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REPORT

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Subject : ***PREPARATION OF THE TRANSPORT/TELECOMMUNICATIONS AND
ENERGY COUNCIL OF 12 AND 13 JUNE 2008***

Proposal for a Directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation

- Progress Report

I. Introduction

1. In 2006 and 2007, the Commission examined the functioning of the EU framework against its main objectives, which are to promote competition, to consolidate the internal market and to promote the interests of the citizen. As a result of its examination, the Commission concluded, that a substantial reform of the regulatory framework was necessary.

2. On 13 November 2007, the Commission adopted its legislative proposals, consisting of two amending Directives and one Regulation. This progress report concerns the Directive known as the 'Citizens' Rights Directive', which amends the current Directive 2002/22/EC on Universal Service, Directive 2002/58/EC on ePrivacy and Regulation (EC) No 2006/2004 on consumer protection cooperation. The progress reports on the other two proposals can be found in documents 9837/08 (Better Regulation Directive) and 9095/08 (EECMA Regulation).
3. The compromise proposal on the consolidated legislative text, as it stands at the moment has been annexed to this document for information. This text does not include the recitals nor the articles common to different parts of the amending Directive. It is to be noted that this is a reflection of the state of play and not the final position of the Member States, as the discussions and examination of the proposals will continue under the future French Presidency.

II. Commission Proposals

1. In its proposals on the Universal Service Directive, the Commission aims to address the four main areas for change it had identified, namely: transparency and publication of information for users, improved accessibility for users with disabilities, emergency services and access to 112, and basic connectivity and quality of services ('net neutrality'). In addition, long-term issues such as the concept and scope of universal service, which have already been identified by the Commission, will be addressed in a Commission Communication to be published in 2008.
2. One of the central goals of the regulatory framework is to promote the interests of EU citizens by, among other things, ensuring a high level of protection of personal data and privacy and ensuring that the integrity and security of public communications networks are maintained. The growing number of new electronic threats in recent years such as viruses, spam, spyware and phishing has further increased the importance of these objectives.

Taking into account the above, the proposal on ePrivacy Directive addresses such issues as ensuring that consumers are informed if their personal data have been compromised as a result of a breach of network security, giving operators and NRAs more responsibility with respect to the security and integrity of all electronic communications networks and services, strengthening implementation and enforcement powers for competent authorities, in particular in the fight against ‘spam’, and clarifying the application of the EU rules to data collection and identification devices using public electronic communications networks.

3. The proposals also aim at modernising specific provisions of the Directives that have become outdated and to bring them into line with technology and market developments, including the deletion of a number of obsolete or redundant provisions.

Moreover, there is an addition proposed to the Regulation on consumer cooperation so as to reinforce the cross-border cooperation and enforcement in line with an existing Community mechanism laid down by that regulation..

III. Principle reactions of the delegations

1. The delegations have expressed their support for the Commission initiative in principle, agreeing that in general the amendments proposed by the Commission go in the right direction and concern important issues. The general thrust of the proposal, namely to ensure that consumers' rights remain an important focus of regulatory policy in the sector, is broadly supported, both as regards Universal Service Directive and ePrivacy Directive.

The delegations have, however, underlined the need to carefully examine the proposals in order to maintain an appropriate balance of proportionality and subsidiarity, as well as to avoid unnecessary burden for both national regulatory authorities or undertakings concerned, while ensuring competition and benefits for the end-users.

2. An overall difference in relation to the proposal of the Commission, is the issue of comitology and references to the Authority. These, at the current stage, have been reduced to the minimum and where the possibility for Commission to take action remains, it is usually proposed to be in the form of recommendations. In the Universal Service Directive, the main changes to the Commission proposal are found in the issues of measures for disabled users, contracts, transparency and publication of information, emergency calls, facilitating change of supplier and copyright. As to the ePrivacy Directive, the main changes can be found in the context of security of processing and implementation and enforcement provisions.
3. There are several points left that need further clarification and examination, before a common approach can be found among the Member States. The main issues that remain open will be discussed in section IV below.

IV. Main Issues to be discussed further

1. Universal Service Directive

i. Provision of access at a fixed location and provision of telephone services (Article 4)

1. *The Commission proposal makes an adjustment to the formulation of universal service by separating access from provision of electronic communications services. This does not affect the scope or the provision of universal service to consumers and end-users.*

2. Delegations are, in general, happy with the Commission's intention not to touch the scope of the universal service obligations, which they believe should be treated separately in the upcoming discussions on the future Commission communication on the scope of universal service. One Member State has, however, proposed that a reference to the possibility of Member States to define data rates of functional Internet access should be added in these provisions, in view of giving the Member States the possibility to encourage the provision of broadband services as part of the universal service. Several delegations are opposing this arguing that the provision would not only extend the scope of the universal service but also go against the trend of harmonising access. Moreover, some delegations have argued that this question should be left for the market to solve.

ii. Contracts (Article 20)

1. *The Commission proposal aims at providing for a transparency mechanism concerning possible restrictions on end-users' choice of lawful content and applications in order to empower end-users to make an informed choice of services, thus allowing them to reap the full benefits of technological developments in the Information Society. It also aims at ensuring that consumer contracts provide a minimum of information related to security of electronic communications services and that customers are duly informed by their provider of electronic communications services of whether or not access to emergency services is provided. The Commission proposal also has a provision for ensuring that end-users are clearly informed in advance of the conclusion of the contract (and regularly thereafter) of their obligations to respect copyright and related rights, as well as of the most common acts of infringements and their legal consequences (without prejudice to the provisions of Directive 2000/31/EC on electronic commerce).*

2. The delegations supported the general thrust of the Commission proposals, but felt it was necessary to add to the detail of information to be given in the contracts, in particular concerning quality of service parameters, customer services and conditions regarding minimum contract duration related to promotions. Some delegations are still concerned about the provisions concerning the right of subscribers to withdraw from their contracts in case of detrimental modifications to the contracts. These delegations argue that it is not clear who would assess whether the modifications are to the detriment of the customer, and should that be the customer himself, this could create much legal uncertainty. Moreover, certain delegations have wanted to examine in more detail the relation of these provisions with national contract law and the Directive 93/13/EC on unfair contract terms.
3. As to the provision concerning respect of copyright and related rights, many delegations had concerns about the implications this could have for the undertakings concerned. These delegations argued that the provision should be deleted or at least moved to a recital. Some Member States, however, supported the Commission proposal indicating that this kind of information was already given by some undertakings and that the issue was an important one in today's society. As a compromise it was proposed to move this provision to the context of transparency and public information (Article 21), but some Member States still have concerns on whether this is the appropriate manner of dealing with this issue.

iii. Quality of Service (Article 22)

1. *In the Commission proposal, the NRAs' powers to request operators to publish information for end-users on the quality of their services is extended to also include information on equivalent access for disabled end-users. The proposal also grants to the NRAs the power to prevent degradation of quality of service by setting minimum quality levels for network transmission services for end-users. The possibility for the Commission to take implementing measures is intended to ensure, where appropriate, a minimum level of harmonisation in this area.*

2. The main issue for discussion for the Member States has been the level and nature of Commission intervention. Whereas some delegations would prefer that the Commission would be able to adopt guidelines regarding minimum quality of service requirements set by NRAs, other delegations have concerns even on letting NRAs to set these requirements. They argue that this is a market issue and if NRAs should have the possibility to set the requirements in question, it should be only on the Universal Service Providers and not on undertakings providing public communications networks in general.

iv. Emergency Services and the single European emergency call number (Article 26)

1. *The Commission proposal imposes on Member States an obligation to ensure that disabled end-users are able to access emergency services with a view to achieving fully inclusive electronic communications. The proposal modernises the Directive so as to take account of market and technological developments in order to ensure that users of a service offering outgoing calls are able to access emergency services and to strengthen the obligation to pass caller location information to emergency authorities. The possibility for the Commission to take implementing measures is intended to ensure, where appropriate, a minimum level of harmonisation in this area.*
2. The questions of which undertakings should provide access to emergency services and the provision of caller location information have been the subject of much discussion among the delegations. Several Member States have had concerns on the technical feasibility of the proposed provisions. Given the new definition of 'publicly available telephone service' (which has been a concern to some delegations), certain VoIP services are considered to be in the scope of these provisions. The provisions for emergency services, however, have been considered particularly problematic for VoIP providers who do not have any control on the infrastructure used for routing the emergency calls and cannot thus guarantee the reliability of this routing. Delegations have also argued that it is not possible to ensure the provision of caller location information in the nomadic use of VoIP services.

3. Another cause for concern for some delegations has been the reference to the international scope of this provision, which they would like to see removed arguing there is not really a need for this. In addition, some delegations have indicated that there are undertakings who only provide a service for originating international calls and thus would not be in a position to provide access to national emergency services.

2. ePrivacy Directive

i. Security of processing (Article 4)

1. *The Commission proposal aims to ensure that end-users are notified about breaches of security resulting in their personal data being lost or otherwise compromised, and that they are also informed about available/advisable precautions that they may take in order to minimise possible economic loss or social harm that could result from such a security breach. The proposal also aims to ensure a minimum level of harmonisation by granting to the Commission the possibility, where appropriate, to adopt technical implementing measures in the areas of security and breach notification.*
2. The delegations have been examining the question of notification about breaches intensively. The delegations differ in their views on when and to whom the notifications about security breaches on personal data should be notified. Some delegations would allow for the provider of publicly available electronic communications to evaluate the seriousness of the breach and the need to notify the NRA and/or the subscriber concerned. Other delegations would not want to leave this evaluation totally at the discretion of the provider and would prefer an obligatory notification to the NRA in any case, as well as a public announcement of any breach having taken place. Certain delegations would like for the providers to be obliged to inform both the NRA and the subscriber as default.

3. Another issue of discussion in this context has been the manner in which the Commission would be able to intervene. Many delegations could accept that the Commission would be able to issue recommendations concerning the circumstances, format and procedures applicable to information and notification requirements concerning the personal data breaches. Some delegations, however, do not consider such a provision appropriate.

ii. Implementation and enforcement (Article 15a)

1. *The Commission proposal enhances the implementation and enforcement mechanisms currently in place, in order to enable competent authorities to take effective and efficient action against infringements. In order to ensure harmonised conditions for the provision of services involving cross-border data flows, the Commission would have the powers to adopt technical implementing measures.*
2. Whereas the Member States are supporting in general the proposal of the Commission in this issue, the discussion is still continuing on the provisions concerning harmonisation at European level. Many Member States could agree to the Commission being able to adopt recommendations in order to create harmonised conditions for the provision of services involving cross-border data flows and to ensure effective cross-border co-operation. However, some Member States consider that such harmonisation of conditions should be a matter of a legislative procedure and not of comitology, or just be left to the Member States.

COMPROMISE PROPOSAL¹
FOR THE

CONSOLIDATED VERSION OF THE PROPOSAL AMENDING DIRECTIVE 2002/22/EC
(Universal Service Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

After having consulted the European Data Protection Supervisor,

Acting in accordance with the procedure laid down in Article 251 of the Treaty

[Whereas]

HAVE ADOPTED THIS DIRECTIVE:

¹ All delegations have a general scrutiny reservation on the whole text. DK has a parliamentary scrutiny reservation. ES and IT have linguistic reservations.

CHAPTER I SCOPE, AIMS AND DEFINITIONS

Article 1

Scope and aims

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

2. This Directive establishes the rights of end-users and the corresponding obligations on undertakings providing publicly available electronic communications networks and services. With regard to ensuring provision of universal service within an environment of open and competitive markets, this Directive defines the minimum set of services of specified quality to which all end-users have access, at an affordable 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. The provisions included in the present Directive with regard to the end-users' rights shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and national rules in conformity with Community law.

Article 2
Definitions

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

The following definitions shall also apply:

(a) "public pay telephone" means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;

~~(b) "public telephone network" means an electronic communications network which is used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms of communication, such as facsimile and data;~~

(c) "publicly available telephone service" means a service available to the public for originating **and receiving, directly or indirectly via carrier selection or pre-selection or resale**, national and/or 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;~~²

(d) "geographic number" means a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);

² PL has a reservation on this definition.

~~(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; (moved to Framework Directive)~~

(f) "non-geographic numbers" means a number from the national numbering plan that is not a geographic number. It includes inter alia mobile, freephone and premium rate numbers.

CHAPTER II

UNIVERSAL SERVICE OBLIGATIONS INCLUDING SOCIAL OBLIGATIONS

Article 3

Availability of universal service

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

Article 4

Provision of access at a fixed location and provision of 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, and data communications,~~ **supporting voice, facsimile 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. **Member States may define the data rates that are considered appropriate for functional Internet access.**³
3. Member States shall ensure that all reasonable requests for provision of a **publicly available** telephone service, over the network connection referred to in paragraph 1, **that allows for, allowing** originating and receiving of national and international calls and calls to emergency services via the number "112" **as well as via any other national emergency numbers**, are met by at least one undertaking.⁴

Article 5

Directory enquiry services and directories

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

³ UK, DE, MT, CZ and AT have reservations on the last sentence of paragraph 2.

⁴ IE, LV, RO and PT have scrutiny reservations on paragraph 3.

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

2. The directories in paragraph 1 shall comprise, subject to the provisions of Article ~~11~~ **12** of Directive ~~97/66/EC~~ **2002/58/EC**, all subscribers of publicly available telephone services.

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

Article 6

Public pay telephones

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

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

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

Article 7

Special Masures for disabled users

1. Member States shall, ~~where appropriate,~~ **unless requirements have been specified under Chapter IV which achieve the equivalent effect,** take specific measures ~~for disabled end-users in order~~ to ensure access to and affordability of **the services identified in Articles 4 and 5 for disabled end-users publicly available telephone services, including access to emergency services, directory enquiry services and directories, equivalent comparable** to that enjoyed by other end-users. **Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including extent and concrete form of such specific measures for disabled users.**
2. Member States ~~shall~~ **may** take specific measures, in the light of national conditions, to ensure that disabled end-users can also take advantage of the choice of undertakings and service providers available to the majority of end-users.

Article 8

Designation of undertakings

1. Member States may designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4, 5, 6 and 7 and, where applicable, Article 9(2) so that the whole of the national territory can be covered. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service and/or to cover different parts of the national territory.
2. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated. Such designation methods shall ensure that universal service is provided in a cost-effective manner and may be used as a means of determining the net cost of the universal service obligation in accordance with Article 12.

3. When an ~~operator 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 the national regulatory 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 conditions specific obligations in accordance with Article 6 (2) of Directive 2002/20/EC (Authorisation Directive).⁵

Article 9

Affordability of tariffs

1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4, 5, 6 and 7 as falling under the universal service obligations and either provided by designated undertakings or available in the market, if no undertakings are designated in relation to these services, otherwise available in the market, 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 using the publicly available telephone service~~ the network access referred to in Article 4(1) and (2), or using the services identified in Articles 4(3), 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.

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

⁵ DE, ES and RO have reservations on paragraph 3.

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

5. National regulatory authorities shall ensure that, where a designated undertaking has an obligation to provide special tariff options, common tariffs, including geographical averaging, or to comply with price caps, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

Article 10

Control of expenditure

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

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

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

Article 11

Quality of service of designated undertakings

1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.
2. National regulatory authorities may specify, *inter alia*, additional quality of service standards, where relevant parameters have been developed, to assess the performance of undertakings in the provision of services to disabled end-users and disabled consumers. National regulatory authorities shall ensure that information concerning the performance of undertakings in relation to these parameters is also published and made available to the national regulatory authority.
3. National regulatory authorities may, in addition, specify the content, form and manner of information to be published, in order to ensure that end-users and consumers have access to comprehensive, comparable and user-friendly information.
4. National regulatory authorities shall be able to set performance targets for those undertakings with universal service obligations at least under Article 4. In so doing, national regulatory authorities shall take account of views of interested parties, in particular as referred to in Article 33.
5. Member States shall ensure that national regulatory authorities are able to monitor compliance with these performance targets by designated undertakings.
6. Persistent failure by an undertaking to meet performance targets may result in specific measures being taken in accordance with Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)(13). National regulatory authorities shall be able to order independent audits or similar reviews of the performance data, paid for by the undertaking concerned, in order to ensure the accuracy and comparability of the data made available by undertakings with universal service obligations.

Article 12

Costing of universal service obligations

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

For that purpose, national regulatory authorities shall:

(a) calculate the net cost of the universal service obligation, taking into account any market benefit which accrues to an undertaking designated to provide universal service, in accordance with Annex IV, Part A; or

(b) make use of the net costs of providing universal service identified by a designation mechanism in accordance with Article 8(2).

2. The accounts and/or other information serving as the basis for the calculation of the net cost of universal service obligations under paragraph 1(a) shall be audited or verified by the national regulatory authority or a body independent of the relevant parties and approved by the national regulatory authority. The results of the cost calculation and the conclusions of the audit shall be publicly available.

Article 13

Financing of universal service obligations

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

(a) to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds; and/or

(b) to share the net cost of universal service obligations between providers of electronic communications networks and services.

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

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

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

Article 14

Transparency

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

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

Article 15

Review of the scope of universal service

1. The Commission shall periodically review the scope of universal service, in particular with a view to proposing to the European Parliament and the Council that the scope be changed or redefined. A review shall be carried out, on the first occasion within two years after the date of application referred to in Article 38(1), second subparagraph, and subsequently every three years.
2. This review shall be undertaken in the light of social, economic and technological developments, taking into account, inter alia, mobility and data rates in the light of the prevailing technologies used by the majority of subscribers. The review process shall be undertaken in accordance with Annex V. The Commission shall submit a report to the European Parliament and the Council regarding the outcome of the review.

CHAPTER III

**REGULATORY CONTROLS ON UNDERTAKINGS WITH SIGNIFICANT MARKET
POWER IN SPECIFIC 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/EEC, until a review has been carried out and a determination made in accordance with the procedure in paragraph 3 of this Article.~~

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

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

Article 17

Regulatory controls on retail services

1. Member States shall ensure that, ~~where:~~ **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),:**

(a) **where** as a result of a market analysis carried out in accordance with Article 16(3) 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) is not effectively competitive, and

(b) **where** the national regulatory authority concludes that obligations imposed under **Articles 9, 10, 11, 12 and 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).~~

2. Obligations imposed under paragraph 1 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). The obligations imposed may include requirements that the identified undertakings do not charge excessive prices, inhibit market entry or restrict competition by setting predatory prices, show undue preference to specific end-users or unreasonably bundle services. National regulatory authorities may apply to such undertakings appropriate retail price cap measures, measures to control individual tariffs, or measures to orient tariffs towards costs or prices on comparable markets, in order to protect end-user interests whilst promoting effective competition.

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

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

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

Article 18

Regulatory controls on the minimum set of leased lines

1. — ~~Where, as a result of the market analysis carried out in accordance with Article 16(3), a national regulatory authority determines that the market for the provision of part or all of the minimum set of leased lines is not effectively competitive, it shall identify undertakings with significant market power in the provision of those specific elements of the minimum set of leased lines services in all or part of its territory in accordance with Article 14 of Directive 2002/21/EC (Framework Directive). The national regulatory authority shall impose obligations regarding the provision of the minimum set of leased lines, as identified in the list of standards published in the Official Journal of the European Communities in accordance with Article 17 of Directive 2002/21/EC (Framework Directive), and the conditions for such provision set out in 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 20⁶

Contracts

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

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

(a) the identity and address of the supplier;

(b) services provided, the service quality levels offered, as well as and the time for the initial connection as well as, where appropriate, other quality of service parameters specified in accordance with Article 22(2);

(c) the types of maintenance service offered and customer support services provided, as well as the methods to contact with these services;

(d) particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

(e) the duration of the contract, the conditions for renewal and termination of services and of the contract, including conditions regarding minimum contract duration related to promotions, and if relevant, including direct costs for charges related to portability of numbers and other identifiers, as well as, where appropriate, any other additional charges;

⁶ PT has a scrutiny reservation on Article 20.

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

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

(h) the types of actions that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

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

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

4. **Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed whether or not access to emergency services, and whether caller location information, is provided. Providers of electronic communications services shall ensure that customers are clearly informed of any limitation in the ~~lack of~~ access to emergency services in advance of the conclusion of a contract and ~~regularly thereafter~~ in case of any change in the access to the emergency services.⁷**

⁷ HU has scrutiny reservations on paragraphs 4 and 5.

5. **Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of a contract and regularly thereafter in case of any substantive change of any limitations imposed by the provider concerned on their ability to access or distribute lawful content or run any lawful applications and services of their choice. Such information shall be provided in a clear, comprehensive and easily accessible form.**

~~6. **Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed, in advance of the conclusion of the contract, and regularly thereafter of their general obligations to respect copyright and related rights. Without prejudice to Directive 2000/31/EC on electronic commerce, this includes the obligation to inform subscribers of the most common acts of infringements and their legal consequences.**~~

7. **Member States shall ensure that subscribers shall have a right to withdraw from their contracts without penalty upon notice of ~~proposed~~ modifications to the detriment of the subscriber in the contractual conditions proposed by operators 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, if they do not accept the new conditions. Member States shall ensure the national regulatory authorities are able to specify the format of such notifications.⁸**

⁸ PL, SK, SE and UK have scrutiny reservations on paragraph 7.

Article 21

Transparency and publication of information

~~1. Member States shall ensure that transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of publicly available telephone the services identified in Articles 4, 5, 6 and 7 is available to end-users and consumers, in accordance with the provisions of Annex II.~~

~~2. Member States shall ensure that undertakings providing public electronic communications networks and/or services publish comparable, adequate and up-to-date information on applicable prices and tariffs in respect of access and use of their services provided to consumers. Such information shall be published in an easily accessible form.~~

1. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications networks and/or services to publish transparent, comparable, adequate and up-to-date information as set out in Annex II, on applicable prices and tariffs and on standard terms and conditions in respect of access and use of their services provided to end-users and consumers. National regulatory authorities may specify additional requirements regarding the form in which such information shall be published to ensure transparency, comparability, clarity and accessibility for the benefit of consumers.

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, **for instance** by means of, for instance, interactive guides or similar techniques. Member States shall ensure that national regulatory authorities **may** make such guides or techniques available, when these are not available on the market. Third parties shall have a right to use without charge the **tariffs information** published by undertakings providing electronic communications networks and/or 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 electronic communications services to provide applicable tariff information to customers end-users and consumers at the time and point of purchase to ensure that customers are fully informed of pricing and other relevant conditions.

4. Member States shall ensure that undertakings providing electronic communications services provide information to end-users and consumers of general obligations with respect to copyright and related rights.⁹

~~5.— Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services and/or networks to provide information required in accordance with Article 20(5) to customers in a clear, comprehensive and easily accessible form.~~

~~6.— In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, having consulted the European Electronic Communications Market Authority (hereinafter referred to as "the Authority"), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. 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). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).~~

⁹ SE, UK, DK, ES and DE have scrutiny reservations on paragraph 4.

Article 22¹⁰

Quality of service

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

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

3. **In order to prevent degradation of service and hindering or slowing of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on undertakings providing public communications networks. The Commission may, having consulted the Authority, adopt technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority on undertakings providing public communications networks. 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 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**¹¹

¹⁰ PT has a scrutiny reservation on Article 22.

¹¹ PL, ES and NL have reservations on paragraph 3.

Article 23

Availability of services

Member States shall take all necessary steps to ensure the ~~integrity of the public telephone network at fixed locations and~~, **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 to ensure uninterrupted access to emergency services.

Article 23a¹²

Ensuring equivalent access and choice for disabled users

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) can have access to electronic communications services comparable to that enjoyed by the majority of end-users, and

(b) can take advantage of the choice of undertakings and services available to the majority of end-users.

Article 24

Interoperability of consumer digital television equipment

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

¹² FI, LV and DK have scrutiny reservations on Article 23a.

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).
2. Member States shall ensure that all undertakings which assign telephone numbers to subscribers meet all reasonable requests to make available, for the purposes of the provision of publicly available directory enquiry services and directories, the relevant information in an agreed format on terms which are fair, objective, cost oriented and non-discriminatory.
3. Member States shall ensure that all end-users provided with a ~~connection to the publicly available~~ telephone **service network** can access ~~operator assistance services and~~ directory enquiry services in accordance with Article 5(1)(b).¹³
4. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State.
5. Paragraphs 1, 2, 3 and 4 **shall** apply subject to the requirements of Community legislation on the protection of personal data and privacy and, in particular, Article ~~11~~ **12** of Directive ~~97/66/EC~~ **2002/58/EC**.

Article 26¹⁴

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 **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" **as well as by any other national emergency call numbers specified by the national regulatory authorities.**

¹³ PT has a reservation on paragraph 3.

¹⁴ IT and GR have scrutiny reservations on Article 26

2. Member States shall ensure that undertakings providing end-users with an electronic communications service for originating national ~~and/or originating national and~~ international calls through a number or numbers in a national or international telephone numbering plan provide access to emergency services.¹⁵

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

4. Member States shall ensure that access for disabled end-users are able to access emergency services is comparable to that enjoyed by other end-users. In order to ensure that disabled end-users are able to access emergency services while travelling in other Member States, the measures taken for this purpose may include ensuring compliance with relevant will 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, to the extent technically feasible, ~~undertakings which operate public telephone networks make~~ **undertakings concerned make** caller location information ~~is made~~ **available free of charge to the authority handling emergency calls and services, to the extent technically feasible, as soon as the call reaches that authority. This applies to for** all calls to the single European emergency call number "112". **Member States may extend this obligation to cover also calls to other national emergency numbers. Where undertakings referred to in paragraph 2 wish to claim that providing caller location information is not technically feasible, they shall bear the burden of proving this.**

¹⁵ SK, IE, ES and HU have scrutiny reservations on paragraph 2. CZ and UK have reservations on the same paragraph.

~~Member States shall require that caller location information is automatically provided as soon as the emergency call reaches the authority dealing with the emergency.~~

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. ~~Member States shall submit a yearly report to the Commission and the Authority on the measures taken in that respect.~~

~~7. In order to ensure the effective implementation of "112" services in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted the Authority, may adopt technical implementing measures.~~

~~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). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).¹⁶~~

Article 27

European telephone access codes

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

~~2. Those Member States to which the ITU assigned the international code "3883" shall entrust the Authority with sole responsibility for management of the European Telephony Numbering Space.~~

¹⁶ IE has a scrutiny reservation on paragraph 7.

2 3. Member States shall ensure that all undertakings that ~~operate~~ **provide publicly available** telephone ~~networks~~ **services** handle all calls to **and from** 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 **at rates that do not exceed the maximum rate they apply for calls to and from other Member States.**¹⁷

Article 28

~~Non-geographic numbers~~ Access to numbers and services

Member States shall ensure that ~~end-users from other Member States are able to access non-geographic numbers within their territory where technically and economically feasible, except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas.~~ **national regulatory relevant national authorities take all necessary steps to ensure that, where technically and economically feasible,:**¹⁸

(a) end-users are able to access **and use services, including information society services, provided using non-geographic numbers** within the Community; and

(b) end-users are able to access all numbers provided in the Community, including those in the national numbering plans of Member States, those from the European Telephone Numbering Space and Universal International Freephone Numbers.

Member states shall ensure that the relevant National regulatory authorities shall be able to require from undertakings providing public communications networks and/or publicly available electronic communications service to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse.

¹⁷ AT and DK have reservations on paragraph 3.

¹⁸ UK has a reservation on the first paragraph.

~~2. In order to ensure that end-users have effective access to numbers and services in the Community, the Commission may, having consulted the Authority, adopt technical implementing measures. 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 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).~~

~~Any such technical implementing measure may be periodically reviewed to take account of market and technological developments.~~

Article 29

Provision of additional facilities

1. Member States shall ensure that national regulatory authorities are able to require all undertakings that ~~operate~~ **provide** publicly available telephone networks ~~services and/or public communications networks~~ to make available to end-users ~~the~~ **additional** facilities listed in Annex I, Part B, subject to technical feasibility and economic viability.
2. A Member State may decide to waive paragraph 1 in all or part of its territory if it considers, after taking into account the views of interested parties, that there is sufficient access to these facilities.
3. Without prejudice to Article 10(2), Member States may impose the obligations in Annex I, Part A, point **(a) and (e)**, ~~concerning disconnection~~ as a general requirement on all undertakings **providing access to public communications networks and/or publicly available telephone services**.

Article 30

Number Portability Facilitating change of supplier

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

~~(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 **to subscribers for the use of these facilities change of service provider.**

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

4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, **no later than one working day** from the initial request by the subscriber.

~~5. The Commission may, having consulted the Authority and taking into account technology and market conditions, amend Annex I Part C in accordance with the procedure referred to in Article 37(2).~~

Such amendment may, in particular provide for:

~~(a) the portability of numbers between fixed and mobile networks;~~

~~(b) the portability of subscriber identifiers and related information, in which case the provisions of paragraphs 2, 3 and 4 shall also apply to these identifiers.~~

6. Without prejudice to any minimum contractual period, ~~national regulatory authorities~~ **Member States** shall ensure that conditions and procedures for termination of contract do not act as a disincentive for changing ~~suppliers or services~~ **service providers**.

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 ~~accessibility~~ services **to enable appropriate access for disabled users**, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or television broadcasts to the public where a significant number of end-users of such networks use them as their principal means to receive radio and television broadcasts. Such obligations shall only be imposed where they are necessary to meet ~~clearly defined~~ general interest objectives **as clearly and specifically defined by each Member State in its national law** and shall be proportionate and transparent. ~~The obligations shall be subject to periodical review.~~

The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of <time-limit for implementation of the amending act>, except where Member States have carried out such a review within the previous 2 years.

Member States shall regularly review "must carry" obligations at least every three years.¹⁹

¹⁹ HU and SE have scrutiny reservations on this sentence.

2. Neither paragraph 1 of this Article nor Article 3(2) of Directive 2002/19/EC (Access Directive) shall prejudice the ability of Member States to determine appropriate remuneration, if any, in respect of measures taken in accordance with this Article while ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks. Where remuneration is provided for, Member States shall ensure that it is applied in a proportionate and transparent manner.

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 32

Additional mandatory services

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

Article 33

Consultation with interested parties

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

In particular, Member States shall ensure that national regulatory authorities establish a consultation mechanism ensuring that in their decisions making process 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. ²⁰

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

~~**3. Member States shall submit a yearly report to the Commission and the Authority on the measures taken and the progress towards improving interoperability and use of, and access to, electronic communications services and terminal equipment by disabled end-users.**~~

~~**3. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may, having consulted the Authority, take the appropriate technical implementing measures to address the issues raised in the report referred to in paragraph 3, following a public consultation. 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 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(2?).**~~

²⁰ IE has a scrutiny reservation on this paragraph.

Article 34

Out-of-court dispute resolution

1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes arising under this Directive, involving between consumers **and undertakings providing electronic communications networks and/or services**, relating to ~~issues covered by this Directive~~ **the contractual conditions and/or performance of contracts concerning supply of such networks 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. Member States may extend these obligations to cover disputes involving other end-users.

~~**Member States shall ensure that bodies in charge of dealing with such disputes provide relevant information for statistical purposes to the Commission and the Authority.**~~

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

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

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

Article 35

~~**Technical adjustment**~~ **Adaptation of annexes**

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

Article 36

Notification, monitoring and review procedures

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

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

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

3. The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 38(1), second subparagraph. The Member States and national regulatory authorities shall supply the necessary information to the Commission for this purpose.

Article 37

Committee

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

2. Where reference is made to this paragraph, 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.~~

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

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

~~3.—The Committee shall adopt its rules of procedure.~~

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

Part A

Facilities and services referred to in Article 10

(a) Itemised billing

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

- (i) allow verification and control of the charges incurred in using the public ~~telephone~~ **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 call barring for outgoing calls or other communications, free of charge

i.e. the facility whereby the subscriber can, on request to ~~the~~ **a designated undertaking that provides** telephone services ~~provider~~, bar outgoing calls **or other communications** 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 use of the public telephone network at fixed locations of **operators undertakings designated in accordance with Article 8.** 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 shall normally be confined to the service concerned. Exceptionally, 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. Member States shall ensure that national regulatory authorities are able to authorise disconnection from the network as a result of non-payment of bills for services provided over the network.~~ Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted.

Part B

List of facilities referred to in Article 29

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

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

(b) Calling-line identification

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

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

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

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

**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. ~~Where information is published by the undertakings providing public communications networks and/or publicly available telephone services, the national regulatory authority may specify the manner in which the information is published, in order to ensure that consumers are fully informed.~~

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~~ **Description of services offered**

2.1. ~~Scope of the publicly available 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~~ **with an indication of what is included in 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.

2.3. Compensation/refund policy, including specific details of any compensation/refund schemes offered.

2.4. Types of maintenance service offered.

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

3. Dispute settlement mechanisms including those developed by the undertaking.

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

QUALITY OF SERVICE PARAMETERS

SUPPLY-TIME AND QUALITY-OF-SERVICE PARAMETERS, DEFINITIONS AND MEASUREMENT METHODS REFERRED TO IN ARTICLES 11 AND 22

For undertaking ~~designated to provide~~ **providing** access to a public communications network

PARAMETER (Note 1)	DEFINITION	MEASUREMENT METHOD
Supply time for initial connection	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>
Fault rate per access line	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>
Fault repair time	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>

For undertaking ~~designated to provide~~ **providing** a publicly available telephone service

Call set up time (Note 2)	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>
<u>Response times for operator services</u>	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>
Response times for directory enquiry services	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>
Proportion of coin and card operated public pay-telephones in working order	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>
Bill correctness complaints	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>
Unsuccessful call ratio (Note 2)	<u>ETSI EG 202 057</u>	<u>ETSI EG 202 057</u>

Version number of ETSI EG ~~201-769-1 is 1.1.1 (April 2000)~~ 202 057-1 is 1.2.1. (October 2005).

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 that up-to-date information concerning the performance for these two parameters be kept, if evidence is available to show that performance in these two areas is satisfactory.

**CALCULATING THE NET COST, IF ANY, OF UNIVERSAL SERVICE OBLIGATIONS
AND ESTABLISHING ANY RECOVERY OR SHARING MECHANISM IN
ACCORDANCE WITH ARTICLES 12 AND 13**

Part A: Calculation of net cost

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INTEROPERABILITY OF DIGITAL CONSUMER EQUIPMENT REFERRED TO IN ARTICLE 24

1. The common scrambling algorithm and free-to-air reception

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

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

2. Interoperability for analogue and digital television sets

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

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

~~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.~~

**COMPROMISE PROPOSAL
FOR THE**

**CONSOLIDATED VERSION OF THE PROPOSAL AMENDING DIRECTIVE 2002/58/EC
(Privacy Directive)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the Economic and Social Committee(2),

Having consulted the Committee of the Regions,

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

[Whereas:]

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Scope and aim

1. This Directive harmonises the 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, 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.
2. The provisions of this Directive particularise and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are legal persons.
3. This Directive shall not apply to activities which fall outside the scope of the Treaty establishing the European Community, such as those covered by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law.

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) shall apply.

The following definitions shall also 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, 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 electronic communications** service allowing two-way communication ~~in real time~~ ²¹;

(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;

²¹ PL has a reservation on point (e).

(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 transmitted, stored or otherwise processed in connection with the provision of publicly available electronic communications service in the Community.²²

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.**²³

~~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.~~

(28) *Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that the fundamental rights of individuals, in particular the right to privacy and data protection, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.*

²² FI has a scrutiny reservation on point (i).

²³ HU and PL have scrutiny reservations on paragraph 1.

Security of processing

1. The provider of a publicly available electronic communications service must take appropriate technical and organisational measures to safeguard security of its services, if necessary in conjunction with the provider of the public communications network with respect to network security. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available electronic communications service must inform the subscribers concerning such risk and, where the risk lies outside the scope of the measures to be taken by the service provider, of any possible remedies, including an indication of the likely costs involved.

3. In case of a personal data breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision by the provider of publicly available electronic communications service in the Community, the provider of publicly available electronic communications services concerned shall, without undue delay, notify the subscriber concerned and the national regulatory authority of such a breach, assess the scope of the personal data breach, evaluate its seriousness and consider whether notification of the personal data breach to the national regulatory authority and subscriber concerned is necessary, taking into account the relevant rules set by the national regulatory authority in accordance with paragraph 3a.

When the personal data breach represents a serious risk for subscriber's privacy, the provider of publicly available electronic communications services concerned shall notify the national regulatory authority and the subscriber concerned of such a breach as soon as possible and without undue delay after the breach has occurred.

²⁴ MT and PT have scrutiny reservations on Article 4.

The notification to the subscriber shall at least describe the nature of the personal data breach and the contact points where more information can be obtained, and it shall recommend measures to mitigate its possible negative effects of the personal data breach. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures proposed or taken by the provider to address the personal data breach.²⁵

3a. Member States shall ensure that the national regulatory authority is able to set detailed rules and, where necessary, issue instructions concerning the circumstances when the notification of personal data breaches by the provider of a publicly available electronic communications service is required, the format applicable to such notification as well as the manner in which the notification is done.

4. In order to ensure consistency in implementation of the measures referred to in paragraph 1, 2 and 3, the Commission may, following consultation with the European Network and Information Security Agency ~~Electronic Communications Market Authority~~ (hereinafter referred to as "the Authority"), and the European Data Protection Supervisor, adopt recommendations ~~technical implementing measures~~ concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.²⁶

~~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). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a (3).~~

²⁵ FI, GR, DK, IE and SE have reservations on paragraph 3.

²⁶ FI and DE have reservations on paragraph 4.

Article 5

Confidentiality of the communications

1. Member States shall ensure the confidentiality of communications and the related traffic data by means of a public communications network and publicly available electronic communications services, through national legislation. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned, except when legally authorised to do so in accordance with Article 15(1). This paragraph shall not prevent technical storage which is necessary for the conveyance of a communication without prejudice to the principle of confidentiality.

2. Paragraph 1 shall not affect any legally authorised recording of communications and the related traffic data when carried out in the course of lawful business practice for the purpose of providing evidence of a commercial transaction or of any other business communication.

3. Member States shall ensure that the ~~use of electronic communications networks to store~~ **storing** ~~of~~ information, or ~~to~~ **gaining** 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 is 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 an information society service explicitly requested by the subscriber or user.²⁷

²⁷ HU and PL have scrutiny reservations on paragraph 3.

Article 6

Traffic data

1. Traffic data relating to subscribers and users processed and stored by the provider of a public communications network or publicly available electronic communications service must be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication without prejudice to paragraphs 2, 3 and 5 of this Article and Article 15(1).
2. Traffic data necessary for the purposes of subscriber billing and interconnection payments may be processed. Such processing is permissible only up to the end of the period during which the bill may lawfully be challenged or payment pursued.
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/her consent. Users or subscribers shall be given the possibility to withdraw their consent for the processing of traffic data at any time.
4. The service provider must inform the subscriber or user of the types of traffic data which are processed and of the duration of such processing for the purposes mentioned in paragraph 2 and, prior to obtaining consent, for the purposes mentioned in paragraph 3.
5. Processing of traffic data, in accordance with paragraphs 1, 2, 3 and 4, must be restricted to persons acting under the authority of providers of the public communications networks and publicly available electronic communications services handling billing or traffic management, customer enquiries, fraud detection, marketing electronic communications services or providing a value added service, and must be restricted to what is necessary for the purposes of such activities.
6. Paragraphs 1, 2, 3 and 5 shall apply without prejudice to the possibility for competent bodies to be informed of traffic data in conformity with applicable legislation with a view to settling disputes, in particular interconnection or billing disputes.

Article 7

Itemised billing

1. Subscribers shall have the right to receive non-itemised bills.
2. Member States shall apply national provisions in order to reconcile the rights of subscribers receiving itemised bills with the right to privacy of calling users and called subscribers, for example by ensuring that sufficient alternative privacy enhancing methods of communications or payments are available to such users and subscribers.

Article 8

Presentation and restriction of calling and connected line identification

1. Where presentation of calling line identification is offered, the service provider must offer the calling user the possibility, using a simple means and free of charge, of preventing the presentation of the calling line identification on a per-call basis. The calling subscriber must have this possibility on a per-line basis.
2. Where presentation of calling line identification is offered, the service provider must offer the called subscriber the possibility, using a simple means and free of charge for reasonable use of this function, of preventing the presentation of the calling line identification of incoming calls.
3. Where presentation of calling line identification is offered and where the calling line identification is presented prior to the call being established, the service provider must offer the called subscriber the possibility, using a simple means, of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.
4. Where presentation of connected line identification is offered, the service provider must offer the called subscriber the possibility, using a simple means and free of charge, of preventing the presentation of the connected line identification to the calling user.

5. Paragraph 1 shall also apply with regard to calls to third countries originating in the Community. Paragraphs 2, 3 and 4 shall also apply to incoming calls originating in third countries.

6. Member States shall ensure that where presentation of calling and/or connected line identification is offered, the providers of publicly available electronic communications services inform the public thereof and of the possibilities set out in paragraphs 1, 2, 3 and 4.

Article 9

Location data other than traffic data

1. Where location data other than traffic data, relating to users or subscribers of public communications networks or publicly available electronic communications services, can be processed, such data may only be processed when they are made anonymous, or with the consent of the users or subscribers to the extent and for the duration necessary for the provision of a value added service. The service provider must inform the users or subscribers, prior to obtaining their consent, of the type of location data other than traffic data which will be processed, of the purposes and duration of the processing and whether the data will be transmitted to a third party for the purpose of providing the value added service. Users or subscribers shall be given the possibility to withdraw their consent for the processing of location data other than traffic data at any time.

2. Where consent of the users or subscribers has been obtained for the processing of location data other than traffic data, the user or subscriber must continue to have the possibility, using a simple means and free of charge, of temporarily refusing the processing of such data for each connection to the network or for each transmission of a communication.

3. Processing of location data other than traffic data in accordance with paragraphs 1 and 2 must be restricted to persons acting under the authority of the provider of the public communications network or publicly available communications service or of the third party providing the value added service, and must be restricted to what is necessary for the purposes of providing the value added service.

Article 10

Exceptions

Member States shall ensure that there are transparent procedures governing the way in which a provider of a public communications network and/or a publicly available electronic communications service may override:

(a) the elimination of the presentation of calling line identification, on a temporary basis, upon application of a subscriber requesting the tracing of malicious or nuisance calls. In this case, in accordance with national law, the data containing the identification of the calling subscriber will be stored and be made available by the provider of a public communications network and/or publicly available electronic communications service;

(b) the elimination of the presentation of calling line identification and the temporary denial or absence of consent of a subscriber or user for the processing of location data, on a per-line basis for organisations dealing with emergency calls and recognised as such by a Member State, including law enforcement agencies, ambulance services and fire brigades, for the purpose of responding to such calls.

Article 11

Automatic call forwarding

Member States shall ensure that any subscriber has the possibility, using a simple means and free of charge, of stopping automatic call forwarding by a third party to the subscriber's terminal.

Article 12

Directories of subscribers

1. Member States shall ensure that subscribers are informed, free of charge and before they are included in the directory, about the purpose(s) of a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which their personal data can be included and of any further usage possibilities based on search functions embedded in electronic versions of the directory.
2. Member States shall ensure that subscribers are given the opportunity to determine whether their personal data are included in a public directory, and if so, which, to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory, and to verify, correct or withdraw such data. Not being included in a public subscriber directory, verifying, correcting or withdrawing personal data from it shall be free of charge.
3. Member States may require that for any purpose of a public directory other than the search of contact details of persons on the basis of their name and, where necessary, a minimum of other identifiers, additional consent be asked of the subscribers.
4. Paragraphs 1 and 2 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to their entry in public directories are sufficiently protected.

Article 13

Unsolicited communications

1. The use of automated calling systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail for the purposes of direct marketing may only be allowed in respect of subscribers 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 ~~when they are collected~~ **at the time of the collection of the contact details** 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 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 concerned or in respect of subscribers 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.**

4. In any event, the practice of sending electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.

5. Paragraphs 1 and 3 shall apply to subscribers who are natural persons. Member States shall also ensure, in the framework of Community law and applicable national legislation, that the legitimate interests of subscribers other than natural persons with regard to unsolicited communications are sufficiently protected.

6. **Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15(a)(2), Member States shall ensure that any individual or legal person ~~having a legitimate interest in combating of~~ **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 ~~or the interests of their customers~~, may take legal action against such infringements before the courts.**

Article 14

Technical features and standardisation

- 1 In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs 2 and 3, that no mandatory requirements for specific technical features are imposed on terminal or other electronic communication equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.
- 2 Where provisions of this Directive can be implemented only by requiring specific technical features in electronic communications networks, Member States shall inform the Commission in accordance with the procedure provided for by Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services.
- 3 Where required, measures may be adopted to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and communications.

Article 14a

Committee

- ~~1. The Commission shall be assisted by the Communications Committee set up by Article 22 of Directive 2002/21/EC (Framework Directive).~~
- ~~2. Where reference is made to this paragraph, Articles 5a (1) to (4) and 7 of Decision 1999/468/EC shall apply, having regard to the provision 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

1. Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in Article 5, Article 6, Article 8(1), (2), (3) and (4), and Article 9 of this Directive when such restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system, as referred to in Article 13(1) of Directive 95/46/EC. To this end, Member States may, inter alia, adopt legislative measures providing for the retention of data for a limited period justified on the grounds laid down in this paragraph. All the measures referred to in this paragraph shall be in accordance with the general principles of Community law, including those referred to in Article 6(1) and (2) of the Treaty on European Union.

1a. Paragraph 1 shall not apply to data specifically required by Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks to be retained for the purposes referred to in Article 1(1) of that Directive.

2. The provisions of Chapter III on judicial remedies, liability and sanctions of Directive 95/46/EC shall apply with regard to national provisions adopted pursuant to this Directive and with regard to the individual rights derived from this Directive.

3. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data instituted by Article 29 of Directive 95/46/EC shall also carry out the tasks laid down in Article 30 of that Directive with regard to matters covered by this Directive, namely the protection of fundamental rights and freedoms and of legitimate interests in the electronic communications sector.

Article 15a

Implementation and enforcement

1. Member States shall lay down the rules on penalties 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 if the breach has subsequently been rectified. The Member States shall notify those provisions to the Commission by the <time-limit for implementation of the amending act> at the latest 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 ~~national regulatory~~ 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 ~~national regulatory~~ competent national authorities and, where relevant, other national bodies have all investigative powers and resources necessary, including the possibility to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive.
4. In order to ensure effective cross-border co-operation 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 Commission may adopt technical implementing measures recommendations, following consultation with [the Authority] and the relevant regulatory authorities.²⁸

~~The 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). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a (3).~~

²⁸ FI, UK and DE have reservations on paragraph 4.

Article 16

Transitional arrangements

1. Article 12 shall not apply to editions of directories already produced or placed on the market in printed or off-line electronic form before the national provisions adopted pursuant to this Directive enter into force.

2. Where the personal data of subscribers to fixed or mobile public voice telephony services have been included in a public subscriber directory in conformity with the provisions of Directive 95/46/EC and of Article 11 of Directive 97/66/EC before the national provisions adopted in pursuance of this Directive enter into force, the personal data of such subscribers may remain included in this public directory in its printed or electronic versions, including versions with reverse search functions, unless subscribers indicate otherwise, after having received complete information about purposes and options in accordance with Article 12 of this Directive.
