



COMMISSION OF THE EUROPEAN COMMUNITIES

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OPINION OF THE COMMISSION

**pursuant to Article 251 (2), third subparagraph, point (c) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a**

**DIRECTIVE OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on universal service and users' rights relating to electronic communications networks
and services**

**AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 250 (2) of the EC Treaty**

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1. INTRODUCTION

Article 251(2), third subparagraph, point (c) of the EC Treaty provides that the Commission is to deliver an opinion on the amendments proposed by the European Parliament at second reading. The Commission sets out its opinion below on the 25 amendments proposed by Parliament.

2. BACKGROUND

In response to the conclusions of the special European Council of Lisbon of 23 – 24 March 2000, and building on the Communication on the results of the public consultation on the 1999 Review of the Electronic Communications Sector and the principles and orientations for the new Regulatory Framework (COM(2000)239), the Commission proposed a package of five directives that would make up the new regulatory framework. The new framework seeks to take account of the convergence between telecommunications, broadcasting and IT sectors. It seeks to reinforce competition in all market segments, while ensuring that the basic rights of consumers continue to be protected. It is designed to cater for new, dynamic and largely unpredictable markets with many more players than today.

The European Parliament adopted its first reading amendments on 1 March 2001. The Council adopted its common position on 17 September 2001. The amendments voted by the European Parliament in second reading are part of a compromise package of amendments on four directives, including the present directive, and one decision on spectrum that was put as an ensemble to the EP by the Council Presidency. The package was accepted in its totality in the plenary vote by the EP on 12 December. Since the amendments are acceptable to the Council, the conciliation procedure will not be invoked. Final adoption by the Council is foreseen in the beginning of 2002 following verification of the texts by jurist-linguists.

3. PURPOSE OF THE PROPOSAL

This directive aims to ensure 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 and for ensuring a

maximum of information transparency. 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 the provision of leased lines. Finally, it lays down harmonised rules for the imposition of ‘must carry’ obligations by Member States on network operators.

4. OPINION OF THE COMMISSION ON THE AMENDMENTS BY THE EUROPEAN PARLIAMENT

The Parliament adopted 25 amendments to the Universal Service directive on 12 December 2001. The Commission can accept all of them in full.

4.1. “Must carry” (amendment 4)

Amendment 4, relating to Recital 43, recognises that MS have the possibility to include specific measures for appropriate access by disabled users within “must carry” obligations imposed under the directive. This amendment makes clear that MS may impose, in the context of ‘must carry’ obligations, requirements for network operators to transmit certain services to ensure access by disabled, which the Commission fully supports.

4.2. Standard for digital TV (amendment 2)

The Parliament came back in its second reading to provisions on interoperability, in particular implementation of the so-called Multimedia Home Platform (MHP) standard for interactive services on digital TV. The EP amendment avoids mandating the MHP standard and endorsed the approach whereby standardisation should be industry-led and voluntary. This compromise, in amendment 2 to recital 33, strikes a good balance between the two positions. It leaves to the industry the task to agree on a common standard for display and presentation of digital interactive television services by means of a market-driven mechanism, which the Commission fully supports.

4.3. Rights of disabled users and quality of service standards (amendments 1, 8, 10, 19 and 20)

Several amendments adopted by the European Parliament in second reading extend specific provisions, in Recital 13, and in Articles 6, 11 and 33, on quality of service standards, performance standards and relevant parameters to cover the quality of service for disabled users. These are important additions to the directive. Amendments 1 and 10 foresee the development of new parameters, to assess the quality of services for disabled users, while Amendment 8 ensures that disabled users’ needs are considered when providing public pay telephones. Amendment 19 ensures that disabled users’ views must be considered during the public consultations that Member States conduct under the directive while Amendment 20 encourages interested parties to develop codes of conduct and operating standards in order to improve the general quality of service provision. The Commission can accept all of the amendments in full.

4.4. Consumer protection, retail price regulation and price and information transparency (amendments 9, 11, 12, 14, 18, 22, 23, 24 and 25)

Several amendments relating to consumer protection, retail regulation and price and information transparency were adopted by the European Parliament in second reading, concerning Articles 17, 20, 21 and 34, Annex I and Annex II.

In the sensitive area of retail tariff regulation, EP Amendment 11 strikes a good balance between Parliamentary and Council positions. The EP amendment no longer requires that NRAs adopt a reasoned opinion before concluding that wholesale regulation would not correct the competition problem in the relevant market. The EP amendment has nonetheless strengthened the Common Position text in that NRAs were only required to “consider” that wholesale regulation would be insufficient before imposing retail tariff regulation. The amendment adopted by the Parliament in second reading introduces greater rigour into the regulatory assessment by NRAs, which is acceptable both to the Council and the Commission. Amendment 12 improves the drafting and clarifies the scope of obligations relating to the implementation of appropriate cost accounting systems. EP Amendment 14 specifies that the ‘particulars of prices and tariffs’ must be included in subscriber contracts. Further modification of contract terms is covered by another provision of the directive whereby subscribers may withdraw without penalty if the terms are proposed to be modified.

Amendment 18 encourages NRAs to facilitate the provision of information on prices and the development of interactive guides. The original wording of the amendment at first reading prescribed the obligation as falling on NRAs to ensure the development of interactive on-line guides. The text of this amendment was re-formulated in second reading to improve its drafting. Amendment 25 mandates more information to be published on certain facilities and services available under universal service, such as measures designed to control expenditure.

The Commission supports all these amendments in full.

4.5. Use of co-regulation (amendment 6)

Amendment 6 endorses the principle of co-regulation in Recital 48 for achieving quality of standards and improved performance, but stipulates that co-regulatory measures should be guided by the same principles as formal regulation. The original formulation of Amendment 6 was more prescriptive. In this softer version, the Commission can accept the amendment in full.

4.6. Extending regulation to SMEs (amendments 5, 7, 13, 15, 16, 17 and 21)

Amendments 5, 7, 13, 15, 16, 17 and 21 allow Member States to go beyond the minimum harmonisation prescribed so as to allow extension of certain obligation of the Directive, that must cover all consumers, to cover also small and medium-sized enterprises. These are amendments that the Commission fully supports.

4.7. 112 emergency number (amendment 3)

Amendment 3 recognises that the obligation for network operators to provide caller location information to national emergency authorities is limited to the technical feasibility of the equipment. Amendment 3 notes additionally that any such information must be received and used in accordance of the Data Protection Directive. The Commission fully supports these provisions.

5. CONCLUSION

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its proposal as set out above.