

# Official Journal

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## Legislation

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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## I

(Acts whose publication is obligatory)

**DECISION No 676/2002/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 7 March 2002**

**on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision)**

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) On 10 November 1999 the Commission presented a communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions proposing the next steps in radio spectrum policy on the basis of the results of the public consultation on the Green Paper on radio spectrum policy in the context of European Community policies such as telecommunications, broadcasting, transport and research and development (R & D). This Communication was welcomed by the European Parliament in a Resolution of 18 May 2000 <sup>(4)</sup>. It should be emphasised that a certain degree of further harmonisation of Community policy on the radio spectrum is desirable for services and applications, in particular for services and applications with Community or European coverage, and that it is necessary to ensure that the Member States make applicable in the required manner certain decisions of the European Conference of Postal and Telecommunications Administrations (CEPT).
- (2) A policy and legal framework therefore needs to be created in the Community in order to ensure coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in Community policy areas, such as electronic

communications, transport and R & D. The policy approach with regard to the use of radio spectrum should be coordinated and, where appropriate, harmonised at Community level, in order to fulfil Community policy objectives efficiently. Community coordination and harmonisation may also help achieving harmonisation and coordination of the use of the radio spectrum at global level in certain cases. At the same time, appropriate technical support can be provided at national level.

- (3) Radio spectrum policy in the Community should contribute to freedom of expression, including freedom of opinion and freedom to receive and disseminate information and ideas, irrespective of borders, as well as freedom and plurality of the media.
- (4) This Decision is based on the principle that, where the European Parliament and the Council have agreed on a Community policy which depends on radio spectrum, committee procedures should be used for the adoption of accompanying technical implementing measures. Technical implementing measures should specifically address harmonised conditions with regard to the availability and efficient use of radio spectrum, as well as the availability of information related to the use of radio spectrum. The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(5)</sup>.
- (5) Any new Community policy initiative depending on radio spectrum should be agreed by the European Parliament and the Council as appropriate, on the basis of a proposal from the Commission. Without prejudice to the right of initiative of the Commission, this proposal should include, *inter alia*, information on the impact of the envisaged policy on existing spectrum user communities as well as indications regarding any general radio frequency reallocation that this new policy would require.
- (6) For the development and adoption of technical implementing measures and with a view to contributing to the formulation, preparation and implementation of

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 256 and OJ C 25 E, 29.1.2002, p. 468.

<sup>(2)</sup> OJ C 123, 25.4.2001, p. 61.

<sup>(3)</sup> Opinion of the European Parliament of 5 July 2001 (not yet published in the Official Journal), Council Common Position of 16 October 2001 (OJ C 9, 11.1.2002, p. 7) and Decision of the European Parliament of 12 December 2001 (not yet published in the Official Journal). Council Decision of 14 February 2002.

<sup>(4)</sup> OJ C 59, 23.2.2001, p. 245.

<sup>(5)</sup> OJ L 184, 17.7.1999, p. 23.

Community radio spectrum policy, the Commission should be assisted by a committee, to be called the Radio Spectrum Committee, composed of representatives of the Member States and chaired by a representative of the Commission. The Committee should consider proposals for technical implementing measures related to radio spectrum. These may be drafted on the basis of discussions in the Committee and may in specific cases require technical preparatory work by national authorities responsible for radio spectrum management. Where committee procedures are used for the adoption of technical implementing measures, the Committee should also take into account the views of the industry and of all users involved, both commercial and non-commercial, as well as of other interested parties, on technological, market and regulatory developments which may affect the use of radio spectrum. Radio spectrum users should be free to provide all input they believe is necessary. The Committee may decide to hear representatives of radio spectrum user communities at its meetings where necessary to illustrate the situation in a particular sector.

- (7) Where it is necessary to adopt harmonisation measures for the implementation of Community policies which go beyond technical implementing measures, the Commission may submit to the European Parliament and to the Council a proposal on the basis of the Treaty.
- (8) Radio spectrum policy cannot be based only on technical parameters but also needs to take into account economic, political, cultural, health and social considerations. Moreover, the ever increasing demand for the finite supply of available radio spectrum will lead to conflicting pressures to accommodate the various groups of radio spectrum users in sectors such as telecommunications, broadcasting, transport, law enforcement, military and the scientific community. Therefore, radio spectrum policy should take into account all sectors and balance the respective needs.
- (9) This Decision should not affect the right of Member States to impose restrictions necessary for public order and public security purposes and defence. Where a technical implementing measure would affect *inter alia* radio frequency bands used by a Member State exclusively and directly for its public security and defence purposes, the Commission may, if the Member State requests it on the basis of justified reasons, agree to transitional periods and/or sharing mechanisms, in order to facilitate the full implementation of that measure. In this regard, Member States may also notify the Commission of their national radio frequency bands used exclusively and directly to pursue public security and defence purposes.
- (10) In order to take into account the views of Member States, Community institutions, industry and of all users involved, both commercial and non-commercial, as well as of other interested parties on technological, market and regulatory developments which may affect the use of radio spectrum, the Commission may organise consultations outside the framework of this Decision.
- (11) Radio spectrum technical management includes the harmonisation and allocation of radio spectrum. Such harmonisation should reflect the requirements of general policy principles identified at Community level. However, radio spectrum technical management does not cover assignment and licensing procedures, nor the decision whether to use competitive selection procedures for the assignment of radio frequencies.
- (12) With a view to the adoption of technical implementing measures addressing the harmonisation of radio frequency allocation and of information availability, the Committee should cooperate with radio spectrum experts from national authorities responsible for radio spectrum management. Building on the experience of mandating procedures gained in specific sectors, for example as a result of the application of Decision No 710/97/EC of the European Parliament and of the Council of 24 March 1997 on a coordinated authorisation approach in the field of satellite personal-communication services in the Community <sup>(1)</sup> and Decision No 128/1999/EC of the European Parliament and of the Council of 14 December 1998 on the coordinated introduction of a third generation mobile and wireless communications system (UMTS) in the Community <sup>(2)</sup>, technical implementing measures should be adopted as a result of mandates to the CEPT. Where it is necessary to adopt harmonised measures for the implementation of Community policies which do not fall within the remit of CEPT, the Commission could adopt implementation measures with the assistance of the Radio Spectrum Committee.
- (13) The CEPT comprises 44 European countries. It drafts technical harmonisation measures with the objective of harmonising the use of radio spectrum beyond the Community borders, which is particularly important for those Member States where the use of radio spectrum may be affected by that of the non-EU members of CEPT. Decisions and measures taken in accordance with this Decision should take account of the specific situation of Member States with external frontiers. Where necessary, the Commission should be able to make the results of mandates issued to CEPT compulsory for Member States, and where the results of such mandates are not available or deemed not

<sup>(1)</sup> OJ L 105, 23.4.1997, p. 4. Decision as amended by Decision No 1215/2000/EC (OJ L 139, 10.6.2000, p. 1).

<sup>(2)</sup> OJ L 17, 22.1.1999, p. 1.

acceptable, to take appropriate alternative action. This will in particular provide for the harmonisation of use of radio frequencies across the Community, in line with Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) <sup>(1)</sup> and taking into account the provisions of Directive 2002/20/EC of the European Parliament and the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) <sup>(2)</sup>.

- (14) The coordinated and timely provision to the public of appropriate information concerning the allocation, availability and use of radio spectrum in the Community is an essential element for investments and policy making. So are technological developments which will give rise to new radio spectrum allocation and management techniques and radio frequency assignment methods. Development of long-term strategic aspects require proper understanding of the implications of how technology evolves. Such information should therefore be made accessible in the Community, without prejudice to confidential business and personal information protection under Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector <sup>(3)</sup>. The implementation of a cross-sectoral radio spectrum policy makes the availability of information on the whole radio spectrum necessary. In view of the general purpose of harmonising radio spectrum use in the Community and elsewhere in Europe, the availability of such information needs to be harmonised at European level in a user-friendly manner.
- (15) It is therefore necessary to complement existing Community and international requirements for publication of information on use of radio spectrum. At international level, the reference paper on regulatory principles negotiated in the context of the World Trade Organisation by the Group on Basic Telecommunications also requires that the existing state of allocated radio frequency bands be made publicly available. Commission Directive 96/2/EC of 16 January 1996 amending Directive 90/388/EEC with regard to mobile and personal communications <sup>(4)</sup> required Member States to publish every year or make available on request the allocation scheme of radio frequencies, including plans for future extension of such frequencies, but covered only mobile and personal communications services. Moreover, 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>(5)</sup>, as well as Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services <sup>(6)</sup>, require Member States to notify the Commission of the interfaces which they have regulated so as to assess their compatibility with Community law.

- (16) Directive 96/2/EC was at the origin of the adoption of a first set of measures by CEPT such as European Radiocommunications Committee Decision (ERC/DEC/(97)01) on the publication of national tables of radio spectrum allocations. It is necessary to ensure that CEPT solutions reflect the needs of Community policy and are given the appropriate legal basis so as to be implemented in the Community. For that purpose, specific measures have to be adopted in the Community both on procedure and substance.
- (17) Community undertakings should obtain fair and non-discriminatory treatment on access to radio spectrum in third countries. As access to radio spectrum is a key factor for business development and public interest activities, it is also necessary to ensure that Community requirements for radio spectrum are reflected in international planning.
- (18) Implementation of Community policies may require coordination of radio spectrum use, in particular with regard to the provision of communications services including Community-wide roaming facilities. Moreover, certain types of radio spectrum use entail a geographical coverage which goes beyond the borders of a Member State and allow for transborder services without requiring the movement of persons, such as satellite communications services. The Community should therefore be adequately represented in the activities of all relevant international organisations and conferences related to radio spectrum management matters, such as within the International Telecommunication Union (ITU) and its World Radiocommunications Conferences.
- (19) The existing preparation and negotiation mechanisms for ITU World Radiocommunication Conferences have generated excellent results due to willing cooperation within the CEPT, and the Community's interests have

<sup>(1)</sup> See page 33 of this Official Journal.

<sup>(2)</sup> See page 21 of this Official Journal.

<sup>(3)</sup> OJ L 24, 30.1.1998, p. 1.

<sup>(4)</sup> OJ L 20, 26.1.1996, p. 59.

<sup>(5)</sup> OJ L 91, 7.4.1999, p. 10.

<sup>(6)</sup> OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

been taken into account in the preparations. In international negotiations, Member States and the Community should develop a common action and closely cooperate during the whole negotiations process so as to safeguard the unity of the international representation of the Community in line with the procedures which had been agreed in the Council conclusions of 3 February 1992 for the World Administrative Radio Conference and as confirmed by the Council conclusions of 22 September 1997 and 2 May 2000. For such international negotiations, the Commission should inform the European Parliament and the Council whether Community policies are affected, with a view to obtaining endorsement by the Council on the Community policy objectives to be achieved and on the positions to be taken by Member States at international level. In order to ensure that such positions also appropriately address the technical dimension related to radio spectrum management, the Commission may issue mandates to the CEPT for this purpose. Member States should accompany any act of acceptance of any agreement or regulation within international fora in charge of, or concerned with, radio spectrum management by a joint declaration stating that they will apply such agreement or regulation in accordance with their obligations under the Treaty.

- (20) In addition to international negotiations specifically addressing radio spectrum, there are other international agreements involving the Community and third countries which may affect radio frequency bands usage and sharing plans and which may address issues such as trade and market access, including in the World Trade Organisation framework, free circulation and use of equipment, communications systems of regional or global coverage such as satellites, safety and distress operations, transportation systems, broadcasting technologies, and research applications such as radio astronomy and earth observation. It is therefore important to ensure compatibility between the Community's arrangements for negotiating trade and market access issues with the radio spectrum policy objectives to be pursued under this Decision.
- (21) It is necessary, due to the potential commercial sensitivity of information which may be obtained by national authorities in the course of their action relating to radio spectrum policy and management, that the national authorities apply common principles in the field of confidentiality laid down in this Decision.
- (22) Since the objective of the proposed action, namely to establish a common framework for radio spectrum policy, 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 Decision does not go beyond what is necessary in order to achieve that objective.

- (23) Member States should implement this common framework for radio spectrum policy in particular through their national authorities and provide the Commission with the relevant information required to assess its proper implementation throughout the Community, taking into account international trade obligations of the Community and its Member States.
- (24) Decisions No 710/97/EC and No 128/1999/EC remain in force.
- (25) The Commission should report annually to the European Parliament and the Council on the results achieved under this Decision, as well as on planned future actions. This may allow the European Parliament and the Council to express their political support, where appropriate,

HAVE ADOPTED THIS DECISION:

#### Article 1

#### **Aim and scope**

1. The aim of this Decision is to establish a policy and legal framework in the Community in order to ensure the coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of the radio spectrum necessary for the establishment and functioning of the internal market in Community policy areas such as electronic communications, transport and research and development (R & D).
2. In order to meet this aim, this Decision establishes procedures in order to:
  - (a) facilitate policy making with regard to the strategic planning and harmonisation of the use of radio spectrum in the Community taking into consideration *inter alia* economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of Community policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and of avoiding harmful interference;
  - (b) ensure the effective implementation of radio spectrum policy in the Community, and in particular establish a

general methodology to ensure harmonised conditions for the availability and efficient use of radio spectrum;

- (c) ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio spectrum in the Community;
- (d) ensure the effective coordination of Community interests in international negotiations where radio spectrum use affects Community policies.

3. Activities pursued under this Decision shall take due account of the work of international organisations related to radio spectrum management, e.g. the International Telecommunication Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT).

4. This Decision is without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy, to the provisions of Directive 1999/5/EC and to the right of Member States to organise and use their radio spectrum for public order and public security purposes and defence.

#### Article 2

#### Definition

For the purposes of this Decision, 'radio spectrum' includes radio waves in frequencies between 9 kHz and 3 000 GHz; radio waves are electromagnetic waves propagated in space without artificial guide.

#### Article 3

#### Committee procedure

1. The Commission shall be assisted by a committee ('the Radio Spectrum Committee').
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its rules of procedure.

#### Article 4

#### Function of the Radio Spectrum Committee

1. In order to meet the aim set out in Article 1, the Commission shall submit to the Radio Spectrum Committee, in accordance with the procedures set out in this Article, appropriate technical implementing measures with a view to ensuring harmonised conditions for the availability and efficient use of radio spectrum, as well as the availability of information related to the use of radio spectrum, as referred to in Article 5.

2. For the development of technical implementing measures referred to in paragraph 1 which fall within the remit of the CEPT, such as the harmonisation of radio frequency allocation and of information availability, the Commission shall issue mandates to the CEPT, setting out the tasks to be performed and the timetable therefor. The Commission shall act in accordance with the procedure referred to in Article 3(2).

3. On the basis of the work completed pursuant to paragraph 2, the Commission shall decide whether the results of the work carried out pursuant to the mandates shall apply in the Community and on the deadline for their implementation by the Member States. These decisions shall be published in the *Official Journal of the European Communities*. For the purpose of this paragraph, the Commission shall act in accordance with the procedure referred to in Article 3(3).

4. Notwithstanding paragraph 3, if the Commission or any Member State considers that the work carried out on the basis of a mandate issued pursuant to paragraph 2 is not progressing satisfactorily having regard to the set timetable or if the results of the mandate are not acceptable, the Commission may adopt, acting in accordance with the procedure referred to in Article 3(3), measures to achieve the objectives of the mandate.

5. The measures referred to in paragraphs 3 and 4 may, where appropriate, provide the possibility for transitional periods and/or radio spectrum sharing arrangements in a Member State to be approved by the Commission, where justified, taking into account the specific situation in the Member State, on the basis of a reasoned request by the Member State concerned and provided such exception would not unduly defer implementation or create undue differences in the competitive or regulatory situations between Member States.

6. To achieve the aim set out in Article 1, the Commission may also adopt technical implementing measures referred to in paragraph 1 which are not covered by paragraph 2, acting in accordance with the procedure referred to in Article 3(3).

7. With a view to contributing to the formulation, preparation and implementation of Community radio spectrum policy, and without prejudice to the procedures set out in this Article, the Commission shall consult the Radio Spectrum Committee periodically on the matters covered by Article 1.

*Article 5*

**Availability of information**

Member States shall ensure that their national radio frequency allocation table and information on rights, conditions, procedures, charges and fees concerning the use of radio spectrum, shall be published if relevant in order to meet the aim set out in Article 1. They shall keep this information up to date and shall take measures to develop appropriate databases in order to make such information available to the public, where applicable in accordance with the relevant harmonisation measures taken under Article 4.

*Article 6*

**Relations with third countries and international organisations**

1. The Commission shall monitor developments regarding radio spectrum in third countries and in international organisations, which may have implications for the implementation of this Decision.

2. Member States shall inform the Commission of any difficulties created, *de jure* or *de facto*, by third countries or international organisations for the implementation of this Decision.

3. The Commission shall report regularly on the results of the application of paragraphs 1 and 2 to the European Parliament and the Council and may propose measures with the aim of securing the implementation of the principles and objectives of this Decision, where appropriate. When necessary to meet the aim set out in Article 1, common policy objectives shall be agreed to ensure Community coordination among Member States.

4. Measures taken pursuant to this Article shall be without prejudice to the Community's and Member States' rights and obligations under relevant international agreements.

*Article 7*

**Notification**

Member States shall give the Commission all information necessary for the purpose of verifying the implementation of this Decision. In particular, Member States shall immediately inform the Commission of the implementation of the results of the mandates pursuant to Article 4(3).

*Article 8*

**Confidentiality**

1. Member States shall not disclose information covered by the obligation of business confidentiality, in particular information about undertakings, their business relations or their cost components.

2. Paragraph 1 shall be without prejudice to the right of relevant authorities to undertake disclosure where it is essential for the purposes of fulfilling their duties, in which case such disclosure shall be proportionate and shall have regard to the legitimate interests of undertakings in the protection of their business secrets.

3. Paragraph 1 shall not preclude publication of information on conditions linked to the granting of rights to use radio spectrum which does not include information of a confidential nature.

*Article 9*

**Report**

The Commission shall report on an annual basis to the European Parliament and the Council on the activities developed and the measures adopted pursuant to this Decision, as well as on future actions envisaged pursuant to this Decision.

*Article 10*

**Implementation**

Member States shall take all measures necessary, by laws, regulations and administrative provisions, for the implementation of this Decision and all resulting measures.

*Article 11*

**Entry into force**

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

*Article 12*

**Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 7 March 2002.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

J. C. APARICIO

**DIRECTIVE 2002/19/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 7 March 2002**

**on access to, and interconnection of, electronic communications networks and associated facilities  
(Access Directive)**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

under this Directive except where, in benefiting from access to public networks, they may be subject to conditions laid down by Member States.

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

(2) Services providing content such as the offer for sale of a package of sound or television broadcasting content are not covered by the common regulatory framework for electronic communications networks and services.

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>,

(3) The term 'access' has a wide range of meanings, and it is therefore necessary to define precisely how that term is used in this Directive, without prejudice to how it may be used in other Community measures. An operator may own the underlying network or facilities or may rent some or all of them.

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

Whereas:

(1) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) <sup>(4)</sup> lays down the objectives of a regulatory framework to cover electronic communications networks and services in the Community, including fixed and mobile telecommunications networks, cable television networks, networks used for terrestrial broadcasting, satellite networks and Internet networks, whether used for voice, fax, data or images. Such networks may have been authorised by Member States under Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) <sup>(5)</sup> or have been authorised under previous regulatory measures. The provisions of this Directive apply to those networks that are used for the provision of publicly available electronic communications services. This Directive covers access and interconnection arrangements between service suppliers. Non-public networks do not have obligations

(4) Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals <sup>(6)</sup> did not mandate any specific digital television transmission system or service requirement, and this opened up an opportunity for the market actors to take the initiative and develop suitable systems. Through the Digital Video Broadcasting Group, European market actors have developed a family of television transmission systems that have been adopted by broadcasters throughout the world. These transmissions systems have been standardised by the European Telecommunications Standards Institute (ETSI) and have become International Telecommunication Union recommendations. In relation to wide-screen digital television, the 16:9 aspect ratio is the reference format for wide-format television services and programmes, and is now established in Member States' markets as a result of Council Decision 93/424/EEC of 22 July 1993 on an action plan for the introduction of advanced television services in Europe <sup>(7)</sup>.

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 215 and OJ C 270 E, 25.9.2001, p. 161.

<sup>(2)</sup> OJ C 123, 25.4.2001, p. 50.

<sup>(3)</sup> Opinion of the European Parliament of 1 March 2001 (OJ C 277, 1.10.2001, p. 72), Council Common Position of 17 September 2001 (OJ C 337, 30.11.2001, p. 1) and Decision of the European Parliament of 12 December 2001 (not yet published in the Official Journal). Council Decision of 14 February 2002.

<sup>(4)</sup> See page 33 of this Official Journal.

<sup>(5)</sup> See page 21 of this Official Journal.

<sup>(6)</sup> OJ L 281, 23.11.1995, p. 51.

<sup>(7)</sup> OJ L 196, 5.8.1993, p. 48.

(5) In an open and competitive market, there should be no restrictions that prevent undertakings from negotiating access and interconnection arrangements between themselves, in particular on cross-border agreements,



subject to the competition rules of the Treaty. In the context of achieving a more efficient, truly pan-European market, with effective competition, more choice and competitive services to consumers, undertakings which receive requests for access or interconnection should in principle conclude such agreements on a commercial basis, and negotiate in good faith.

- (6) In markets where there continue to be large differences in negotiating power between undertakings, and where some undertakings rely on infrastructure provided by others for delivery of their services, it is appropriate to establish a framework to ensure that the market functions effectively. National regulatory authorities should have the power to secure, where commercial negotiation fails, adequate access and interconnection and interoperability of services in the interest of end-users. In particular, they may ensure end-to-end connectivity by imposing proportionate obligations on undertakings that control access to end-users. Control of means of access may entail ownership or control of the physical link to the end-user (either fixed or mobile), and/or the ability to change or withdraw the national number or numbers needed to access an end-user's network termination point. This would be the case for example if network operators were to restrict unreasonably end-user choice for access to Internet portals and services.
- (7) National legal or administrative measures that link the terms and conditions for access or interconnection to the activities of the party seeking interconnection, and specifically to the degree of its investment in network infrastructure, and not to the interconnection or access services provided, may cause market distortion and may therefore not be compatible with competition rules.
- (8) Network operators who control access to their own customers do so on the basis of unique numbers or addresses from a published numbering or addressing range. Other network operators need to be able to deliver traffic to those customers, and so need to be able to interconnect directly or indirectly to each other. The existing rights and obligations to negotiate interconnection should therefore be maintained. It is also appropriate to maintain the obligations formerly laid down in Directive 95/47/EC requiring fully digital electronic communications networks used for the distribution of television services and open to the public to be capable of distributing wide-screen television services and programmes, so that users are able to receive such programmes in the format in which they were transmitted.
- (9) Interoperability is of benefit to end-users and is an important aim of this regulatory framework. Encouraging interoperability is one of the objectives for national regulatory authorities as set out in this framework, which also provides for the Commission to publish a list of standards and/or specifications covering the provision of services, technical interfaces and/or network functions, as the basis for encouraging harmonisation in electronic communications. Member States should encourage the use of published standards and/or specifications to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.
- (10) Competition rules alone may not be sufficient to ensure cultural diversity and media pluralism in the area of digital television. Directive 95/47/EC provided an initial regulatory framework for the nascent digital television industry which should be maintained, including in particular the obligation to provide conditional access on fair, reasonable and non-discriminatory terms, in order to make sure that a wide variety of programming and services is available. Technological and market developments make it necessary to review these obligations on a regular basis, either by a Member State for its national market or the Commission for the Community, in particular to determine whether there is justification for extending obligations to new gateways, such as electronic programme guides (EPGs) and application program interfaces (APIs), to the extent that is necessary to ensure accessibility for end-users to specified digital broadcasting services. Member States may specify the digital broadcasting services to which access by end-users must be ensured by any legislative, regulatory or administrative means that they deem necessary.
- (11) Member States may also permit their national regulatory authority to review obligations in relation to conditional access to digital broadcasting services in order to assess through a market analysis whether to withdraw or amend conditions for operators that do not have significant market power on the relevant market. Such withdrawal or amendment should not adversely affect access for end-users to such services or the prospects for effective competition.
- (12) In order to ensure continuity of existing agreements and to avoid a legal vacuum, it is necessary to ensure that obligations for access and interconnection imposed under Articles 4, 6, 7, 8, 11, 12, and 14 of Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the

principles of open network provision (ONP) <sup>(1)</sup>, obligations on special access imposed under Article 16 of Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment <sup>(2)</sup>, and obligations concerning the provision of leased line transmission capacity under Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines <sup>(3)</sup>, are initially carried over into the new regulatory framework, but are subject to immediate review in the light of prevailing market conditions. Such a review should also extend to those organisations covered by Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop <sup>(4)</sup>.

- (13) The review should be carried out using an economic market analysis based on competition law methodology. The aim is to reduce *ex ante* sector specific rules progressively as competition in the market develops. However the procedure also takes account of transitional problems in the market such as those related to international roaming and of the possibility of new bottlenecks arising as a result of technological development, which may require *ex ante* regulation, for example in the area of broadband access networks. It may well be the case that competition develops at different speeds in different market segments and in different Member States, and national regulatory authorities should be able to relax regulatory obligations in those markets where competition is delivering the desired results. In order to ensure that market players in similar circumstances are treated in similar ways in different Member States, the Commission should be able to ensure harmonised application of the provisions of this Directive. National regulatory authorities and national authorities entrusted with the implementation of competition law should, where appropriate, coordinate their actions to ensure that the most appropriate remedy is applied. The Community and its Member States have entered into commitments on interconnection of telecommunications networks in the context of the World Trade Organisation agreement on basic telecommunications and these commitments need to be respected.

- (14) Directive 97/33/EC laid down a range of obligations to be imposed on undertakings with significant market power, namely transparency, non-discrimination, accounting separation, access, and price control including cost orientation. This range of possible

obligations should be maintained but, in addition, they should be established as a set of maximum obligations that can be applied to undertakings, in order to avoid over-regulation. Exceptionally, in order to comply with international commitments or Community law, it may be appropriate to impose obligations for access or interconnection on all market players, as is currently the case for conditional access systems for digital television services.

- (15) The imposition of a specific obligation on an undertaking with significant market power does not require an additional market analysis but a justification that the obligation in question is appropriate and proportionate in relation to the nature of the problem identified.

- (16) Transparency of terms and conditions for access and interconnection, including prices, serve to speed-up negotiation, avoid disputes and give confidence to market players that a service is not being provided on discriminatory terms. Openness and transparency of technical interfaces can be particularly important in ensuring interoperability. Where a national regulatory authority imposes obligations to make information public, it may also specify the manner in which the information is to be made available, covering for example the type of publication (paper and/or electronic) and whether or not it is free of charge, taking into account the nature and purpose of the information concerned.

- (17) The principle of non-discrimination ensures that undertakings with market power do not distort competition, in particular where they are vertically integrated undertakings that supply services to undertakings with whom they compete on downstream markets.

- (18) Accounting separation allows internal price transfers to be rendered visible, and allows national regulatory authorities to check compliance with obligations for non-discrimination where applicable. In this regard the Commission published Recommendation 98/322/EC of 8 April 1998 on interconnection in a liberalised telecommunications market (Part 2 — accounting separation and cost accounting) <sup>(5)</sup>.

- (19) Mandating access to network infrastructure can be justified as a means of increasing competition, but national regulatory authorities need to balance the rights of an infrastructure owner to exploit its infrastructure for its own benefit, and the rights of other service

<sup>(1)</sup> OJ L 199, 26.7.1997, p. 32. Directive as last amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).

<sup>(2)</sup> OJ L 101, 1.4.1998, p. 24.

<sup>(3)</sup> OJ L 165, 19.6.1992, p. 27. Directive as last amended by Commission Decision No 98/80/EC (OJ L 14, 20.1.1998, p. 27).

<sup>(4)</sup> OJ L 366, 30.12.2000, p. 4.

<sup>(5)</sup> OJ L 141, 13.5.1998, p. 6.

providers to access facilities that are essential for the provision of competing services. Where obligations are imposed on operators that require them to meet reasonable requests for access to and use of networks elements and associated facilities, such requests should only be refused on the basis of objective criteria such as technical feasibility or the need to maintain network integrity. Where access is refused, the aggrieved party may submit the case to the dispute resolutions procedure referred to in Articles 20 and 21 of Directive 2002/21/EC (Framework Directive). An operator with mandated access obligations cannot be required to provide types of access which are not within its powers to provide. The imposition by national regulatory authorities of mandated access that increases competition in the short-term should not reduce incentives for competitors to invest in alternative facilities that will secure more competition in the long-term. The Commission has published a Notice on the application of the competition rules to access agreements in the telecommunications sector <sup>(1)</sup> which addresses these issues. National regulatory authorities may impose technical and operational conditions on the provider and/or beneficiaries of mandated access in accordance with Community law. In particular the imposition of technical standards should comply with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of Information Society Services <sup>(2)</sup>.

- (20) Price control may be necessary when market analysis in a particular market reveals inefficient competition. The regulatory intervention may be relatively light, such as an obligation that prices for carrier selection are reasonable as laid down in Directive 97/33/EC, or much heavier such as an obligation that prices are cost oriented to provide full justification for those prices where competition is not sufficiently strong to prevent excessive pricing. In particular, operators with significant market power should avoid a price squeeze whereby the difference between their retail prices and the interconnection prices charged to competitors who provide similar retail services is not adequate to ensure sustainable competition. When a national regulatory authority calculates costs incurred in establishing a service mandated under this Directive, it is appropriate to allow a reasonable return on the capital employed including appropriate labour and building costs, with the value of capital adjusted where necessary to reflect the current valuation of assets and efficiency of operations. The method of cost recovery should be appropriate to the circumstances taking account of the need to promote efficiency and sustainable competition and maximise consumer benefits.
- (21) Where a national regulatory authority imposes obligations to implement a cost accounting system in order to support price controls, it may itself undertake an annual audit to ensure compliance with that cost accounting system, provided that it has the necessary qualified staff, or it may require the audit to be carried out by another qualified body, independent of the operator concerned.
- (22) Publication of information by Member States will ensure that market players and potential market entrants understand their rights and obligations, and know where to find the relevant detailed information. Publication in the national gazette helps interested parties in other Member States to find the relevant information.
- (23) In order to ensure that the pan-European electronic communications market is effective and efficient, the Commission should monitor and publish information on charges which contribute to determining prices to end-users.
- (24) The development of the electronic communications market, with its associated infrastructure, could have adverse effects on the environment and the landscape. Member States should therefore monitor this process and, if necessary, take action to minimise any such effects by means of appropriate agreements and other arrangements with the relevant authorities.
- (25) In order to determine the correct application of Community law, the Commission needs to know which undertakings have been designated as having significant market power and what obligations have been placed upon market players by national regulatory authorities. In addition to national publication of this information, it is therefore necessary for Member States to send this information to the Commission. Where Member States are required to send information to the Commission, this may be in electronic form, subject to appropriate authentication procedures being agreed.
- (26) Given the pace of technological and market developments, the implementation of this Directive

<sup>(1)</sup> OJ C 265, 22.8.1998, p. 2.

<sup>(2)</sup> OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

should be reviewed within three years of its date of application to determine if it is meeting its objectives.

(27) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.

(28) Since the objectives of the proposed action, namely establishing a harmonised framework for the regulation of access to and interconnection of electronic communications networks and associated facilities, 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 in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### SCOPE, AIM AND DEFINITIONS

##### Article 1

##### Scope and aim

1. Within the framework set out in Directive 2002/21/EC (Framework Directive), this Directive harmonises the way in which Member States regulate access to, and interconnection of, electronic communications networks and associated facilities. The aim is to establish a regulatory framework, in accordance with internal market principles, for the relationships between suppliers of networks and services that will result in sustainable competition, interoperability of electronic communications services and consumer benefits.

2. This Directive establishes rights and obligations for operators and for undertakings seeking interconnection and/or access to their networks or associated facilities. It sets out objectives for national regulatory authorities with regard to access and interconnection, and lays down procedures to ensure that obligations imposed by national regulatory authorities are reviewed and, where appropriate, withdrawn

once the desired objectives have been achieved. Access in this Directive does not refer to access by end-users.

##### Article 2

##### Definitions

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

The following definitions shall also apply:

- (a) 'access' means the making available of facilities and/or services, to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers *inter alia*: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop), access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems, access to number translation or systems offering equivalent functionality, access to fixed and mobile networks, in particular for roaming, access to conditional access systems for digital television services; access to virtual network services;
- (b) 'interconnection' means the physical and logical linking of public communications networks used by the same or a different undertaking in order to allow the users of one undertaking to communicate with users of the same or another undertaking, or to access services provided by another undertaking. Services may be provided by the parties involved or other parties who have access to the network. Interconnection is a specific type of access implemented between public network operators;
- (c) 'operator' means an undertaking providing or authorised to provide a public communications network or an associated facility;
- (d) 'wide-screen television service' means a television service that consists wholly or partially of programmes produced and edited to be displayed in a full height wide-screen format. The 16:9 format is the reference format for wide-screen television services;
- (e) 'local loop' means the physical circuit connecting the network termination point at the subscriber's premises to the main distribution frame or equivalent facility in the fixed public telephone network.

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

## CHAPTER II

**GENERAL PROVISIONS***Article 3***General framework for access and interconnection**

1. Member States shall ensure that there are no restrictions which prevent undertakings in the same Member State or in different Member States from negotiating between themselves agreements on technical and commercial arrangements for access and/or interconnection, in accordance with Community law. The undertaking requesting access or interconnection does not need to be authorised to operate in the Member State where access or interconnection is requested, if it is not providing services and does not operate a network in that Member State.

2. Without prejudice to Article 31 of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) <sup>(1)</sup>, Member States shall not maintain legal or administrative measures which oblige operators, when granting access or interconnection, to offer different terms and conditions to different undertakings for equivalent services and/or imposing obligations that are not related to the actual access and interconnection services provided without prejudice to the conditions fixed in the Annex of Directive 2002/20/EC (Authorisation Directive).

*Article 4***Rights and obligations for undertakings**

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised, an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.

2. Public electronic communications networks established for the distribution of digital television services shall be capable of distributing wide-screen television services and programmes. Network operators that receive and redistribute wide-screen television services or programmes shall maintain that wide-screen format.

3. Without prejudice to Article 11 of Directive 2002/20/EC (Authorisation Directive), Member States shall require that undertakings which acquire information from another undertaking before, during or after the process of negotiating

access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. The received information shall not be passed on to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage.

*Article 5***Powers and responsibilities of the national regulatory authorities with regard to access and interconnection**

1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, and gives the maximum benefit to end-users.

In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article 8, national regulatory authorities shall be able to impose:

- (a) to the extent that is necessary to ensure end-to-end connectivity, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case;
- (b) to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting services specified by the Member State, obligations on operators to provide access to the other facilities referred to in Annex I, Part II on fair, reasonable and non-discriminatory terms.

2. When imposing obligations on an operator to provide access in accordance with Article 12, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access, in accordance with Community law, where necessary to ensure normal operation of the network. Conditions that refer to implementation of specific technical standards or specifications shall respect Article 17 of Directive 2002/21/EC (Framework Directive).

3. Obligations and conditions imposed in accordance with paragraphs 1 and 2 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

<sup>(1)</sup> See page 51 of this Official Journal.

4. With regard to access and interconnection, Member States shall ensure that the national regulatory authority is empowered to intervene at its own initiative where justified or, in the absence of agreement between undertakings, at the request of either of the parties involved, in order to secure the policy objectives of Article 8 of Directive 2002/21/EC (Framework Directive), in accordance with the provisions of this Directive and the procedures referred to in Articles 6 and 7, 20 and 21 of Directive 2002/21/EC (Framework Directive).

### CHAPTER III

#### OBLIGATIONS ON OPERATORS AND MARKET REVIEW PROCEDURES

##### Article 6

##### Conditional access systems and other facilities

1. Member States shall ensure that, in relation to conditional access to digital television and radio services broadcast to viewers and listeners in the Community, irrespective of the means of transmission, the conditions laid down in Annex I, Part I apply.

2. In the light of market and technological developments, Annex I may be amended in accordance with the procedure referred to in Article 14(3).

3. Notwithstanding the provisions of paragraph 1, Member States may permit their national regulatory authority, as soon as possible after the entry into force of this Directive and periodically thereafter, to review the conditions applied in accordance with this Article, by undertaking a market analysis in accordance with the first paragraph of Article 16 of Directive 2002/21/EC (Framework Directive) to determine whether to maintain, amend or withdraw the conditions applied.

Where, as a result of this market analysis, a national regulatory authority finds that one or more operators do not have significant market power on the relevant market, it may amend or withdraw the conditions with respect to those operators, in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive), only to the extent that:

- (a) accessibility for end-users to radio and television broadcasts and broadcasting channels and services specified in accordance with Article 31 of Directive 2002/22/EC (Universal Service Directive) would not be adversely affected by such amendment or withdrawal, and
- (b) the prospects for effective competition in the markets for:
  - (i) retail digital television and radio broadcasting services, and

- (ii) conditional access systems and other associated facilities,

would not be adversely affected by such amendment or withdrawal.

An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of conditions.

4. Conditions applied in accordance with this Article are without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities.

##### Article 7

##### Review of former obligations for access and interconnection

1. Member States shall maintain all obligations on undertakings providing public communications networks and/or services concerning access and interconnection that were in force prior to the date of entry into force of this Directive under Articles 4, 6, 7, 8, 11, 12, and 14 of Directive 97/33/EC, Article 16 of Directive 98/10/EC, and Articles 7 and 8 of Directive 92/44/EC, until such time as these obligations have been reviewed and a determination made in accordance with paragraph 3.

2. The Commission will indicate relevant markets for the obligations referred to in paragraph 1 in the initial recommendation on relevant product and service markets and the Decision identifying transnational markets to be adopted in accordance with Article 15 of Directive 2002/21/EC (Framework Directive).

3. Member States shall ensure that, as soon as possible after the entry into force of this Directive, and periodically thereafter, national regulatory authorities undertake a market analysis, in accordance with Article 16 of Directive 2002/21/EC (Framework Directive) to determine whether to maintain, amend or withdraw these obligations. An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of obligations.

##### Article 8

##### Imposition, amendment or withdrawal of obligations

1. Member States shall ensure that national regulatory authorities are empowered to impose the obligations identified in Articles 9 to 13.

2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), national regulatory

authorities shall impose the obligations set out in Articles 9 to 13 of this Directive as appropriate.

3. Without prejudice to:

- the provisions of Articles 5(1), 5(2) and 6,
- the provisions of Articles 12 and 13 of Directive 2002/21/EC (Framework Directive), Condition 7 in Part B of the Annex to Directive 2002/20/EC (Authorisation Directive) as applied by virtue of Article 6(1) of that Directive, Articles 27, 28 and 30 of Directive 2002/22/EC (Universal Service Directive) and the relevant provisions of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>(1)</sup> containing obligations on undertakings other than those designated as having significant market power, or
- the need to comply with international commitments,

national regulatory authorities shall not impose the obligations set out in Articles 9 to 13 on operators that have not been designated in accordance with paragraph 2.

In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power other obligations for access or interconnection than those set out in Articles 9 to 13 in this Directive it shall submit this request to the Commission. The Commission, acting in accordance with Article 14(2), shall take a decision authorising or preventing the national regulatory authority from taking such measures.

4. Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Such obligations shall only be imposed following consultation in accordance with Articles 6 and 7 of that Directive.

5. In relation to the third indent of the first subparagraph of paragraph 3, national regulatory authorities shall notify decisions to impose, amend or withdraw obligations on market players to the Commission, in accordance with the procedure referred to in Article 7 of Directive 2002/21/EC (Framework Directive).

#### Article 9

##### Obligation of transparency

1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for

<sup>(1)</sup> OJ L 24, 30.1.1998, p. 1.

transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, and prices.

2. In particular where an operator has obligations of non-discrimination, national regulatory authorities may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices. The national regulatory authority shall, *inter alia*, be able to impose changes to reference offers to give effect to obligations imposed under this Directive.

3. National regulatory authorities may specify the precise information to be made available, the level of detail required and the manner of publication.

4. Notwithstanding paragraph 3, where an operator has obligations under Article 12 concerning unbundled access to the twisted metallic pair local loop, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II.

5. In the light of market and technological developments, Annex II may be amended in accordance with the procedure referred to in Article 14(3).

#### Article 10

##### Obligation of non-discrimination

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations of non-discrimination, in relation to interconnection and/or access.

2. Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners.

#### Article 11

##### Obligation of accounting separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations for accounting separation in relation to specified activities related to interconnection and/or access.

In particular, a national regulatory authority may require a vertically integrated company to make transparent its wholesale prices and its internal transfer prices *inter alia* to ensure compliance where there is a requirement for non-discrimination under Article 10 or, where necessary, to prevent unfair cross-subsidy. National regulatory authorities may specify the format and accounting methodology to be used.

2. Without prejudice to Article 5 of Directive 2002/21/EC (Framework Directive), to facilitate the verification of compliance with obligations of transparency and non-discrimination, national regulatory authorities shall have the power to require that accounting records, including data on revenues received from third parties, are provided on request. National regulatory authorities may publish such information as would contribute to an open and competitive market, while respecting national and Community rules on commercial confidentiality.

#### Article 12

#### **Obligations of access to, and use of, specific network facilities**

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, *inter alia* in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

Operators may be required *inter alia*:

- (a) to give third parties access to specified network elements and/or facilities, including unbundled access to the local loop;
- (b) to negotiate in good faith with undertakings requesting access;
- (c) not to withdraw access to facilities already granted;
- (d) to provide specified services on a wholesale basis for resale by third parties;
- (e) to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;

- (f) to provide co-location or other forms of facility sharing, including duct, building or mast sharing;
- (g) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;
- (h) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
- (i) to interconnect networks or network facilities.

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness.

2. When national regulatory authorities are considering whether to impose the obligations referred in paragraph 1, and in particular when assessing whether such obligations would be proportionate to the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), they shall take account in particular of the following factors:

- (a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved;
- (b) the feasibility of providing the access proposed, in relation to the capacity available;
- (c) the initial investment by the facility owner, bearing in mind the risks involved in making the investment;
- (d) the need to safeguard competition in the long term;
- (e) where appropriate, any relevant intellectual property rights;
- (f) the provision of pan-European services.

#### Article 13

#### **Price control and cost accounting obligations**

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means



that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. National regulatory authorities shall take into account the investment made by the operator and allow him a reasonable rate of return on adequate capital employed, taking into account the risks involved.

2. National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits. In this regard national regulatory authorities may also take account of prices available in comparable competitive markets.

3. Where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on investment shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, national regulatory authorities may use cost accounting methods independent of those used by the undertaking. National regulatory authorities may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

4. National regulatory authorities shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a description of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost accounting system shall be verified by a qualified independent body. A statement concerning compliance shall be published annually.

#### CHAPTER IV

#### PROCEDURAL PROVISIONS

##### Article 14

##### Committee

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

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

4. The Committee shall adopt its rules of procedure.

##### Article 15

#### Publication of, and access to, information

1. Member States shall ensure that the specific obligations imposed on undertakings under this Directive are published and that the specific product/service and geographical markets are identified. They shall ensure that up-to-date information, provided that the information is not confidential and, in particular, does not comprise business secrets, is made publicly available in a manner that guarantees all interested parties easy access to that information.

2. Member States shall send to the Commission a copy of all such information published. The Commission shall make this information available in a readily accessible form, and shall distribute the information to the Communications Committee as appropriate.

##### Article 16

#### Notification

1. Member States shall notify to the Commission by at the latest the date of application referred to in Article 18(1) second subparagraph the national regulatory authorities responsible for the tasks set out in this Directive.

2. National regulatory authorities shall notify to the Commission the names of operators deemed to have significant market power for the purposes of this Directive, and the obligations imposed upon them under this Directive. Any changes affecting the obligations imposed upon undertakings or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.

##### Article 17

#### Review procedures

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

##### Article 18

#### Transposition

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by not later than 24 July 2003. They shall forthwith inform the Commission thereof.

They shall apply those measures from 25 July 2003.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by 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 Brussels, 7 March 2002.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

J. C. APARICIO

## ANNEX I

**CONDITIONS FOR ACCESS TO DIGITAL TELEVISION AND RADIO SERVICES BROADCAST TO VIEWERS AND LISTENERS IN THE COMMUNITY****Part I: Conditions for conditional access systems to be applied in accordance with Article 6(1)**

In relation to conditional access to digital television and radio services broadcast to viewers and listeners in the Community, irrespective of the means of transmission, Member States must ensure in accordance with Article 6 that the following conditions apply:

- (a) conditional access systems operated on the market in the Community are to have the necessary technical capability for cost-effective transcontrol allowing the possibility for full control by network operators at local or regional level of the services using such conditional access systems;
- (b) all operators of conditional access services, irrespective of the means of transmission, who provide access services to digital television and radio services and whose access services broadcasters depend on to reach any group of potential viewers or listeners are to:
  - offer to all broadcasters, on a fair, reasonable and non-discriminatory basis compatible with Community competition law, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers or listeners authorised by means of decoders administered by the service operators, and comply with Community competition law,
  - keep separate financial accounts regarding their activity as conditional access providers.
- (c) when granting licences to manufacturers of consumer equipment, holders of industrial property rights to conditional access products and systems are to ensure that this is done on fair, reasonable and non-discriminatory terms. Taking into account technical and commercial factors, holders of rights are not to subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of:
  - a common interface allowing connection with several other access systems, or
  - means specific to another access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as he is concerned, the security of transactions of conditional access system operators.

**Part II: Other facilities to which conditions may be applied under Article 5(1)(b)**

- (a) Access to application program interfaces (APIs);
  - (b) Access to electronic programme guides (EPGs).
-

## ANNEX II

**MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR UNBUNDLED ACCESS TO THE TWISTED METALLIC PAIR LOCAL LOOP TO BE PUBLISHED BY NOTIFIED OPERATORS**

For the purposes of this Annex the following definitions apply:

- (a) 'local sub-loop' means a partial local loop connecting the network termination point at the subscriber's premises to a concentration point or a specified intermediate access point in the fixed public telephone network;
- (b) 'unbundled access to the local loop' means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;
- (c) 'full unbundled access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator authorising the use of the full frequency spectrum of the twisted metallic pair;
- (d) 'shared access to the local loop' means the provision to a beneficiary of access to the local loop or local sub-loop of the notified operator, authorising the use of the non-voice band frequency spectrum of the twisted metallic pair; the local loop continues to be used by the notified operator to provide the telephone service to the public;

**A. Conditions for unbundled access to the local loop**

- 1. Network elements to which access is offered covering in particular the following elements:
  - (a) access to local loops;
  - (b) access to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop;
- 2. Information concerning the locations of physical access sites <sup>(1)</sup>, availability of local loops in specific parts of the access network;
- 3. Technical conditions related to access and use of local loops, including the technical characteristics of the twisted metallic pair in the local loop;
- 4. Ordering and provisioning procedures, usage restrictions.

**B. Co-location services**

- 1. Information on the notified operator's relevant sites <sup>(1)</sup>.
- 2. Co-location options at the sites indicated under point 1 (including physical co-location and, as appropriate, distant co-location and virtual co-location).
- 3. Equipment characteristics: restrictions, if any, on equipment that can be co-located.
- 4. Security issues: measures put in place by notified operators to ensure the security of their locations.
- 5. Access conditions for staff of competitive operators.
- 6. Safety standards.
- 7. Rules for the allocation of space where co-location space is limited.
- 8. Conditions for beneficiaries to inspect the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity.

<sup>(1)</sup> Availability of this information may be restricted to interested parties only, in order to avoid public security concerns.

**C. Information systems**

Conditions for access to notified operator's operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing.

**D. Supply conditions**

1. Lead time for responding to requests for supply of services and facilities; service level agreements, fault resolution, procedures to return to a normal level of service and quality of service parameters.
  2. Standard contract terms, including, where appropriate, compensation provided for failure to meet lead times.
  3. Prices or pricing formulae for each feature, function and facility listed above.
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**DIRECTIVE 2002/20/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 7 March 2002**  
**on the authorisation of electronic communications networks and services**  
**(Authorisation Directive)**

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.
- (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,

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 230 and OJ C 270 E, 25.9.2001, p. 182.

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

<sup>(3)</sup> Opinion of the European Parliament of 1 March 2001 (OJ C 277, 1.10.2001, p. 116), Council Common Position of 17 September 2001 (OJ C 337, 30.11.2001, p. 18) and Decision of the European Parliament of 12 December 2001 (not yet published in the Official Journal). Council Decision of 14 February 2002.

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

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

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 2002/19/EC of the European Parliament and of the Council of 7 March 2002 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 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.
- (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 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) <sup>(2)</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

<sup>(1)</sup> See page 7 of this Official Journal.

<sup>(2)</sup> See page 33 of this Official Journal.

- 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 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 8 of Directive 2002/21/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 upon 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 upon 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 2002/21/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.
- (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. Where, in the case of competitive or comparative selection procedures, fees for rights of use for radio frequencies consist entirely or partly of a one-off amount, payment arrangements should ensure that such fees do not in practice lead to selection on the basis of criteria unrelated to the objective of ensuring optimal use of radio frequencies. The Commission may publish on a regular basis benchmark studies with regard to best practices for the assignment of radio frequencies, the assignment of numbers or the granting of rights of way.
- (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 nine 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, upon 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,

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. Upon 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.

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 2002/21/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

#### *Article 4*

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

1. Undertakings authorised pursuant to Article 3, shall have the right to:

- (a) provide electronic communications networks and services;
- (b) have their application for the necessary rights to install facilities considered in accordance with Article 11 of Directive 2002/21/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 to:

- (a) 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 2002/19/EC (Access Directive);

- (b) 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 2002/22/EC of the European Parliament and of the Council of 7 March 2002 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, upon 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) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/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 9 of Directive 2002/21/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 of Directive 2002/21/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), 5(2), 6 and 8 of Directive 2002/19/EC (Access Directive) and Articles 16, 17, 18 and 19 of Directive 2002/22/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.

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

<sup>(1)</sup> See page 51 of this Official Journal.

## 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 of Directive 2002/21/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; and
- (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 8 of Directive 2002/21/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 9 of Directive 2002/21/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 2002/19/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 2002/21/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 2002/19/EC (Access Directive) or Directive 2002/22/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 upon 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 8 of Directive 2002/21/EC (Framework Directive).

#### Article 14

### Amendment of rights and obligations

1. 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.

2. Member States shall not restrict or withdraw rights to install facilities before expiry of the period for which they were granted except where justified and where applicable in conformity with relevant national provisions regarding compensation for withdrawal of rights.

#### 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, bearing in mind the costs involved, to create a user-friendly overview of all such information, including information on the relevant levels of government and the responsible authorities, 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 nine 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 after 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 24 July 2003 at the latest. They shall forthwith inform the Commission thereof.

They shall apply those measures from 25 July 2003.

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 Brussels, 7 March 2002.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

J. C. APARICIO

## 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 2002/22/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 2002/19/EC (Access Directive).
4. Accessibility of numbers from the national numbering plan to end-users including conditions in conformity with Directive 2002/22/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 2002/22/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 2002/22/EC (Universal Service Directive).
7. Personal data and privacy protection specific to the electronic communications sector in conformity with Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector <sup>(1)</sup>.
8. Consumer protection rules specific to the electronic communications sector including conditions in conformity with Directive 2002/22/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 97/66/EC 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.
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 2002/19/EC (Access Directive).

<sup>(1)</sup> OJ L 24, 30.1.1998, p. 1.

<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.



15. Maintenance of the integrity of public communications networks in accordance with Directive 2002/19/EC (Access Directive) and Directive 2002/22/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 the laws of the Member States relating to electromagnetic compatibility <sup>(1)</sup>.
16. Security of public networks against unauthorised access according to Directive 97/66/EC.
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 17 of Directive 2002/21/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 2002/21/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 2002/21/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 2002/21/EC (Framework Directive).
3. Number portability requirements in conformity with Directive 2002/22/EC (Universal Service Directive).
4. Obligation to provide public directory subscriber information for the purposes of Articles 5 and 25 of Directive 2002/22/EC (Universal Service Directive).
5. Maximum duration in conformity with Article 5 of this Directive, subject to any changes in the national numbering plan.
6. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with Directive 2002/21/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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<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).

**DIRECTIVE 2002/21/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 7 March 2002**

**on a common regulatory framework for electronic communications networks and services  
(Framework Directive)**

THE EUROPEAN PARLIAMENT AND THE  
COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <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 current regulatory framework for telecommunications has been successful in creating the conditions for effective competition in the telecommunications sector during the transition from monopoly to full competition.
- (2) On 10 November 1999, the Commission presented a communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled 'Towards a new framework for electronic communications infrastructure and associated services – the 1999 communications review'. In that communication, the Commission reviewed the existing regulatory framework for telecommunications, in accordance with its obligation under Article 8 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision <sup>(4)</sup>. It also presented a series of policy proposals for a new regulatory framework for electronic communications infrastructure and associated services for public consultation.
- (3) On 26 April 2000 the Commission presented a communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the results of the public

consultation on the 1999 communications review and orientations for the new regulatory framework. The communication summarised the public consultation and set out certain key orientations for the preparation of a new framework for electronic communications infrastructure and associated services.

- (4) The Lisbon European Council of 23 and 24 March 2000 highlighted the potential for growth, competitiveness and job creation of the shift to a digital, knowledge-based economy. In particular, it emphasised the importance for Europe's businesses and citizens of access to an inexpensive, world-class communications infrastructure and a wide range of services.

- (5) The convergence of the telecommunications, media and information technology sectors means all transmission networks and services should be covered by a single regulatory framework. That regulatory framework consists of this Directive and four specific Directives: Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) <sup>(5)</sup>, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) <sup>(6)</sup>, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) <sup>(7)</sup>, Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector <sup>(8)</sup>, (hereinafter referred to as 'the Specific Directives'). It is necessary to separate the regulation of transmission from the regulation of content. This framework does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services and certain information society services, and is therefore without prejudice to measures taken at Community or national level in respect of such services, in compliance with Community law, in order to promote cultural and linguistic diversity and to ensure the defence of media pluralism. The content of

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 198 and OJ C 270 E, 25.9.2001, p. 199.

<sup>(2)</sup> OJ C 123, 25.4.2001, p. 56.

<sup>(3)</sup> Opinion of the European Parliament of 1 March 2001 (OJ C 277, 1.10.2001, p. 91), Council Common Position of 17 September 2001 (OJ C 337, 30.11.2001, p. 34) and Decision of the European Parliament of 12 December 2001 (not yet published in the Official Journal). Council Decision of 14 February 2002.

<sup>(4)</sup> OJ L 192, 24.7.1990, p. 1. Directive as amended by Directive 97/51/EC of the European Parliament and of the Council (OJ L 295, 29.10.1997, p. 23).

<sup>(5)</sup> See page 21 of this Official Journal.

<sup>(6)</sup> See page 7 of this Official Journal.

<sup>(7)</sup> See page 51 of this Official Journal.

<sup>(8)</sup> OJ L 24, 30.1.1998, p. 1.

television programmes is covered by 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>(1)</sup>. The separation between the regulation of transmission and the regulation of content does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection.

- (6) Audiovisual policy and content regulation are undertaken in pursuit of general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors. The Commission communication 'Principles and guidelines for the Community's audio-visual policy in the digital age', and the Council conclusions of 6 June 2000 welcoming this communication, set out the key actions to be taken by the Community to implement its audio-visual policy.
- (7) The provisions of this Directive and the Specific Directives are without prejudice to the possibility for each Member State to take the necessary measures to ensure the protection of its essential security interests, to safeguard public policy and public security, and to permit the investigation, detection and prosecution of criminal offences, including the establishment by national regulatory authorities of specific and proportional obligations applicable to providers of electronic communications services.
- (8) This Directive does not cover equipment within the scope of 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>(2)</sup>, but does cover consumer equipment used for digital television. It is important for regulators to encourage network operators and terminal equipment manufacturers to cooperate in order to facilitate access by disabled users to electronic communications services.
- (9) Information society services are covered by Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) <sup>(3)</sup>.

- (10) The definition of 'information society service' in Article 1 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of information society services <sup>(4)</sup> spans a wide range of economic activities which take place on-line. Most of these activities are not covered by the scope of this Directive because they do not consist wholly or mainly in the conveyance of signals on electronic communications networks. Voice telephony and electronic mail conveyance services are covered by this Directive. The same undertaking, for example an Internet service provider, can offer both an electronic communications service, such as access to the Internet, and services not covered under this Directive, such as the provision of web-based content.
- (11) In accordance with the principle of the separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities with a view to ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership laid down in Article 295 of the Treaty. National regulatory authorities should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.
- (12) Any party who is the subject of a decision by a national regulatory authority should have the right to appeal to a body that is independent of the parties involved. This body may be a court. Furthermore, any undertaking which considers that its applications for the granting of rights to install facilities have not been dealt with in accordance with the principles set out in this Directive should be entitled to appeal against such decisions. This appeal procedure is without prejudice to the division of competences within national judicial systems and to the rights of legal entities or natural persons under national law.
- (13) National regulatory authorities need to gather information from market players in order to carry out their tasks effectively. Such information may also need to be gathered on behalf of the Commission, to allow it to fulfil its obligations under Community law. Requests for information should be proportionate and not impose an undue burden on undertakings. Information

<sup>(1)</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>(2)</sup> OJ L 91, 7.4.1999, p. 10.

<sup>(3)</sup> OJ L 178, 17.7.2000, p. 1.

<sup>(4)</sup> OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

- gathered by national regulatory authorities should be publicly available, except in so far as it is confidential in accordance with national rules on public access to information and subject to Community and national law on business confidentiality.
- (14) Information that is considered confidential by a national regulatory authority, in accordance with Community and national rules on business confidentiality, may only be exchanged with the Commission and other national regulatory authorities where such exchange is strictly necessary for the application of the provisions of this Directive or the Specific Directives. The information exchanged should be limited to that which is relevant and proportionate to the purpose of such an exchange.
- (15) It is important that national regulatory authorities consult all interested parties on proposed decisions and take account of their comments before adopting a final decision. In order to ensure that decisions at national level do not have an adverse effect on the single market or other Treaty objectives, national regulatory authorities should also notify certain draft decisions to the Commission and other national regulatory authorities to give them the opportunity to comment. It is appropriate for national regulatory authorities to consult interested parties on all draft measures which have an effect on trade between Member States. The cases where the procedures referred to in Articles 6 and 7 apply are defined in this Directive and in the Specific Directives. The Commission should be able, after consulting the Communications Committee, to require a national regulatory authority to withdraw a draft measure where it concerns definition of relevant markets or the designation or not of undertakings with significant market power, and where such decisions would create a barrier to the single market or would be incompatible with Community law and in particular the policy objectives that national regulatory authorities should follow. This procedure is without prejudice to the notification procedure provided for in Directive 98/34/EC and the Commission's prerogatives under the Treaty in respect of infringements of Community law.
- (16) National regulatory authorities should have a harmonised set of objectives and principles to underpin, and should, where necessary, coordinate their actions with the regulatory authorities of other Member States in carrying out their tasks under this regulatory framework.
- (17) The activities of national regulatory authorities established under this Directive and the Specific Directives contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning.
- (18) The requirement for Member States to ensure that national regulatory authorities take the utmost account of the desirability of making regulation technologically neutral, that is to say that it neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified, for example digital television as a means for increasing spectrum efficiency.
- (19) Radio frequencies are an essential input for radio-based electronic communications services and, in so far as they relate to such services, should therefore be allocated and assigned by national regulatory authorities according to a set of harmonised objectives and principles governing their action as well as to objective, transparent and non-discriminatory criteria, taking into account the democratic, social, linguistic and cultural interests related to the use of frequency. It is important that the allocation and assignment of radio frequencies is managed as efficiently as possible. Transfer of radio frequencies can be an effective means of increasing efficient use of spectrum, as long as there are sufficient safeguards in place to protect the public interest, in particular the need to ensure transparency and regulatory supervision of such transfers. Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) <sup>(1)</sup> establishes a framework for harmonisation of radio frequencies, and action taken under this Directive should seek to facilitate the work under that Decision.
- (20) Access to numbering resources on the basis of transparent, objective and non-discriminatory criteria is essential for undertakings to compete in the electronic communications sector. All elements of national numbering plans should be managed by national regulatory authorities, including point codes used in network addressing. Where there is a need for harmonisation of numbering resources in the Community to support the development of pan-European services, the Commission may take technical implementing measures using its executive powers. Where this is appropriate to ensure full global interoperability of services, Member States should coordinate their national positions in accordance with the Treaty in international organisations and fora where numbering decisions are taken. The provisions of this Directive do not establish any new areas of responsibility for the national regulatory authorities in the field of Internet naming and addressing.

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

- (21) Member States may use, *inter alia*, competitive or comparative selection procedures for the assignment of radio frequencies as well as numbers with exceptional economic value. In administering such schemes, national regulatory authorities should take into account the provisions of Article 8.
- (22) It should be ensured that procedures exist for the granting of rights to install facilities that are timely, non-discriminatory and transparent, in order to guarantee the conditions for fair and effective competition. This Directive is without prejudice to national provisions governing the expropriation or use of property, the normal exercise of property rights, the normal use of the public domain, or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership.
- (23) Facility sharing can be of benefit for town planning, public health or environmental reasons, and should be encouraged by national regulatory authorities on the basis of voluntary agreements. In cases where undertakings are deprived of access to viable alternatives, compulsory facility or property sharing may be appropriate. It covers *inter alia*: physical co-location and duct, building, mast, antenna or antenna system sharing. Compulsory facility or property sharing should be imposed on undertakings only after full public consultation.
- (24) Where mobile operators are required to share towers or masts for environmental reasons, such mandated sharing may lead to a reduction in the maximum transmitted power levels allowed for each operator for reasons of public health, and this in turn may require operators to install more transmission sites to ensure national coverage.
- (25) There is a need for *ex ante* obligations in certain circumstances in order to ensure the development of a competitive market. The definition of significant market power in the Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP) <sup>(1)</sup> has proved effective in the initial stages of market opening as the threshold for *ex ante* obligations, but now needs to be adapted to suit more complex and dynamic markets. For this reason, the definition used in
- this Directive is equivalent to the concept of dominance as defined in the case law of the Court of Justice and the Court of First Instance of the European Communities.
- (26) Two or more undertakings can be found to enjoy a joint dominant position not only where there exist structural or other links between them but also where the structure of the relevant market is conducive to coordinated effects, that is, it encourages parallel or aligned anti-competitive behaviour on the market.
- (27) It is essential that *ex ante* regulatory obligations should only be imposed where there is not effective competition, i.e. in markets where there are one or more undertakings with significant market power, and where national and Community competition law remedies are not sufficient to address the problem. It is necessary therefore for the Commission to draw up guidelines at Community level in accordance with the principles of competition law for national regulatory authorities to follow in assessing whether competition is effective in a given market and in assessing significant market power. National regulatory authorities should analyse whether a given product or service market is effectively competitive in a given geographical area, which could be the whole or a part of the territory of the Member State concerned or neighbouring parts of territories of Member States considered together. An analysis of effective competition should include an analysis as to whether the market is prospectively competitive, and thus whether any lack of effective competition is durable. Those guidelines will also address the issue of newly emerging markets, where de facto the market leader is likely to have a substantial market share but should not be subjected to inappropriate obligations. The Commission should review the guidelines regularly to ensure that they remain appropriate in a rapidly developing market. National regulatory authorities will need to cooperate with each other where the relevant market is found to be transnational.
- (28) In determining whether an undertaking has significant market power in a specific market, national regulatory authorities should act in accordance with Community law and take into the utmost account the Commission guidelines.
- (29) The Community and the Member States have entered into commitments in relation to standards and the regulatory framework of telecommunications networks and services in the World Trade Organisation.

<sup>(1)</sup> OJ L 199, 26.7.1997, p. 32. Directive as amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).

- (30) Standardisation should remain primarily a market-driven process. However there may still be situations where it is appropriate to require compliance with specified standards at Community level to ensure interoperability in the single market. At national level, Member States are subject to the provisions of Directive 98/34/EC. Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals <sup>(1)</sup> did not mandate any specific digital television transmission system or service requirement. Through the Digital Video Broadcasting Group, European market players have developed a family of television transmission systems that have been standardised by the European Telecommunications Standards Institute (ETSI) and have become International Telecommunication Union recommendations. Any decision to make the implementation of such standards mandatory should follow a full public consultation. Standardisation procedures under this Directive are without prejudice to the provisions of Directive 1999/5/EC, Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits <sup>(2)</sup> and Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility <sup>(3)</sup>.
- (31) Interoperability of digital interactive television services and enhanced digital television equipment, at the level of the consumer, should be encouraged in order to ensure the free flow of information, media pluralism and cultural diversity. It is desirable for consumers to have the capability of receiving, regardless of the transmission mode, all digital interactive television services, having regard to technological neutrality, future technological progress, the need to promote the take-up of digital television, and the state of competition in the markets for digital television services. Digital interactive television platform operators should strive to implement an open application program interface (API) which conforms to standards or specifications adopted by a European standards organisation. Migration from existing APIs to new open APIs should be encouraged and organised, for example by Memoranda of Understanding between all relevant market players. Open APIs facilitate interoperability, i.e. the portability of interactive content between delivery mechanisms, and full functionality of this content on enhanced digital television equipment. However, the need not to hinder the functioning of the receiving equipment and to protect it from malicious attacks, for example from viruses, should be taken into account.
- (32) In the event of a dispute between undertakings in the same Member State in an area covered by this Directive or the Specific Directives, for example relating to obligations for access and interconnection or to the means of transferring subscriber lists, an aggrieved party that has negotiated in good faith but failed to reach agreement should be able to call on the national regulatory authority to resolve the dispute. National regulatory authorities should be able to impose a solution on the parties. The intervention of a national regulatory authority in the resolution of a dispute between undertakings providing electronic communications networks or services in a Member State should seek to ensure compliance with the obligations arising under this Directive or the Specific Directives.
- (33) In addition to the rights of recourse granted under national or Community law, there is a need for a simple procedure to be initiated at the request of either party in a dispute, to resolve cross-border disputes which lie outside the competence of a single national regulatory authority.
- (34) A single Committee should replace the 'ONP Committee' instituted by Article 9 of Directive 90/387/EEC and the Licensing Committee instituted by Article 14 of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services <sup>(4)</sup>.
- (35) National regulatory authorities and national competition authorities should provide each other with the information necessary to apply the provisions of this Directive and the Specific Directives, in order to allow them to cooperate fully together. In respect of the information exchanged, the receiving authority should ensure the same level of confidentiality as the originating authority.
- (36) The Commission has indicated its intention to set up a European regulators group for electronic communications networks and services which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for electronic communications networks and services, and to seek to achieve consistent application, in all Member States, of the provisions set out in this Directive and the Specific Directives, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in application of the relevant rules.

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 51.

<sup>(2)</sup> OJ L 77, 26.3.1973, p. 29.

<sup>(3)</sup> OJ L 139, 23.5.1989, p. 19.

<sup>(4)</sup> OJ L 117, 7.5.1997, p. 15.

- (37) National regulatory authorities should be required to cooperate with each other and with the Commission in a transparent manner to ensure consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. This cooperation could take place, *inter alia*, in the Communications Committee or in a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of this Directive and the Specific Directives.
- (38) Measures that could affect trade between Member States are measures that may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in a manner which might create a barrier to the single market. They comprise measures that have a significant impact on operators or users in other Member States, which include, *inter alia*: measures which affect prices for users in other Member States; measures which affect the ability of an undertaking established in another Member State to provide an electronic communications service, and in particular measures which affect the ability to offer services on a transnational basis; and measures which affect market structure or access, leading to repercussions for undertakings in other Member States.
- (39) The provisions of this Directive should be reviewed periodically, in particular with a view to determining the need for modification in the light of changing technological or market conditions.
- (40) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(1)</sup>.
- (41) Since the objectives of the proposed action, namely achieving a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated 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.
- (42) Certain directives and decisions in this field should be repealed.
- (43) The Commission should monitor the transition from the existing framework to the new framework, and may in particular, at an appropriate time, bring forward a proposal to repeal Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop <sup>(2)</sup>.

HAVE ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### SCOPE, AIM AND DEFINITIONS

##### Article 1

##### Scope and aim

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.
2. This Directive as well as the Specific Directives are without prejudice to obligations imposed by national law in accordance with Community law or by Community law in respect of services provided using electronic communications networks and services.
3. This Directive as well as the Specific Directives are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.
4. This Directive and the Specific Directives are without prejudice to the provisions of Directive 1999/5/EC.

##### Article 2

##### Definitions

For the purposes of this Directive:

- (a) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

<sup>(2)</sup> OJ L 336, 30.12.2000, p. 4.

- signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;
- (b) 'transnational markets' means markets identified in accordance with Article 15(4) covering the Community or a substantial part thereof;
- (c) 'electronic communications service' means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;
- (d) 'public communications network' means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;
- (e) 'associated facilities' means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service. It includes conditional access systems and electronic programme guides;
- (f) 'conditional access system' means any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;
- (g) 'national regulatory authority' means the body or bodies charged by a Member State with any of the regulatory tasks assigned in this Directive and the Specific Directives;
- (h) 'user' means a legal entity or natural person using or requesting a publicly available electronic communications service;
- (i) 'consumer' means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession;
- (j) 'universal service' means the minimum set of services, defined in Directive 2002/22/EC (Universal Service Directive), of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price;
- (k) 'subscriber' means any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;
- (l) 'Specific Directives' means Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive) and Directive 97/66/EC;
- (m) 'provision of an electronic communications network' means the establishment, operation, control or making available of such a network;
- (n) 'end-user' means a user not providing public communications networks or publicly available electronic communications services.
- (o) 'enhanced digital television equipment' means set-top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;
- (p) 'application program interface (API)' means the software interfaces between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television and radio services.

## CHAPTER II

## NATIONAL REGULATORY AUTHORITIES

## Article 3

## National regulatory authorities

1. Member States shall ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Directives is undertaken by a competent body.
2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
3. Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently.
4. Member States shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one



body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities, and between those authorities and national authorities entrusted with the implementation of competition law and national authorities entrusted with the implementation of consumer law, on matters of common interest. Where more than one authority has competence to address such matters, Member States shall ensure that the respective tasks of each authority are published in an easily accessible form.

5. National regulatory authorities and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive and the Specific Directives. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

6. Member States shall notify to the Commission all national regulatory authorities assigned tasks under this Directive and the Specific Directives, and their respective responsibilities.

#### Article 4

### Right of appeal

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.

2. Where the appeal body referred to in paragraph 1 is not judicial in character, written reasons for its decision shall always be given. Furthermore, in such a case, its decision shall be subject to review by a court or tribunal within the meaning of Article 234 of the Treaty.

#### Article 5

### Provision of information

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the

timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

2. Member States shall ensure that national regulatory authorities provide the Commission, after a reasoned request, with the information necessary for it to carry out its tasks under the Treaty. The information requested by the Commission shall be proportionate to the performance of those tasks. Where the information provided refers to information previously provided by undertakings at the request of the national regulatory authority, such undertakings shall be informed thereof. To the extent necessary, and unless the authority that provides the information has made an explicit and reasoned request to the contrary, the Commission shall make the information provided available to another such authority in another Member State.

Subject to the requirements of paragraph 3, Member States shall ensure that the information submitted to one national regulatory authority can be made available to another such authority in the same or different Member State, after a substantiated request, where necessary to allow either authority to fulfil its responsibilities under Community law.

3. Where information is considered confidential by a national regulatory authority in accordance with Community and national rules on business confidentiality, the Commission and the national regulatory authorities concerned shall ensure such confidentiality.

4. Member States shall ensure that, acting in accordance with national rules on public access to information and subject to Community and national rules on business confidentiality, national regulatory authorities publish such information as would contribute to an open and competitive market.

5. National regulatory authorities shall publish the terms of public access to information as referred to in paragraph 4, including procedures for obtaining such access.

#### Article 6

### Consultation and transparency mechanism

Except in cases falling within Articles 7(6), 20 or 21 Member States shall ensure that where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives which have a significant impact on the relevant market, they give interested parties the opportunity to comment on the draft measure within a reasonable period. National regulatory authorities shall publish their national

consultation procedures. Member States shall ensure the establishment of a single information point through which all current consultations can be accessed. The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality.

#### Article 7

### Consolidating the internal market for electronic communications

1. In carrying out their tasks under this Directive and the Specific Directives, national regulatory authorities shall take the utmost account of the objectives set out in Article 8, including in so far as they relate to the functioning of the internal market.

2. National regulatory authorities shall contribute to the development of the internal market by cooperating with each other and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, seek to agree on the types of instruments and remedies best suited to address particular types of situations in the market place.

3. In addition to the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles 15 or 16 of this Directive, Articles 5 or 8 of Directive 2002/19/EC (Access Directive) or Article 16 of Directive 2002/22/EC (Universal Service Directive), and

(b) would affect trade between Member States,

it shall at the same time make the draft measure accessible to the Commission and the national regulatory authorities in other Member States, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission and other national regulatory authorities thereof. National regulatory authorities and the Commission may make comments to the national regulatory authority concerned only within one month or within the period referred to in Article 6 if that period is longer. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

(a) defining a relevant market which differs from those defined in the recommendation in accordance with Article 15(1), or

(b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 16(3), (4) or (5),

and would affect trade between Member States and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8, then the draft measure shall not be adopted for a further two months. This period may not be extended. Within this period the Commission may, in accordance with the procedure referred to in Article 22(2), take a decision requiring the national regulatory authority concerned to withdraw the draft measure. This decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

5. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities and the Commission and may, except in cases covered by paragraph 4, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

6. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 3 and 4, in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission and the other national regulatory authorities. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

#### CHAPTER III

### TASKS OF NATIONAL REGULATORY AUTHORITIES

#### Article 8

### Policy objectives and regulatory principles

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, the national regulatory authorities take all reasonable measures which are aimed at achieving the objectives set out in paragraphs 2, 3 and 4. Such measures shall be proportionate to those objectives.

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in

particular those designed to ensure effective competition, national regulatory authorities take the utmost account of the desirability of making regulations technologically neutral.

National regulatory authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.

2. The national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by *inter alia*:

- (a) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price, and quality;
- (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- (c) encouraging efficient investment in infrastructure, and promoting innovation; and
- (d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.

3. The national regulatory authorities shall contribute to the development of the internal market by *inter alia*:

- (a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;
- (b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services, and end-to-end connectivity;
- (c) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
- (d) cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.

4. The national regulatory authorities shall promote the interests of the citizens of the European Union by *inter alia*:

- (a) ensuring all citizens have access to a universal service specified in Directive 2002/22/EC (Universal Service Directive);
- (b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the

availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;

- (c) contributing to ensuring a high level of protection of personal data and privacy;
- (d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
- (e) addressing the needs of specific social groups, in particular disabled users; and
- (f) ensuring that the integrity and security of public communications networks are maintained.

#### Article 9

#### Management of radio frequencies for electronic communications services

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and in accordance with the Decision No 676/2002/EC (Radio Spectrum Decision).

3. Member States may make provision for undertakings to transfer rights to use radio frequencies with other undertakings.

4. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies is notified to the national regulatory authority responsible for spectrum assignment and that any transfer takes place in accordance with procedures laid down by the national regulatory authority and is made public. National regulatory authorities shall ensure that competition is not distorted as a result of any such transaction. Where radio frequency use has been harmonised through the application of Decision No 676/2002/EC (Radio Spectrum Decision) or other Community measures, any such transfer shall not result in change of use of that radio frequency.

#### Article 10

#### Numbering, naming and addressing

1. Member States shall ensure that national regulatory authorities control the assignment of all national numbering

resources and the management of the national numbering plans. Member States shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services. National regulatory authorities shall establish objective, transparent and non-discriminatory assigning procedures for national numbering resources.

2. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services. In particular, Member States shall ensure that an undertaking allocated a range of numbers does not discriminate against other providers of electronic communications services as regards the number sequences used to give access to their services.

3. Member States shall ensure that the national numbering plans, and all subsequent additions or amendments thereto, are published, subject only to limitations imposed on the grounds of national security.

4. Member States shall support the harmonisation of numbering resources within the Community where that is necessary to support the development of pan European services. The Commission may, in accordance with the procedure referred to in Article 22(3), take the appropriate technical implementing measures on this matter.

5. Where this is appropriate in order to ensure full global interoperability of services, Member States shall coordinate their positions in international organisations and forums in which decisions are taken on issues relating to the numbering, naming and addressing of electronic communications networks and services.

#### Article 11

##### **Rights of way**

1. Member States shall ensure that when a competent authority considers:

— an application for the granting of rights to install facilities on, over or under public or private property to an undertaking authorised to provide public communications networks, or

— an application for the granting of rights to install facilities on, over or under public property to an undertaking authorised to provide electronic communications networks other than to the public,

the competent authority:

— acts on the basis of transparent and publicly available procedures, applied without discrimination and without delay, and

— follows the principles of transparency and non-discrimination in attaching conditions to any such rights.

The abovementioned procedures can differ depending on whether the applicant is providing public communications networks or not.

2. Member States shall ensure that where public or local authorities retain ownership or control of undertakings operating electronic communications networks and/or services, there is effective structural separation of the function responsible for granting the rights referred to in paragraph 1 from activities associated with ownership or control.

3. Member States shall ensure that effective mechanisms exist to allow undertakings to appeal against decisions on the granting of rights to install facilities to a body that is independent of the parties involved.

#### Article 12

##### **Co-location and facility sharing**

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall encourage the sharing of such facilities or property.

2. In particular where undertakings are deprived of access to viable alternatives because of the need to protect the environment, public health, public security or to meet town and country planning objectives, Member States may impose the sharing of facilities or property (including physical co-location) on an undertaking operating an electronic communications network or take measures to facilitate the coordination of public works only after an appropriate period of public consultation during which all interested parties must be given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.

#### Article 13

##### **Accounting separation and financial reports**

1. Member States shall require undertakings providing public communications networks or publicly available electronic communications services which have special or exclusive rights for the provision of services in other sectors in the same or another Member State to:

- (a) keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs, or
- (b) have structural separation for the activities associated with the provision of electronic communications networks or services.

Member States may choose not to apply the requirements referred to in the first subparagraph to undertakings the annual turnover of which in activities associated with electronic communications networks or services in the Member States is less than EUR 50 million.

2. Where undertakings providing public communications networks or publicly available electronic communications services are not subject to the requirements of company law and do not satisfy the small and medium-sized enterprise criteria of Community law accounting rules, their financial reports shall be drawn up and submitted to independent audit and published. The audit shall be carried out in accordance with the relevant Community and national rules.

This requirement shall also apply to the separate accounts required under paragraph 1(a).

#### CHAPTER IV

#### GENERAL PROVISIONS

##### Article 14

#### Undertakings with significant market power

1. Where the Specific Directives require national regulatory authorities to determine whether operators have significant market power in accordance with the procedure referred to in Article 16, paragraphs 2 and 3 of this Article shall apply.
2. An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, that is to say a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

In particular, national regulatory authorities shall, when assessing whether two or more undertakings are in a joint dominant position in a market, act in accordance with Community law and take into the utmost account the guidelines on market analysis and the assessment of significant market power published by the Commission pursuant to

Article 15. Criteria to be used in making such an assessment are set out in Annex II.

3. Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.

##### Article 15

#### Market definition procedure

1. After public consultation and consultation with national regulatory authorities the Commission shall adopt a recommendation on relevant product and service markets (hereinafter 'the recommendation'). The recommendation shall identify in accordance with Annex I hereto those product and service markets within the electronic communications sector, the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

The Commission shall regularly review the recommendation.

2. The Commission shall publish, at the latest on the date of entry into force of this Directive, guidelines for market analysis and the assessment of significant market power (hereinafter 'the guidelines') which shall be in accordance with the principles of competition law.

3. National regulatory authorities shall, taking the utmost account of the recommendation and the guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall follow the procedures referred to in Articles 6 and 7 before defining the markets that differ from those defined in the recommendation.

4. After consultation with national regulatory authorities the Commission may, acting in accordance with the procedure referred to in Article 22(3), adopt a Decision identifying transnational markets.

##### Article 16

#### Market analysis procedure

1. As soon as possible after the adoption of the recommendation or any updating thereof, national regulatory authorities shall carry out an analysis of the relevant markets,

taking the utmost account of the guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.

2. Where a national regulatory authority is required under Articles 16, 17, 18 or 19 of Directive 2002/22/EC (Universal Service Directive), or Articles 7 or 8 of Directive 2002/19/EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive.

3. Where a national regulatory authority concludes that the market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations referred to in paragraph 2 of this Article. In cases where sector specific regulatory obligations already exist, it shall withdraw such obligations placed on undertakings in that relevant market. An appropriate period of notice shall be given to parties affected by such a withdrawal of obligations.

4. Where a national regulatory authority determines that a relevant market is not effectively competitive, it shall identify undertakings with significant market power on that market in accordance with Article 14 and the national regulatory authority shall on such undertakings impose appropriate specific regulatory obligations referred to in paragraph 2 of this Article or maintain or amend such obligations where they already exist.

5. In the case of transnational markets identified in the Decision referred to in Article 15(4), the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the guidelines and decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in paragraph 2 of this Article in a concerted fashion.

6. Measures taken according to the provisions of paragraphs 3, 4 and 5 of this Article shall be subject to the procedures referred to in Articles 6 and 7.

#### Article 17

#### Standardisation

1. The Commission, acting in accordance with the procedure referred to in Article 22(2), shall draw up and publish in the *Official Journal of the European Communities* a list of standards and/or specifications to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services. Where necessary, the Commission may, acting in accordance with the procedure referred to in Article 22(2) and following consultation of the Committee established by Directive 98/34/EC, request that standards be drawn up by the European standards organisations (European Committee for Standardisation (CEN), European Committee for Electrotechnical Standardisation (CENELEC), and European Telecommunications Standards Institute (ETSI)).

2. Member States shall encourage the use of the standards and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.

As long as standards and/or specifications have not been published in accordance with paragraph 1, Member States shall encourage the implementation of standards and/or specifications adopted by the European standards organisations.

In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC).

Where international standards exist, Member States shall encourage the European standards organisations to use them, or the relevant parts of them, as a basis for the standards they develop, except where such international standards or relevant parts would be ineffective.

3. If the standards and/or specifications referred to in paragraph 1 have not been adequately implemented so that interoperability of services in one or more Member States cannot be ensured, the implementation of such standards and/or specifications may be made compulsory under the procedure laid down in paragraph 4, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users.

4. Where the Commission intends to make the implementation of certain standards and/or specifications compulsory, it shall publish a notice in the *Official Journal of the European Communities* and invite public comment by all parties concerned. The Commission, acting in accordance with the procedure referred to in Article 22(3), shall make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the list of standards and/or specifications published in the *Official Journal of the European Communities*.

5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall, acting in accordance with the procedure referred to in Article 22(2), remove them from the list of standards and/or specifications referred to in paragraph 1.

6. Where the Commission considers that standards and/or specifications referred to in paragraph 4 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall, acting in

accordance with the procedure referred to in Article 22(3), remove them from this list of standards and/or specifications referred to in paragraph 1.

7. This Article does not apply in respect of any of the essential requirements, interface specifications or harmonised standards to which the provisions of Directive 1999/5/EC apply.

#### Article 18

##### Interoperability of digital interactive television services

1. In order to promote the free flow of information, media pluralism and cultural diversity, Member States shall encourage, in accordance with the provisions of Article 17(2):

- (a) providers of digital interactive television services for distribution to the public in the Community on digital interactive television platforms, regardless of the transmission mode, to use an open API;
- (b) providers of all enhanced digital television equipment deployed for the reception of digital interactive television services on interactive digital television platforms to comply with an open API in accordance with the minimum requirements of the relevant standards or specifications.

2. Without prejudice to Article 5(1)(b) of Directive 2002/19/EC (Access Directive), Member States shall encourage proprietors of APIs to make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable providers of digital interactive television services to provide all services supported by the API in a fully functional form.

3. Within one year after the date of application referred to in Article 28(1), second subparagraph, the Commission shall examine the effects of this Article. If interoperability and freedom of choice for users have not been adequately achieved in one or more Member States, the Commission may take action in accordance with the procedure laid down in Article 17(3) and (4).

#### Article 19

##### Harmonisation procedures

1. Where the Commission, acting in accordance with the procedure referred to in Article 22(2), issues recommendations to Member States on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8, Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a recommendation, it shall inform the Commission giving the reasoning for its position.

2. Where the Commission finds that divergence at national level in regulations aimed at implementing Article 10(4) creates a barrier to the single market, the Commission may, acting in accordance with the procedure referred to in Article 22(3), take the appropriate technical implementing measures.

#### Article 20

##### Dispute resolution between undertakings

1. In the event of a dispute arising in connection with obligations arising under this Directive or the Specific Directives between undertakings providing electronic communications networks or services in a Member State, the national regulatory authority concerned shall, at the request of either party, and without prejudice to the provisions of paragraph 2, issue a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.

2. Member States may make provision for national regulatory authorities to decline to resolve a dispute through a binding decision where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8. The national regulatory authority shall inform the parties without delay. If after four months the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding decision to resolve the dispute in the shortest possible time frame and in any case within four months.

3. In resolving a dispute, the national regulatory authority shall take decisions aimed at achieving the objectives set out in Article 8. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.

4. The decision of the national regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.

5. The procedure referred to in paragraphs 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

#### Article 21

##### Resolution of cross-border disputes

1. In the event of a cross-border dispute arising under this Directive or the Specific Directives between parties in different

Member States, where the dispute lies within the competence of national regulatory authorities from more than one Member State, the procedure set out in paragraphs 2, 3 and 4 shall be applicable.

2. Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.

3. Member States may make provision for national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8. They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party seeking redress, and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8.

4. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.

#### Article 22

#### Committee

1. The Commission shall be assisted by a Committee ('the Communications Committee').

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

4. The Committee shall adopt its rules of procedure.

#### Article 23

#### Exchange of information

1. The Commission shall provide all relevant information to the Communications Committee on the outcome of regular consultations with the representatives of network operators, service providers, users, consumers, manufacturers and trade unions, as well as third countries and international organisations.

2. The Communications Committee shall, taking account of the Community's electronic communications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding electronic communications networks and services.

#### Article 24

#### Publication of information

1. Member States shall ensure that up-to-date information pertaining to the application of this Directive and the Specific Directives is made publicly available in a manner that guarantees all interested parties easy access to that information. They shall publish a notice in their national official gazette describing how and where the information is published. The first such notice shall be published before the date of application referred to in Article 28(1), second subparagraph, and thereafter a notice shall be published whenever there is any change in the information contained therein.

2. Member States shall send to the Commission a copy of all such notices at the time of publication. The Commission shall distribute the information to the Communications Committee as appropriate.

#### Article 25

#### Review procedures

1. The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 28(1), second subparagraph. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay.

#### CHAPTER V

#### FINAL PROVISIONS

#### Article 26

#### Repeal

The following Directives and Decisions are hereby repealed with effect from the date of application referred to in Article 28(1), second subparagraph:

— Directive 90/387/EEC,



- Council Decision 91/396/EEC of 29 July 1991 on the introduction of a single European emergency call number <sup>(1)</sup>,
- Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines <sup>(2)</sup>,
- Council Decision 92/264/EEC of 11 May 1992 on the introduction of a standard international telephone access code in the Community <sup>(3)</sup>,
- Directive 95/47/EC,
- Directive 97/13/EC,
- Directive 97/33/EC,
- Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment <sup>(4)</sup>.

#### Article 27

##### Transitional measures

Member States shall maintain all obligations under national law referred to in Article 7 of Directive 2002/19/EC (Access Directive) and Article 16 of Directive 2002/22/EC (Universal Service Directive) until such time as a determination is made in respect of those obligations by a national regulatory authority in accordance with Article 16 of this Directive.

Operators of fixed public telephone networks that were designated by their national regulatory authority as having significant market power in the provision of fixed public telephone networks and services under Annex I, Part 1 of Directive 97/33/EC or Directive 98/10/EC shall continue to be considered 'notified operators' for the purposes of Regulation (EC) No 2887/2000 until such a time as the market analysis procedure referred to in Article 16 has been completed. Thereafter they shall cease to be considered 'notified operators' for the purposes of the Regulation.

#### Article 28

##### Transposition

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive not later than 24 July 2003. They shall forthwith inform the Commission thereof.

They shall apply those measures from 25 July 2003.

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

3. 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 29

##### Entry into force

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

#### Article 30

##### Addressees

This Directive is addressed to the Member States.

Done at Brussels, 7 March 2002.

*For the European Parliament*

*The President*

P. COX

*For the Council*

*The President*

J. C. APARICIO

<sup>(1)</sup> OJ L 217, 6.8.1991, p. 31.

<sup>(2)</sup> OJ L 165, 19.6.1992, p. 27. Directive as last amended by Commission Decision 98/80/EC (OJ L 14, 20.1.1998, p. 27).

<sup>(3)</sup> OJ L 137, 20.5.1992, p. 21.

<sup>(4)</sup> OJ L 101, 1.4.1998, p. 24.

## ANNEX I

**List of markets to be included in the initial Commission recommendation on relevant product and service markets referred to in Article 15**1. *Markets referred to in Directive 2002/22/EC (Universal Service Directive)*

Article 16 — Markets defined under the former regulatory framework, where obligations should be reviewed.

The provision of connection to and use of the public telephone network at fixed locations.

The provision of leased lines to end users.

2. *Markets referred to in Directive 2002/19/EC (Access Directive)*

Article 7 — Markets defined under the former regulatory framework, where obligations should be reviewed.

Interconnection (Directive 97/33/EC)

call origination in the fixed public telephone network

call termination in the fixed public telephone network

transit services in the fixed public telephone network

call origination on public mobile telephone networks

call termination on public mobile telephone networks

leased line interconnection (interconnection of part circuits)

Network access and special network access (Directive 97/33/EC, Directive 98/10/EC)

access to the fixed public telephone network, including unbundled access to the local loop

access to public mobile telephone networks, including carrier selection

Wholesale leased line capacity (Directive 92/44/EEC)

wholesale provision of leased line capacity to other suppliers of electronic communications networks or services

3. *Markets referred to in Regulation (EC) No 2887/2000*

Services provided over unbundled (twisted metallic pair) loops.

4. *Additional markets*

The national market for international roaming services on public mobile telephone networks.

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## ANNEX II

**Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph**

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market the structure of which is considered to be conducive to coordinated effects. Without prejudice to the case law of the Court of Justice on joint dominance, this is likely to be the case where the market satisfies a number of appropriate characteristics, in particular in terms of market concentration, transparency and other characteristics mentioned below:

- mature market,
- stagnant or moderate growth on the demand side,
- low elasticity of demand,
- homogeneous product,
- similar cost structures,
- similar market shares,
- lack of technical innovation, mature technology,
- absence of excess capacity,
- high barriers to entry,
- lack of countervailing buying power,
- lack of potential competition,
- various kinds of informal or other links between the undertakings concerned,
- retaliatory mechanisms,
- lack or reduced scope for price competition.

The above is not an exhaustive list, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance.

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**DIRECTIVE 2002/22/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 7 March 2002**

**on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

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

Having regard to the opinion of the Committee of the Regions <sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>(4)</sup>,

Whereas:

- (1) The liberalisation of the telecommunications sector and increasing competition and choice for communications services go hand in hand with parallel action to create a harmonised regulatory framework which secures the delivery of universal service. The concept of universal service should evolve to reflect advances in technology, market developments and changes in user demand. The regulatory framework established for the full liberalisation of the telecommunications market in 1998 in the Community defined the minimum scope of universal service obligations and established rules for its costing and financing.
- (2) Under Article 153 of the Treaty, the Community is to contribute to the protection of consumers.
- (3) The Community and its Member States have undertaken commitments on the regulatory framework of telecommunications networks and services in the context of the World Trade Organisation (WTO) agreement on basic telecommunications. Any member of the WTO has the right to define the kind of universal

service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the member.

- (4) Ensuring universal service (that is to say, the provision of a defined minimum set of services to all end-users at an affordable price) may involve the provision of some services to some end-users at prices that depart from those resulting from normal market conditions. However, compensating undertakings designated to provide such services in such circumstances need not result in any distortion of competition, provided that designated undertakings are compensated for the specific net cost involved and provided that the net cost burden is recovered in a competitively neutral way.

- (5) In a competitive market, certain obligations should apply to all undertakings providing publicly available telephone services at fixed locations and others should apply only to undertakings enjoying significant market power or which have been designated as a universal service operator.

- (6) The network termination point represents a boundary for regulatory purposes between the regulatory framework for electronic communication networks and services and the regulation of telecommunication terminal equipment. Defining the location of the network termination point is the responsibility of the national regulatory authority, where necessary on the basis of a proposal by the relevant undertakings.

- (7) Member States should continue to ensure that the services set out in Chapter II are made available with the quality specified to all end-users in their territory, irrespective of their geographical location, and, in the light of specific national conditions, at an affordable price. Member States may, in the context of universal service obligations and in the light of national conditions, take specific measures for consumers in rural or geographically isolated areas to ensure their access to the services set out in the Chapter II and the affordability of those services, as well as ensure under

<sup>(1)</sup> OJ C 365 E, 19.12.2000, p. 238 and OJ C 332 E, 27.11.2001, p. 292.

<sup>(2)</sup> OJ C 139, 11.5.2001, p. 15.

<sup>(3)</sup> OJ C 144, 16.5.2001, p. 60.

<sup>(4)</sup> Opinion of the European Parliament of 13 June 2001 (not yet published in the Official Journal), Council Common Position of 17 September 2001 (OJ C 337, 30.11.2001, p. 55) and Decision of the European Parliament of 12 December 2001 (not yet published in the Official Journal). Council Decision of 14 February 2002.

the same conditions this access, in particular for the elderly, the disabled and for people with special social needs. Such measures may also include measures directly targeted at consumers with special social needs providing support to identified consumers, for example by means of specific measures, taken after the examination of individual requests, such as the paying off of debts.

- (8) A fundamental requirement of universal service is to provide users on request with a connection to the public telephone network at a fixed location, at an affordable price. The requirement is limited to a single narrowband network connection, the provision of which may be restricted by Member States to the end-user's primary location/residence, and does not extend to the Integrated Services Digital Network (ISDN) which provides two or more connections capable of being used simultaneously. There should be no constraints on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations. Connections to the public telephone network at a fixed location should be capable of supporting speech and data communications at rates sufficient for access to online services such as those provided via the public Internet. The speed of Internet access experienced by a given user may depend on a number of factors including the provider(s) of Internet connectivity as well as the given application for which a connection is being used. The data rate that can be supported by a single narrowband connection to the public telephone network depends on the capabilities of the subscriber's terminal equipment as well as the connection. For this reason it is not appropriate to mandate a specific data or bit rate at Community level. Currently available voice band modems typically offer a data rate of 56 kbit/s and employ automatic data rate adaptation to cater for variable line quality, with the result that the achieved data rate may be lower than 56 kbit/s. Flexibility is required on the one hand to allow Member States to take measures where necessary to ensure that connections are capable of supporting such a data rate, and on the other hand to allow Member States where relevant to permit data rates below this upper limit of 56 kbit/s in order, for example, to exploit the capabilities of wireless technologies (including cellular wireless networks) to deliver universal service to a higher proportion of the population. This may be of particular importance in some accession countries where household penetration of traditional telephone connections remains relatively low. In specific cases where the connection to the public telephony network at a fixed location is clearly insufficient to support satisfactory Internet access, Member States should be able to require the connection to be brought up to the level enjoyed by the majority of subscribers so that it supports data rates sufficient for access to the Internet. Where such specific measures produce a net cost burden for those consumers concerned, the net effect

may be included in any net cost calculation of universal service obligations.

- (9) The provisions of this Directive do not preclude Member States from designating different undertakings to provide the network and service elements of universal service. Designated undertakings providing network elements may be required to ensure such construction and maintenance as are necessary and proportionate to meet all reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location.
- (10) Affordable price means a price defined by Member States at national level in the light of specific national conditions, and may involve setting common tariffs irrespective of location or special tariff options to deal with the needs of low-income users. Affordability for individual consumers is related to their ability to monitor and control their expenditure.
- (11) Directory information and a directory enquiry service constitute an essential access tool for publicly available telephone services and form part of the universal service obligation. Users and consumers desire comprehensive directories and a directory enquiry service covering all listed telephone subscribers and their numbers (including fixed and mobile numbers) and want this information to be presented in a non-preferential fashion. Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector <sup>(1)</sup> ensures the subscribers' right to privacy with regard to the inclusion of their personal information in a public directory.
- (12) For the citizen, it is important for there to be adequate provision of public pay telephones, and for users to be able to call emergency telephone numbers and, in particular, the single European emergency call number ('112') free of charge from any telephone, including public pay telephones, without the use of any means of

<sup>(1)</sup> OJ L 24, 30.1.1998, p. 1.

payment. Insufficient information about the existence of '112' deprives citizens of the additional safety ensured by the existence of this number at European level especially during their travel in other Member States.

- (13) Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs. Specific measures for disabled users could include, as appropriate, making available accessible public telephones, public text telephones or equivalent measures for deaf or speech-impaired people, providing services such as directory enquiry services or equivalent measures free of charge for blind or partially sighted people, and providing itemised bills in alternative format on request for blind or partially sighted people. Specific measures may also need to be taken to enable disabled users and users with special social needs to access emergency services '112' and to give them a similar possibility to choose between different operators or service providers as other consumers. Quality of service standards have been developed for a range of parameters to assess the quality of services received by subscribers and how well undertakings designated with universal service obligations perform in achieving these standards. Quality of service standards do not yet exist in respect of disabled users. Performance standards and relevant parameters should be developed for disabled users and are provided for in Article 11 of this Directive. Moreover, national regulatory authorities should be enabled to require publication of quality of service performance data if and when such standards and parameters are developed. The provider of universal service should not take measures to prevent users from benefiting fully from services offered by different operators or service providers, in combination with its own services offered as part of universal service.

- (14) The importance of access to and use of the public telephone network at a fixed location is such that it should be available to anyone reasonably requesting it. In accordance with the principle of subsidiarity, it is for Member States to decide on the basis of objective criteria which undertakings have universal service obligations for the purposes of this Directive, where appropriate taking into account the ability and the willingness of undertakings to accept all or part of the universal service obligations. It is important that universal service obligations are fulfilled in the most efficient fashion so that users generally pay prices that correspond to efficient cost provision. It is likewise important that universal service operators maintain the integrity of the network as well as service continuity and quality. The development of greater competition

and choice provide more possibilities for all or part of the universal service obligations to be provided by undertakings other than those with significant market power. Therefore, universal service obligations could in some cases be allocated to operators demonstrating the most cost-effective means of delivering access and services, including by competitive or comparative selection procedures. Corresponding obligations could be included as conditions in authorisations to provide publicly available services.

- (15) Member States should monitor the situation of consumers with respect to their use of publicly available telephone services and in particular with respect to affordability. The affordability of telephone service is related to the information which users receive regarding telephone usage expenses as well as the relative cost of telephone usage compared to other services, and is also related to their ability to control expenditure. Affordability therefore means giving power to consumers through obligations imposed on undertakings designated as having universal service obligations. These obligations include a specified level of itemised billing, the possibility for consumers selectively to block certain calls (such as high-priced calls to premium services), the possibility for consumers to control expenditure via pre-payment means and the possibility for consumers to offset up-front connection fees. Such measures may need to be reviewed and changed in the light of market developments. Current conditions do not warrant a requirement for operators with universal service obligations to alert subscribers where a predetermined limit of expenditure is exceeded or an abnormal calling pattern occurs. Review of the relevant legislative provisions in future should consider whether there is a possible need to alert subscribers for these reasons.

- (16) Except in cases of persistent late payment or non-payment of bills, consumers should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium rate services, should continue to have access to essential telephone services pending resolution of the dispute. Member States may decide that such access may continue to be provided only if the subscriber continues to pay line rental charges.

- (17) Quality and price are key factors in a competitive market and national regulatory authorities should be able to monitor achieved quality of service for undertakings which have been designated as having universal service obligations. In relation to the quality of service attained by such undertakings, national

regulatory authorities should be able to take appropriate measures where they deem it necessary. National regulatory authorities should also be able to monitor the achieved quality of services of other undertakings providing public telephone networks and/or publicly available telephone services to users at fixed locations.

- (18) Member States should, where necessary, establish mechanisms for financing the net cost of universal service obligations in cases where it is demonstrated that the obligations can only be provided at a loss or at a net cost which falls outside normal commercial standards. It is important to ensure that the net cost of universal service obligations is properly calculated and that any financing is undertaken with minimum distortion to the market and to undertakings, and is compatible with the provisions of Articles 87 and 88 of the Treaty.
- (19) Any calculation of the net cost of universal service should take due account of costs and revenues, as well as the intangible benefits resulting from providing universal service, but should not hinder the general aim of ensuring that pricing structures reflect costs. Any net costs of universal service obligations should be calculated on the basis of transparent procedures.
- (20) Taking into account intangible benefits means that an estimate in monetary terms, of the indirect benefits that an undertaking derives by virtue of its position as provider of universal service, should be deducted from the direct net cost of universal service obligations in order to determine the overall cost burden.
- (21) When a universal service obligation represents an unfair burden on an undertaking, it is appropriate to allow Member States to establish mechanisms for efficiently recovering net costs. Recovery via public funds constitutes one method of recovering the net costs of universal service obligations. It is also reasonable for established net costs to be recovered from all users in a transparent fashion by means of levies on undertakings. Member States should be able to finance the net costs of different elements of universal service through different mechanisms, and/or to finance the net costs of some or all elements from either of the mechanisms or a combination of both. In the case of cost recovery by means of levies on undertakings, Member States should ensure that the method of allocation amongst them is based on objective and non-discriminatory criteria and is in accordance with the principle of proportionality. This principle does not prevent Member States from exempting new entrants which have not yet achieved any significant market presence. Any funding mechanism should ensure that market participants only contribute to the financing of universal service obligations and not to other activities which are not directly linked to the provision of the universal service obligations. Recovery mechanisms should in all cases respect the principles of Community law, and in particular in the case of sharing mechanisms those of non-discrimination and proportionality. Any funding mechanism should ensure that users in one Member State do not contribute to universal service costs in another Member State, for example when making calls from one Member State to another.
- (22) Where Member States decide to finance the net cost of universal service obligations from public funds, this should be understood to comprise funding from general government budgets including other public financing sources such as state lotteries.
- (23) The net cost of universal service obligations may be shared between all or certain specified classes of undertaking. Member States should ensure that the sharing mechanism respects the principles of transparency, least market distortion, non-discrimination and proportionality. Least market distortion means that contributions should be recovered in a way that as far as possible minimises the impact of the financial burden falling on end-users, for example by spreading contributions as widely as possible.
- (24) National regulatory authorities should satisfy themselves that those undertakings benefiting from universal service funding provide a sufficient level of detail of the specific elements requiring such funding in order to justify their request. Member States' schemes for the costing and financing of universal service obligations should be communicated to the Commission for verification of compatibility with the Treaty. There are incentives for designated operators to raise the assessed net cost of universal service obligations. Therefore Member States should ensure effective transparency and control of amounts charged to finance universal service obligations.
- (25) Communications markets continue to evolve in terms of the services used and the technical means used to deliver them to users. The universal service obligations, which are defined at a Community level, should be periodically reviewed with a view to proposing that the scope be changed or redefined. Such a review should take account of evolving social, commercial and technological conditions and the fact that any change of scope should be subject to the twin test of services that become available to a substantial majority of the

population, with a consequent risk of social exclusion for those who can not afford them. Care should be taken in any change of the scope of universal service obligations to ensure that certain technological choices are not artificially promoted above others, that a disproportionate financial burden is not imposed on sector undertakings (thereby endangering market developments and innovation) and that any financing burden does not fall unfairly on consumers with lower incomes. Any change of scope automatically means that any net cost can be financed via the methods permitted in this Directive. Member States are not permitted to impose on market players financial contributions which relate to measures which are not part of universal service obligations. Individual Member States remain free to impose special measures (outside the scope of universal service obligations) and finance them in conformity with Community law but not by means of contributions from market players.

- (26) More effective competition across all access and service markets will give greater choice for users. The extent of effective competition and choice varies across the Community and varies within Member States between geographical areas and between access and service markets. Some users may be entirely dependent on the provision of access and services by an undertaking with significant market power. In general, for reasons of efficiency and to encourage effective competition, it is important that the services provided by an undertaking with significant market power reflect costs. For reasons of efficiency and social reasons, end-user tariffs should reflect demand conditions as well as cost conditions, provided that this does not result in distortions of competition. There is a risk that an undertaking with significant market power may act in various ways to inhibit entry or distort competition, for example by charging excessive prices, setting predatory prices, compulsory bundling of retail services or showing undue preference to certain customers. Therefore, national regulatory authorities should have powers to impose, as a last resort and after due consideration, retail regulation on an undertaking with significant market power. Price cap regulation, geographical averaging or similar instruments, as well as non-regulatory measures such as publicly available comparisons of retail tariffs, may be used to achieve the twin objectives of promoting effective competition whilst pursuing public interest needs, such as maintaining the affordability of publicly available telephone services for some consumers. Access to appropriate cost accounting information is necessary, in order for national regulatory authorities to fulfil their regulatory duties in this area, including the imposition of any tariff controls. However, regulatory controls on retail services should only be imposed where national regulatory authorities consider that relevant wholesale measures or measures regarding carrier selection or

pre-selection would fail to achieve the objective of ensuring effective competition and public interest.

- (27) Where a national regulatory authority imposes obligations to implement a cost accounting system in order to support price controls, it may itself undertake an annual audit to ensure compliance with that cost accounting system, provided that it has the necessary qualified staff, or it may require the audit to be carried out by another qualified body, independent of the operator concerned.
- (28) It is considered necessary to ensure the continued application of the existing provisions relating to the minimum set of leased line services in Community telecommunications legislation, in particular in Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines <sup>(1)</sup>, until such time as national regulatory authorities determine, in accordance with the market analysis procedures laid down in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) <sup>(2)</sup>, that such provisions are no longer needed because a sufficiently competitive market has developed in their territory. The degree of competition is likely to vary between different markets of leased lines in the minimum set, and in different parts of the territory. In undertaking the market analysis, national regulatory authorities should make separate assessments for each market of leased lines in the minimum set, taking into account their geographic dimension. Leased lines services constitute mandatory services to be provided without recourse to any compensation mechanisms. The provision of leased lines outside of the minimum set of leased lines should be covered by general retail regulatory provisions rather than specific requirements covering the supply of the minimum set.
- (29) National regulatory authorities may also, in the light of an analysis of the relevant market, require mobile operators with significant market power to enable their subscribers to access the services of any interconnected provider of publicly available telephone services on a call-by-call basis or by means of pre-selection.

<sup>(1)</sup> OJ L 165, 19.6.1992, p. 27. Directive as last amended by Commission Decision No 98/80/EC (OJ L 14, 20.1.1998, p. 27).

<sup>(2)</sup> See page 33 of this Official Journal.



- (30) Contracts are an important tool for users and consumers to ensure a minimum level of transparency of information and legal security. Most service providers in a competitive environment will conclude contracts with their customers for reasons of commercial desirability. In addition to the provisions of this Directive, the requirements of existing Community consumer protection legislation relating to contracts, in particular Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts <sup>(1)</sup> and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts <sup>(2)</sup>, apply to consumer transactions relating to electronic networks and services. Specifically, consumers should enjoy a minimum level of legal certainty in respect of their contractual relations with their direct telephone service provider, such that the contractual terms, conditions, quality of service, condition for termination of the contract and the service, compensation measures and dispute resolution are specified in their contracts. Where service providers other than direct telephone service providers conclude contracts with consumers, the same information should be included in those contracts as well. The measures to ensure transparency on prices, tariffs, terms and conditions will increase the ability of consumers to optimise their choices and thus to benefit fully from competition.
- (31) End-users should have access to publicly available information on communications services. Member States should be able to monitor the quality of services which are offered in their territories. National regulatory authorities should be able systematically to collect information on the quality of services offered in their territories on the basis of criteria which allow comparability between service providers and between Member States. Undertakings providing communications services, operating in a competitive environment, are likely to make adequate and up-to-date information on their services publicly available for reasons of commercial advantage. National regulatory authorities should nonetheless be able to require publication of such information where it is demonstrated that such information is not effectively available to the public.
- (32) End-users should be able to enjoy a guarantee of interoperability in respect of all equipment sold in the Community for the reception of digital television. Member States should be able to require minimum harmonised standards in respect of such equipment. Such standards could be adapted from time to time in the light of technological and market developments.
- (33) It is desirable to enable consumers to achieve the fullest connectivity possible to digital television sets. Interoperability is an evolving concept in dynamic markets. Standards bodies should do their utmost to ensure that appropriate standards evolve along with the technologies concerned. It is likewise important to ensure that connectors are available on television sets that are capable of passing all the necessary elements of a digital signal, including the audio and video streams, conditional access information, service information, application program interface (API) information and copy protection information. This Directive therefore ensures that the functionality of the open interface for digital television sets is not limited by network operators, service providers or equipment manufacturers and continues to evolve in line with technological developments. For display and presentation of digital interactive television services, the realisation of a common standard through a market-driven mechanism is recognised as a consumer benefit. Member States and the Commission may take policy initiatives, consistent with the Treaty, to encourage this development.
- (34) All end-users should continue to enjoy access to operator assistance services whatever organisation provides access to the public telephone network.
- (35) The provision of directory enquiry services and directories is already open to competition. The provisions of this Directive complement the provisions of Directive 97/66/EC by giving subscribers a right to have their personal data included in a printed or electronic directory. All service providers which assign telephone numbers to their subscribers are obliged to make relevant information available in a fair, cost-oriented and non-discriminatory manner.
- (36) It is important that users should be able to call the single European emergency number '112', and any other national emergency telephone numbers, free of charge, from any telephone, including public pay telephones, without the use of any means of payment. Member States should have already made the necessary organisational arrangements best suited to the national organisation of the emergency systems, in order to ensure that calls to this number are adequately answered and handled. Caller location information, to be made available to the emergency services, will improve the level of protection and the security of users of '112' services and assist the emergency services, to the extent technically feasible, in the discharge of their duties, provided that the transfer of calls and associated data to the emergency services concerned is guaranteed. The reception and use of such information should comply with relevant Community law on the processing of personal data. Steady information technology

<sup>(1)</sup> OJ L 95, 21.4.1993, p. 29.

<sup>(2)</sup> OJ L 144, 4.6.1997, p. 19.

- improvements will progressively support the simultaneous handling of several languages over the networks at a reasonable cost. This in turn will ensure additional safety for European citizens using the '112' emergency call number.
- (37) Easy access to international telephone services is vital for European citizens and European businesses. '00' has already been established as the standard international telephone access code for the Community. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. The ITU has assigned, in accordance with ITU Recommendation E.164, code '3883' to the European Telephony Numbering Space (ETNS). In order to ensure connection of calls to the ETNS, undertakings operating public telephone networks should ensure that calls using '3883' are directly or indirectly interconnected to ETNS serving networks specified in the relevant European Telecommunications Standards Institute (ETSI) standards. Such interconnection arrangements should be governed by the provisions of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) <sup>(1)</sup>.
- (38) Access by end-users to all numbering resources in the Community is a vital pre-condition for a single market. It should include freephone, premium rate, and other non-geographic numbers, except where the called subscriber has chosen, for commercial reasons, to limit access from certain geographical areas. Tariffs charged to parties calling from outside the Member State concerned need not be the same as for those parties calling from inside that Member State.
- (39) Tone dialling and calling line identification facilities are normally available on modern telephone exchanges and can therefore increasingly be provided at little or no expense. Tone dialling is increasingly being used for user interaction with special services and facilities, including value added services, and the absence of this facility can prevent the user from making use of these services. Member States are not required to impose obligations to provide these facilities when they are already available. Directive 97/66/EC safeguards the privacy of users with regard to itemised billing, by giving them the means to protect their right to privacy when calling line identification is implemented. The development of these services on a pan-European basis would benefit consumers and is encouraged by this Directive.
- (40) Number portability is a key facilitator of consumer choice and effective competition in a competitive telecommunications environment such that end-users who so request should be able to retain their number(s) on the public telephone network independently of the organisation providing service. The provision of this facility between connections to the public telephone network at fixed and non-fixed locations is not covered by this Directive. However, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks.
- (41) The impact of number portability is considerably strengthened when there is transparent tariff information, both for end-users who port their numbers and also for end-users who call those who have ported their numbers. National regulatory authorities should, where feasible, facilitate appropriate tariff transparency as part of the implementation of number portability.
- (42) When ensuring that pricing for interconnection related to the provision of number portability is cost-oriented, national regulatory authorities may also take account of prices available in comparable markets.
- (43) Currently, Member States impose certain 'must carry' obligations on networks for the distribution of radio or television broadcasts to the public. Member States should be able to lay down proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Community law and should be proportionate, transparent and subject to periodical review. 'Must carry' obligations imposed by Member States should be reasonable, that is they should be proportionate and transparent in the light of clearly defined general interest objectives, and could, where appropriate, entail a provision for proportionate remuneration. Such 'must carry' obligations may include the transmission of services specifically designed to enable appropriate access by disabled users.
- (44) Networks used for the distribution of radio or television broadcasts to the public include cable, satellite and terrestrial broadcasting networks. They might also include other networks to the extent that a significant number of end-users use such networks as their principal means to receive radio and television broadcasts.

<sup>(1)</sup> See page 7 of this Official Journal.

- (45) Services providing content such as the offer for sale of a package of sound or television broadcasting content are not covered by the common regulatory framework for electronic communications networks and services. Providers of such services should not be subject to universal service obligations in respect of these activities. This Directive is without prejudice to measures taken at national level, in compliance with Community law, in respect of such services.
- (46) Where a Member State seeks to ensure the provision of other specific services throughout its national territory, such obligations should be implemented on a cost efficient basis and outside the scope of universal service obligations. Accordingly, Member States may undertake additional measures (such as facilitating the development of infrastructure or services in circumstances where the market does not satisfactorily address the requirements of end-users or consumers), in conformity with Community law. As a reaction to the Commission's e-Europe initiative, the Lisbon European Council of 23 and 24 March 2000 called on Member States to ensure that all schools have access to the Internet and to multimedia resources.
- (47) In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to end-users' rights. Effective procedures should be available to deal with disputes between consumers, on the one hand, and undertakings providing publicly available communications services, on the other. Member States should take full account of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes <sup>(1)</sup>.
- (48) Co-regulation could be an appropriate way of stimulating enhanced quality standards and improved service performance. Co-regulation should be guided by the same principles as formal regulation, i.e. it should be objective, justified, proportional, non-discriminatory and transparent.
- (49) This Directive should provide for elements of consumer protection, including clear contract terms and dispute resolution, and tariff transparency for consumers. It should also encourage the extension of such benefits to other categories of end-users, in particular small and medium-sized enterprises.
- (50) The provisions of this Directive do not prevent a Member State from taking measures justified on grounds set out in Articles 30 and 46 of the Treaty, and in particular on grounds of public security, public policy and public morality.
- (51) Since the objectives of the proposed action, namely setting a common level of universal service for telecommunications for all European users and of harmonising conditions for access to and use of public telephone networks at a fixed location and related publicly available telephone services and also achieving a harmonised framework for the regulation of electronic communications services, electronic communications networks and associated facilities, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principles 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 in order to achieve those objectives.
- (52) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>(2)</sup>.

HAVE ADOPTED THIS DIRECTIVE:

#### CHAPTER I

#### SCOPE, AIMS AND DEFINITIONS

##### Article 1

#### Scope and aims

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

2. This Directive establishes the rights of end-users and the corresponding obligations on undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable

<sup>(1)</sup> OJ L 115, 17.4.1998, p. 31.

<sup>(2)</sup> OJ L 184, 17.7.1999, p. 23.

price in the light of specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory services such as the retail provision of leased lines.

#### Article 2

#### Definitions

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

The following definitions shall also apply:

- (a) 'public pay telephone' means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;
- (b) 'public telephone network' means an electronic communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms of communication, such as facsimile and data;
- (c) 'publicly available telephone service' means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory enquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or with special social needs and/or the provision of non-geographic services;
- (d) 'geographic number' means a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);
- (e) 'network termination point' (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;
- (f) 'non-geographic numbers' means a number from the national numbering plan that is not a geographic number.

It includes *inter alia* mobile, freephone and premium rate numbers.

#### CHAPTER II

#### UNIVERSAL SERVICE OBLIGATIONS INCLUDING SOCIAL OBLIGATIONS

#### Article 3

#### Availability of universal service

1. Member States shall ensure that the services set out in this Chapter are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.
2. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

#### Article 4

#### Provision of access at a fixed location

1. Member States shall ensure that all reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location are met by at least one undertaking.
2. The connection provided shall be capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

#### Article 5

#### Directory enquiry services and directories

1. Member States shall ensure that:
  - (a) at least one comprehensive directory is available to end-users in a form approved by the relevant authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year;

(b) at least one comprehensive telephone directory enquiry service is available to all end-users, including users of public pay telephones.

2. The directories in paragraph 1 shall comprise, subject to the provisions of Article 11 of Directive 97/66/EC, all subscribers of publicly available telephone services.

3. Member States shall ensure that the undertaking(s) providing the services referred to in paragraph 1 apply the principle of non-discrimination to the treatment of information that has been provided to them by other undertakings.

#### Article 6

### Public pay telephones

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

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

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

#### Article 7

### Special measures for disabled users

1. Member States shall, where appropriate, take specific measures for disabled end-users in order to ensure access to and affordability of publicly available telephone services, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

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

#### Article 8

### Designation of undertakings

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

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

#### Article 9

### Affordability of tariffs

1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4, 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings, in particular in relation to national consumer prices and income.

2. Member States may, in the light of national conditions, require that designated undertakings provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the publicly available telephone service.

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

4. Member States may require undertakings with obligations under Articles 4, 5, 6 and 7 to apply common tariffs, including geographical averaging, throughout the territory, in the light of national conditions or to comply with price caps.

5. National regulatory authorities shall ensure that, where a designated undertaking has an obligation to provide special

tariff options, common tariffs, including geographical averaging, or to comply with price caps, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

#### Article 10

### Control of expenditure

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

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

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

#### Article 11

### Quality of service of designated undertakings

1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.

2. National regulatory authorities may specify, *inter alia*, additional quality of service standards, where relevant parameters have been developed, to assess the performance of undertakings in the provision of services to disabled end-users and disabled consumers. National regulatory authorities shall ensure that information concerning the performance of undertakings in relation to these parameters is also published and made available to the national regulatory authority.

3. National regulatory authorities may, in addition, specify the content, form and manner of information to be published, in order to ensure that end-users and consumers have access to comprehensive, comparable and user-friendly information.

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

5. Member States shall ensure that national regulatory authorities are able to monitor compliance with these performance targets by designated undertakings.

6. Persistent failure by an undertaking to meet performance targets may result in specific measures being taken in accordance with Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) <sup>(1)</sup>. National regulatory authorities shall be able to order independent audits or similar reviews of the performance data, paid for by the undertaking concerned, in order to ensure the accuracy and comparability of the data made available by undertakings with universal service obligations.

#### Article 12

### Costing of universal service obligations

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

For that purpose, national regulatory authorities shall:

- (a) calculate the net cost of the universal service obligation, taking into account any market benefit which accrues to an undertaking designated to provide universal service, in accordance with Annex IV, Part A; or
- (b) make use of the net costs of providing universal service identified by a designation mechanism in accordance with Article 8(2).

2. The accounts and/or other information serving as the basis for the calculation of the net cost of universal service obligations under paragraph 1(a) shall be audited or verified by

<sup>(1)</sup> See page 21 of this Official Journal.

the national regulatory authority or a body independent of the relevant parties and approved by the national regulatory authority. The results of the cost calculation and the conclusions of the audit shall be publicly available.

#### Article 13

### Financing of universal service obligations

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

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

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

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

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

#### Article 14

### Transparency

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

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

#### Article 15

### Review of the scope of universal service

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

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

## CHAPTER III

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

#### Article 16

### Review of obligations

1. Member States shall maintain all obligations relating to:
  - (a) retail tariffs for the provision of access to and use of the public telephone network, imposed under Article 17 of Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment <sup>(1)</sup>;
  - (b) carrier selection or pre-selection, imposed under Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal

<sup>(1)</sup> OJ L 101, 1.4.1998, p. 24.

service and interoperability through application of the principles of open network provision (ONP) <sup>(1)</sup>;

- (c) leased lines, imposed under Articles 3, 4, 6, 7, 8 and 10 of Directive 92/44/EEC,

until a review has been carried out and a determination made in accordance with the procedure in paragraph 3 of this Article.

2. The Commission shall indicate relevant markets for the obligations relating to retail markets in the initial recommendation on relevant product and service markets and the Decision identifying transnational markets to be adopted in accordance with Article 15 of Directive 2002/21/EC (Framework Directive).

3. Member States shall ensure that, as soon as possible after the entry into force of this Directive, and periodically thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) to determine whether to maintain, amend or withdraw the obligations relating to retail markets. Measures taken shall be subject to the procedure referred to in Article 7 of Directive 2002/21/EC (Framework Directive).

#### Article 17

##### Regulatory controls on retail services

1. Member States shall ensure that, where:
- (a) as a result of a market analysis carried out in accordance with Article 16(3) a national regulatory authority determines that a given retail market identified in accordance with Article 15 of Directive 2002/21/EC (Framework Directive) is not effectively competitive, and
- (b) the national regulatory authority concludes that obligations imposed under Directive 2002/19/EC (Access Directive), or Article 19 of this Directive would not result in the achievement of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive),

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

2. Obligations imposed under paragraph 1 shall be based on the nature of the problem identified and be proportionate

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

3. National regulatory authorities shall, on request, submit information to the Commission concerning the retail controls applied and, where appropriate, the cost accounting systems used by the undertakings concerned.

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

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

#### Article 18

##### Regulatory controls on the minimum set of leased lines

1. Where, as a result of the market analysis carried out in accordance with Article 16(3), a national regulatory authority determines that the market for the provision of part or all of the minimum set of leased lines is not effectively competitive, it shall identify undertakings with significant market power in the provision of those specific elements of the minimum set of leased lines services in all or part of its territory in accordance with Article 14 of Directive 2002/21/EC (Framework Directive). The national regulatory authority shall impose obligations regarding the provision of the minimum set of leased lines, as identified in the list of standards published in the *Official Journal of the European Communities* in accordance with Article 17 of Directive 2002/21/EC (Framework Directive), and the conditions for such provision set out in

<sup>(1)</sup> OJ L 199, 26.7.1997, p. 32. Directive as amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).



Annex VII to this Directive, on such undertakings in relation to those specific leased line markets.

2. Where as a result of the market analysis carried out in accordance with Article 16(3), a national regulatory authority determines that a relevant market for the provision of leased lines in the minimum set is effectively competitive, it shall withdraw the obligations referred to in paragraph 1 in relation to this specific leased line market.

3. The minimum set of leased lines with harmonised characteristics, and associated standards, shall be published in the *Official Journal of the European Communities* as part of the list of standards referred to in Article 17 of Directive 2002/21/EC (Framework Directive). The Commission may adopt amendments necessary to adapt the minimum set of leased lines to new technical developments and to changes in market demand, including the possible deletion of certain types of leased line from the minimum set, acting in accordance with the procedure referred to in Article 37(2) of this Directive.

#### Article 19

##### Carrier selection and carrier pre-selection

1. National regulatory authorities shall require undertakings notified as having significant market power for the provision of connection to and use of the public telephone network at a fixed location in accordance with Article 16(3) to enable their subscribers to access the services of any interconnected provider of publicly available telephone services:

- (a) on a call-by-call basis by dialling a carrier selection code; and
- (b) by means of pre-selection, with a facility to override any pre-selected choice on a call-by-call basis by dialling a carrier selection code.

2. User requirements for these facilities to be implemented on other networks or in other ways shall be assessed in accordance with the market analysis procedure laid down in Article 16 of Directive 2002/21/EC (Framework Directive) and implemented in accordance with Article 12 of Directive 2002/19/EC (Access Directive).

3. National regulatory authorities shall ensure that pricing for access and interconnection related to the provision of the facilities in paragraph 1 is cost oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.

#### CHAPTER IV

##### END-USER INTERESTS AND RIGHTS

#### Article 20

##### Contracts

1. Paragraphs 2, 3 and 4 apply without prejudice to Community rules on consumer protection, in particular Directives 97/7/EC and 93/13/EC, and national rules in conformity with Community law.

2. Member States shall ensure that, where subscribing to services providing connection and/or access to the public telephone network, consumers have a right to a contract with an undertaking or undertakings providing such services. The contract shall specify at least:

- (a) the identity and address of the supplier;
- (b) services provided, the service quality levels offered, as well as the time for the initial connection;
- (c) the types of maintenance service offered;
- (d) particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
- (e) the duration of the contract, the conditions for renewal and termination of services and of the contract;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; and
- (g) the method of initiating procedures for settlement of disputes in accordance with Article 34.

Member States may extend these obligations to cover other end-users.

3. Where contracts are concluded between consumers and electronic communications services providers other than those providing connection and/or access to the public telephone network, the information in paragraph 2 shall also be included in such contracts. Member States may extend this obligation to cover other end-users.

4. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of proposed modifications in the contractual conditions. Subscribers shall be given adequate notice, not shorter than one month, ahead

of any such modifications and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions.

#### Article 21

### Transparency and publication of information

1. Member States shall ensure that transparent and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone services is available to end-users and consumers, in accordance with the provisions of Annex II.

2. National regulatory authorities shall encourage the provision of information to enable end-users, as far as appropriate, and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of, for instance, interactive guides.

#### Article 22

### Quality of service

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

2. National regulatory authorities may specify, *inter alia*, the quality of service parameters to be measured, and the content, form and manner of information to be published, in order to ensure that end-users have access to comprehensive, comparable and user-friendly information. Where appropriate, the parameters, definitions and measurement methods given in Annex III could be used.

#### Article 23

### Integrity of the network

Member States shall take all necessary steps to ensure the integrity of the public telephone network at fixed locations and, in the event of catastrophic network breakdown or in cases of *force majeure*, the availability of the public telephone network and publicly available telephone services at fixed locations. Member States shall ensure that undertakings providing publicly available telephone services at fixed locations take all reasonable steps to ensure uninterrupted access to emergency services.

#### Article 24

### Interoperability of consumer digital television equipment

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

#### Article 25

### Operator assistance and directory enquiry services

1. Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a).

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

3. Member States shall ensure that all end-users provided with a connection to the public telephone network can access operator assistance services and directory enquiry services in accordance with Article 5(1)(b).

4. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State.

5. Paragraphs 1, 2, 3 and 4 apply subject to the requirements of Community legislation on the protection of personal data and privacy and, in particular, Article 11 of Directive 97/66/EC.

#### Article 26

### Single European emergency call number

1. Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all end-users of publicly available telephone services, including users of public pay telephones, are able to call the emergency services free of charge, by using the single European emergency call number '112'.

2. Member States shall ensure that calls to the single European emergency call number '112' are appropriately answered and handled in a manner best suited to the national organisation of emergency systems and within the technological possibilities of the networks.

3. Member States shall ensure that undertakings which operate public telephone networks make caller location information available to authorities handling emergencies, to the extent technically feasible, for all calls to the single European emergency call number '112'.

4. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency call number '112'.

#### Article 27

### European telephone access codes

1. Member States shall ensure that the '00' code is the standard international access code. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. The end-users of publicly available telephone services in the locations concerned shall be fully informed of such arrangements.

2. Member States shall ensure that all undertakings that operate public telephone networks handle all calls to the European telephony numbering space, without prejudice to the need for an undertaking that operates a public telephone network to recover the cost of the conveyance of calls on its network.

#### Article 28

### Non-geographic numbers

Member States shall ensure that end-users from other Member States are able to access non-geographic numbers within their territory where technically and economically feasible, except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas.

#### Article 29

### Provision of additional facilities

1. Member States shall ensure that national regulatory authorities are able to require all undertakings that operate public telephone networks to make available to end-users the facilities listed in Annex I, Part B, subject to technical feasibility and economic viability.

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

3. Without prejudice to Article 10(2), Member States may impose the obligations in Annex I, Part A, point (e), concerning disconnection as a general requirement on all undertakings.

#### Article 30

### Number portability

1. Member States shall ensure that all subscribers of publicly available telephone services, including mobile services, who so request can retain their number(s) independently of the undertaking providing the service:

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

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

2. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability is cost oriented and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities.

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

#### Article 31

### 'Must carry' obligations

1. Member States may impose reasonable 'must carry' obligations, for the transmission of specified radio and television broadcast channels and services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate and transparent. The obligations shall be subject to periodical review.

2. Neither paragraph 1 of this Article nor Article 3(2) of Directive 2002/19/EC (Access Directive) shall prejudice the ability of Member States to determine appropriate remuneration, if any, in respect of measures taken in accordance with this Article while ensuring that, in similar

circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

## CHAPTER V

### GENERAL AND FINAL PROVISIONS

#### Article 32

#### **Additional mandatory services**

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

#### Article 33

#### **Consultation with interested parties**

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

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

#### Article 34

#### **Out-of-court dispute resolution**

1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes, involving consumers, relating to issues covered by this Directive. Member States shall adopt measures to ensure that such procedures enable disputes to be

settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

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

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

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

#### Article 35

#### **Technical adjustment**

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

#### Article 36

#### **Notification, monitoring and review procedures**

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

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

2. National regulatory authorities shall notify to the Commission the names of operators deemed to have significant market power for the purposes of this Directive, and the obligations imposed upon them under this Directive. Any changes affecting the obligations imposed upon undertakings or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.

3. The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years

after the date of application referred to in Article 38(1), second subparagraph. The Member States and national regulatory authorities shall supply the necessary information to the Commission for this purpose.

#### Article 37

##### Committee

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

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be three months.

3. The Committee shall adopt its rules of procedure.

#### Article 38

##### Transposition

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 24 July 2003 at the latest. They shall forthwith inform the Commission thereof.

They shall apply those measures from 25 July 2003.

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

3. 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 modifications to those provisions.

#### Article 39

##### Entry into force

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

#### Article 40

##### Addressees

This Directive is addressed to the Member States.

Done at Brussels, 7 March 2002.

For the European Parliament

The President

P. COX

For the Council

The President

J. C. APARICIO

## ANNEX I

**DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE) AND ARTICLE 29 (ADDITIONAL FACILITIES)****Part A: Facilities and services referred to in Article 10****(a) Itemised billing**

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

- (i) allow verification and control of the charges incurred in using the public telephone network at a fixed location and/or related publicly available telephone services, and
- (ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

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

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

**(b) Selective call barring for outgoing calls, free of charge**

I.e. the facility whereby the subscriber can, on request to the telephone service provider, bar outgoing calls of defined types or to defined types of numbers free of charge.

**(c) Pre-payment systems**

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

**(d) Phased payment of connection fees**

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

**(e) Non-payment of bills**

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

**Part B: List of facilities referred to in Article 29****(a) Tone dialling or DTMF (dual-tone multi-frequency operation)**

I.e. the public telephone network supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within a Member State and between Member States.

(b) *Calling-line identification*

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

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular Directive 97/66/EC.

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

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## ANNEX II

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

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

1. Name(s) and address(es) of undertaking(s)  
  
I.e. names and head office addresses of undertakings providing public telephone networks and/or publicly available telephone services.
  2. Publicly available telephone services offered
    - 2.1. Scope of the publicly available telephone service  
  
Description of the publicly available telephone services offered, indicating what is included in the subscription charge and the periodic rental charge (e.g. operator services, directories, directory enquiry services, selective call barring, itemised billing, maintenance, etc.).
    - 2.2. Standard tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes.
    - 2.3. Compensation/refund policy, including specific details of any compensation/refund schemes offered.
    - 2.4. Types of maintenance service offered.
    - 2.5. Standard contract conditions, including any minimum contractual period, if relevant.
  3. Dispute settlement mechanisms including those developed by the undertaking.
  4. Information about rights as regards universal service, including the facilities and services mentioned in Annex I.
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## ANNEX III

## QUALITY OF SERVICE PARAMETERS

## Supply-time and quality-of-service parameters, definitions and measurement methods referred to Articles 11 and 22

Parameter <sup>(1)</sup>	Definition	Measurement method
Supply time for initial connection	ETSI EG 201 769-1	ETSI EG 201 769-1
Fault rate per access line	ETSI EG 201 769-1	ETSI EG 201 769-1
Fault repair time	ETSI EG 201 769-1	ETSI EG 201 769-1
Unsuccessful call ratio <sup>(2)</sup>	ETSI EG 201 769-1	ETSI EG 201 769-1
Call set up time <sup>(2)</sup>	ETSI EG 201 769-1	ETSI EG 201 769-1
Response times for operator services	ETSI EG 201 769-1	ETSI EG 201 769-1
Response times for directory enquiry services	ETSI EG 201 769-1	ETSI EG 201 769-1
Proportion of coin and card operated public pay telephones in working order	ETSI EG 201 769-1	ETSI EG 201 769-1
Bill correctness complaints	ETSI EG 201 769-1	ETSI EG 201 769-1

<sup>(1)</sup> Parameters should allow for performance to be analysed at a regional level (i.e. no less than Level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat).

<sup>(2)</sup> Member States may decide not to require that up-to-date information concerning the performance for these two parameters be kept, if evidence is available to show that performance in these two areas is satisfactory.

Note: Version number of ETSI EG 201 769-1 is 1.1.1 (April 2000).

## ANNEX IV

**CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS AND ESTABLISHING ANY RECOVERY OR SHARING MECHANISM IN ACCORDANCE WITH ARTICLES 12 AND 13****Part A: Calculation of net cost**

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

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

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

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

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

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

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

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

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

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

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

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

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## ANNEX V

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

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

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

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

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

**INTEROPERABILITY OF DIGITAL CONSUMER EQUIPMENT REFERRED TO IN ARTICLE 24**1. *The common scrambling algorithm and free-to-air reception*

All consumer equipment intended for the reception of digital television signals, for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, is to possess the capability to:

- allow the descrambling of such signals according to the common European scrambling algorithm as administered by a recognised European standards organisation, currently ETSI;
- display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

2. *Interoperability for analogue and digital television sets*

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

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

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## ANNEX VII

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

*Note:* In accordance with the procedure in Article 18, provision of the minimum set of leased lines under the conditions established by Directive 92/44/EC should continue until such time as the national regulatory authority determines that there is effective competition in the relevant leased lines market.

National regulatory authorities are to ensure that provision of the minimum set of leased lines referred to in Article 18 follows the basic principles of non-discrimination, cost orientation and transparency.

1. *Non discrimination*

National regulatory authorities are to ensure that the organisations identified as having significant market power pursuant to Article 18(1) adhere to the principle of non-discrimination when providing leased lines referred to in Article 18. Those organisations are to apply similar conditions in similar circumstances to organisations providing similar services, and are to provide leased lines to others under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries or partners, where applicable.

2. *Cost orientation*

National regulatory authorities are, where appropriate, to ensure that tariffs for leased lines referred to in Article 18 follow the basic principles of cost orientation.

To this end, national regulatory authorities are to ensure that undertakings identified as having significant market power pursuant to Article 18(1) formulate and put in practice a suitable cost accounting system.

National regulatory authorities are to keep available, with an adequate level of detail, information on the cost accounting systems applied by such undertakings. They are to submit this information to the Commission on request.

3. *Transparency*

National regulatory authorities are to ensure that the following information in respect of the minimum set of leased lines referred to in Article 18 is published in an easily accessible form.

- 3.1. Technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point.
- 3.2. Tariffs, including the initial connection charges, the periodic rental charges and other charges. Where tariffs are differentiated, this must be indicated.

Where, in response to a particular request, an organisation identified as having significant market power pursuant to Article 18(1) considers it unreasonable to provide a leased line in the minimum set under its published tariffs and supply conditions, it must seek the agreement of the national regulatory authority to vary those conditions in that case.

3.3. Supply conditions, including at least the following elements:

- information concerning the ordering procedure,
- the typical delivery period, which is the period, counted from the date when the user has made a firm request for a leased line, in which 95 % of all leased lines of the same type have been put through to the customers.

This period will be established on the basis of the actual delivery periods of leased lines during a recent time interval of reasonable duration. The calculation must not include cases where late delivery periods were requested by users,

- the contractual period, which includes the period which is in general laid down in the contract and the minimum contractual period which the user is obliged to accept,
- the typical repair time, which is the period, counted from the time when a failure message has been given to the responsible unit within the undertaking identified as having significant market power pursuant to Article 18(1) up to the moment in which 80 % of all leased lines of the same type have been re-established and in appropriate cases notified back in operation to the users. Where different classes of quality of repair are offered for the same type of leased lines, the different typical repair times shall be published,
- any refund procedure.

In addition where a Member State considers that the achieved performance for the provision of the minimum set of leased lines does not meet users' needs, it may define appropriate targets for the supply conditions listed above.

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