be deleted.

Article 2

Amendments to Directive 2002/58/EC (Directive on privacy and electronic communications)

Directive 2002/58/EC (Directive on privacy and electronic communications) is hereby amended as follows:

1) Article 1(1) shall be replaced by the following:

"1. This Directive provides for the harmonisation of the national provisions required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.";

2) Article 2 shall be amended as follows:

(a) point (c) shall be replaced by the following:

"(c) "location data" means any data processed in an electronic communications network or by an electronic communications service, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service;";

(b) point (e) shall be deleted;

(c) the following point shall be added:

"(h) "personal data breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed in connection with the provision of a publicly available electronic communications service in the Community.";

3) Article 3 shall be replaced by the following:

"*Article 3*
Services concerned

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Community, including public communications networks supporting data collection and identification devices.";

4) Article 4 shall be amended as follows:

(a) the title shall be replaced by the following:

"Security of processing";

(b) the following paragraphs shall be added:

"3. In the case of a personal data breach, the provider of publicly available electronic communications services shall assess the scope of the personal data breach, evaluate its seriousness and consider whether it is necessary to notify the personal data breach to the competent national authority and subscriber concerned, taking into account the relevant rules set by the competent national authority in accordance with paragraph 4.

When the personal data breach represents a serious risk for the subscriber's privacy, the provider of publicly available electronic communications services shall notify the competent national authority and the subscriber of the breach without undue delay.

The notification to the subscriber shall at least describe the nature of the personal data breach and the contact points where more information can be obtained, and shall recommend measures to mitigate the possible negative effects of the personal data breach. The notification to the competent national authority shall, in addition, describe the consequences of, and the measures proposed or taken by the provider to address, the personal data breach.

4. Member States shall ensure that the competent national authority is able to set detailed rules and, where necessary, issue instructions concerning the circumstances in which notification of personal data breaches by providers of a publicly available electronic communications service is necessary, the format applicable to such notification and the manner in which the notification is to be made.

5. In order to ensure consistency in implementation of the measures referred to in paragraphs 1 to 4 the Commission may, following consultation with the European Network and Information Security Agency (ENISA), the Article 29 Working Party and the European Data Protection Supervisor, adopt recommendations concerning, inter alia, the circumstances, format and procedures applicable to the information and notification requirements referred to in this Article.";

5) Article 5(3) shall be replaced by the following:

"3. Member States shall ensure that the storing of information, or access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned is provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia about the purposes of the processing, and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.";

6) Article 6 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

"1. Traffic data relating to subscribers and users processed and stored by the provider of a public communications network or publicly available electronic communications service shall be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication. This shall be without prejudice to paragraphs 2, 3, 5 and 7 of this Article and Article 15(1).";

(b) paragraph 3 shall be replaced by the following:

"3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services or marketing, if the subscriber or user to whom the data relate has given his or her prior consent. Users or subscribers shall be given the possibility to withdraw their consent for the processing of traffic data at any time.";

(c) the following paragraph shall be added:

"7. Traffic data may be processed to the extent strictly necessary to ensure network and information security, as defined by Article 4(c) of Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency*.

---

* OJ L 77, 13.3.2004, p. 1.";

7) Article 13 shall be replaced by the following:

"*Article 13*

Unsolicited communications

1. The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail (including short message services (SMS) and multimedia messaging services (MMS)) for the purposes of direct marketing may be allowed only in respect of subscribers or users who have given their prior consent.

2. Notwithstanding paragraph 1, where a natural or legal person obtains from its customers their electronic contact details for electronic mail, in the context of the sale of a product or a service, in accordance with Directive 95/46/EC, the same natural or legal person may use these electronic contact details for direct marketing of its own similar products or services provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details at the time of their collection and on the occasion of each message in case the customer has not initially refused such use.

3. Member States shall take appropriate measures to ensure that unsolicited communications for the purposes of direct marketing, in cases other than those referred to in paragraphs 1 and 2, are not allowed either without the consent of the subscribers or users concerned or in respect of subscribers or users who do not wish to receive these communications, the choice between these options to be determined by national legislation, taking into account that both options must be free of charge for the subscriber or user.

4. In any event, the practice of sending electronic mail for the purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or in contravention of Article 6 of Directive 2000/31/EC, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.

5. Paragraphs 1 and 3 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

6. Without prejudice to any administrative remedy for which provision may be made, inter alia, under Article 15a(2), Member States shall ensure that any natural or legal person adversely affected by infringements of national provisions adopted pursuant to this Article and therefore having a legitimate interest in the cessation or prohibition of such infringements, including an electronic communications service provider protecting its legitimate business interests, may bring legal proceedings in respect of such infringements. Member States may also lay down specific rules on penalties applicable to providers of electronic communications services which by their negligence contribute to infringements of national provisions adopted pursuant to this Article.";

8) the following Article shall be inserted:

"*Article 15a*
Implementation and enforcement

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive and may be applied to cover the period of any breach, even where the breach has subsequently been rectified. The Member States shall notify those provisions to the Commission by ...[+], and shall notify it without delay of any subsequent amendment affecting them.

[+] The date referred to in Article 4(1).

2. Member States shall ensure that the competent national authority and, where relevant, other national bodies have the power to order the cessation of the infringements referred to in paragraph 1.

3. Member States shall ensure that the competent national authority and, where relevant, other national bodies have all necessary investigative powers and resources, including the power to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive.

4. In order to ensure effective cross-border cooperation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt recommendations, following consultation with ENISA, the Article 29 Working Party and the relevant regulatory authorities.".

Article 3

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 (the Regulation on consumer protection cooperation), the following point shall be added:

"17. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications): Article 13 (OJ L 201, 31.7.2002, p. 37).".

Article 4

Transposition

1. Member States shall adopt and publish by …* the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply those measures from …...**.

---

* …

** …

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the day following that of its publication in the Official Journal of the European Union.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament	*For the Council*
The President	*The President*

"**ANNEX I**

DESCRIPTION OF FACILITIES AND SERVICES
REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE),
ARTICLE 29 (ADDITIONAL FACILITIES) AND ARTICLE 30 (FACILITATING CHANGE OF PROVIDER)

Part A

Facilities and services referred to in Article 10

(a) Itemised billing

Member States are to ensure that national regulatory authorities, subject to the requirements of relevant legislation on the protection of personal data and privacy, may lay down the basic level of itemised bills which are to be provided by designated undertakings (as established in Article 8) to consumers free of charge in order that they can:

(i) allow verification and control of the charges incurred in using the public communications network at a fixed location and/or related publicly available telephone services; and

(ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

Where appropriate, additional levels of detail may be offered to subscribers at reasonable tariffs or at no charge.

Calls which are free of charge to the calling subscriber, including calls to helplines, are not to be identified in the calling subscriber's itemised bill.

(b) Selective barring for outgoing calls or premium SMS or MMS, free of charge

i.e. the facility whereby the subscriber can, on request to a designated undertaking that provides telephone services, bar outgoing calls or premium SMS or MMS of defined types or to defined types of numbers free of charge.

(c) Pre-payment systems

Member States are to ensure that national regulatory authorities may require designated undertakings to provide means for consumers to pay for access to the public communications network and use of publicly available telephone services on pre-paid terms.

(d) Phased payment of connection fees

Member States are to ensure that national regulatory authorities may require designated undertakings to allow consumers to pay for connection to the public communications network on the basis of payments phased over time.

(e) Non payment of bills

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills issued by undertakings designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. Except in cases of fraud, persistent late payment or non-payment, these measures are to ensure, as far as is technically feasible that any service interruption is confined to the service concerned. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted.

Part B

Facilities referred to in Article 29

(a) Tone dialling or DTMF (dual-tone multi-frequency operation)

i.e. the public communications network and/or publicly available telephone services supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within a Member State and between Member States.

(b) Calling-line identification

i.e. the calling party's number is presented to the called party prior to the call being established.

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular Directive 2002/58/EC (Directive on privacy and electronic communications).

To the extent technically feasible, operators should provide data and signals to facilitate the offering of calling-line identity and tone dialling across Member State boundaries.

Part C

Implementation of the number portability provisions referred to in Article 30

The requirement that all subscribers with numbers from the national numbering plan, who so request can retain their number(s) independently of the undertaking providing the service shall apply:

(a) in the case of geographic numbers, at a specific location; and

(b) in the case of non-geographic numbers, at any location.

This Part does not apply to the porting of numbers between networks providing services at a fixed location and mobile networks.

ANNEX II

INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE 21 (TRANSPARENCY AND PUBLICATION OF INFORMATION)

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public communications networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, so as to ensure that consumers are able to make informed choices.

1. Name(s) and address(es) of undertaking(s)

   i.e. names and head office addresses of undertakings providing public communications networks and/or publicly available telephone services.

2. Description of services offered

2.1. Scope of services offered

2.2. Standard tariffs indicating the services provided and the content of each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment.

2.3. Compensation/refund policy, including specific details of any compensation/refund schemes offered.

2.4. Types of maintenance service offered.

2.5. Standard contract conditions, including any minimum contractual period, termination of the contract and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.

3. Dispute settlement mechanisms, including those developed by the undertaking.

4. Information about rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I.

ANNEX III

QUALITY OF SERVICE PARAMETERS

SUPPLY-TIME AND QUALITY-OF-SERVICE PARAMETERS,
DEFINITIONS AND MEASUREMENT METHODS
REFERRED TO ARTICLES 11 AND 22

For undertakings providing access to a public communications network

PARAMETER (Note 1)	DEFINITION	MEASUREMENT METHOD
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Fault rate per access line	ETSI EG 202 057	ETSI EG 202 057
Fault repair time	ETSI EG 202 057	ETSI EG 202 057

For undertakings providing a publicly available telephone service

Call set up time (Note 2)	ETSI EG 202 057	ETSI EG 202 057
Response times for directory enquiry services	ETSI EG 202 057	ETSI EG 202 057
Proportion of coin and card operated public pay-telephones in working order	ETSI EG 202 057	ETSI EG 202 057
Bill correctness complaints	ETSI EG 202 057	ETSI EG 202 057
Unsuccessful call ratio (Note 2)	ETSI EG 202 057	ETSI EG 202 057

Version number of ETSI EG 202 057-1 is 1.2.1 (October 2005)

Note 1

Parameters should allow for performance to be analysed at a regional level (i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).

Note 2

Member States may decide not to require up-to-date information concerning the performance for these two parameters to be kept if evidence is available to show that performance in these two areas is satisfactory."

"**ANNEX VI**

INTEROPERABILITY OF DIGITAL CONSUMER EQUIPMENT
REFERRED TO IN ARTICLE 24

1. Common scrambling algorithm and free-to-air reception

All consumer equipment intended for the reception of conventional digital television signals (i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S), for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, is to possess the capability to:

– allow the descrambling of such signals according to a common European scrambling algorithm as administered by a recognised European standards organisation, currently ETSI;

– display signals that have been transmitted in the clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

2. Interoperability for analogue and digital television sets

Any analogue television set with an integral screen of visible diagonal greater than 42 cm which is put on the market for sale or rent in the Community is to be fitted with at least one open interface socket, as standardised by a recognised European standards organisation, e.g. as given in the CENELEC EN 50 049-1:1997 standard, permitting simple connection of peripherals, especially additional decoders and digital receivers.

Any digital television set with an integral screen of visible diagonal greater than 30 cm which is put on the market for sale or rent in the Community is to be fitted with at least one open interface socket (either standardised by, or conforming to a standard adopted by, a recognised European standards organisation, or conforming to an industry-wide specification) e.g. the DVB common interface connector, permitting simple connection of peripherals, and able to pass all the elements of a digital television signal, including information relating to interactive and conditionally accessed services."