Amended proposal for a Directive of the European Parliament and of the Council on universal services and users' rights relating to electronic communications networks and services (1)

(2001/C 332 E/15)

(Text with EEA relevance)

COM(2001) 503 final — 2000/0183(COD)

(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 17 September 2001)

1. BACKGROUND


The Economic and Social Committee delivered its opinion on 1 March 2001 (2).

The Committee of the Regions delivered its opinion on 14 December 2000 (3).


This amended proposal sets out the Commission's opinion, pursuant to Article 250(2) of the EC Treaty, on the amendments proposed in the Parliament's opinion adopted on 12 June 2001.

2. AIM OF THE COMMISSION PROPOSAL

The universal service and users' rights directive aims to ensure the provision of universal service for public telephony services in an environment of greater overall competitiveness, with provisions for financing the cost of providing universal service in the most competitively neutral manner. It also establishes rights of users and consumers of electronic communications services, with corresponding obligations on undertakings. It aims to ensure interoperability of digital consumer television equipment and to ensure the provision of certain mandatory services, such as leased lines. It recognises Member States' rights to designate specified radio and television broadcasts as having a 'must carry' status for distribution over certain networks in order to ensure universal availability of specified programming. The directive also ensures that network operators will handle calls to the new European regional code of '3883' which has been assigned by the ITU to the European Telephony Numbering Space.

3. COMMENTARY ON THE OPINION OF THE PARLIAMENT

3.1. Summary of the position of the Commission

The Commission is able to support a large majority of the amendments voted by the Parliament, either in full, in part or in principle. Many of the proposed amendments strengthen or clarify the Commission's original proposal.

3.2. Amendments adopted by the European Parliament at its first reading

Amendments of the European Parliament

At first reading the European Parliament adopted a total of 65 amendments to the Commission's original proposal.

Of the 62 amendments proposed by the Legal Affairs Committee, of which 18 had been incorporated directly from the opinion of the Industry, External Trade, Research and Energy committee through the 'enhanced Hughes' procedure, 60 were carried in plenary. From the 14 amendments tabled from the plenary, 5 were carried in plenary, for a total of 65 amendments overall proposed by the Parliament at its first reading.

Amendments of the European Parliament accepted by the Commission

The following amendments were accepted in full, in part or in principle by the Commission: 2, 4 to 33, 35 to 39, 41, 42, 44 to 47, 49, 52, 53, 54, 57, 58, 60 and 70. Many of the Parliament's amendments contained several separable elements. While some parts of these amendments were acceptable to the Commission, others were not. Section 3.2.2 below explains the Commission's position in respect of all aspects of the amendments that were accepted in part, and therefore describes both what was and was not accepted by the Commission.

Amendments of the European Parliament not accepted by the Commission

The following amendments were not acceptable to the Commission: 1, 3, 34, 40, 43, 48, 51, 55, 56, 59, 61, 66, 72 and 73. These are explained in detail in section 3.2.1 below.

(2) OJ C 139, 11.5.2001, p. 15.
(3) OJ C 144, 16.5.2001, p. 60.
3.2.1. Details of amendments not acceptable to the Commission
Amendments 1 and 37 (security issues)

Parliament's amendments sought to introduce new measures into the universal service directive dealing with security issues, including network security and risks of breach of network security, which are already addressed in the Data Protection Directive, the proposed amendments were duplicative of the Data Protection Directive. The Commission sees no need for the same measures in two directives that make up a coherent package. Moreover, this could be confusing for purposes of enforcement in that it might be thought that the Community institutions were attempting to achieve different objectives by having the same provisions in two different directives.

Amendments 3 and 43 (European Telephony Numbering Space)

Amendments 3 and 43 subject the implementation of the European regional code '3883' to an evaluation study by the Commission. A study such as that called for in amendments 3 and 43 was already performed on behalf of the Commission. This study concluded that potential demand existed and endorsed the creation of the European Telephony Numbering Space (ETNS) with a European regional code. Such code has now been allocated from the ITU. Commercial use of the services linked to such a code will allow European companies to develop pan-European services using a single telephone number throughout Europe. The Council has twice endorsed development of the ETNS. Subjecting the implementation of the code to a further study would have called into question the political commitment that already exists.

Amendment 34 (consumer contracts)

The Commission considered that amendment 34 of the Parliament opinion, which required fair and transparent terms in consumer contracts with clear and understandable wording, was a duplication of the existing Community consumer protection measures of Directives 97/7/EC and 93/13/EEC.

Amendment 40 (operator assistance and directory enquiries)

The Parliament's amendment required operator assistance services as well as directory enquiry services to be made available free of charge or for a minimal charge. Commission rejected this proposed amendment for two reasons. Operator assistance and directory services form part of the elements of universal service that must be made available to all subscribers on an affordable basis and which are supervised by national regulatory authorities responsible for monitoring universal service. Secondly, directory enquiry services are now provided by operators on a competitive basis. In addition to the universal directory, end-users may therefore use other directories, either in electronic or printed form. Making all directory services free or subject to a minimal charge would constitute over-regulation that would stifle competition in the provision of this service.

Amendment 48 (access to conditional access services)

The Parliament's amendment 48 proposed that broadcasters should have access to conditional access services and associated facilities where necessary for the public reception of specified broadcasts and to ensure that those broadcasts are easily accessible and prominently displayed on navigators and electronic programming guides. This amendment contains two parts, both of which the Commission rejected, for separate reasons. The first part of the amendment relating to access to conditional access services and associated facilities (CAS) is already covered by provisions of the Access and Interconnection Directive under which broadcasters are given access to CAS on fair, reasonable and non-discriminatory terms. The second part of the Parliament's amendment to ensure due prominence of broadcasts on navigators and electronic programming guides is a content regulation measure. This part of Parliament's amendment therefore addresses issues that are outside the scope, not just of the universal service directive, but of the entire regulatory package.

Amendment 51 (periodic review of relevant markets)

This proposed amendment of the Parliament would require National Regulatory Authorities to conduct an annual review of leased lines retail controls. The Commission consider this too prescriptive a time period.

Amendment 55 (Dispute resolution)

Amendment 55 called for the creation in each Member State of a national complaints office with 'approachable' procedures. While the Commission sympathised with the intention of this amendment, it considered it as overly prescriptive and failing to respect the principle of subsidiarity.

Amendment 56 (Provisions of Annex I on disconnection)

The provisions of amendment 56 of the Parliament removed the discretion from Member States in the context of non-payment of bills to require that calls not incurring a charge to the subscriber must be able to be completed, e.g., incoming calls, during the period prior to complete disconnection. The Commission considers it more appropriate to give Member States flexibility in implementing measures related to non-payment. The annex already provides that disconnection for non-payment should only occur after a warning. The annex gives Member States flexibility to provide for a period prior to complete disconnection in which non-charged calls might still be allowed and the Commission considers this sufficient.
Amendment 59 (Deletion of reference to VAT-type recovery mechanisms)

The Parliament's amendment proposed to delete paragraph 3 from Annex IV, Part B. This paragraph suggests that Member States should give due consideration to collecting contributions via a VAT mechanism on operators and service providers for transparency and consistency. Financing the costs of universal service from within the sector using administratively easy and efficient methods is likely to become more difficult in future. The Commission considers that an alternative method, such as a value added type of tax for the sector, should remain available as an option. Traditional universal service funds will become more difficult to operate in future with convergence.

Amendments 61, 72 and 73 (Annex VI, Interoperability of Digital Consumer Equipment)

Parliament's amendment 61 required a common interface to be fitted to television sets in the Community to allow consumers to operate their set with any decoder system. The Commission agrees with the objective to achieve interoperability but rejected the proposed amendment as being more prescriptive than required and covered by the provisions of Paragraph 2 of Annex VI. Amendment 72 requires all terminals equipped for the presentation of digital interactive offerings to ensure that additional services transmitted in clear are available with full functionality to the consumer and requires compliance with the MHP standard. The Commission rejected this amendment on several grounds. The term 'terminals' is inappropriately broad and could cover telephones and Personal Computers. The term 'digital interactive' is both too broad and too vague, while mandating the MHP standard is not acceptable. The implementation of MHP should be the subject of voluntary industry agreement. Commission supports but does not consider it appropriate to mandate MHP.

Amendment 66 (Article 7, Special measures for disabled users)

Amendment 66 changed the term 'telephone services' to electronic communications' which would have the effect of broadening the scope of universal service for disabled users without review of the desirability or justification for such a measure. Commission considered that the measure was disproportionate at this time.

3.2.2. Amendments proposed by the Parliament accepted in full, in part or in principle by the Commission

Amendments 2, 24 to 30 (Recital 19 and Article 16, Retail regulation)

Amendment 2 made two changes to Recital 19 of the directive, in removing a reference to exclusive rights and adding text that makes clear that retail controls would only be permitted under the directive where wholesale regulation would be ineffective.

The Commission accepts the first change in full and the second in principle to the effect that preference could be given to wholesale regulation before retail regulation, but some basic retail controls on SMP provision of telephone services are still needed.

The two proposed amendments of amendment 24 were acceptable only in part to the Commission. The first amendment, requiring NRAs to review their leased lines markets annually, the Commission considered as being too onerous and too artificial. The framework should be flexible and NRAs should review whenever needed. The second change was to require NRAs to consult publicly on measures relating to retail regulation, which the Commission accepted in principle.

Parliament's amendment 25 changed the article into a more general retail tariff regulation and included measures on the provision of leased lines. The Commission recognised the merit of combining provisions in different parts of the directive that deal with obligations that may be placed on operators designated as having significant market power but the particular formulation proposed was not accepted. The amendment also proposed a link to wholesale regulation of SMP operators in the Access and Interconnection directive which the Commission accepted in principle but considered that the formulation needs to avoid combining leased line services and telephone services into a single retail market for services.

Parliament's amendment 26 required that NRAs take corrective action to address justified complaints and to ensure competitive markets where requirements of users or consumers are not being met in a national or trans-national market. Commission agreed that wholesale as well as retail remedies could be relevant to resolving such problems. However, the process of NRA intervention should be linked not so much to complaints but rather to the specific objectives of the regulatory package as a whole.

Amendment 27 of the Parliament deleted the 'tariff' in reference to 'retail tariff' controls and added 'where appropriate' before the 'cost accounting systems used by the undertakings concerned', both of which the Commission accepted as consistent changes with amendment 26. Amendment 28 similarly deleted 'tariff' from paragraph 5 of this article which is consistent with the two earlier amendments. The amendment also linked the cost accounting systems to policies, principles and methodologies determined by NRAs, which the Commission accepted, while the Commission rejected the part of the amendment that deleted the requirement for NRAs to ensure publication of a statement concerning compliance.
Amendment 29 deleted the reference to ‘tariff’ from retail controls which the Commission accepted as being in line with earlier amendments. Amendment 30 of the Parliament required the publication of details of discount schemes for undertakings with cost orientation obligations. The Commission accepted this amendment in principle, on the basis that it would be better to link the obligation to publish not so much to the cost orientation obligation but rather to the designation of SMP.

Amendments 4 and 44 (Recital 27 and Article 24, Provision of additional facilities)

The Parliament’s proposal adds a sentence noting that the development of the facilities of tone dialling and calling line identification on a pan-European basis is encouraged by the directive and is beneficial to consumers. Commission accepted the addition of the statement of the Parliament. Amendment 44 of the Parliament required Member States to make additional facilities available, subject to technical feasibility and economic viability, and to facilitate their availability across frontiers. Commission rejected the first part of the amendment but accepted the second which corrects a current weakness of existing legislation.

Amendments 5 and 18 (Recital 32 and Article 11, Quality of service of designated undertakings)

Amendment 5 endorsed co-regulation for achieving quality standards and improved service performance and foresees withdrawal of formal regulation whenever co-regulation is introduced. The amendment stipulates that any co-regulatory measures must be based on the same criteria as formal regulatory measures. The Commission can only accept in principle that co-regulation may be an appropriate way of stimulating enhanced quality standards and improved service performance. Commission finds the remainder of the amendment overly prescriptive. There may be a need to maintain formal regulation even where co-regulatory measures are applied. Parliament’s amendment 18 extends coverage of universal service obligations on quality and monitoring to measures for disabled users. Commission welcomed this amendment to disabled users even though the parameters for such monitoring will need to be developed.

Amendment 6 (Article 1, Aims of the directive)

Amendment 6 suggests minor drafting changes to paragraph 2 of the article and sets out in a new paragraph 3 that the directive establishes rights of users and consumers, that it also defines a minimum set of services of a specified quality for all users and consumers at an affordable price without distorting competition; the new paragraph also mentions that the directive lays down objectives in respect of the provision of certain mandatory services, such as leased lines. The Commission accepted the amendments as representing thorough statements of the aims of the directive that were not reflected in the original proposal.

Amendment 7 (Article 2, Definitions)

Parliament’s amendment adds three new elements to the definitions of which the Commission accepted two. Changes to the definition of ‘public telephone network’ were useful clarifications to the original text proposed. The third proposed change was the addition of the term ‘associated service’ and a definition. Commission considers that the term is not needed in the directive in that the proposed definition covers certain operator services that are expected to be subsumed into the definition of publicly available telephone services in Article 2(e) of the text. The other aspect of the proposed definition relates to presentational elements of electronic programming guides: this is a content regulation issue and therefore is not covered by the new package nor is a definition needed in the present directive.

Amendment 8 (Article 3, Availability of universal service)

The amendment adds ‘competitive neutrality’ to the list of principles for implementation of universal service. Commission finds this term attractive and appropriate to capture the essence of the balance to be struck between financing universal availability of services in the context of increasingly competitive markets overall.

Amendment 9 (Article 4, Provision of access at a fixed location)

Parliament proposed three separate amendments to Article 4 of the directive in respect of the definition of universal service obligations. The amendment added ‘effective’ to Internet access; requires Member States to take account of prevailing technologies to determine data rates and prescribes the principle that Member States shall not determine rates in excess of those available to the general public. Commission considered that adding ‘effective’ to Internet access could create undesirable confusion and lack of consistency in implementation, so it rejected the suggested amendment. As to a determination of what rates should be considered for Internet access as part of universal service, the correct notion is that of rates that are actually used by the general public and not ‘rates available to the general public’. The Commission rejected a formulation that was unacceptably broad. However, the requirement for Member States to take account of prevailing technologies in determining date rates is a relevant consideration amongst others, but must be carefully assessed in the circumstances. The quality experienced by a dial-up user will depend on factors that are outside the control of the network operator or the Internet service provider. This consideration forms part of the contextual appreciation of what is appropriate. The Commission therefore accepts the amendment in principle but believes that the latter idea is best reflected in a recital.
Amendment 10 (Article 6, Public pay phones)

Parliament proposed a drafting change to clarify that Member States may elect not to impose certain obligations rather than 'decide not to apply certain provisions'. Commission considered that it was an improvement over the original.

Amendment 11 (Article 7, Special measures for disabled users)

Parliament's proposed amendment would have moved the article to the chapter on users and consumers rights; amendment also proposed to add a sentence requiring Member States to identify users with special needs after public consultation. Commission rejected the first part of the amendment as the article is an integral part of the minimum set of services defined under the chapter on universal service where this provision belongs. Commission welcomed the introduction of public consultation procedure for defining needs of users with special needs.

Amendments 12 and 13 (Article 8, Designation of undertakings)

The amendment proposed to subject to a proposal of the national regulator the designation of one or more undertakings to guarantee the provision of universal service. Parliament's amendment also eliminated the specific mention of the need to cover the entire national territory with additional text clarifying that possible division of universal service by coverage and service would be possible. The Commission did not accept the first two amendments. A decision by a Member State should not depend on receiving a proposal from the NRA and the deletion of requirement to cover the whole of the territory was not compensated by the additional text proposed in the amendment. This latter text was entirely acceptable to the Commission. Parliament proposed in Amendment 13 to add a requirement of public consultation to the designation procedure for universal service. Commission welcomed this added transparency to the procedure for designating universal service providers. A second part of the amendment required that network integrity, service quality and network continuity be guaranteed. This was acceptable in principle to the Commission but in a separate article.

Amendments 14 and 15 (Article 9, Affordability of tariffs)

Parliament's amendment 14 changed the title of the article to 'Affordability of Tariffs' which the Commission accepted. This amendment also prescribed in detail the tariffs to be monitored and the methodology for monitoring, which the Commission considered excessively detailed. Amendment 14 also specified that all sections of the population, including those on low incomes or with special social needs, should have access to and can effectively use telephone services. Commission welcomed this addition. Parliament's amendment 15 modified the description of consumers entitled to special tariffs and clarified the initially proposed text, both of which the Commission accepted.

Amendments 16 and 17 (Article 10, Control of expenditure)

Parliament's amendment 16 changed the wording dealing with the supply of additional services which clarified the original text and which the Commission accepted. Amendment 17 is a small drafting clarification to the original text which the Commission accepted.

Amendments 19 and 20 (Article 12, Costing of universal service obligations)

Parliament's amendment 19 strengthened the terms of the article by imposing an obligation on NRAs to determine if and to what extent universal service represents an unfair burden and the Commission accepted this change. Amendment 20 reinforced the provision of the article dealing with the verification of net cost calculation of universal service to ensure that NRAs calculate USO transparently and make these calculations publicly available. Commission accepted this strengthening.

Amendments 21 and 22 (Article 13, Financing universal service obligations)

Amendment 21 introduced three specific changes to the text, all of which the Commission accepted albeit the second change was thought better in a recital as being explanatory. Parliament's amendment replaced 'may' with 'shall' in the first paragraph, making clear that Member States must compensate where there is an unfair burden; the second change mentioned lotteries as additional funding sources available to the government for compensation; lastly, the amendment added 'and' to 'or' at the end of paragraph 1(a), thus making clear that Member States may use a combination of financing mechanisms compatibly with the directive. Parliament's amendment changed the wording slightly of the article to clarify the regulatory oversight involved in any financing scheme, which the Commission accepted as an improvement to the text.

Amendment 23 (Article 15, Review of the scope of universal service)

Parliament's amendment specified the factors particularly to be considered in a review of the scope of universal service, which the Commission rejected for the reason that this language focused on certain conditions and factors which might pre-judge the basis for reviewing the scope in several years time. The second part of the amendment in which transparency is assured and the Commission is obliged to report to the Council and the Parliament following its review was accepted by the Commission.
Amendments 31 to 33 (Article 17, Contracts)

Parliament's amendment 31 modified the first paragraph of Article 17 to specify that a minimum set of informational elements must appear in the contract before the contract is concluded, which the Commission rejected as being already covered by the terms of the article. A second amendment proposed was to require that prevailing 'prices and tariffs' must be included in the contract even if these were to change, which the Commission accepted. In amendment 32, Parliament proposed to change 'users and consumers' to 'subscribers of electronic communications services' which the Commission accepted only in part, for the reason that using 'subscribers' at this point is prior to the conclusion of the contract is inaccurate. The Framework Directive defines subscribers as those having already concluded a contract with their service providers. Parliament's amendment 33 changed 'users and consumers' to 'subscribers' in paragraph 3 of the article which the Commission accepted under the reasoning set out for Amendment 32. The amendment also introduced the right for consumers to be informed of their right to withdraw from contracts when notified of an intention to change the terms of their contract. Commission accepted this proposed amendment with a rewording of the entire paragraph for reasons of greater clarity.

Amendments 35 (Article 18, Transparency and publication of information)

Amendment 35 of the Parliament required NRAs to ensure, in addition to transparent, 'accurate and up-to-date' information on applicable prices and tariffs. Commission considered that ensuring accurate information on applicable prices and tariffs would be impracticable for NRAs but accepted that they should ensure up-to-date information was available. Amendment 35 also required NRAs to publish regular reports on tariffs and to develop interactive guides for comparing tariffs, both of which the Commission rejected as excessive regulation.

Amendments 36 and 37 (Article 19, Quality of service)

Parliament's amendment 36 added 'only' to the text and clarified the meaning of the original proposal, which the Commission accepted. The Parliament proposed a new article to create an obligation for Member States to ensure network integrity and, in the event of a catastrophe or in cases of force majeure, continued availability of the public network. Parliament's amendment also required that access to the emergency services from fixed locations be uninterrupted. All of these amendments were accepted by the Commission subject to textual revision. In addition, the amendment required network operators and service providers to take measures to safeguard the security of services and furthermore required that subscribers be informed whenever there was a risk of breach of network security, as well as the possible remedies and costs involved. The Commission rejected these amendments for reasons of duplication with the Data Protection Directive.

Amendment 38 (Article 20, Interoperability of consumer digital TV equipment)

The amendment deleted the second paragraph of the article, which the Commission accepted, due to a duplication with the provisions of Article 31 of the directive.

Amendment 39 (Article 21, Operator assistance and directory enquiry services)

The amendment provides for subscribers' entries in public directories to be free of charge which was accepted by the Commission as this is no change to the current practice for universal directories.

Amendment 41 and 42 (Article 22, European emergency number)

The requirement for textphones to be included as one of the means to access emergency services was accepted by the Commission in principle but it preferred to use a recital to explain how this possibility is already covered in the existing text. Amendment 42 introduced two conditions to the requirement to make caller location information available to emergency services. The Commission accepted the first, i.e., 'where technically feasible' whilst it rejected the second, i.e., 'where it does not require disproportionate economic effort'. The other amendments added excessive detail on implementation and a reference to the Data Protection, both of which the Commission rejected.

Amendments 45 and 46 (Article 25, Number portability)

Parliament's amendment 45 added a provision that the costs to subscribers of number portability must not discourage them from using the facility. The Commission accepted this amendment with textual adaptation. Amendment 46 created an obligation for Member States to ensure that users are informed regularly of their right to port their numbers, which the Commission accepted in principle, on the basis that reasonable measures are appropriate to ensure that consumers are aware of their rights.

Amendments 47, 49 and 70 (Article 26, Must carry obligations)

Parliament's amendments 47, 49 and 70 introduced several changes to article 26, only a few of which were acceptable to the Commission. The scope of allowable must carry obligations in the article was reduced to 'broadcasts in pursuit of a public service broadcasting remit' which does not cover commercial television channels that fulfil a cultural diversity criterion. Amendment 47 added 'or subsequently developed'
to networks established for radio and television distribution which the Commission accepted as it introduced flexibility to take account of future developments over other networks. Amendment 49 clarified the meaning of the original proposal by adding 'subject to period review' to substitute for 'limited in time'. Amendment 70 allowed Member States discretionarily to 'set up a compensation mechanism' for network operators subject to must carry obligations. The Commission considered that the principle of appropriate compensation, not a compensation mechanism, should be established and rejected the amendment. A second part of amendment 70 addressing the calculation of compensation, provided that compensation would take account of the 'net cost' [a universal service term] of the network capacity required and the value of the services distributed by broadcasters and content providers. Commission could accept to take account of cost to operators, network capacity used and value of content provided, in any determination of compensation and therefore accepted the amendment in part.

Amendment 52 (Article 28, Additional mandatory services)

Parliament's amendment 52 required that undertakings should be fully compensated by the Member State for fulfilling obligations, which are not universal service obligations, under this article. Commission considered that the scope of possible measures that could be required under the article was broad; therefore, it could be inappropriate to stipulate that compensation must be provided, as that might be incompatible with the Treaty rules on State aids. Commission could at most accept a statement to this effect in a recital.

Amendments 53 and 54 (Article 29, Consultation with interested parties)

The amendment 53 requires NRAs to take into account the views of disabled users when consulting on issues relating to user and consumer rights. Commission welcomed this addition. Parliament's amendment 54 introduced a new article in which MS are encouraged to develop co-regulatory mechanisms and mentioned the articles deemed most relevant to this exercise. Commission accepted the amendment in part and in principle. It considered that the use of co-regulation would be consistent with regulatory model, the relevant regulatory principles and overall regulatory approach. But Commission believed that it would not be appropriate to pre-judge where co-regulation could apply and to include such areas explicitly in the present article. The idea could be acceptable in a recital with textual adaptation.

Amendments 57 and 58 (Annex II, Introduction)

Commission accepted the amendment that added a sentence to the annex to underscore the effect of the provision that empowers consumers by virtue of being able to make informed choices. Similarly the Commission accepted the requirement for Member States to ensure that consumers are informed of their rights concerning universal services with respect to the facilities mentioned in the annex.

Amendment 60 (Annex V, Paragraph 3)

Amendment 60 deleted text that the Commission considered non-essential to the text and accepted the amendment.

4. CONCLUSION

Overall the Commission accepted a large majority of amendments either in full, in part or in principle. This reflects a parallelism of thinking between the Parliament and the Commission. The ability of the Commission to accept most of the amendments proposed by the European Parliament in its first reading is also a reflection that the Parliament endorsed the principles behind the Commission's original proposal. Parliament's and Commission's views on the major policy areas addressed by the directive are closely aligned.