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REPORT

from : COREPER

to : COUNCIL

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Subject : Review of the EU regulatory framework for electronic communications networks
and services:

Proposal for 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
– Political agreement

I. INTRODUCTION

1. On 13 November 2007, the Commission adopted its legislative proposals on the Review of the EU regulatory framework for electronic communications networks and services, consisting of two amending Directives and one Regulation. This report concerns the Directive known as the "Citizens' Rights Directive", and its part which amends the current Directive 2002/22/EC on Universal Service.

The part amending the Directive 2002/58/EC on ePrivacy will be examined in a separate report (15899/08). It is to be noted that the above Commission proposal also proposes to amend Regulation (EC) No 2006/2004 on consumer protection cooperation; this has been accepted without discussion.

2. In its proposals on the Universal Service Directive, the Commission aims to address the four main areas for change it had identified, namely: transparency and publication of information for users, improved accessibility for users with disabilities, emergency services and access to 112, and basic connectivity and quality of services ('net neutrality'). In addition, long-term issues such as the concept and scope of universal service, which have already been identified by the Commission, have been addressed in a separate Communication transmitted to the Council on 2 October 2008¹.
3. The discussions during the Slovenian Presidency resulted in a progress report on which an exchange of views took place on 12 June 2008. During the French Presidency, the proposal has been examined in further detail, including in relation to the European Parliament's first reading opinion adopted on 24 September 2008.
4. On 6 November 2008 the Commission adopted its amended proposal following the European Parliament's first reading (15422/08).
5. The European Economic and Social Committee (EESC) adopted its Opinion on 29 May 2008 and the Committee of the Regions (CoR) on 19 June 2008.

¹ 13775/08.

II. OUTCOME OF COREPER'S PROCEEDINGS

1. The text of the Presidency compromise proposal concerning the Universal Service Directive is annexed. The text provides a consolidated version of the proposal for an amending Directive on the basis of the results of the Working Party's discussions. The Working Party has reached a broad consensus on the text.
2. Apart from linguistic reservations on the text and the fact that the Commission has not definitively adopted its overall position on the Presidency compromise proposal, only one delegation is maintaining reservations on the text of Articles 20, 22 and 30.

III. THE TASK FOR THE COUNCIL

The Council is invited to examine the issues which remain outstanding, with a view to achieving political agreement. The text will then have to be forwarded to the legal/linguistic experts for finalisation, with a view to the adoption of the Council's common position.

**PRESIDENCY COMPROMISE PROPOSAL FOR THE
CONSOLIDATED VERSION OF THE PROPOSAL AMENDING DIRECTIVE 2002/22/EC
(Universal Service Directive)**

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,

Having regard to the opinion of the Committee of the Regions,

After having consulted the European Data Protection Supervisor,

Acting in accordance with the procedure laid down in Article 251 of the Treaty

Whereas: [common to the Universal Service and ePrivacy Directives]

- (1) *The functioning of the five directives 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)², 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)³, 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)⁴, 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)⁵ and 2002/58/EC of the European Parliament and 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)⁶ which constitute the existing regulatory framework for electronic communications networks and services 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.*
- (3) *The reform of the EU regulatory framework for electronic communications networks and service, including the reinforcement of provisions for users with disabilities, represents a key step towards achieving a Single European Information Space and at the same time 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 entitled "i2010 — A European Information Society for growth and employment".*
- (4) *For the sake of clarity and simplicity, the present act only deals with the amendments to Directives 2002/22/EC and 2002/58/EC.*

² OJ L 108, 24.4.2002, p. 7.

³ OJ L 108, 24.4.2002, p. 21.

⁴ OJ L 108, 24.4.2002, p. 33.

⁵ OJ L 108, 24.4.2002, p. 51.

⁶ OJ L 201, 31.7.2002, p. 37.

(37) *Cross border cooperation and enforcement should be reinforced in line with existing Community cross border enforcement mechanisms such as that laid down by the Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for enforcement of consumer protection laws (Regulation on consumer protection cooperation)⁷ by way of an amendment to that regulation.*

(40) *Directives 2002/22/EC and 2002/58/EC should therefore be amended accordingly,*

[for the rest, see the relevant articles]

HAVE ADOPTED THIS DIRECTIVE:

⁷ OJ L 364, 9.12.2004, p. 1.

CHAPTER I

SCOPE, AIMS AND DEFINITIONS

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 to facilitate access for disabled users.**
2. This Directive establishes the rights of end-users and the corresponding obligations on 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 included in the present Directive with regard to the 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.**

- (4a) *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 conformity⁸, 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 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 users.*

Article 2

Definitions

For the purposes of this Directive, the definitions set out in Article 2 of Directive 2002/21/EC (Framework Directive) shall apply.

The following definitions shall also apply:

- (a) "public pay telephone" means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;
- (b) **deleted.**
- (c) "publicly available telephone service" means a service 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 [...];

⁸ OJ L 91, 7.4.1999, p. 10. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

- (5) *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** 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 users using text relay or total conversation services.***
- (6) *It is necessary to clarify **that the indirect provision of service 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.***
- (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);
- (e) *(moved to Framework Directive)*
- (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.

CHAPTER II

UNIVERSAL SERVICE OBLIGATIONS INCLUDING SOCIAL OBLIGATIONS

Article 3

Availability of universal service

1. Member States shall ensure that the services set out in this Chapter are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.

2. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

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 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.**
- (7) *As a result of technological and market evolutions, networks are increasingly moving to the "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 other national emergency numbers besides "112" may impose on undertakings similar obligations for access to those national emergency numbers.*

Article 5

Directory enquiry services and directories

1. Member States shall ensure that:
 - (a) at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year;
 - (b) at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones.
2. The directories in paragraph 1 shall comprise, subject to the provisions of Article [...] **12** of Directive [...] **2002/58/EC**, all subscribers of publicly available telephone services.
3. Member States shall ensure that the undertaking(s) providing the services referred to in paragraph 1 apply the principle of non-discrimination to the treatment of information that has been provided to them by other undertakings.

Article 6

Public pay telephones

1. Member States shall ensure that national regulatory authorities can impose obligations on undertakings in order to ensure that public pay telephones are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones, the accessibility of such telephones to disabled users and the quality of services.

2. A Member State shall ensure that its national regulatory authority can decide not to impose obligations under paragraph 1 in all or part of its territory, if it is satisfied that these facilities or comparable services are widely available, on the basis of a consultation of interested parties as referred to in Article 33.

3. Member States shall ensure that it is possible to make emergency calls from public pay telephones using the single European emergency call number "112" and other national emergency numbers, all free of charge and without having to use any means of payment.

Article 7

[...] Measures for disabled users

1. Member States shall [...], **unless requirements have been specified under Chapter IV which achieve the equivalent effect**, take specific measures [...] to ensure access to and affordability of [...] **the services identified in Articles 4(3) and 5 for disabled end-users 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 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.

Article 8

Designation of undertakings

1. Member States may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4, 5, 6 and 7 and, where applicable, Article 9(2) so that the whole of the national territory can be covered. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service and/or to cover different parts of the national territory.

2. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that universal service is provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Article 12.

(7a) 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 of geographical areas or components or minimum period for the designation.

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 the national regulatory 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).

Article 9

Affordability of tariffs

1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4, 5, 6 and 7 as falling under the universal service obligations and **either** provided by designated undertakings **or available in the market, if no undertakings are designated in relation to these 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 using the services identified in Articles 4(3), 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.
4. Member States may require undertakings with obligations under Articles 4, 5, 6 and 7 to apply common tariffs, including geographical averaging, throughout the territory, in the light of national conditions or to comply with price caps.

5. National regulatory authorities shall ensure that, where a designated undertaking has an obligation to provide special tariff options, common tariffs, including geographical averaging, or to comply with price caps, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

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

Article 10

Control of expenditure

1. Member States shall ensure that designated undertakings, in providing facilities and services additional to those referred to in Articles 4, 5, 6, 7 and 9(2), establish terms and conditions in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

2. Member States shall ensure that designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) provide the specific facilities and services set out in Annex I, Part A, in order that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service.

3. Member States shall ensure that the relevant authority is able to waive the requirements of paragraph 2 in all or part of its national territory if it is satisfied that the facility is widely available.

Article 11

Quality of service of designated undertakings

1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.
2. National regulatory authorities may specify, *inter alia*, additional quality of service standards, where relevant parameters have been developed, to assess the performance of undertakings in the provision of services to disabled end-users and disabled consumers. National regulatory authorities shall ensure that information concerning the performance of undertakings in relation to these parameters is also published and made available to the national regulatory authority.
3. National regulatory authorities may, in addition, specify the content, form and manner of information to be published, in order to ensure that end-users and consumers have access to comprehensive, comparable and user-friendly information.
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.
5. Member States shall ensure that national regulatory authorities are able to monitor compliance with these performance targets by designated undertakings.

6. Persistent failure by an undertaking to meet performance targets may result in specific measures being taken in accordance with 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). National regulatory authorities shall be able to order independent audits or similar reviews of the performance data, paid for by the undertaking concerned, in order to ensure the accuracy and comparability of the data made available by undertakings with universal service obligations.

Article 12

Costing of universal service obligations

1. Where national regulatory authorities consider that the provision of universal service as set out in Articles 3 to 10 may represent an unfair burden on undertakings designated to provide universal service, they shall calculate the net costs of its provision.

For that purpose, national regulatory authorities shall:

- (a) calculate the net cost of the universal service obligation, taking into account any market benefit which accrues to an undertaking designated to provide universal service, in accordance with Annex IV, Part A; or

(b) make use of the net costs of providing universal service identified by a designation mechanism in accordance with Article 8(2).

2. The accounts and/or other information serving as the basis for the calculation of the net cost of universal service obligations under paragraph 1(a) shall be audited or verified by the national regulatory authority or a body independent of the relevant parties and approved by the national regulatory authority. The results of the cost calculation and the conclusions of the audit shall be publicly available.

Article 13

Financing of universal service obligations

1. Where, on the basis of the net cost calculation referred to in Article 12, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from a designated undertaking, decide:

- (a) to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds; and/or
- (b) to share the net cost of universal service obligations between providers of electronic communications networks and services.

2. Where the net cost is shared under paragraph 1(b), Member States shall establish a sharing mechanism administered by the national regulatory authority or a body independent from the beneficiaries under the supervision of the national regulatory authority. Only the net cost, as determined in accordance with Article 12, of the obligations laid down in Articles 3 to 10 may be financed.

3. A sharing mechanism shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles of Annex IV, Part B. Member States may choose not to require contributions from undertakings whose national turnover is less than a set limit.

4. Any charges related to the sharing of the cost of universal service obligations shall be unbundled and identified separately for each undertaking. Such charges shall not be imposed or collected from undertakings that are not providing services in the territory of the Member State that has established the sharing mechanism.

Article 14

Transparency

1. Where a mechanism for sharing the net cost of universal service obligations as referred to in Article 13 is established, national regulatory authorities shall ensure that the principles for cost sharing, and details of the mechanism used, are publicly available.

2. Subject to Community and national rules on business confidentiality, national regulatory authorities shall ensure that an annual report is published giving the calculated cost of universal service obligations, identifying the contributions made by all the undertakings involved, and identifying any market benefits, that may have accrued to the undertaking(s) designated to provide universal service, where a fund is actually in place and working.

Article 15

Review of the scope of universal service

1. The Commission shall periodically review the scope of universal service, in particular with a view to proposing to the European Parliament and the Council that the scope be changed or redefined. A review shall be carried out, on the first occasion within two years after the date of application referred to in Article 38(1), second subparagraph, and subsequently every three years.

2. This review shall be undertaken in the light of social, economic and technological developments, taking into account, inter alia, mobility and data rates in the light of the prevailing technologies used by the majority of subscribers. The review process shall be undertaken in accordance with Annex V. The Commission shall submit a report to the European Parliament and the Council regarding the outcome of the review.

CHAPTER III

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

Article 16

Review of obligations

Deleted.

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

Article 17

Regulatory controls on retail services

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):**

- (a) **where** 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) **where** the national regulatory authority concludes that obligations imposed under **Articles 9, 10, 11, 12 and 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).

[...]

2. Obligations imposed under paragraph 1 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). The obligations imposed may include requirements that the identified undertakings do not charge excessive prices, inhibit market entry or restrict competition by setting predatory prices, show undue preference to specific end-users or unreasonably bundle services. National regulatory authorities may apply to such undertakings appropriate retail price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices on comparable markets, in order to protect end-user interests whilst promoting effective competition.

3. Deleted.

4. National regulatory authorities shall ensure that, where an undertaking is subject to retail tariff regulation or other relevant retail controls, the necessary and appropriate cost accounting systems are implemented. National regulatory authorities may specify the format and accounting methodology to be used. Compliance with the cost accounting system shall be verified by a qualified independent body. National regulatory authorities shall ensure that a statement concerning compliance is published annually.

5. Without prejudice to Article 9(2) and Article 10, national regulatory authorities shall not apply retail control mechanisms under paragraph 1 of this Article to geographical or user markets where they are satisfied that there is effective competition.

Article 18

Regulatory controls on the minimum set of leased lines

Deleted.

(10) *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 yet sufficiently competitive at the time the 2002 framework entered into force, is no longer necessary and should be repealed.*

Article 19

Carrier selection and carrier pre-selection

Deleted.

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

CHAPTER IV
END-USER INTERESTS AND RIGHTS

Article 20

Contracts

1. Deleted.

2. Member States shall ensure that, where 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 services **and/or connection**. The contract shall specify **in a clear, comprehensive and easily accessible form** at least:

(a) the identity and address of the supplier;

(b) 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;**⁹

⁹ PL has a reservation on this indent.

- the types of maintenance service offered **and customer support services provided, as well as the methods to contact with 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 to include his or her personal data in a directory and the data concerned;**
- (d) particulars 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 any 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 method of initiating procedures for settlement of disputes in accordance with Article 34;

- (h) the type of action that might be taken by the undertaking providing connection to a public communications network and/or publicly available electronic communications services 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(4a) and relevant to the service provided.

[...]

3. Deleted.

4. 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 whether or not access to emergency services, and whether caller location information, is provided. Providers of electronic communications services shall ensure that customers are clearly informed of any limitation in the [...] access to emergency services in advance of the conclusion of a contract and [...] in case of any change in the access to the emergency services.

5. Member States shall ensure that subscribers [...] have a right to withdraw from their contracts without penalty upon notice of [...] modifications in 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, ahead of any such modifications and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions. **Member States shall ensure the national regulatory authorities are able to specify the format of such notifications.**

(11a) The 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), who may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens on providers and 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.

(11aa new) As a consequence of technological developments, other types of identifiers may be used in the future, in addition to ordinary forms of numbering identification.

(12) 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 on any limitation in service (such as limitation in the provision of caller location information or the routing of emergency calls), and are given clear and transparent information in the initial customer contract and [...] thereafter in case of any change in the access provision, for example in customer billing information. This information should include any limitations as to 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.. [...]

- (12a) *With respect to terminal equipment, the customer contract should specify any restrictions imposed by the provider on the customer's 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.*
- (12b) *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.*
- (12c) *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 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, privacy and personal data. The information could be coordinated by way of the cooperation procedure established in Article 33(2a) of Directive 2002/22/EC. Such public interest information should be updated whenever necessary and it 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. The information should also be included in contracts when required by Member States.*
- (13) *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.*
- (14) *[...] 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, the relevant national [...] authorities should use the remedies available to them in Directive 2002/19/EC to ensure that users' access to particular types of content or applications is not unreasonably restricted.*

(14a) 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 or not. The Framework Directive and the Specific Directives are without prejudice to Directive 2000/31/EC (Directive on electronic commerce), which inter alia contains a "mere conduit" rule for intermediary service providers, as defined therein.

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 on standard terms and conditions in respect of access and use of their services provided to end-users and consumers. National regulatory authorities may specify additional requirements regarding the form in which such information shall be 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 when these are not available on the market free of charge or at a reasonable price. Third parties shall have a right to use without charge the [...] information published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar 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; and**
- (d) regularly inform disabled subscribers of details of current products and services aimed at 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 that case, such information shall be produced 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 right, and their legal consequences; and**
- (b) **means of protection against risks to personal security, privacy and personal data in using electronic communications services.**

[...]

(15) *The availability of transparent, up-to-date and comparable [...] **information on offers and services** is a key element for consumers in competitive markets with several providers offering services. **End-users and consumers** of electronic communications services should be able to easily compare 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 have powers to require from [...] **undertakings providing electronic communications networks and/or services** better [...] **transparency on 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 undertakings providing electronic communications **networks and/or services**. They 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 such use of [...] **information** which had already been published and thus belong to the public domain. In addition, **end-users and consumers** should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any 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 it is 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 on electronic commerce, undertakings should also, if required by Member States, provide to subscribers public interest information produced by the relevant public authorities, inter alia on the most common acts of infringements and their legal consequences.

(15a) Customers should be informed of their rights with respect to the use of their personal information in directories of subscribers, 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. Where systems exist allowing information to be included in the directory database but not disclosed to users of directory services customers should also be informed of that possibility.

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 on measures taken to ensure comparable access for disabled end-users**. The information shall, on request, also 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 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 given in Annex III could be used.

3. In order to prevent degradation of service and hindering or slowing 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. [...]¹⁰

(16) *A competitive market should ensure that users are able to have 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 the 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.

(17) *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 subscribers and technical limitations.***

¹⁰ PL has a reservation on paragraph 3.

Article 23a

Ensuring comparable access and choice for disabled 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) can have access to electronic communications services comparable to that enjoyed by the majority of end-users, and**
 - (b) can take advantage of 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 users, Member States shall encourage the availability of terminal equipment offering the necessary services and functions.**

(17a) In order to ensure that disabled users benefit from the competition and the choice of service providers enjoyed by the majority of other end users, national regulatory authorities can 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, undertakings being required to ensure that disabled end-users can take advantage of their services on the same terms and conditions, including prices and tariffs, as those offered to their other end-users, and to charge equivalent prices for their services irrespective of any additional costs incurred by them. They may also include requirements relating to the wholesale arrangements between undertakings.

(4b) Member States should introduce measures to promote the creation of a market for widely available products and services incorporating facilities for disabled 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.

Article 24

Interoperability of consumer digital television equipment

In accordance with the provisions of Annex VI, Member States shall ensure the interoperability of the consumer digital television equipment referred to therein.

Article 25

[...] Telephone directory enquiry services

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 their information made available to providers of directory enquiry services and/or directories in accordance with paragraph 2.**

2. Member States shall ensure that all undertakings which assign telephone numbers to subscribers meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory.

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 to 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, 2, 3 and 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.**

(18) 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 there is no need to continue to mandate their provision. Therefore, the corresponding obligation should be repealed.

(18a) 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.¹¹ Measures concerning the inclusion of end-user data (of all undertakings that assign telephone numbers to subscribers) in databases should respect the safeguards for the protection of personal data, including Article 12 of Directive 2002/58/EC. 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 conditions from competitive offers.

Article 26

Emergency services and the single European emergency call number

1. Member States shall ensure that [...] all end-users of [...] services **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" **as well as by any other national emergency call numbers 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 a 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 national emergency number or numbers, where these continue in use.**

¹¹ OJ L 249, 17.9.2002, p.21.

4. Member States shall ensure that access for disabled end-users [...] to [...] emergency services is comparable to that enjoyed by other end-users. In order to ensure that disabled end-users are able to access emergency services while travelling in other Member States, the measures taken for this purpose [...] will 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 and services [...] 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 also calls to other 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. [...]

(19) *End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national [...] telephone numbering plan. Emergency authorities should be able to handle and answer calls to the number "112" at least as expeditiously and effectively as calls to other 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 that "112" can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. **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 further awareness of "112" and periodically to evaluate knowledge of "112" by the public.** 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 available caller location information to emergency services [...] as soon as the call reaches that service independently of the technology used. [...]*

(19a) *Member States shall ensure that undertakings providing end-users with an electronic communications service for originating calls through a number or numbers in a national [...] telephone numbering plan provide access to emergency services with the accuracy and reliability that is technically feasible for that electronic communications service. Network-independent service providers may not have control over networks and could not ensure that the emergency calls made through their service would be 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 the infrastructure are not under the control of these service providers.*

Once internationally recognized standards are in place that will ensure accurate, reliable routing and connection to the emergency services, the network-independent service providers should also fulfil the obligations related to access to emergency services at a comparable level to other undertakings.

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

(20a) *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.*

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 adjacent locations across borders between Member States may be established or continued. The 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 telephony numbering space, **without prejudice to the need for an undertaking [...] to recover its costs [...].**

Recital (21) is deleted.

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 accessibility by disabled end-users to services provided under the '116' numbering range. In order to facilitate that disabled end-users are able to access such services while travelling in other Member States, measures taken 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 about 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.**

[...]

(21a) 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,^x the Commission has asked Member States to reserve numbers in the '116' numbering range for certain services of social value. [...]. The appropriate provisions of Decision 2007/116/EC should be reflected in Directive 2002/22/EC in order to integrate them more firmly into the regulatory framework for electronic communications networks and services and to facilitate accessibility by disabled end-users as well. [...]

^x OJ L 49, 17.2.2007, p. 30.

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:

- (a) end-users are able to access and use services [...] using non-geographic numbers within the Community; and**
- (b) end-users are able to access all numbers provided in the Community, including those in the national numbering plans of Member States, those from the European Telephone Numbering Space and Universal International Freephone Numbers.**

Member States shall ensure that the relevant [...] authorities are able to require from 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.

2. Deleted.

(22) *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 to the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, [...] when the number is defined as having a national scope only (e.g. national short code), or when **technically or economically unfeasible**. Users should be fully informed in advance in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes. [...]*

Article 29

Provision of additional facilities

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 [...] **additional facilities** listed in Annex I, Part B, subject to technical feasibility and economic viability.

2. A Member State may decide to waive paragraph 1 in all or part of its territory if it considers, after taking into account the views of interested parties, that there is sufficient access to these facilities.

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

Article 30

[...] Facilitating change of supplier

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 Annex I, part C**.

[...]

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 **to subscribers for [...] change of 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 executed within the shortest possible delay. In any case, the technical transfer of the number shall not exceed one day.

National regulatory authorities may prescribe [...] the global process of porting of numbers, taking into account national provisions on contracts and technical feasibility, including where necessary to ensure that subscribers are protected throughout the switching process.¹²

5. Deleted.

5a. 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 termination of contract do not act as a disincentive for changing [...] service providers.¹³

(23) 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 interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. This does not preclude imposing 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 of delay.

¹² PL has a reservation on paragraph 4.

¹³ PL has a reservation on paragraph 6.

*In any case, the technical transfer of the number shall not exceed one day. National regulatory authorities may prescribe [...] the global process of porting of numbers, taking into account national provisions on contracts and technological development and, where necessary, appropriate measures to guarantee that consumers are protected throughout the switching process. This protection may include the limitation of porting abuse and/or the setting of fast corrective actions. [...]*¹⁴

Article 31

"Must carry" obligations

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 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 [time-limit for implementation of the amending act], except where Member States have carried out such a review within the previous 2 years.

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

¹⁴ PL has a reservation on recital 23.

2. Neither paragraph 1 of this Article nor Article 3(2) of Directive 2002/19/EC (Access Directive) shall prejudice the ability of Member States to determine appropriate remuneration, if any, in respect of measures taken in accordance with this Article while ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

(24) [...] 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 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 to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

CHAPTER V GENERAL AND FINAL PROVISIONS

Article 32

Additional mandatory services

Member States may decide to make additional services, apart from services within the universal service obligations as defined in Chapter II, publicly available in its own territory but, in such circumstances, no compensation mechanism involving specific undertakings may be imposed.

Article 33

Consultation with interested parties

1. Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users, and consumers (including, in particular, disabled 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.

2. Where appropriate, interested parties may develop, with the guidance of national regulatory authorities, mechanisms, involving consumers, user groups and service providers, to improve the general quality of service provision by, inter alia, developing and monitoring codes of conduct and operating standards.

2a. 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 the sectors interested in the promotion of lawful content in electronic communication networks and services. That co-operation may also include coordination of the public interest information to be made available under Article 21(4a) and Article 20(2).

3. Deleted.

4. Deleted.

- (25) *In order to overcome existing shortcomings in terms of consumer consultation and 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 from the national regulatory authority as well as from service providers, carry out research on 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 stakeholders' 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 systematic surveillance of internet usage.***

Article 34

Out-of-court dispute resolution

1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes **arising under this Directive [...] between consumers and undertakings providing electronic communications networks and/or services, relating to [...] the contractual conditions and/or performance of contracts concerning supply of such networks 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.

[...]

2. Member States shall ensure that their legislation does not hamper the establishment of complaints offices and the provision of on-line services at the appropriate territorial level to facilitate access to dispute resolution by consumers and end-users.

3. Where such disputes involve parties in different Member States, Member States shall coordinate their efforts with a view to bringing about a resolution of the dispute.

4. This Article is without prejudice to national court procedures.

Article 35

[...] Adaptation of annexes

Amendments necessary to adapt Annexes I, II, III, **and VI [...]** to technological developments or to changes in market demand shall be adopted by the Commission, acting in accordance with the procedure referred to in Article 37(2).

Article 36

Notification, monitoring and review procedures

1. National regulatory authorities shall notify to the Commission by at the latest the date of application referred to in Article 38(1), second subparagraph, and immediately in the event of any change thereafter in the names of undertakings designated as having universal service obligations under Article 8(1).

The Commission shall make the information available in a readily accessible form, and shall distribute it to the Communications Committee referred to in Article 37.

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 imposed upon undertakings or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.

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

3. The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 38(1), second subparagraph. The Member States and national regulatory authorities shall supply the necessary information to the Commission for this purpose.

Article 37

Committee

1. The Commission shall be assisted by the Communications Committee, set up by 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.

3. Deleted.

(38) *The measures necessary for the implementation of the 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.*

(39) *In particular power should be conferred on the Commission [...] to adapt the Annexes to technical progress or changes in market demand. [...] Since those measures are of a general scope and are designed to supplement this Directive by adding 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. [...]*

[The following articles are common for this and the ePrivacy Directive]

Article 4

Transposition

(1) Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions [...].

(42) *In accordance with point 34 of the Interinstitutional Agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between the Directive and the transposition measures, and to make them public.*

They shall apply those provisions from [...].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- (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 Brussels,

For the European Parliament

The President

For the Council

The President

**DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10
(CONTROL OF EXPENDITURE) [...], ARTICLE 29 (ADDITIONAL FACILITIES) AND
ARTICLE 30 (FACILITATING CHANGE OF SUPPLIER)**

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 [...] of [...] **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

List of 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**.

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 paragraph 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 the [...] 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, shall also be included.**

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, 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.

QUALITY OF SERVICE PARAMETERS

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

For undertaking [...] 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 undertaking [...] 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 that up-to-date information concerning the performance for these two parameters be kept, if evidence is available to show that performance in these two areas is satisfactory.

**CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS
AND ESTABLISHING ANY RECOVERY OR SHARING MECHANISM IN
ACCORDANCE WITH ARTICLES 12 AND 13**

Part A: Calculation of net cost

Universal service obligations refer to those obligations placed upon an undertaking by a Member State which concern the provision of a network and service throughout a specified geographical area, including, where required, averaged prices in that geographical area for the provision of that service or provision of specific tariff options for consumers with low incomes or with special social needs.

National regulatory authorities are to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently. In undertaking a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for a designated undertaking of operating with the universal service obligations and operating without the universal service obligations. This applies whether the network in a particular Member State is fully developed or is still undergoing development and expansion. Due attention is to be given to correctly assessing the costs that any designated undertaking would have chosen to avoid had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

The calculation is to be based upon the costs attributable to:

(i) elements of the identified services which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards.

This category may include service elements such as access to emergency telephone services, provision of certain public pay telephones, provision of certain services or equipment for disabled people, etc;

(ii) specific end-users or groups of end-users who, taking into account the cost of providing the specified network and service, the revenue generated and any geographical averaging of prices imposed by the Member State, can only be served at a loss or under cost conditions falling outside normal commercial standards.

This category includes those end-users or groups of end-users which would not be served by a commercial operator which did not have an obligation to provide universal service.

The calculation of the net cost of specific aspects of universal service obligations is to be made separately and so as to avoid the double counting of any direct or indirect benefits and costs. The overall net cost of universal service obligations to any undertaking is to be calculated as the sum of the net costs arising from the specific components of universal service obligations, taking account of any intangible benefits. The responsibility for verifying the net cost lies with the national regulatory authority.

Part B: Recovery of any net costs of universal service obligations

The recovery or financing of any net costs of universal service obligations requires designated undertakings with universal service obligations to be compensated for the services they provide under non-commercial conditions. Because such a compensation involves financial transfers, Member States are to ensure that these are undertaken in an objective, transparent, non-discriminatory and proportionate manner. This means that the transfers result in the least distortion to competition and to user demand.

In accordance with Article 13(3), a sharing mechanism based on a fund should use a transparent and neutral means for collecting contributions that avoids the danger of a double imposition of contributions falling on both outputs and inputs of undertakings.

The independent body administering the fund is to be responsible for collecting contributions from undertakings which are assessed as liable to contribute to the net cost of universal service obligations in the Member State and is to oversee the transfer of sums due and/or administrative payments to the undertakings entitled to receive payments from the fund.

**PROCESS FOR REVIEWING THE SCOPE OF UNIVERSAL SERVICE IN
ACCORDANCE WITH ARTICLE 15**

In considering whether a review of the scope of universal service obligations should be undertaken, the Commission is to take into consideration the following elements:

- social and market developments in terms of the services used by consumers,
- social and market developments in terms of the availability and choice of services to consumers,
- technological developments in terms of the way services are provided to consumers.

In considering whether the scope of universal service obligations be changed or redefined, the Commission is to take into consideration the following elements:

- re specific services available to and used by a majority of consumers and does the lack of availability or non-use by a minority of consumers result in social exclusion, and
- does the availability and use of specific services convey a general net benefit to all consumers such that public intervention is warranted in circumstances where the specific services are not provided to the public under normal commercial circumstances?

**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.

**CONDITIONS FOR THE MINIMUM SET OF LEASED LINES REFERRED TO IN
ARTICLE 18**

Deleted.

