

**COMMON POSITION (EC) No 27/2001****adopted by the Council on 17 September 2001****with a view to adopting Directive 2001/.../EC of the European Parliament and of the Council of ...  
on the authorisation of electronic communications networks and services (Authorisation  
Directive)**

(2001/C 337/02)

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 <sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(3)</sup>,

Whereas:

(1) The outcome of the public consultation on the 1999 review of the regulatory framework for electronic communications, as reflected in the Commission communication of 26 April 2000, and the findings reported by the Commission in its communications on the fifth and sixth reports on the implementation of the telecommunications regulatory package, has confirmed the need for a more harmonised and less onerous market access regulation for electronic communications networks and services throughout the Community.

(2) Convergence between different electronic communications networks and services and their technologies requires the establishment of an authorisation system covering all comparable services in a similar way regardless of the technologies used.

(3) The objective of this Directive is to create a legal framework to ensure the freedom to provide electronic communications networks and services, subject only to the conditions laid down in this Directive and to any restrictions in conformity with Article 46(1) of the Treaty, in particular measures regarding public policy, public security and public health.

(4) This Directive covers authorisation of all electronic communications networks and services whether they are provided to the public or not. This is important to ensure that both categories of providers may benefit from objective, transparent, non-discriminatory and proportionate rights, conditions and procedures.

(5) This Directive only applies to the granting of rights to use radio frequencies where such use involves the provision of an electronic communications network or service, normally for remuneration. The self-use of radio terminal equipment, based on the non-exclusive use of specific radio frequencies by a user and not related to an economic activity, such as use of a citizen's band by radio amateurs, does not consist of the provision of an electronic communications network or service and is therefore not covered by this Directive. Such use is covered by the Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity <sup>(4)</sup>.

(6) Provisions regarding the free movement of conditional access systems and the free provision of protected services based on such systems are laid down in Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on or consisting of conditional access <sup>(5)</sup>. The authorisation of such systems and services therefore does not need to be covered by this Directive.

(7) The least onerous authorisation system possible should be used to allow the provision of electronic communications networks and services in order to stimulate the development of new electronic communications services and pan-European communications networks and services and to allow service providers and consumers to benefit from the economies of scale of the single market.

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 230.

<sup>(2)</sup> OJ C 123, 25.4.2001, p. 55.

<sup>(3)</sup> Opinion of the European Parliament of 1 March 2001 (not yet published in the Official Journal), Council Common Position of 17 September 2001 and Decision of the European Parliament of ... (not yet published in the Official Journal).

<sup>(4)</sup> OJ L 91, 7.4.1999, p. 10.

<sup>(5)</sup> OJ L 320, 28.11.1998, p. 54.

- (8) Those aims can be best achieved by general authorisation of all electronic communications networks and services without requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to notification only. Where Member States require notification by providers of electronic communication networks or services when they start their activities, they may also require proof of such notification having been made by means of any legally recognised postal or electronic acknowledgement of receipt of the notification. Such acknowledgement should in any case not consist of or require an administrative act by the national regulatory authority to which the notification must be made.
- (9) It is necessary to include the rights and obligations of undertakings under general authorisations explicitly in such authorisations in order to ensure a level playing field throughout the Community and to facilitate cross border negotiation of interconnection between public communications networks.
- (10) The general authorisation entitles undertakings providing electronic communications networks and services to the public to negotiate interconnection under the conditions of Directive 2001/.../EC of the European Parliament and of the Council of ... on access to, and interconnection of, electronic communication networks and associated facilities (Access Directive) <sup>(1)</sup>. Undertakings providing electronic communications networks and services other than to the public can negotiate interconnection on commercial terms.
- (11) The granting of specific rights may continue to be necessary for the use of radio frequencies and numbers, including short codes, from the national numbering plan. Rights to numbers may also be allocated from a European numbering plan, including for example the virtual country code '3883' which has been attributed to member countries of the European Conference of Post and Telecommunications (CEPT). Those rights of use should not be restricted except where this is unavoidable in view of the scarcity of radio frequencies and the need to ensure the efficient use thereof.
- (12) This Directive does not prejudice whether radio frequencies are assigned directly to providers of electronic communication networks or services or to entities that use these networks or services. Such entities may be radio or television broadcast content providers. Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use for radio frequencies to providers of radio or television broadcast content services, to pursue general interest objectives in conformity with Community law, the procedure for assignment of radio frequencies should in any event be objective, transparent, non-discriminatory and proportionate. In accordance with the case-law of the Court of Justice, any national restrictions on the rights guaranteed by Article 49 of the Treaty should be objectively justified, proportionate and not exceed what is necessary to achieve general interest objectives as defined by Member States in conformity with Community law. The responsibility for compliance with the conditions attached to the right to use a radio frequency and the relevant conditions attached to the general authorisation should in any case lie with the undertaking to whom the right of use for the radio frequency has been granted.
- (13) As part of the application procedure for granting rights to use a radio frequency, Member States may verify whether the applicant will be able to comply with the conditions attached to such rights. For this purpose the applicant may be requested to submit the necessary information to prove his ability to comply with these conditions. Where such information is not provided, the application for the right to use a radio frequency may be rejected.
- (14) Member States are neither obliged to grant nor prevented from granting rights to use numbers from the national numbering plan or rights to install facilities to undertakings other than providers of electronic communications networks or services.
- (15) The conditions, which may be attached to the general authorisation and to the specific rights of use, should be limited to what is strictly necessary to ensure compliance with requirements and obligations under Community law and national law in accordance with Community law.
- (16) In the case of electronic communications networks and services not provided to the public it is appropriate to impose fewer and lighter conditions than are justified for electronic communications networks and services provided to the public.

<sup>(1)</sup> See page 1 of this Official Journal.

- (17) Specific obligations which may be imposed on providers of electronic communications networks and services in accordance with Community law by virtue of their significant market power as defined in Directive 2001/.../EC of the European Parliament and of the Council of ... on a common regulatory framework for electronic communications networks and services (Framework Directive) <sup>(1)</sup> should be imposed separately from the general rights and obligations under the general authorisation.
- (18) The general authorisation should only contain conditions which are specific to the electronic communications sector. It should not be made subject to conditions which are already applicable by virtue of other existing national law which is not specific to the electronic communications sector. Nevertheless, the national regulatory authorities may inform network operators and service providers about other legislation concerning their business, for instance through references on their websites.
- (19) The requirement to publish decisions on the granting of rights to use frequencies or numbers may be fulfilled by making these decisions publicly accessible via a website.
- (20) The same undertaking, for example a cable operator, can offer both an electronic communications service, such as the conveyance of television signals, and services not covered under this Directive, such as the commercialisation of an offer of sound or television broadcasting content services, and therefore additional obligations can be imposed on this undertaking in relation to its activity as a content provider or distributor, according to provisions other than those of this Directive, without prejudice to the list of conditions laid down in the Annex to this Directive.
- (21) When granting rights of use for radio frequencies, numbers or rights to install facilities, the relevant authorities may inform the undertakings to whom they grant such rights of the relevant conditions in the general authorisation.
- (22) Where the demand for radio frequencies in a specific range exceeds their availability, appropriate and transparent procedures should be followed for the assignment of such frequencies in order to avoid any discrimination and optimise use of those scarce resources.
- (23) National regulatory authorities should ensure, in establishing criteria for competitive or comparative selection procedures, that the objectives in Article 7 of Directive 2001/.../EC (Framework Directive) are met. It would therefore not be contrary to this Directive if the application of objective, non-discriminatory and proportionate selection criteria to promote the development of competition, would have the effect of excluding certain undertakings from a competitive or comparative selection procedure for a particular radio frequency.
- (24) Where the harmonised assignment of radio frequencies to particular undertakings has been agreed at European level, Member States should strictly implement such agreements in the granting of rights of use of radio frequencies from the national frequency usage plan.
- (25) Providers of electronic communications networks and services may need a confirmation of their rights under the general authorisation with respect to interconnection and rights of way, in particular to facilitate negotiations with other, regional or local, levels of government or with service providers in other Member States. For this purpose the national regulatory authorities should provide declarations to undertakings either on request or alternatively as an automatic response to a notification under the general authorisation. Such declarations should not by themselves constitute entitlements to rights nor should any rights under the general authorisation or rights of use or the exercise of such rights depend on a declaration.
- (26) Where undertakings find that their applications for rights to install facilities have not been dealt with in accordance with the principles set out in Directive 2001/.../EC (Framework Directive) or where such decisions are unduly delayed, they should have the right to appeal against decisions or delays in such decisions in accordance with that Directive.
- (27) The penalties for non-compliance with conditions under the general authorisation should be commensurate with the infringement. Save in exceptional circumstances, it would not be proportionate to suspend or withdraw the right to provide electronic communications services or the right to use radio frequencies or numbers where an undertaking did not comply with one or more of the conditions under the general authorisation. This is without prejudice to urgent measures which the relevant authorities of the Member States may need to take in case of serious threats to public safety, security or health or to economic and operational interests of other undertakings. This Directive should also be without prejudice to any claims between undertakings for compensation for damages under national law.

<sup>(1)</sup> See page 34 of this Official Journal.

- (28) Subjecting service providers to reporting and information obligations can be cumbersome, both for the undertaking and for the national regulatory authority concerned. Such obligations should therefore be proportionate, objectively justified and limited to what is strictly necessary. It is not necessary to require systematic and regular proof of compliance with all conditions under the general authorisation or attached to rights of use. Undertakings have a right to know the purposes for which the information they should provide will be used. The provision of information should not be a condition for market access. For statistical purposes a notification may be required from providers of electronic communication networks or services when they cease activities.
- (29) This Directive should be without prejudice to Member States' obligations to provide any information necessary for the defence of Community interests within the context of international agreements. This Directive should also be without prejudice to any reporting obligations under legislation which is not specific to the electronic communications sector such as competition law.
- (30) Administrative charges may be imposed on providers of electronic communications services in order to finance the activities of the national regulatory authority in managing the authorisation system and for the granting of rights of use. Such charges should be limited to cover the actual administrative costs for those activities. For this purpose transparency should be created in the income and expenditure of national regulatory authorities by means of annual reporting about the total sum of charges collected and the administrative costs incurred. This will allow undertakings to verify that administrative costs and charges are in balance.
- (31) Systems for administrative charges should not distort competition or create barriers for entry into the market. With a general authorisation system it will no longer be possible to attribute administrative costs and hence charges to individual undertakings except for the granting of rights to use numbers, radio frequencies and for rights to install facilities. Any applicable administrative charges should be in line with the principles of a general authorisation system. An example of a fair, simple and transparent alternative for these charge attribution criteria could be a turnover-related distribution key. Where administrative charges are very low, flat-rate charges, or charges combining a flat-rate basis with a turnover related element could also be appropriate.
- (32) In addition to administrative charges, usage fees may be levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Such fees should not hinder the development of innovative services and competition in the market. This Directive is without prejudice to the purpose for which fees for rights of use are employed. Such fees may for instance be used to finance activities of national regulatory authorities that cannot be covered by administrative charges.
- (33) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is objectively justified. Such changes should be duly notified to all interested parties in good time giving them adequate opportunity to express their views on any such amendments.
- (34) The objective of transparency requires that service providers, consumers and other interested parties have easy access to any information regarding rights, conditions, procedures, charges, fees and decisions concerning the provision of electronic communications services, rights of use of radio frequencies and numbers, rights to install facilities, national frequency usage plans and national numbering plans. The national regulatory authorities have an important task in providing such information and keeping it up to date. Where such rights are administered by other levels of government, the national regulatory authorities should endeavour to create a user friendly instrument for access to information regarding such rights.
- (35) The proper functioning of the single market on the basis of the national authorisation regimes under this Directive should be monitored by the Commission.
- (36) In order to arrive at a single date of application of all elements of the new regulatory framework for the electronic communications sector, it is important that the process of national transposition of this Directive and of alignment of the existing licences with the new rules take place in parallel. However, in specific cases where the replacement of authorisations existing on the date of entry into force of this Directive by the general authorisation and the individual rights of use in accordance with this Directive would lead to an increase in the obligations for service providers operating under an existing authorisation or to a reduction of their rights, Member States may avail themselves of an additional 12 months after the date of application of this Directive for alignment of such licences, unless this would have a negative effect on the rights and obligations of other undertakings.

- (37) There may be circumstances under which the abolition of an authorisation condition regarding access to electronic communications networks would create serious hardship for one or more undertakings that have benefited from the condition. In such cases further transitional arrangements may be granted by the Commission, on request by a Member State,
- (38) Since the objectives of the proposed action, namely the harmonisation and simplification of electronic communications rules and conditions for the authorisation of networks and services cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary for those objectives,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

##### Objective and scope

1. The aim of this Directive is to implement an internal market in electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions in order to facilitate their provision throughout the Community.
2. This Directive shall apply to authorisations for the provision of electronic communications networks and services.

#### Article 2

##### Definitions

1. For the purposes of this Directive, the definitions set out in Article 2 of Directive 2001/.../EC (Framework Directive) shall apply.
2. The following definitions shall also apply:
  - (a) 'general authorisation' means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive;
  - (b) 'harmful interference' means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously

degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations.

#### Article 3

##### General authorisation of electronic communications networks and services

1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 46(1) of the Treaty.
2. The provision of electronic communications networks or the provision of electronic communications services may, without prejudice to the specific obligations referred to in Article 6(2) or rights of use referred to in Article 5, only be subject to a general authorisation. The undertaking concerned may be required to submit a notification but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. On notification, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use in Articles 5, 6 and 7.
3. The notification referred to in paragraph 2 shall not entail more than a declaration by a legal or natural person to the national regulatory authority of the intention to commence the provision of electronic communication networks or services and the submission of the minimal information which is required to allow the national regulatory authority to keep a register or list of providers of electronic communications networks and services. This information must be limited to what is necessary for the identification of the provider, such as company registration numbers, and the provider's contact persons, the provider's address, a short description of the network or service, and an estimated date for starting the activity.

#### Article 4

##### Minimum list of rights derived from the general authorisation

1. Undertakings authorised pursuant to Article 3, shall have the right:
  - (a) to provide electronic communications networks and services;
  - (b) to have their application for the necessary rights to install facilities considered in accordance with Article 10 of Directive 2001/.../EC (Framework Directive).

2. When such undertakings provide electronic communications networks or services to the public the general authorisation shall also give them the right:

- (a) to negotiate interconnection with and where applicable obtain access to or interconnection from other providers of publicly available communications networks and services covered by a general authorisation anywhere in the Community under the conditions of and in accordance with Directive 2001/.../EC (Access Directive);
- (b) to be given an opportunity to be designated to provide different elements of a universal service and/or to cover different parts of the national territory in accordance with Directive 2001/.../EC of the European Parliament and of the Council of ... on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) <sup>(1)</sup>.

#### Article 5

### Rights of use for radio frequencies and numbers

1. Member States shall, where possible, in particular where the risk of harmful interference is negligible, not make the use of radio frequencies subject to the grant of individual rights of use but shall include the conditions for usage of such radio frequencies in the general authorisation.

2. Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, on request, to any undertaking providing or using networks or services under the general authorisation, subject to the provisions of Articles 6, 7 and 11(1)(c), and any other rules ensuring the efficient use of those resources in accordance with Directive 2001/.../EC (Framework Directive).

Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television-broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through open, transparent and non-discriminatory procedures. When granting rights of use, Member States shall specify whether those rights can be transferred at the initiative of the right holder, and under which conditions, in the case of radio frequencies, in accordance with Article 8 of Directive 2001/.../EC (Framework Directive). Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned.

3. Decisions on rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been

allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for specific purposes within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

4. Where it has been decided, after consultation with interested parties in accordance with Article 6(1) of Directive 2001/.../EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to three weeks.

With regard to competitive or comparative selection procedures for radio frequencies Article 7 shall apply.

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

#### Article 6

### Conditions attached to the general authorisation and to the rights of use for radio frequencies and for numbers, and specific obligations

1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio frequencies and rights of use for numbers may be subject only to the conditions listed respectively in parts A, B and C of the Annex. Such conditions shall be objectively justified in relation to the network or service concerned, non-discriminatory, proportionate and transparent.

2. Specific obligations which may be imposed on providers of electronic communications networks and services under Articles 5(1) and (2), 6 and 8 of Directive 2001/.../EC (Access Directive) and Articles 16, 17, 18 and 19 of Directive 2001/.../EC (Universal Service Directive) or on those designated to provide universal service under the said Directive shall be legally separate from the rights and obligations under the general authorisation. In order to achieve transparency for undertakings, the criteria and procedures for imposing such specific obligations on individual undertakings, shall be referred to in the general authorisation.

3. The general authorisation shall only contain conditions which are specific for that sector and are set out in Part A of the Annex and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation.

<sup>(1)</sup> See page 55 of this Official Journal.

4. Member States shall not duplicate the conditions of the general authorisation where they grant the right of use for radio frequencies or numbers.

#### Article 7

### Procedure for limiting the number of rights of use to be granted for radio frequencies

1. Where a Member State is considering whether to limit the number of rights of use to be granted for radio frequencies, it shall, *inter alia*:

- (a) give due weight to the need to maximise benefits for users and to facilitate the development of competition;
- (b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation in accordance with Article 6(1) of Directive 2001/.../EC (Framework Directive);
- (c) publish any decision to limit the granting of rights of use, stating the reasons therefor;
- (d) after having determined the procedure invite applications for rights of use;
- (e) review the limitation at reasonable intervals or at the reasonable request of affected undertakings.

2. Where a Member State concludes that further rights of use for radio frequencies can be granted, it shall publish that conclusion and invite applications for such rights.

3. Where the granting of rights of use for radio frequencies needs to be limited, Member States shall grant such rights on the basis of selection criteria which must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives of Article 7 of Directive 2001/.../EC (Framework Directive).

4. Where competitive or comparative selection procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 5(3) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than eight months.

These time limits shall be without prejudice to any applicable international agreements relating to the use of radio frequencies and satellite coordination.

5. This Article is without prejudice to the transfer of rights of use for radio frequencies in accordance with Article 8 of Directive 2001/.../EC (Framework Directive).

#### Article 8

### Harmonised assignment of radio frequencies

Where the usage of radio frequencies has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio frequencies shall be assigned have been selected in accordance with international agreements and Community rules, Member States shall grant the right of use for such radio frequencies in accordance therewith. Provided that all national conditions attached to the right to use the radio frequencies concerned have been satisfied in the case of a common selection procedure, Member States shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the common assignment of such radio frequencies.

#### Article 9

### Declarations to facilitate the exercise of rights to install facilities and rights of interconnection

At the request of an undertaking, national regulatory authorities shall, within one week, issue standardised declarations, confirming, where applicable, that the undertaking has submitted a notification under Article 3(2) and detailing under what circumstances any undertaking providing electronic communications networks or services under the general authorisation has the right to apply for rights to install facilities, negotiate interconnection, and/or obtain access or interconnection in order to facilitate the exercise of those rights for instance at other levels of government or in relation to other undertakings. Where appropriate such declarations may also be issued as an automatic reply following the notification referred to in Article 3(2).

#### Article 10

### Compliance with the conditions of the general authorisation or of rights of use and with specific obligations

1. National regulatory authorities may require undertakings providing electronic communications networks or services covered by the general authorisation or enjoying rights of use for radio frequencies or numbers to provide information necessary to verify compliance with the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article 6(2), in accordance with Article 11.

2. Where a national regulatory authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation, or of rights of use or with the specific obligations referred to in Article 6(2), it shall notify the undertaking of those findings and give the undertaking a reasonable opportunity to state its views or remedy any breaches within:

- one month after notification, or
- a shorter period agreed by the undertaking or stipulated by the national regulatory authority in case of repeated breaches, or
- a longer period decided by the national regulatory authority.

3. If the undertaking concerned does not remedy the breaches within the period as referred to in paragraph 2, the relevant authority shall take appropriate and proportionate measures aimed at ensuring compliance. In this regard, Member States may empower the relevant authorities to impose financial penalties where appropriate. The measures and the reasons on which they are based shall be communicated to the undertaking concerned within one week of their adoption and shall stipulate a reasonable period for the undertaking to comply with the measure.

4. Notwithstanding the provisions of paragraphs 2 and 3, Member States may empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with obligations imposed under Article 11(1)(a) or (b) of this Directive or Article 9 of Directive 2001/.../EC (Access Directive) within a reasonable period stipulated by the national regulatory authority.

5. In cases of serious and repeated breaches of the conditions of the general authorisation, the rights of use or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use.

6. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation, rights of use or specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its view and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures.

7. Undertakings shall have the right to appeal against measures taken under this Article in accordance with the procedure referred to in Article 4 of Directive 2001/.../EC (Framework Directive).

#### Article 11

#### Information required under the general authorisation, for rights of use and for the specific obligations

1. Without prejudice to information and reporting obligations under national legislation other than the general authorisation, national regulatory authorities may only require undertakings to provide information under the general authorisation, for rights of use or the specific obligations referred to in Article 6(2) that is proportionate and objectively justified for:

- (a) systematic or case-by-case verification of compliance with conditions 1 and 2 of Part A, condition 6 of Part B and condition 7 of Part C of the Annex and of compliance with obligations as referred to in Article 6(2);
- (b) case-by-case verification of compliance with conditions as set out in the Annex where a complaint has been received or where the national regulatory authority has other reasons to believe that a condition is not complied with or in case of an investigation by the national regulatory authority on its own initiative;
- (c) procedures for and assessment of requests for granting rights of use;
- (d) publication of comparative overviews of quality and price of services for the benefit of consumers;
- (e) clearly defined statistical purposes;
- (f) market analysis for the purposes of Directive 2001/.../EC (Access Directive) or Directive 2001/.../EC (Universal Service Directive).

The information referred to in points (a), (b), (d), (e) and (f) of the first subparagraph may not be required prior to or as a condition for market access.

2. Where national regulatory authorities require undertakings to provide information as referred to in paragraph 1, they shall inform them of the specific purpose for which this information is to be used.

#### Article 12

#### Administrative charges

1. Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted, shall:



- (a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations as referred to in Article 6(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection, and
- (b) be imposed on the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

2. Where national regulatory authorities impose administrative charges, they shall publish a yearly overview of their administrative costs and of the total sum of the charges collected. In the light of the difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.

#### Article 13

##### **Fees for rights of use and rights to install facilities**

Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 7 of Directive 2001/.../EC (Framework Directive).

#### Article 14

##### **Amendment of rights and obligations**

Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner. Notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.

#### Article 15

##### **Publication of information**

1. Member States shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations and rights of use is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.

2. Where information as referred to in paragraph 1 is held at different levels of government, in particular information regarding procedures and conditions on rights to install facilities, the national regulatory authority shall make all reasonable efforts to create a user-friendly overview of all such information, where the relevant authority deems this possible at proportionate costs, in order to facilitate applications for rights to install facilities.

#### Article 16

##### **Review procedures**

The Commission shall periodically review the functioning of the national authorisation systems and the development of cross-border service provision within the Community and report to the European Parliament and to the Council on the first occasion not later than three years after the date of application of this Directive referred to in Article 18(1), second subparagraph. For this purpose, the Commission may request from the Member States information, which shall be supplied without undue delay.

#### Article 17

##### **Existing authorisations**

1. Member States shall bring authorisations already in existence on the date of entry into force of this Directive into line with the provisions of this Directive by at the latest the date of application referred to in Article 18(1), second subparagraph.

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the obligations under authorisations already in existence, Member States may extend the validity of those rights and obligations until at the latest 12 months after the date of application referred to in Article 18(1), second subparagraph, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefor.

3. Where the Member State concerned can prove that the abolition of an authorisation condition regarding access to electronic communications networks, which was in force before the date of entry into force of this Directive, creates excessive difficulties for undertakings that have benefited from mandated access to another network, and where it is not possible for these undertakings to negotiate new agreements on reasonable commercial terms before the date of application referred to in Article 18(1), second subparagraph, Member States may request a temporary prolongation of the relevant condition(s). Such requests shall be submitted by the date of application referred to in Article 18(1), second subparagraph, at the latest, and shall specify the condition(s) and period for which the temporary prolongation is requested.

The Member State shall inform the Commission of the reasons for requesting a prolongation. The Commission shall consider such a request, taking into account the particular situation in that Member State and of the undertaking(s) concerned, and the need to ensure a coherent regulatory environment at a Community level. It shall take a decision on whether to grant or reject the request, and where it decides to grant the request, on the scope and duration of the prolongation to be granted. The Commission shall communicate its decision to the Member State concerned within six months of receipt of the application for a prolongation. Such decisions shall be published in the *Official Journal of the European Communities*.

#### Article 18

#### Transposition

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by ... (\*) at the latest. They shall forthwith inform the Commission thereof.

They shall apply those measures from ... (\*\*).

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

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive and of any subsequent amendments to those provisions.

#### Article 19

#### Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

#### Article 20

#### Addressees

This Directive is addressed to the Member States.

Done at ...

For the European Parliament

The President

For the Council

The President

(\*) Fifteen months after the date of entry into force.

(\*\*) The first day after the expiry of this 15-month period.

## ANNEX

The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations (Part A), rights to use radio frequencies (Part B) and rights to use numbers (Part C) as referred to in Article 6(1) and Article 11(1)(a).

## A. CONDITIONS WHICH MAY BE ATTACHED TO A GENERAL AUTHORISATION

1. Financial contributions to the funding of universal service in conformity with Directive 2001/.../EC (Universal Service Directive).
2. Administrative charges in accordance with Article 12 of this Directive.
3. Interoperability of services and interconnection of networks in conformity with Directive 2001/.../EC (Access Directive).
4. Accessibility of numbers from the national numbering plan to end-users including conditions in conformity with Directive 2001/.../EC (Universal Service Directive).
5. Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with Directive 2001/.../EC (Framework Directive) and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.
6. 'Must carry' obligations in conformity with Directive 2001/.../EC (Universal Service Directive).
7. Personal data and privacy protection specific to the electronic communications sector in conformity with Directive 2001/.../EC of the European Parliament and of the Council of ... on the processing of personal data and the protection of privacy in the electronic communications sector (Data Protection Directive) <sup>(1)</sup>.
8. Consumer protection rules specific to the electronic communications sector including conditions in conformity with Directive 2001/.../EC (Universal Service Directive).
9. Restrictions in relation to the transmission of illegal content, in accordance with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market <sup>(2)</sup> and restrictions in relation to the transmission of harmful content in accordance with Article 2a(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities <sup>(3)</sup>.
10. Information to be provided under a notification procedure in accordance with Article 3(3) of this Directive and for other purposes as included in Article 11 of this Directive.
11. Enabling of legal interception by competent national authorities in conformity with Directive 2001/.../EC (Data Protection Directive) and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(4)</sup>.
12. Terms of use during major disasters to ensure communications between emergency services and authorities and broadcasts to the general public.
13. Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with Community law.

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<sup>(1)</sup> OJ C ...

<sup>(2)</sup> OJ L 178, 17.7.2000, p. 1.

<sup>(3)</sup> OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

<sup>(4)</sup> OJ L 281, 23.11.1995, p. 31.

14. Access obligations other than those provided for in Article 6(2) of this Directive applying to undertakings providing electronic communications networks or services, in conformity with Directive 2001/.../EC (Access Directive).
15. Maintenance of the integrity of public communications networks in accordance with Directive 2001/.../EC (Access Directive) and Directive 2001/.../EC (Universal Service Directive) including by conditions to prevent electromagnetic interference between electronic communications networks and/or services in accordance with Council Directive 89/336/EEC of 3 May 1989 on the approximation of laws of Member States relating to electromagnetic compatibility<sup>(1)</sup>.
16. Security of public networks against unauthorised access according to Directive 2001/.../EC (Data Protection Directive).
17. Conditions for the use of radio frequencies, in conformity with Article 7(2) of Directive 1999/5/EC, where such use is not made subject to the granting of individual rights of use in accordance with Article 5(1) of this Directive.
18. Measures designed to ensure compliance with the standards and/or specifications referred to in Article 16 of Directive 2001/.../EC (Framework Directive).

#### B. CONDITIONS WHICH MAY BE ATTACHED TO RIGHTS OF USE FOR RADIO FREQUENCIES

1. Designation of service or type of network or technology for which the rights of use for the frequency has been granted, including, where applicable, the exclusive use of a frequency for the transmission of specific content or specific audiovisual services.
2. Effective and efficient use of frequencies in conformity with Directive 2001/.../EC (Framework Directive), including, where appropriate, coverage requirements.
3. Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.
4. Maximum duration in conformity with Article 5 of this Directive, subject to any changes in the national frequency plan.
5. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with Directive 2001/.../EC (Framework Directive).
6. Usage fees in accordance with Article 13 of this Directive.
7. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
8. Obligations under relevant international agreements relating to the use of frequencies.

#### C. CONDITIONS WHICH MAY BE ATTACHED TO RIGHTS OF USE FOR NUMBERS

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service.
2. Effective and efficient use of numbers in conformity with Directive 2001/.../EC (Framework Directive).
3. Number portability requirements in conformity with Directive 2001/.../EC (Universal Service Directive).
4. Obligation to provide public directory subscriber information for the purposes of Articles 5 and 25 of Directive 2001/.../EC (Universal Service Directive).
5. Maximum duration in conformity with Article 5 of this Directive, subject to any changes in the national numbering plan.

<sup>(1)</sup> OJ L 139, 23.5.1989, p. 19. Directive as last amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p. 1).

6. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with Directive 2001/.../EC (Framework Directive).
  7. Usage fees in accordance with Article 13 of this Directive.
  8. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
  9. Obligations under relevant international agreements relating to the use of numbers.
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## STATEMENT OF THE COUNCIL'S REASONS

### I. INTRODUCTION

1. On 29, 30 and 31 August 2000 the Commission submitted a package of proposals for a regulatory framework applicable to electronic communications infrastructure and associated services. This document refers to one important element of this package: a proposal for a Directive of the European Parliament and of the Council on the authorisation of electronic communications networks and services, known as the 'Authorisation Directive'.
2. The European Parliament delivered its opinion at first reading on 1 March 2001 and the Economic and Social Committee delivered its opinion on 21 January 2001. The Committee of the Regions informed the Council that it did not intend to deliver an opinion on this file.
3. On 17 September 2001 the Council adopted its Common Position in accordance with Article 251 of the Treaty.

### II. OBJECTIVE

1. The purpose of the regulatory package proposed is to bring current Community legislation on telecommunications into line with the far-reaching changes which have taken place in the telecommunications, media and information technologies sectors. The convergence of these sectors underlies the approach in the Commission's proposals which seek to bring all transmission networks and associated services together under a single regulatory framework.
2. The proposal for a Directive on the authorisation of electronic communications networks and services, which is the subject of this document, is intended to replace Directive 97/13/EC on authorisations and licences. It obliges recourse to be had to general authorisations, except for the granting of radio spectrum and numbering, and sets new limits on the conditions that can be imposed on service suppliers. The intention is to simplify procedures for seeking authorisations by doing away with information requirements and by curtailing the scope of conformity controls.

### III. ANALYSIS OF THE COMMON POSITION

#### A. GENERAL COMMENTS

In adopting its Common Position the Council has endorsed the approach and aims proposed by the Commission. A number of changes to both the substance and the wording of the proposed Directive have nevertheless been made principally with a view to:

- taking account of the opinion of the European Parliament,
- addressing a small number of specific issues which created difficulties,
- rendering the wording of the Directive more precise and thus improving the legal clarity of the text.

## B. SPECIFIC COMMENTS

1. *Principal changes made to the Commission proposal*(a) **Administrative charges (Article 12)**

Mindful of the importance of maintaining the financial independence of national regulatory authorities (NRAs), the Council has extended the scope of administrative costs which may be recovered through charges.

The Council also shared the opinion of the European Parliament that the explicit requirement to link charges proportionately to an undertaking's turnover should be deleted. A logical consequence of this approach was to also delete the specific exemption for undertakings with low turnover.

(b) **Deadlines for decisions on rights of use for numbers and radio frequencies [Article 5(3) and (3a), Article 7(4)]**

The Council shares the approach proposed by the Commission, and supported by the European Parliament, that strict deadlines should be in place for decisions on rights to use frequencies and numbers. However, it has been considered necessary to slightly extend the basic deadlines for numbers (now three weeks, instead of two) and the maximum deadlines for frequencies allocated by competitive or comparative selection (now eight months, instead of six).

(c) **Review procedures — comitology (Article 16)**

The Council did not consider it appropriate to include the possibility of further harmonisation of national provisions on the basis of a comitology procedure. Any such future harmonisation should, it considers, be based on a co-decision procedure, thus ensuring the full involvement of the European Parliament.

(d) **Article 17 (existing authorisations)**

Given the difficulties likely to be experienced in some Member States when bringing existing licences into line with this Directive, the additional period granted for cases where alignment would reduce rights or extend obligations has been extended from six to twelve months. In addition a new possibility for Member States to request a temporary prolongation in cases causing excessive difficulties for undertakings has been included.

2. *The Council's position on the European Parliament amendments*(a) **Amendments incorporated fully or in part into the Common Position**

The Council accepted in full, in part or in principle amendments 1, 2, 3, 5, 12, 13, 14, 18, 25, and 26. For certain of these amendments the near-complete wording has been taken on board, while others have been incorporated in a different form which nevertheless maintains the aim underlying the amendment or parts of the amendment.

(b) **Amendments not incorporated into the Common Position**

In not incorporating amendments 4, 7, 9, 15, 19 and 27, the Council followed the Commission's opinion.

In not incorporating amendments 8, 11, 21, 23, 24 and 28, the Council based its decisions on the following considerations:

- *amendment 8 (maintaining free rights of way)*  
while understanding the reasons behind the request to add a guarantee that where no fees exist now, none shall be levied in the future, the Council was unable to include such a commitment, given that competences in this area are often decentralised to local level,
  - *amendment 11 (territorial coverage of authorisation)*  
the clarification regarding validity of general authorisations throughout a Member State's territory raised specific difficulties for certain Member States in respect of their overseas territories and islands,
  - *amendment 21 (fees for rights of use and rights to install facilities)*  
the Council found the requirement to provide for payment in annual instalments to be very detailed and prescriptive for a Community-level instrument. The requirement to submit decisions on fees to the Framework Directive's transparency mechanism (Article 6) seemed inconsistent with the fact that if will not always be the NRA that takes such measures,
  - *amendment 23 (Information regarding rights of way)*  
the Council considered the Commission proposal for a register of information to be disproportionate and burdensome. However noting the contents of the European Parliament amendment, the Council has sought to reach a compromise which maintains Article 15(2) in a 'softer' form, while including in the revised recital 18 (now 34) a formulation addressing Parliament's concern about identifying the authority responsible,
  - *amendment 24 (deduction of charges already paid before the Directive's entry into force)*  
the Council considered this to be a matter best left to national legal systems,
  - *amendment 28 (Article 14 — amendment of rights and obligations)*  
this amendment limiting the situations where Member States can amend rights of use or rights of way, seemed unnecessary given the general requirement for such changes to be 'objectively justified' and 'proportionate'.
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