

BIS | Department for Business
Innovation & Skills

**IMPLEMENTING THE REVISED EU
ELECTRONIC COMMUNICATIONS
FRAMEWORK**

Marked up text showing
revisions to the Directives

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Please note: Unchanged paragraphs have been omitted.

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Consolidated text for the Framework Directive 2002/21/EC As amended by Directive 2009/140/EC

FRAMEWORK DIRECTIVE 2002/21/EC

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, and certain aspects of terminal equipment to facilitate access for disabled users. 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.

3a. Measures taken by Member States regarding end-users' access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.

Any of these measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and with general principles of Community law, including effective judicial protection and due process. Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to effective and timely judicial review shall be guaranteed.

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, including network elements which are not active, 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 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 located in more than one Member State;

(d) "public communications network" means an electronic communications network used wholly or mainly for the provision of ~~publicly available~~ electronic communications services available to the public which support the transfer of information between network termination points;

(da) "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;

(e) "associated facilities" means those associated services, physical infrastructures and other facilities or elements 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 or have the potential to do so, and include inter alia buildings or entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;

(ea) "associated services" means those services 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 or have the potential to do so and include inter alia number translation or systems offering equivalent functionality, conditional access systems and electronic programme guides, as well as other services such as identity, location and presence service;

(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~~ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)*

(q) "spectrum allocation" means the designation of a given frequency band for use by one or more types of radiocommunications services, where appropriate, under specified conditions;

(r) "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 international, Community or national regulations;

(s) "call" means a connection established by means of a publicly available electronic communications service allowing two-way voice communication."

CHAPTER II NATIONAL REGULATORY AUTHORITIES

Article 3 National Regulatory Authorities

3. Member States shall ensure that national regulatory authorities exercise their powers impartially and, transparently and in a timely manner. Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the task assigned to them.

3a. Without prejudice to the provisions of paragraphs 4 and 5, national regulatory authorities responsible for ex ante market regulation or for the resolution of disputes between undertakings in accordance with Article 20 or 21 of this Directive shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 4 shall have the power to suspend or overturn decisions by the national regulatory authorities. Member States shall ensure that the head of a national regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a national regulatory authority referred to in the first subparagraph or their replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the national regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the national regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.

Member States shall ensure that national regulatory authorities referred to in the first subparagraph have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to actively participate in and contribute to the Body of European Regulators for Electronic Communications (BEREC)*.

3b. Member States shall ensure that the goals of BEREC of promoting greater regulatory coordination and coherence are actively supported by the respective national regulatory authorities.

3c. Member States shall ensure that national regulatory authorities take utmost account of opinions and common positions adopted by BEREC when adopting their own decisions for their national markets.

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 effectively. 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~~ the appeal, the decision of the national regulatory authority shall stand, unless ~~the appeal body decides otherwise~~ interim measures are granted in accordance with national law.

3. Member States shall collect information on the general subject matter of appeals, the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. Member States shall provide such information to the Commission and BEREC after a reasoned request from either.

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~~ In particular, national regulatory authorities shall have the power to require those undertakings to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors. Undertakings with significant market power on wholesale markets may also be required to submit accounting data on the retail markets that are associated with those wholesale markets.

Undertakings shall provide such information promptly upon request and to in conformity with 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 and shall treat the information in accordance with paragraph 3.

Article 6

Consultation and transparency mechanism

Except in cases falling within Articles 7(69), 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, or where they intend to provide for restrictions in accordance with Article 9(3) and 9(4), 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

2. National regulatory authorities shall contribute to the development of the internal market by ~~cooperating~~ working with each other and with the Commission and BEREC in a transparent manner so as 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 work with the Commission and BEREC to agree on~~ identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. ~~In addition~~ Except where otherwise provided in recommendations or guidelines adopted pursuant to Article 7b upon completion of 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, or 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, BEREC, and the national regulatory authorities in other Member States, at the same time, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission, BEREC and other national regulatory authorities thereof. National regulatory authorities, BEREC 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. The Commission shall inform other national regulatory authorities of its reservations in such a case.

5. Within ~~this~~ the two-month period referred to in paragraph 4, the Commission may, in accordance with the procedure referred to in Article 22(2);:

(a) take a decision requiring the national regulatory authority concerned to withdraw the draft measure. ~~This, and/or~~

(b) take a decision to lift its reservations in relation to a draft measure referred to in paragraph 4.

The Commission shall take utmost account of the opinion of BEREC before issuing a decision. The 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.

6. Where the Commission has adopted a decision in accordance with paragraph 5, requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure within six months of the date of the Commission's decision. When the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and shall re notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

~~5-7.~~ The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, BEREC and the Commission and may, except in cases covered by ~~paragraph 4, paragraphs 4 and 5(a)~~, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

8. The national regulatory authority shall communicate to the Commission and BEREC all adopted final measures which fall under Article 7(3)(a) and (b).

~~6- 9.~~ In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, in order to safeguard competition and protect the interests of users, 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 authority, and BEREC. 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.

Article 7a

Procedure for the consistent application of remedies

1. Where an intended measure covered by Article 7(3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with Article 5 and Articles 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission may, within the period of one month provided for by Article 7(3) of this Directive, notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its compatibility with Community law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.

In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission, BEREC or any other national regulatory authority.

2. Within the three month period referred to in paragraph 1, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective measure in the light of the objectives laid down in Article 8, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

3. Within six weeks from the beginning of the three month period referred to in paragraph 1, BEREC shall, acting by a majority of its component members, issue an opinion on the Commission's notification referred to in paragraph 1, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. This opinion shall be reasoned and made public.

4. If in its opinion, BEREC shares the serious doubts of the Commission, it shall cooperate closely with the national regulatory authority concerned to identify the most appropriate and effective measure. Before the end of the three month period referred in paragraph 1, the national regulatory authority may:

(a) amend or withdraw its draft measure taking utmost account of the Commission's notification referred to in paragraph 1 and of BEREC's opinion and advice;

(b) maintain its draft measure.

5. Where BEREC does not share the serious doubts of the Commission or does not issue an opinion, or where the national regulatory authority amends or maintains its draft measure pursuant to paragraph 4, the Commission may, within one month following the end of the three month period referred to in paragraph 1 and taking utmost account of the opinion of BEREC if any:

(a) issue a recommendation requiring the national regulatory authority concerned to amend or withdraw the draft measure, including specific proposals to that end and providing reasons justifying its recommendation, in particular where BEREC does not share the serious doubts of the Commission;

(b) take a decision to lift its reservations indicated in accordance with paragraph 1.

6. Within one month of the Commission issuing the recommendation in accordance with paragraph 5(a) or lifting its reservations in accordance with paragraph 5(b), the national regulatory authority concerned shall communicate to the Commission and BEREC the adopted final measure.

This period may be extended to allow the national regulatory authority to undertake a public consultation in accordance with Article 6.

7. Where the national regulatory authority decides not to amend or withdraw the draft measure on the basis of the recommendation issued under paragraph 5(a), it shall provide a reasoned justification

8. The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure.

Article 7b

Implementing provisions

1. After public consultation and consultation with national regulatory authorities and taking utmost account of the opinion of BEREC, the Commission may adopt recommendations and/or guidelines in relation to Article 7 that define the form, content and level of detail to be given in the notifications required in accordance with Article 7(3), the circumstances in which notifications would not be required, and the calculation of the time limits.

2. The measures referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 22(2).

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.

Unless otherwise provided for in Article 9 regarding radio frequencies, Member States shall take the utmost account of the desirability of making regulations technologically neutral and 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 do likewise.

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, elderly users, and users with special social needs 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, including the transmission of content;

- ~~(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~~ and BEREC so as 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, elderly users and users with special social needs;
- (f) ensuring that the integrity and security of public communications networks are maintained.
- (g) promoting the ability of end-users to access and distribute information or run applications and services of their choice;

5. The national regulatory authorities shall, in pursuit of the policy objectives referred to in paragraphs 2, 3 and 4, apply objective, transparent, non discriminatory and proportionate regulatory principles by, inter alia:

- (a) promoting regulatory predictability by ensuring a consistent regulatory approach over appropriate review periods;
- (b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
- (c) safeguarding competition to the benefit of consumers and promoting, where appropriate, infrastructure-based competition;
- (d) promoting efficient investment and innovation in new and enhanced infrastructures, including by ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings and by permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of

investment, whilst ensuring that competition in the market and the principle of non discrimination are preserved;

(e) taking due account of the variety of conditions relating to competition and consumers that exist in the various geographic areas within a Member State;

(f) imposing ex ante regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting such obligations as soon as that condition is fulfilled.

Article 8a

Strategic planning and coordination of radio spectrum policy

1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European Community. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

2. By cooperating with each other and with the Commission, Member States shall promote the coordination of radio spectrum policy approaches in the European Community 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 electronic communications.

3. The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), established by Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group*, may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive and the Specific Directives.

4. Where necessary to ensure the effective coordination of the interests of the European Community in international organisations competent in radio spectrum matters, the Commission, taking utmost account of the opinion of the RSPG, may propose common policy objectives to the European Parliament and the Council.

Article 9

Management of radio frequencies for electronic communications services

1. Taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value, Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article-Articles 8 and 8a. They shall ensure that the spectrum allocation used for electronic communications services and assignment issuing general authorisations or individual rights of use of such radio frequencies by competent national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

In applying this Article, Member States shall respect relevant international agreements, including the ITU Radio Regulations, and may take public policy considerations into account.

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 pursuit of benefits for the consumer such as economies of scale and interoperability of

services. In so doing, they shall act in accordance with Article 8a and 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 Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of technology used for electronic communications services may be used in the radio frequency bands, declared available for electronic communications services in their National Frequency Allocation Plan in accordance with Community law.

Member States may, however, provide for proportionate and non discriminatory restrictions to the types of radio network or wireless access technology used for electronic communications services where this is necessary to:

(a) avoid harmful interference;

(b) protect public health against electromagnetic fields;

(c) ensure technical quality of service;

(d) ensure maximisation of radio frequency sharing;

(e) safeguard efficient use of spectrum, or

(f) ensure the fulfilment of a general interest objective in accordance with paragraph 4.

4. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands, declared available for electronic communications services in their National Frequency Allocation Plan in accordance with Community law. Member States may, however, provide for proportionate and non discriminatory restrictions to the types of electronic communications services to be provided, including, where necessary, to fulfil a requirement under the ITU Radio Regulations.

Measures that require an electronic communications service to be provided in a specific band available for electronic communications services shall be justified in order to ensure the fulfilment of a general interest objective as defined by Member States in conformity with Community law, such as, and not limited to:

(a) safety of life,

(b) the promotion of social, regional or territorial cohesion,

(c) the avoidance of inefficient use of radio frequencies, or

(d) the promotion of cultural and linguistic diversity and media pluralism, for example by the provision of radio and television broadcasting services.

A measure which prohibits the provision of any other electronic communications service in a specific band may only be provided for where justified by the need to protect safety of life services. Member States may exceptionally also extend such a measure in order to fulfil other general interest objectives as defined by Member States in accordance with Community law.

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4, and shall make the results of these reviews public.

6. Paragraphs 3 and 4 shall apply to spectrum allocated to be used for electronic communications services, general authorisations issued and individual rights of use of radio frequencies granted after 25 May 2011.

Spectrum allocations, general authorisations and individual rights of use which existed by 25 May 2011 shall be subject to Article 9a.

7. Without prejudice to the provisions of the Specific Directives and taking into account the relevant national circumstances, Member States may lay down rules in order to prevent spectrum hoarding, in particular by setting out strict deadlines for the effective exploitation of the rights of use by the holder of the rights and by applying penalties, including financial penalties or the withdrawal of the rights of use in case of non compliance with the deadlines. These rules shall be established and applied in a proportionate, non discriminatory and transparent manner.

Article 9a

Review of restrictions on existing rights

1. For a period of five years starting from 25 May 2011, Member States may allow holders of rights to use radio frequencies which were granted before that date and which will remain valid for a period of not less than five years after that date, to submit an application to the competent national authority for a reassessment of the restrictions on their rights in accordance with Article 9(3) and (4).

Before adopting its decision, the competent national authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and shall allow him a reasonable time limit to withdraw his application.

If the right holder withdraws his application, the right shall remain unchanged until its expiry or until the end of the five-year period, whichever is the earlier date.

2. After the five-year period referred to in paragraph 1, Member States shall take all appropriate measures to ensure that Article 9(3) and (4) apply to all remaining general authorisations or individual rights of use and spectrum allocations used for electronic communications services which existed on 25 May 2011.

3. In applying this Article, Member States shall take appropriate measures to promote fair competition.

4. Measures adopted in applying this Article do not constitute the granting of new rights of use and therefore are not subject to the relevant provisions of Article 5(2) of Directive 2002/20/EC (Authorisation Directive).

Article 9b

Transfer or lease of individual rights to use radio frequencies

1. Member States shall ensure that undertakings may transfer or lease to other undertakings in accordance with conditions attached to the rights of use of radio frequencies and in accordance with national procedures individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to paragraph 3.

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings in accordance with national procedures.

Conditions attached to individual rights to use radio frequencies shall continue to apply after the transfer or lease, unless otherwise specified by the competent national authority.

Member States may also determine that the provisions of this paragraph shall not apply where the undertaking's individual right to use radio frequencies was initially obtained free of charge.

(Ex. Art.9.4.) 2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies, as well as the effective transfer thereof is notified to the national regulatory in accordance with national procedures to the competent national authority responsible for spectrum assignment and that any transfer takes place in accordance with procedures laid down by the national regulatory authority granting individual rights of use 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 the 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 comply with such harmonised use.

3. The Commission may adopt appropriate implementing measures to identify the bands for which rights to use radio frequencies may be transferred or leased between undertakings. These measures shall not cover frequencies which are used for broadcasting.

These technical implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Article 10

Numbering, naming and addressing

1. Member States shall ensure that national regulatory authorities control the assignment granting of rights of use 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 granting rights of use for national numbering resources.

2. National regulatory authorities shall ensure that national 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 to which the right of use for a range of numbers has been granted does not discriminate against other providers of electronic communications services as regards the number sequences used to give access to their services.

4. Member States shall support the harmonisation of specific numbers or numbering resources ranges within the Community where that is necessary to support it promotes both the functioning of the internal market and 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.

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

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 simple, efficient, transparent and publicly available procedures, applied without discrimination and without delay, and in any event makes its decision within six months of the application, except in cases of expropriation, 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 public electronic communications networks and/or publicly available electronic communications services, there is an effective structural separation of the function responsible for granting the rights referred to in paragraph 1 from the activities associated with ownership or control.

Article 12

Co location and facility sharing of network elements and associated facilities for providers of electronic communications networks

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, taking full account of the need to protect the environment, public health, public security or to meet town and country planning objectives, Member States may~~ principle of proportionality, be able to impose the sharing of such facilities or property, including buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets.

2. Member States may require holders of the rights referred to in paragraph 1 to share 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 in order to protect the environment, public health, public security or to meet town and country planning objectives and only after an appropriate period of public consultation, during which all interested parties must shall 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.

3. Member States shall ensure that national authorities, after an appropriate period of public consultation during which all interested parties are given the opportunity to state their views, also have the power to impose obligations in relation to the sharing of wiring inside buildings or up to the first concentration or distribution point where this is located outside the building, on the holders of the rights referred to in paragraph 1 and/or on the owner of such wiring, where this is justified on the grounds that duplication of such infrastructure would be economically inefficient or physically impracticable. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing adjusted for risk where appropriate.

4. Member States shall ensure that competent national authorities may require undertakings to provide the necessary information, if requested by the competent

authorities, in order for these authorities, in conjunction with national regulatory authorities, to be able to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 and make it available to interested parties.

5. Measures taken by a national regulatory authority in accordance with this Article shall be objective, transparent, non-discriminatory, and proportionate. Where relevant, these measures shall be carried out in coordination with local authorities.

Article 13

No change

CHAPTER IIIa

SECURITY AND INTEGRITY OF NETWORKS AND SERVICES

Article 13a

Security and integrity

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to appropriately manage the risks posed to security of networks and services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent and minimise the impact of security incidents on users and interconnected networks.

2. Member States shall ensure that undertakings providing public communications networks take all appropriate steps to guarantee the integrity of their networks, and thus ensure the continuity of supply of services provided over those networks.

3. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the competent national regulatory authority of a breach of security or loss of integrity that has had a significant impact on the operation of networks or services.

Where appropriate, the national regulatory authority concerned shall inform the national regulatory authorities in other Member States and the European Network and Information Security Agency (ENISA). The national regulatory authority concerned may inform the public or require the undertakings to do so, where it determines that disclosure of the breach is in the public interest.

Once a year, the national regulatory authority concerned shall submit a summary report to the Commission and ENISA on the notifications received and the action taken in accordance with this paragraph.

4. The Commission, taking the utmost account of the opinion of ENISA, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements. These technical implementing measures shall be based on European and international standards to the greatest extent possible, and shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.

These implementing measures, designed to amend non essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Article 13b

Implementation and enforcement

1. Member States shall ensure that in order to implement Article 13a, competent national regulatory authorities have the power to issue binding instructions, including those regarding time limits for implementation, to undertakings providing public communications networks or publicly available electronic communications services.

2. Member States shall ensure that competent national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

(a) provide information needed to assess the security and/or integrity of their services and networks, including documented security policies; and

(b) submit to a security audit carried out by a qualified independent body or a competent national authority and make the results thereof available to the national regulatory authority. The cost of the audit shall be paid by the undertaking.

3. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases of non-compliance and the effects thereof on the security and integrity of the networks.

4. These provisions shall be without prejudice to Article 3 of this Directive.

CHAPTER IV GENERAL PROVISIONS

Article 14

Undertakings with significant market power

3. Where an undertaking has significant market power on a specific market (the first market), it may also be deemed to have designated as having significant market power on a closely related market (the second market), where the links between the two markets are such as to allow the market power held in one the first market to be leveraged into the other second market, thereby strengthening the market power of the undertaking. Consequently, remedies aimed at preventing such leverage may be applied in the second market pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/EC (Access Directive), and where such remedies prove to be insufficient, remedies pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive) may be imposed.

Article 15

Market Procedure for the identification and definition procedure of markets

1. After public consultation and consultation including with national regulatory authorities and taking the utmost account of the opinion of BEREC, the Commission shall adopt a recommendation on relevant product and service markets (hereinafter "the recommendation"), in accordance with the advisory procedure referred to in Article 22(2), adopt a Recommendation on Relevant Product and Service Markets (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.

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~~ identified in the Recommendation

4. After consultation including with national regulatory authorities the Commission may, ~~acting in accordance with the procedure referred to in Article 22(3)~~ taking the utmost account of the opinion of BEREC, adopt a Decision identifying transnational markets, acting in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Article 16

Market analysis procedure

1. ~~As soon as possible after the adoption of the recommendation or any updating thereof, national~~ National regulatory authorities shall carry out an analysis of the relevant markets taking into account the markets identified in the Recommendation, and 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, paragraphs 3 or 4 of this Article, Article 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.~~

4. Where a national regulatory authority determines that a relevant market is not effectively competitive, it shall identify undertakings with which individually or jointly have a 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, in a concerted fashion, shall 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 in accordance with the provisions of paragraphs 3, 4 and 5 of this Article~~ 4 shall be subject to the procedures referred to in Articles 6 and 7. National regulatory authorities shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Article 7:

(a) within three years from the adoption of a previous measure relating to that market. However, exceptionally, that period may be extended for up to three additional years, where the national regulatory authority has notified a reasoned proposed extension to the Commission and the Commission has not objected within one month of the notified extension;

(b) within two years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the Commission, or;

(c) within two years from their accession, for Member States which have newly joined the Union.

7. Where a national regulatory authority has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in paragraph 6, BEREC shall, upon request, provide assistance to the national regulatory authority concerned in completing the analysis of the specific market and the specific obligations to be imposed. With this assistance, the national regulatory authority concerned shall within six months notify the draft measure to the Commission in accordance with Article 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 non-compulsory 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 European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) ~~or~~ and 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.

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 Union~~ and invite public comment by all parties concerned. The Commission, ~~acting in accordance with the procedure referred to in Article 22(3)~~, shall take appropriate implementing measures and 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~~ Union.

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 advisory 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)~~, take the appropriate implementing measures and remove them from this list of ~~those~~ standards and/or specifications from the list of standards and/or specifications referred to in paragraph 1.

6a. The implementing measures designed to amend non-essential elements of this Directive by supplementing it, referred to in paragraphs 4 and 6, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

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.

(c) providers of digital TV services and equipment to cooperate in the provision of interoperable TV services for disabled end-users.

~~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 Without prejudice to Article 9 of this Directive and Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by the national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to Member States the internal market, the Commission may, taking the utmost account of the opinion of BEREC, issue a recommendation or a decision 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.~~

~~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.

Where the Commission issues a recommendation pursuant to paragraph 1, it shall act in accordance with the advisory procedure referred to in Article 22(2).

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 reasons for its position.

3. The decisions adopted pursuant to paragraph 1 may include only the identification of a harmonised or coordinated approach for the purposes of addressing the following matters:

(a) the inconsistent implementation of general regulatory approaches by national regulatory authorities on the regulation of electronic communication markets in the application of Articles 15 and 16, where it creates a barrier to the internal market. Such decisions shall not refer to specific notifications issued by the national regulatory authorities pursuant to Article 7a;

In such a case, the Commission shall propose a draft decision only:

– after at least two years following the adoption of a Commission Recommendation dealing with the same matter, and;

– taking utmost account of an opinion from BEREC on the case for adoption of such a decision, which shall be provided by BEREC within three months of the Commission's request;

(b) numbering, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services.

4. The decision referred to in paragraph 1, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

5. BEREC may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

Article 20

Dispute resolution between undertakings

1. In the event of a dispute arising in connection with existing obligations arising under this Directive or the Specific Directives between undertakings providing electronic communications networks or services in a Member State, or between such undertakings and other undertakings in the Member State benefiting from obligations of access and/or interconnection arising under this Directive or the Specific Directives, 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.

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, and where the dispute lies within

the competence of national regulatory authorities from more than one Member State, the ~~procedure~~ provisions 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 competent national regulatory authorities shall coordinate their efforts and shall have the right to consult BEREC in order to bring about a consistent resolution of the dispute, in accordance with the objectives set out in Article 8.

Any obligations imposed by the national regulatory authorities on undertakings as part of the resolution of a dispute shall comply with this Directive and the Specific Directives.

Any national regulatory authority which has competence in such a dispute may request BEREC to adopt an opinion as to the action to be taken in accordance with the provisions of the Framework Directive and/or the Specific Directives to resolve the dispute.

Where such a request has been made to BEREC, any national regulatory authority with competence in any aspect of the dispute shall await BEREC's opinion before taking action to resolve the dispute. This shall not preclude national regulatory authorities from taking urgent measures where necessary.

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 and take the utmost account of the opinion adopted by BEREC.

3. Member States may make provision for the competent national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to ~~resolution of~~ resolving 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 where~~ 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~~ resolve the dispute, in accordance with the provisions set out in Article 8 and taking the utmost account of any opinion adopted by BEREC.

Article 21a

Penalties

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be appropriate, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 25 May 2011 and shall notify it without delay of any subsequent amendment affecting them.

Article 22

Committee

3. Where reference is made to this paragraph, ~~Articles 5~~ Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof..

~~4. The Committee shall adopt its rules of procedure.~~

Article 23

No changes

Article 24

No changes

Article 25

No changes

**CHAPTER V
FINAL PROVISIONS**

Article 26

No changes

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

No changes

Article 29

No changes

Article 30

No changes

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.~~

Annex II

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

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~~ characterised by a lack of effective competition and in which no single undertaking has significant market power. In accordance with the applicable Community law and with the case-law of the Court of Justice of the European Communities on joint dominance, this is likely to be the case where the market satisfies is concentrated and exhibits a number of appropriate characteristics, in particular of which the following may be the most relevant in terms of market concentration, transparency and other characteristics mentioned below the context of electronic communications:

- ~~• 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 legal or economic barriers to entry
- vertical integration with collective refusal to supply;

- lack of countervailing ~~buying-buyer~~ power
- lack of potential competition
- ~~various kind of informal or other links between the undertakings concerned~~
- ~~retaliatory mechanisms~~
- ~~lack or reduced scope for price competition.~~

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

Consolidated text for the Access Directive 2002/19/EC As amended by Directive 2009/140/EC

ACCESS DIRECTIVE 2002/19/EC

Article 1

No changes

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, including when they are used for the delivery of information society services or broadcast content 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 information systems or databases for pre-ordering, provisioning, ordering, maintaining and repair requests, and billing; 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; and access to virtual network services;

(e) "local loop" means the physical circuit connecting the network termination point ~~at the subscriber's premises to a~~ the main distribution frame or equivalent facility in the fixed public telephone electronic communications network.

Article 3

No changes

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 in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), 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 to 8.

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 the interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, efficient investment and innovation, and gives the maximum benefit to end-users.

(ab) in justified cases and to the extent that is necessary, obligations on undertakings that control access to end users to make their services interoperable.

~~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).~~

~~3.2.~~ 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 and 7a of Directive 2002/21/EC (Framework Directive).

~~4.~~ 3. With regard to access and interconnection referred to in paragraph 1, 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

2. In the light of market and technological developments, ~~Annex I~~ the Commission may adopt implementing measures to amend Annex I. The measures, designed to amend non essential elements of this Directive, shall be amended adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).

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 13a.

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 ~~97/66/2002/58/EC~~ of the European Parliament and of the Council of ~~15 December 1997~~ 12 July 2002 concerning the processing of personal data and the protection of privacy in the ~~tele~~electronic communications sector (Directive on privacy and electronic communications) 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 other than those set out in Articles 9 to 13 in this Directive,~~ it shall submit this request to the Commission. The Commission shall take utmost account of the opinion of the Body of Europeans Regulators for Electronic Communications (BEREC). The Commission, acting in accordance with Article 14(2), shall take a decision authorising or preventing the national regulatory authority from taking such measures.

Article 9

Obligation of transparency

1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for 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, including any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with Community law, and prices.

4. Notwithstanding paragraph 3, where an operator has obligations under Article 12 concerning ~~unbundled-wholesale network infrastructure 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~~ The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments, ~~Annex II may~~ The measures, designed to amend non-essential elements of this Directive, shall be amended-adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). In implementing the provisions of this paragraph, the Commission may be assisted by BEREC.

Article 10

No changes

Article 11

No changes

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 access to network elements which are not active and/or unbundled access to the local loop, to inter alia allow carrier selection and/or pre selection and/or subscriber line resale offer;

(f) to provide co-location or other forms of ~~facility~~ associated facilities sharing, ~~including duct, building or mast sharing;~~

(j) to provide access to associated services such as identity, location and presence service. 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~~ how such obligations would be imposed 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/or access involved, including the viability of other upstream access products such as access to ducts;

(c) the initial investment by the facility owner, ~~bearing in mind~~ taking account of any public investment made and the risks involved in making the investment;

(d) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure based competition;

3. When imposing obligations on an operator to provide access in accordance with Article 12 the provisions of this Article, 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~~ Obligations to follow specific technical standards or specifications shall respect be in compliance with the standards and specifications laid down in accordance with Article 17 of Directive 2002/21/EC (Framework Directive).

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~~ may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users. To encourage investments by the operator, including in next generation networks, 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 ~~any~~ risks involved ~~specific to a particular new investment network project.~~

Article 13a

Functional separation

1. Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 9 to 13 have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

That business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a proposal to the Commission that includes:

(a) evidence justifying the conclusions of the national regulatory authority as referred to in paragraph 1;

(b) a reasoned assessment that there is no or little prospect of effective and sustainable infrastructure based competition within a reasonable timeframe;

(c) an analysis of the expected impact on the regulatory authority, on the undertaking, in particular on the workforce of the separated undertaking and on the electronic communications sector as a whole, and on incentives to invest in a sector as a whole, particularly with regard to the need to ensure social and territorial cohesion, and on other stakeholders including, in particular, the expected impact on competition and any potential entailing effects on consumers;

(d) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems/markets failures identified.

3. The draft measure shall include the following elements:

(a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;

(b) an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

(f) a monitoring programme to ensure compliance, including the publication of an annual report.

4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9 to 13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to Article 8(3).

Article 13b

Voluntary separation by a vertically integrated undertaking

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive) shall inform the national regulatory authority in advance and in a timely manner, in order to allow the national regulatory authority to assess the effect of the intended transaction, when they intend to transfer their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products.

Undertakings shall also inform the national regulatory authority of any change of that intent as well as the final outcome of the process of separation.

2. The national regulatory authority shall assess the effect of the intended transaction on existing regulatory obligations under Directive 2002/21/EC (Framework Directive).

For that purpose, the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive).

On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

3. The legally and/or operationally separate business entity may be subject to any of the obligations identified in Articles 9 to 13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to Article 8(3).

Article 14

Committee

3. Where reference is made to this paragraph, ~~Articles 5~~ Article 5a(1) to (4) and Article 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

No changes

Article 16

No changes

Article 17

No changes

Article 18

No changes

Article 19

No changes

Article 20

No changes

ANNEX II

MINIMUM LIST OF ITEMS TO BE INCLUDED IN A REFERENCE OFFER FOR WHOLESALE NETWORK INFRASTRUCTURE ACCESS, INCLUDING SHARED OR FULLY UNBUNDLED ACCESS TO THE TWISTED METALLIC PAIR LOCAL LOOP AT A FIXED LOCATION TO BE PUBLISHED BY NOTIFIED OPERATORS WITH SIGNIFICANT MARKET POWER (SMP):

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~~ electronic communications network;

(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 SMP operator ~~authorising~~ allowing the use of the full ~~frequency spectrum of the twisted metallic pair~~ capacity of the network infrastructure;

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 SMP operator, ~~authorising~~ allowing the use of ~~the non-voice band frequency spectrum~~ a specified part of the twisted metallic pair; ~~the local loop continues to be used by the notified operator to provide the telephone service to the public~~ capacity of the network infrastructure such as a part of the frequency or an equivalent;

A. Conditions for unbundled access to the local loop

1. Network elements to which access is offered covering in particular the following

elements together with appropriate associated facilities:

(a) unbundled access to local loops (full and shared);

(b) access to non-voice band frequency spectrum of a local loop, in the case of shared access to the local loop unbundled access to local sub-loops (full and shared), including, when relevant, access to network elements which are not active for the purpose of roll-out of backhaul networks;

(c) where relevant, duct access enabling the roll out of access networks.

2. Information concerning the locations of physical access sites⁽⁴⁾ including cabinets and distribution frames, availability of local loops, sub loops and backhaul in specific parts of the access network and when relevant, information concerning the locations of ducts and the availability within ducts;

3. Technical conditions related to access and use of local loops and sub loops, including the technical characteristics of the twisted ~~metallic pair in the local loop~~pair and/or optical fibre and/or equivalent, cable distributors, and associated facilities and, when relevant, technical conditions related to access to ducts;

B. Co-location services

1. Information on the ~~notified~~SMP operator's existing relevant sites⁽⁴⁾ or equipment locations and planned update thereof*.

⁴*_Availability of this information may be restricted to interested parties only, in order to avoid public security concerns.

Consolidated text for the Authorisation Directive 2002/20/EC As amended by Directive 2009/140/EC

AUTHORISATION DIRECTIVE 2002/20/EC

Article 1

No changes

Article 2

Definitions

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 service

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.

Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned.

Article 4

No changes

Article 5

Rights of use for radio frequencies and numbers

1. Member States shall ~~facilitate, where possible, in particular where the risk of harmful interference is negligible, not make the use of radio frequencies under general authorisations. Where necessary, Member States may subject to the grant of individual rights of use but shall include the conditions for usage of such radio frequencies in the general authorisation. in order to:~~

- avoid harmful interference,
- ensure technical quality of service,
- safeguard efficient use of spectrum, or
- fulfil other objectives of general interest as defined by Member States in conformity with Community law.

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 for the provision of providing or using networks or services under the general authorisation referred to in Article 3, 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, thesuch rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, and non-discriminatory and proportionate procedures, and procedures. in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.

When granting rights of use, Member States shall specify whether those rights can be transferred at the initiative of by the right holder of the rights, and under which conditions, in the case of radio frequencies, such provision shall be in accordance with Articles 9 and 9b 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 in view of the objective pursued taking due account of the need to allow for an appropriate period for investment amortisation. Where individual rights to use radio frequencies are granted for 10 years or more and such rights may not be transferred or leased between undertakings pursuant to Article 9b of Directive 2002/21/EC (Framework Directive) the competent national authority shall ensure that the criteria to grant individual rights of use apply and are complied with for the duration of the licence, in particular upon a justified request of the holder of the right. If those criteria are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice and after a reasonable period, or shall be made transferable or leaseable between undertakings in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).

3. Decisions on the granting of 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 to be used by electronic communications services 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 a further three weeks.

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

6. Competent national authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Articles 8(2) and 9(2) of Directive 2002/21/EC (Framework Directive). They shall ensure competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. For such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use radio frequencies.

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 and, in the case of rights of use for radio frequencies, shall be in accordance with Article 9 of Directive 2002/21/EC (Framework Directive).

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.

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 or whether to extend the duration of existing rights other than in accordance with the terms specified in such rights, 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 or the renewal 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.

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) and of the requirements of Article 9 of that Directive.

5. This Article is without prejudice to the transfer of rights of use for radio frequencies in accordance with ~~Article 9~~ Article 9b of Directive 2002/21/EC (Framework Directive).

Article 8

No changes

Article 9

No changes

Article 10

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

1. National regulatory authorities shall monitor and supervise compliance with the conditions of the general authorisation or of rights of use and with the specific obligations referred to in Article 6(2), in accordance with Article 11.

National regulatory authorities shall have the power to ~~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 all 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 the a reasonable opportunity to state its views, or ~~remedy any breaches within: a reasonable time limit.~~

~~— 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~~ The relevant authority shall have the power to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and ~~, the relevant authority shall take appropriate and proportionate measures aimed at ensuring compliance.~~

In this regard, Member States shall ~~may~~ empower the relevant authorities to impose:

(a) dissuasive financial penalties where appropriate, which may include periodic penalties having retroactive effect; and

(b) orders to cease or delay provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive).

The measures and the reasons on which they are based shall be communicated to the undertaking concerned without delay ~~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 shall ~~may~~ empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with the obligations imposed under Article 11(1)(a) or (b) of this Directive and ~~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 ~~or of~~, 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. Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

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 of~~ the 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 or other users of the radio spectrum, 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 views ~~and~~ propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 measures-months, but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to three months.

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, conditions 2 and 6 of Part B and conditions 2 and 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).

(g) safeguarding the efficient use and ensuring the effective management of radio frequencies;

(h) evaluating future network or service developments that could have an impact on wholesale services made available to competitors.

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

Article 12

No changes

Article 13

No changes

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, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. Except

where proposed amendments are minor and have been agreed with the holder of the rights or general authorisation, notice. 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 or rights of use for radio frequencies before expiry of the period for which they were granted except where justified and where applicable in conformity with the Annex and 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, rights of use and rights to install facilities ~~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.

Article 16

No changes

Article 17

Existing authorisations

1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States shall bring general authorisations and individual rights of use already in existence on 31 December 2009 into conformity the date of entry into force of this Directive into line with Articles 5, 6, 7, and the Annex provisions of this Directive 19 December 2011 ~~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 general obligations under authorisations and individual rights of use already in existence, Member States may extend the validity of those authorisations and rights and obligations until 30 September 2012 at the latest, 9 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.

Article 18

No changes

Article 19

No changes

Article 20

No changes

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), within the limits allowed under Articles 5, 6, 7, 8 and 9 of Directive 2002/21/EC (the Framework Directive).

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) by end users of numbers from the national numbering plan, numbers from the European Telephone Numbering Space, the Universal International Freephone Numbers, and, where technically and economically feasible, from numbering plans of other Member States, and 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 ~~2002/58/EC~~ ~~97/66/EC~~ of the European Parliament and of the Council (Directive of 15 December 1997 concerning the processing of personal data and the protection of privacy and electronic communications) (1) ~~in the telecommunications sector~~(1).
8. Consumer protection rules specific to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC (Universal Service Directive), and conditions on accessibility for users with disabilities in accordance with Article 7 of that Directive. ~~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 (2) 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 (3).

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 ~~2002/58/EC~~~~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 ~~(1)(4)~~.

11a. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.

12. Terms of use during major disasters or national emergencies to ensure communications between emergency services ~~and authorities~~ and authorities. ~~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).

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 (2).

16. Security of public networks against unauthorised access according to Directive ~~2002/58/EC~~~~97/66/EC~~. (Directive on Privacy and electronic communications).

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).

19. Transparency obligations on public communications network providers providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article 8 of Directive 2002/21/EC (Framework Directive), disclosure regarding any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with Community law, and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.

B. Conditions which may be attached to rights of use for radio frequencies

1. Obligation to provide a~~Designation of service or to use a 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~~ appropriate, coverage and quality requirements.

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.
9. Obligations specific to an experimental use of radio 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 and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC (Framework Directive).
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.

Consolidated text for the Universal Service Directive 2002/22/EC As amended by Directive 2009/136/EC

UNIVERSAL SERVICE DIRECTIVE 2002/22/EC

CHAPTER I SCOPE, AIM AND DEFINITIONS

Article 1

~~Scope and aim~~

Subject-matter and scope

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good-quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. The Directive also includes provisions concerning certain aspects of terminal equipment, including provisions intended to facilitate access for disabled end-users.

2. This Directive establishes the rights of end-users and the corresponding obligations ~~of~~ of undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition. This Directive also sets out obligations with regard to the provision of certain mandatory services ~~such as the retail provision of leased lines.~~

3. This Directive neither mandates nor prohibits conditions, imposed by providers of publicly available electronic communications and services, limiting end-users' access to, and/or use of, services and applications, where allowed under national law and in conformity with Community law, but lays down an obligation to provide information regarding such conditions. National measures regarding end-users' access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, including in relation to privacy and due process, as defined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4. The provisions of this Directive concerning end users' rights shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EEC and 97/7/EC, and national rules in conformity with Community law.

Article 2

Definitions

~~(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 made available to the public for originating and receiving, directly or indirectly, national or 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 telephone numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);

~~(e) "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 telephone numbering plan that is not a geographic number. It includes, *inter alia*, mobile, freephone and premium rate numbers.

Article 3

No changes

Article 4

Provision of access at a fixed location and provision of the telephone services

1. Member States shall ensure that all reasonable requests for connection at a fixed location to the a public telephone communications 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,~~ supporting voice, 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.

3. Member States shall ensure that all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in paragraph 1 that allows for originating and receiving national and international calls are met by at least one undertaking.

2. The directories referred to in paragraph 1 shall comprise, subject to the provisions of Article 41 of ~~Directive 97/66/EC,~~ 12 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (^(*)), all subscribers of publicly available telephone services.

Article 5

No changes

Article 6

Public pay telephones and other public voice telephony access points

1. Member States shall ensure that national regulatory authorities ~~can~~ may impose obligations on undertakings in order to ensure that public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users

(*) OJ L 201, 31.7.2002, p. 37.

in terms of the geographical coverage, the number of telephones, ~~the~~ or other access points, accessibility ~~of such telephones~~ to disabled end-users and the quality of services.

Article 7

Special Measures for disabled end-users

1. Unless requirements have been specified under Chapter IV which achieve the equivalent effect, Member States shall, ~~where appropriate~~, take specific measures for ~~disable end-users in order to ensure that~~ access to, and affordability of, publicly available telephone the services, including access to emergency services, directory enquiry services identified in Article 4(3) and Article 5 for disabled end-users is equivalent to the that level enjoyed by other end-users. Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users

3. In taking the measures referred to in paragraphs 1 and 2, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Articles 17 and 18 of Directive 2002/21/EC (Framework Directive).

Article 8

Designation of undertakings

3. When an undertaking designated in accordance with paragraph 1 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the national regulatory authority in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 6(2) of Directive 2002/20/EC (Authorisation Directive).

Article 9

Affordability of tariffs

1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4, ~~5,6~~ and to 7 as falling under the universal service obligations and either provided by designated undertakings or available on the market, if no undertakings are designated in relation to those services, in particular in relation to national consumer prices and income.

2. Member States may, in the light of national conditions, require that designated undertakings provide to consumers tariff options or packages 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 the network referred to in Article 4(1) or from using the publicly available telephone service services identified in Article 4(3) and Articles 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings~~

Article 10

No changes

Article 11

Quality of service of designated undertakings

4. National regulatory authorities shall be able to set performance targets for these 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.

Article 12

No changes

Article 13

No changes

Article 14

No changes

Article 15

No changes

CHAPTER III

REGULATORY CONTROLS ON UNDERTAKINGS WITH SIGNIFICANT MARKET POWER IN SPECIFIC RETAIL 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(14);~~

~~(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 service and interoperability through application of the principles of open network provision (ONP)(15);~~

~~(c) leased lines, imposed under Articles 3, 4, 6, 7, 8 and 10 of Directive 92/44/EEG, 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 national regulatory authorities impose appropriate regulatory obligations on undertakings identified as having significant market power on a

given retail market in accordance with Article 14 of Directive 2002/21/EC (Framework Directive) where:

(a) as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), a national regulatory authority determines that a given retail market identified in accordance with Article 15 of Directive 2002/21/EC (Framework Directive) that Directive is not effectively competitive; and

(b) the national regulatory authority concludes that obligations imposed under Articles 9 to 13 of 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).~~

~~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.~~

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 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) 1. Member States shall ensure that, where when subscribing to services providing connection and/or access to a the public telephone communications network and/or publicly available electronic communications services, consumers, and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. The contract shall specify in a clear, comprehensive and easily accessible form at least:~~

~~(a) the identity and address of the supplier undertaking;~~

~~(b) the services provided, including in particular,~~

~~– whether or not access to emergency services and caller location information is being provided, and any limitations on the provision of emergency services under Article 26,~~

~~– information on any other conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law,~~

~~– the minimum service quality levels offered, as well as, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,~~

~~– information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link, and information on how those procedures could impact on service quality,~~

~~– the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,~~

~~– any restrictions imposed by the provider on the use of terminal equipment supplied;~~

~~(c) the types of maintenance service offered; where an obligation exists under Article 25, the subscriber's options as to whether or not to include his or her personal data in a directory, and the data concerned;~~

(d) ~~particulars~~ details of prices and tariffs, ~~and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;~~ payment methods offered and any differences in costs due to payment method;

(e) the duration of the contract, and the conditions for renewal and termination of services and of the contract, including:

– any minimum usage or duration required to benefit from promotional terms,

– any charges related to portability of numbers and other identifiers,

– any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;

(f) any compensation and the refund arrangements which apply if contracted service quality levels are not met; ~~and~~

(g) the ~~method~~ means of initiating procedures for the settlement of disputes in accordance with Article 34;

(h) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.

~~Member States may extend these obligations to cover other end-users also require that the contract include any information which may be provided by the relevant public authorities for this purpose on the use of electronic communications networks and services providers other than those providing connection and/or access to the public telephone network, the information in paragraph 2 shall also be include engage in such contracts unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data, referred to in Article 21(4) and relevant to the service provided.~~

~~2. Member States may extend this obligation to cover other end user. 4 Subscribers shall ensure that subscribers have a right to withdraw from their contract without penalty upon notice of proposed modifications in modification to the contractual conditions proposed by the undertakings providing electronic communications networks and/or services. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications, and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, their contract if they do not accept the new conditions. Member States shall ensure that national regulatory authorities are able to specify the format of such notifications.~~

Article 21

Transparency and publication of information

1. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on any charges due on termination of a contract and on standard terms and conditions in respect of access to, and use of publicly available telephone services is available provided by them to end-users and consumers; in accordance with ~~the provision of Annex II. Such information shall be published in a clear, comprehensive and easily accessible form. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.~~

2. National regulatory authorities shall encourage the provision of comparable 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 by means of interactive guides or similar techniques. Where such facilities are not available on the market free of charge or at a reasonable price, Member States shall ensure that national regulatory authorities are able to make such guides or techniques available themselves or through third party procurement. Third parties shall have a right to use, free of charge, the information published by undertakings providing electronic communications networks and/or publicly available electronic communications services for the purposes of selling or making available such interactive guides or similar techniques.

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

(b) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed;

(c) inform subscribers of any change to conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law;

(d) provide information on any procedures put in place by the provider to measure and shape traffic so as to avoid filling or overflowing a network link, and on how those procedures could impact on service quality;

(e) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(f) regularly inform disabled subscribers of details of products and services designed for them.

If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.

4. Member States may require that the undertakings referred to in paragraph 3 distribute public interest information free of charge to existing and new subscribers, where appropriate, by the same means as those ordinarily used by them in their communications with subscribers. In such a case, that information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.

Article 22

Quality of service

1. Member States shall ensure that national regulatory authorities are, after taking account of the views of interested parties, able to require undertakings that provide publicly available electronic communications networks and/or services to publish

comparable, adequate and up-to-date information for end-users on the quality of their services. ~~The~~ and on measures taken to ensure equivalence in access for disabled end-users. That 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 the information to be published, including possible quality certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information. Where appropriate, the parameters, definitions and measurement methods ~~given~~ set out in Annex III ~~could~~ may be used.

3. In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

National regulatory authorities shall provide the Commission, in good time before setting any such requirements, with a summary of the grounds for action, the envisaged requirements and the proposed course of action. This information shall also be made available to the Body of European Regulators for Electronic Communications (BEREC). The Commission may, having examined such information, make comments or recommendations thereupon, in particular to ensure that the envisaged requirements do not adversely affect the functioning of the internal market. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations when deciding on the requirements.

Article 23

Inegrity of the network Availability of services

Member States shall take all necessary steps measures to ensure the integrity ~~of the public telephone network at fixed locations and, fullest possible availability of publicly available telephone services provided over public communications networks~~ in the event of catastrophic network breakdown or in cases of force *majeure* ~~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 necessary measures to ensure uninterrupted access to emergency services.

Article 23a

Ensuring equivalence in access and choice for disabled end-users

1. Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users:

(a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users; and

(b) benefit from the choice of undertakings and services available to the majority of end-users.

2. In order to be able to adopt and implement specific arrangements for disabled end-users, Member States shall encourage the availability of terminal equipment offering the necessary services and functions.

Article 24

No changes

Article 25

Operator assistance and Telephone directory enquiry services

1. Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a) and to have their information made available to providers of directory enquiry services and/or directories in accordance with paragraph 2.

3. Member States shall ensure that all end-users provided with a ~~connection to the public~~ publicly available telephone network service can access ~~operator assistance services~~ directory enquiry services. National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 5-4(b) of Directive 2002/19/EC (Access Directive). Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

4. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State: by voice call or SMS, and shall take measures to ensure such access in accordance with Article 28.

5. Paragraphs 1, ~~2, 3 and~~ to 4 shall 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 12 of Directive 2002/58/EC (Directive on privacy and electronic communications).

Article 26

Single Emergency services and the 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 the service referred to in paragraph 2, including users of public pay telephones, are able to call the emergency services free of charge and without having to use any means of payment, by using the single European emergency call number "112" and any national emergency call number specified by Member States.

2. Member States, in consultation with national regulatory authorities, emergency services and providers, shall ensure that undertakings providing end-users with an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan provide access to emergency services.

~~(2)~~ 3. Member States shall ensure that calls to the single European emergency call number "112" are appropriately answered and handled in a the manner best suited to the national organisation of emergency systems and within the technological possibilities of the networks. Such calls shall be answered and handled at least as expeditiously and effectively as calls to the national emergency number or numbers, where these continue to be in use.

4. Member States shall ensure that access for disabled end-users to emergency services is equivalent to that enjoyed by other end-users. Measures taken to ensure that disabled end-users are able to access emergency services whilst travelling in other Member States shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive), and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article.

~~(3)~~ 5. Member States shall ensure that undertakings which operate public telephone networks concerned make caller location information available to the authorities free of

charge to the authority handling emergencies, to extent technically feasible, for emergency calls as soon as the call reaches that authority. This shall apply to all calls to the single European emergency call number "112". Member States may extend this obligation to cover calls to national emergency numbers. Competent regulatory authorities shall lay down criteria for the accuracy and reliability of the caller location information provided.

~~(4)~~ 6. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States.

7. In order to ensure effective access to "112" services in the Member States, the Commission, having consulted BEREC, may adopt technical implementing measures. However, these technical implementing measures shall be adopted without prejudice to, and shall have no impact on, the organisation of emergency services, which remains of the exclusive competence of Member States.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

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 adjacent to one another 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. A legal entity, established within the Community and designated by the Commission, shall have sole responsibility for the management, including number assignment, and promotion of the European Telephony Numbering Space (ETNS). The Commission shall adopt the necessary implementing rules.

~~(2)~~ 3. 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 provide publicly available telephone services allowing international calls handle all calls to and from the ETNS at rates similar to those applied for calls to and from other Member States.

Article 27a

Harmonised numbers for harmonised services of social value, including the missing children hotline number

1. Member States shall promote the specific numbers in the numbering range beginning with "116" identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with "116" for harmonised numbers for harmonised services of social value [()]. They shall encourage the provision within their territory of the services for which such numbers are reserved.

2. Member States shall ensure that disabled end users are able to access services provided under the "116" numbering range to the greatest extent possible. Measures taken to facilitate disabled end-users' access to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 17 of Directive 2002/21/EC (Framework Directive).

3. Member States shall ensure that citizens are adequately informed of the existence and use of services provided under the "116" numbering range, in particular through initiatives specifically targeting persons travelling between Member States.

4. Member States shall, in addition to measures of general applicability to all numbers in the "116" numbering range taken pursuant to paragraphs 1, 2, and 3, make every effort to ensure that citizens have access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number "116000".

5. In order to ensure the effective implementation of the "116" numbering range, in particular the missing children hotline number "116000", in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted BEREC, may adopt technical implementing measures. However, these technical implementing measures shall be adopted without prejudice to, and shall have no impact on, the organisation of these services, which remains of the exclusive competence of Member States.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

Article 28

Non-geographic numbers Access to numbers and services

1. 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, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, relevant national authorities take all necessary steps to ensure that end users are able to:

(a) access and use services using non-geographic numbers within the Community; and

b) access all numbers provided in the Community, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States, those from the ETNS and Universal International Freephone Numbers (UIFN).

2. Member States shall ensure that the relevant authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues

Article 29

Provision of additional facilities

1. Without prejudice to Article 10(2), Member States shall ensure that national regulatory authorities are able to require all undertakings that operate public provide publicly available telephone services and/or access to public communications networks to make available to the end-users all or part of the additional facilities listed in Part B of Annex I Part B, subject to technical feasibility and economic viability, as well as all or part of the additional facilities listed in Part A of Annex I.

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~~ **Facilitating change of provider**

1. Member States shall ensure that all subscribers of ~~publicly available telephone services, including mobile services,~~ with numbers from the national telephone numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Part C of Annex I.

- ~~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 between operators and/or service providers~~ related to the provision of number portability is cost-oriented, and that direct charges to subscribers, if any, do not act as a disincentive for the use of these facilities subscribers against changing service provider.

4. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day.

Without prejudice to the first subparagraph, competent national authorities may establish the global process of porting of numbers, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the subscriber. In any event, loss of service during the process of porting shall not exceed one working day. Competent national authorities shall also take into account, where necessary, measures ensuring that subscribers are protected throughout the switching process and are not switched to another provider against their will.

Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.

5. Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months. Member States shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months.

6. Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.

Article 31

"Must carry" obligations

1. Member States may impose reasonable "must carry" obligations, for the transmission of specified radio and television broadcast channels and complementary services, particularly accessibility services to enable appropriate access for disabled end-users, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television ~~broadcasts~~ broadcast channels to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television ~~broadcasts~~ broadcast channels. Such

obligations shall only be imposed where they are necessary to meet ~~clearly defined~~ general interest objectives as clearly defined by each Member State and shall be proportionate and transparent.

The obligations referred to in the first subparagraph shall be ~~subject to periodical reviewed by the Member States at the latest within one year of 25 May 2011 except where Member States have carried out such a review within the previous two years.~~

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

CHAPTER V GENERAL AND FINAL PROVISIONS

Article 32

No changes

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~~ consumers), manufacturers and undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market.

In particular, Member States shall ensure that national regulatory authorities establish a consultation mechanism ensuring that in their decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services, due consideration is given to consumer interests in electronic communications.

3. Without prejudice to national rules in conformity with Community law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities may promote cooperation between undertakings providing electronic communications networks and/or services and sectors interested in the promotion of lawful content in electronic communication networks and services. That cooperation may also include coordination of the public interest information to be provided pursuant to Article 21(4) and the second subparagraph of Article 20(1).

Article 34

Out-of-court dispute resolution

1. Member States shall ensure that transparent, non-discriminatory, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes, ~~involving between consumers, relating to issues covered by and undertakings providing~~ electronic communications networks and/or services arising under this Directive and relating to the contractual conditions and/or performance of contracts concerning the supply of those networks and/or services. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Such procedures shall enable disputes to be settled impartially and shall not deprive the consumer of the legal protection afforded by national law. Member States may extend these obligations to cover disputes involving other end-users.

Article 35

Technical adjustment Adaptation of annexes

~~Measures designed to amend non-essential elements of this Directive and Amendments necessary to adapt Annexes I, II, III, ~~V~~ and ~~VI~~ VI to technological developments or to changes in market demand shall be adopted by the Commission acting in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).~~

Article 36

Notification, monitoring and review procedures

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 universal service obligations imposed upon undertakings designated as having universal service obligations. Any changes affecting these obligations or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.~~

Article 37

Committee procedure

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

2. Where reference is made to this paragraph, Articles 5a(1) to (4) and Article 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

No changes

Article 39

No changes

Article 40

No changes

ANNEX I

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE), ARTICLE 29 (ADDITIONAL FACILITIES) AND ARTICLE 30 (FACILITATING CHANGE OF PROVIDER)

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 subscribers free of charge in order that they can:

(i) allow verification and control of the charges incurred in using the public ~~telephone~~ communications network at a fixed location and/or related publicly available telephone services; and

(ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

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

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

(b) ~~Selective calls~~ barring for outgoing calls or premium SMS or MMS, or, where technically feasible, other kinds of similar applications, free of charge

i.e. the facility whereby the subscriber can, on request to the designated undertaking that provides telephone service provider services, bar outgoing calls or premium SMS or MMS or other kinds of similar applications 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~~ communications network and use of publicly available telephone services on pre-paid terms.

(d) Phased payment of connection fees

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

(e) Non-payment of bills

Member States are to authorise specified measures, which are to be proportionate, non discriminatory and published, to cover non-payment of telephone bills ~~for the use of the public telephone network at fixed locations~~ issued by undertakings. 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.

(f) Tariff advice

i.e. the facility whereby subscribers may request the undertaking to provide information regarding alternative lower-cost tariffs, if available.

(g) Cost control

i.e. the facility whereby undertakings offer other means, if determined to be appropriate by national regulatory authorities, to control the costs of publicly available telephone services, including free-of-charge alerts to consumers in case of abnormal or excessive consumption patterns.

Part B: List of Facilities referred to in Article 29

(a) Tone dialling or DTMF (dual-tone multi-frequency operation)

i.e. the public communications network and/or publicly available telephone network services supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within a Member State and between Member States.

(b) Calling-line identification

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

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular Directive ~~97/66/EC~~ 2002/58/EC (Directive on privacy and electronic communications).

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

Part C: Implementation of the number portability provisions referred to in Article 30

The requirement that all subscribers with numbers from the national numbering plan, who so request can retain their number(s) independently of the undertaking providing the service shall apply:

(a) in the case of geographic numbers, at a specific location; and

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

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

ANNEX II

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

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

1. Name(s) and address(es) of undertaking(s)

i.e. names and head office addresses of undertakings providing public ~~telephone~~ communications networks and/or publicly available telephone services.

2. ~~Publicly available telephone services offered~~ Description of services offered

2.1. ~~Scope of publicly telephone services offered~~

~~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~~ indicating the services provided and the content of each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted

tariff schemes and any additional charges, as well as costs with respect to terminal equipment.

2.5. Standard contract conditions, including any minimum contractual period, termination of the contract and procedures and direct charges related to the portability of numbers and other identifiers, if relevant.

4. Information about rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I.

ANNEX III

QUALITY OF SERVICE PARAMETERS

Supply-time and Quality-of-Service Parameters, Definitions and Measurement Methods referred to in Articles 11 and 22

For undertakings providing access to a public communications network

PARAMETER

(Note 1)

DEFINITION

MEASUREMENT METHOD

Supply time for initial connection

~~ETSI EG 201 769-1~~

ETSI EG 202 057

~~ETSI EG 201 769-1~~

ETSI EG 202 057

Fault rate per access line

~~ETSI EG 201 769-1~~

ETSI EG 202 057

~~ETSI EG 201 769-1~~

ETSI EG 202 057

Fault repair time

~~ETSI EG 201 769-1~~

ETSI EG 202 057

~~ETSI EG 201 769-1~~

ETSI EG 202 057

For undertakings providing a publicly telephone service

Call set up time

(Note 2)

~~ETSI EG 201 769-1~~

ETSI EG 202 057

~~ETSI EG 201 769-1~~

ETSI EG 202 057

Response times for directory enquiry services

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

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

~~ETSI EG 201 769-1~~

ETSI EG 202 057

~~ETSI EG 201 769-1~~

ETSI EG 202 057

Proportion of coin and card operated public pay-telephones in working order

~~ETSI EG 201 769-1~~

ETSI EG 202 057

~~ETSI EG 201 769-1~~

ETSI EG 202 057

Bill correctness complaints

~~ETSI EG 201 769-1~~

ETSI EG 202 057

~~ETSI EG 201 769-1~~

ETSI EG 202 057

Unsuccessful call ratio

(Note 2)

~~ETSI EG 201 769-1~~

ETSI EG 202 057

~~ETSI EG 201 769-1~~

ETSI EG 202 057

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 conventional digital television signals (i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S), for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, is to possess the capability to:

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

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.~~

Consolidated text for the e-Privacy Directive 2002/58/EC As amended by Directive 2009/136/EC

E-PRIVACY DIRECTIVE 2002/58/EC

Article 1

Scope and aim

1. This Directive ~~provides for~~ ~~harmonises~~ the harmonisation of the national provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and confidentiality, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community

Article 2

Definitions

Save as otherwise provided, the definitions in Directive 95/46/EC and 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) ¹, shall apply:

- (a) 'user' means any natural person using a publicly available electronic communications service, for private or business purposes, without necessarily having subscribed to this service;
- (b) 'traffic data' means any data processed for the purpose of the conveyance of a communication on an electronic communications network or for the billing thereof;
- (c) 'location data' means any data processed in an electronic communications network or by an electronic communications service, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service;
- (d) 'communication' means any information exchanged or conveyed between a finite number of parties by means of a publicly available electronic communications service. This does not include any information conveyed as part of a broadcasting service to the public over an electronic communications network except to the extent that the information can be related to the identifiable subscriber or user receiving the information;
- ~~(e) 'call' means a connection established by means of a publicly available telephone service allowing two-way communication in real time;~~
- (f) 'consent' by a user or subscriber corresponds to the data subject's consent in Directive 95/46/EC;
- (g) 'value added service' means any service which requires the processing of traffic data or location data other than traffic data beyond what is necessary for the transmission of a communication or the billing thereof;
- (h) 'electronic mail' means any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient.
- (i) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data

¹ OJ L 108, 24.4.2002, p.33.

transmitted, stored or otherwise processed in connection with the provision of a publicly available electronic communications service in the Community.

Article 3

Services concerned

1. This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Community, including public communications networks supporting data collection and identification devices.

~~2. Articles 8, 10 and 11 shall apply to subscriber lines connected to digital exchanges and, where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.~~

~~3. Cases where it would be technically impossible or require a disproportionate economic effort to fulfil the requirements of Articles 8, 10 and 11 shall be notified to the Commission by the Member States.~~

Article 4

Security of processing

1a. Without prejudice to Directive 95/46/EC, the measures referred to in paragraph 1 shall at least:

– ensure that personal data can be accessed only by authorised personnel for legally authorised purposes,

– protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access or disclosure, and

– ensure the implementation of a security policy with respect to the processing of personal data.

Relevant national authorities shall be able to audit the measures taken by providers of publicly available electronic communication services and to issue recommendations about best practices concerning the level of security which those measures should achieve.

3. In the case of a personal data breach, the provider of publicly available electronic communications services shall, without undue delay, notify the personal data breach to the competent national authority.

When the personal data breach is likely to adversely affect the personal data or privacy of a subscriber or individual, the provider shall also notify the subscriber or individual of the breach without undue delay.

Notification of a personal data breach to a subscriber or individual concerned shall not be required if the provider has demonstrated to the satisfaction of the competent authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the security breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

Without prejudice to the provider's obligation to notify subscribers and individuals concerned, if the provider has not already notified the subscriber or individual of the personal data breach, the competent national authority, having considered the likely adverse effects of the breach, may require it to do so.

The notification to the subscriber or individual shall at least describe the nature of the personal data breach and the contact points where more information can be obtained, and shall recommend measures to mitigate the possible adverse effects of the personal data breach. The notification to the competent national authority shall, in addition,

describe the consequences of, and the measures proposed or taken by the provider to address, the personal data breach.

4. Subject to any technical implementing measures adopted under paragraph 5, the competent national authorities may adopt guidelines and, where necessary, issue instructions concerning the circumstances in which providers are required to notify personal data breaches, the format of such notification and the manner in which the notification is to be made. They shall also be able to audit whether providers have complied with their notification obligations under this paragraph, and shall impose appropriate sanctions in the event of a failure to do so.

Providers shall maintain an inventory of personal data breaches comprising the facts surrounding the breach, its effects and the remedial action taken which shall be sufficient to enable the competent national authorities to verify compliance with the provisions of paragraph 3. The inventory shall only include the information necessary for this purpose.

5. In order to ensure consistency in implementation of the measures referred to in paragraphs 2, 3 and 4, the Commission may, following consultation with the European Network and Information Security Agency (ENISA), the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC and the European Data Protection Supervisor, adopt technical implementing measures concerning the circumstances, format and procedures applicable to the information and notification requirements referred to in this Article.

When adopting such measures, the Commission shall involve all relevant stakeholders particularly in order to be informed of the best available technical and economic means of implementation of this Article.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(2).

Article 5

Confidentiality of the communications

3. Member States shall ensure that the ~~storing~~ use of electronic communications networks ~~to store information,~~ or ~~the gaining of~~ ~~to gain~~ access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia about the purposes of the processing, ~~and is offered the right to refuse such processing by the data controller.~~ This shall not prevent any technical storage or access for the sole purpose of carrying out ~~or facilitating~~ the transmission of a communication over an electronic communications network, or as strictly necessary in order ~~to provide for the provider of an information society service explicitly requested by the subscriber or user to provide the service.~~

Article 6

Traffic data

3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services or marketing, if the subscriber or user to whom the data relate has given his or /her prior consent. Users or subscribers shall be given the possibility to withdraw their consent for the processing of traffic data at any time.

Article 7

No changes

Article 8

No changes

Article 9

No changes

Article 10

No changes

Article 11

No changes

Article 12

No changes

Article 13

Unsolicited communications

1. The use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail for the purposes of direct marketing may ~~only~~ be allowed only in respect of subscribers or users who have given their prior consent.

2. Notwithstanding paragraph 1, where a natural or legal person obtains from its customers their electronic contact details for electronic mail, in the context of the sale of a product or a service, in accordance with Directive 95/46/EC, the same natural or legal person may use these electronic contact details for direct marketing of its own similar products or services provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details at the time of their collection ~~when they are collected~~ and on the occasion of each message in case the customer has not initially refused such use.

3. Member States shall take appropriate measures to ensure that, ~~free of charge,~~ unsolicited communications for the purposes of direct marketing, in cases other than those referred to in paragraphs 1 and 2, are not allowed either without the consent of the subscribers or users concerned or in respect of subscribers or users who do not wish to receive these communications, the choice between these options to be determined by national legislation, taking into account that both options must be free of charge for the subscriber or user.

4. In any event, the practice of sending electronic mail for the purposes of direct marketing which disguised ~~disguising~~ or ~~concealing~~ the identity of the sender on whose behalf the communication is made, which contravene Article 6 of Directive 2000/31/EC, which do not have or without a valid address to which the recipient may send a request that such communications cease or which encourage recipients to visit websites that contravene that Article, shall be prohibited.

6. Without prejudice to any administrative remedy for which provision may be made, inter alia, under Article 15a(2), Member States shall ensure that any natural or legal person adversely affected by infringements of national provisions adopted pursuant to this Article and therefore having a legitimate interest in the cessation or prohibition of such infringements, including an electronic communications service provider protecting its legitimate business interests, may bring legal proceedings in respect of such

infringements. Member States may also lay down specific rules on penalties applicable to providers of electronic communications services which by their negligence contribute to infringements of national provisions adopted pursuant to this Article.

Article 14

No changes

Article 14a

Committee procedure

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

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 15

Application of certain provisions of Directive 95/46/EC

1b. Providers shall establish internal procedures for responding to requests for access to users' personal data based on national provisions adopted pursuant to paragraph 1. They shall provide the competent national authority, on demand, with information about those procedures, the number of requests received, the legal justification invoked and their response.

Article 15a

Implementation and enforcement

1. Member States shall lay down the rules on penalties, including criminal sanctions where appropriate, applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive and may be applied to cover the period of any breach, even where the breach has subsequently been rectified. The Member States shall notify those provisions to the Commission by 25 May 2011 and shall notify it without delay of any subsequent amendment affecting them.

2. Without prejudice to any judicial remedy which might be available, Member States shall ensure that the competent national authority and, where relevant, other national bodies have the power to order the cessation of the infringements referred to in paragraph 1.

3. Member States shall ensure that the competent national authority and, where relevant, other national bodies have the necessary investigative powers and resources, including the power to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive.

4. The relevant national regulatory authorities may adopt measures to ensure effective cross-border cooperation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows. The national regulatory authorities shall provide the Commission, in good time before adopting any such measures, with a summary of the grounds for action, the envisaged measures and the proposed course of action. The Commission may, having examined such information and consulted ENISA and the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC, make comments or recommendations thereupon, in particular to ensure that the envisaged measures do not

adversely affect the functioning of the internal market. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations when deciding on the measures.

Article 16

No changes

Article 17

No changes

Article 18

No changes

Article 19

No changes

Article 20

No changes

Article 21

No changes