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Abrogat(ă) de Directiva (UE) 2018/1972 a Parlamentului European și a Consiliului din 11 decembrie 2018

Directive 2002/22/EC of the European Parliament and of the Council

of 7 March 2002

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Having regard to the opinion of the Committee of the Regions(3),

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

Whereas:

(1) The liberalisation of the telecommunications sector and increasing competition and choice for communications services go hand in hand with parallel action to create a harmonised regulatory framework which secures the delivery of universal service. The concept of universal service should evolve to reflect advances in technology, market developments and changes in user demand. The regulatory framework established for the full liberalisation of the telecommunications market in 1998 in the Community defined the minimum scope of universal service obligations and established rules for its costing and financing.

(2) Under Article 153 of the Treaty, the Community is to contribute to the protection of consumers.

(3) The Community and its Member States have undertaken commitments on the regulatory framework of telecommunications networks and services in the context of the World Trade Organisation (WTO) agreement on basic telecommunications. Any member of the WTO has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the member.

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

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

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

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

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

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

(9) The provisions of this Directive do not preclude Member States from designating different undertakings to provide the network and service elements of universal service. Designated undertakings providing network elements may be required to ensure such construction and maintenance as are necessary and proportionate to meet all reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location.

(10) Affordable price means a price defined by Member States at national level in the light of specific national conditions, and may involve setting common tariffs irrespective of location or special tariff options to deal with the needs of low-income users. Affordability for individual consumers is related to their ability to monitor and control their expenditure.

(11) Directory information and a directory enquiry service constitute an essential access tool for publicly available telephone services and form part of the universal service obligation. Users and consumers desire comprehensive directories and a directory enquiry service covering all listed telephone subscribers and their numbers (including fixed and mobile numbers) and want this information to be presented in a non-preferential fashion. Directive 97/66 /EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector(5) ensures the subscribers' right to privacy with regard to the inclusion of their personal information in a public directory.

(12) For the citizen, it is important for there to be adequate provision of public pay telephones, and for users to be able to call emergency telephone numbers and, in particular, the single European emergency call number ("112") free of charge from any telephone, including public pay telephones, without the use of any means of payment. Insufficient information about the existence of "112" deprives citizens of the additional safety ensured by the existence of this number at European level especially during their travel in other Member States.

(13) Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs. Specific measures for disabled users could include, as appropriate, making available accessible public telephones, public text telephones or equivalent measures for deaf or speech-impaired people, providing services such as directory enquiry

services or equivalent measures free of charge for blind or partially sighted people, and providing itemised bills in alternative format on request for blind or partially sighted people. Specific measures may also need to be taken to enable disabled users and users with special social needs to access emergency services "112" and to give them a similar possibility to choose between different operators or service providers as other consumers. Quality of service standards have been developed for a range of parameters to assess the quality of services received by subscribers and how well undertakings designated with universal service obligations perform in achieving these standards. Quality of service standards do not yet exist in respect of disabled users. Performance standards and relevant parameters should be developed for disabled users and are provided for in Article 11 of this Directive. Moreover, national regulatory authorities should be enabled to require publication of quality of service performance data if and when such standards and parameters are developed. The provider of universal service should not take measures to prevent users from benefiting fully from services offered by different operators or service providers, in combination with its own services offered as part of universal service.

(14) The importance of access to and use of the public telephone network at a fixed location is such that it should be available to anyone reasonably requesting it. In accordance with the principle of subsidiarity, it is for Member States to decide on the basis of objective criteria which undertakings have universal service obligations for the purposes of this Directive, where appropriate taking into account the ability and the willingness of undertakings to accept all or part of the universal service obligations. It is important that universal service obligations are fulfilled in the most efficient fashion so that users generally pay prices that correspond to efficient cost provision. It is likewise important that universal service operators maintain the integrity of the network as well as service continuity and quality. The development of greater competition and choice provide more possibilities for all or part of the universal service obligations to be provided by undertakings other than those with significant market power. Therefore, universal service obligations could in some cases be allocated to operators demonstrating the most cost-effective means of delivering access and services, including by competitive or comparative selection procedures. Corresponding obligations could be included as conditions in authorisations to provide publicly available services.

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

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

(17) Quality and price are key factors in a competitive market and national regulatory authorities should be able to monitor achieved quality of service for undertakings which have been designated as having universal service obligations. In relation to the quality of service attained by such undertakings, national regulatory authorities should be able to take appropriate measures where they deem it necessary. National regulatory authorities should also be able to monitor the achieved quality of services of other undertakings providing public telephone networks and/or publicly available telephone services to users at fixed locations.

(18) Member States should, where necessary, establish mechanisms for financing the net cost of universal service obligations in cases where it is demonstrated that the obligations can only be provided at a loss or at a net cost which falls outside normal commercial standards. It is important to ensure that the net cost of universal service obligations is properly calculated and that any financing is undertaken with minimum distortion to the market and to undertakings, and is compatible with the provisions of Articles 87 and 88 of the Treaty.

(19) Any calculation of the net cost of universal service should take due account of costs and revenues, as well as the intangible benefits resulting from providing universal service, but should not hinder the general aim of ensuring

that pricing structures reflect costs. Any net costs of universal service obligations should be calculated on the basis of transparent procedures.

(20) Taking into account intangible benefits means that an estimate in monetary terms, of the indirect benefits that an undertaking derives by virtue of its position as provider of universal service, should be deducted from the direct net cost of universal service obligations in order to determine the overall cost burden.

(21) When a universal service obligation represents an unfair burden on an undertaking, it is appropriate to allow Member States to establish mechanisms for efficiently recovering net costs. Recovery via public funds constitutes one method of recovering the net costs of universal service obligations. It is also reasonable for established net costs to be recovered from all users in a transparent fashion by means of levies on undertakings. Member States should be able to finance the net costs of different elements of universal service through different mechanisms, and/or to finance the net costs of some or all elements from either of the mechanisms or a combination of both. In the case of cost recovery by means of levies on undertakings, Member States should ensure that that the method of allocation amongst them is based on objective and non-discriminatory criteria and is in accordance with the principle of proportionality. This principle does not prevent Member States from exempting new entrants which have not yet achieved any significant market presence. Any funding mechanism should ensure that market participants only contribute to the financing of universal service obligations and not to other activities which are not directly linked to the provision of the universal service obligations. Recovery mechanisms should in all cases respect the principles of Community law, and in particular in the case of sharing mechanisms those of non-discrimination and proportionality. Any funding mechanism should ensure that users in one Member State do not contribute to universal service costs in another Member State, for example when making calls from one Member State to another.

(22) Where Member States decide to finance the net cost of universal service obligations from public funds, this should be understood to comprise funding from general government budgets including other public financing sources such as state lotteries.

(23) The net cost of universal service obligations may be shared between all or certain specified classes of undertaking. Member States should ensure that the sharing mechanism respects the principles of transparency, least market distortion, non-discrimination and proportionality. Least market distortion means that contributions should be recovered in a way that as far as possible minimises the impact of the financial burden falling on end-users, for example by spreading contributions as widely as possible.

(24) National regulatory authorities should satisfy themselves that those undertakings benefiting from universal service funding provide a sufficient level of detail of the specific elements requiring such funding in order to justify their request. Member States' schemes for the costing and financing of universal service obligations should be communicated to the Commission for verification of compatibility with the Treaty. There are incentives for designated operators to raise the assessed net cost of universal service obligations. Therefore Member States should ensure effective transparency and control of amounts charged to finance universal service obligations.

(25) Communications markets continue to evolve in terms of the services used and the technical means used to deliver them to users. The universal service obligations, which are defined at a Community level, should be periodically reviewed with a view to proposing that the scope be changed or redefined. Such a review should take account of evolving social, commercial and technological conditions and the fact that any change of scope should be subject to the twin test of services that become available to a substantial majority of the population, with a consequent risk of social exclusion for those who can not afford them. Care should be taken in any change of the scope of universal service obligations to ensure that certain technological choices are not artificially promoted above others, that a disproportionate financial burden is not imposed on sector undertakings (thereby endangering market developments and innovation) and that any financing burden does not fall unfairly on consumers with lower incomes. Any change of scope automatically means that any net cost can be financed via the methods permitted in this Directive. Member States are not permitted to impose on market players financial contributions which relate to measures which are not part of universal service obligations. Individual Member States remain free to impose special measures (outside the scope of universal service obligations) and finance them in conformity with Community law but not by means of contributions from market players.

(26) More effective competition across all access and service markets will give greater choice for users. The extent of effective competition and choice varies across the Community and varies within Member States between geographical areas and between access and service markets. Some users may be entirely dependent on the provision of access and services by an undertaking with significant market power. In general, for reasons of efficiency and to encourage effective competition, it is important that the services provided by an undertaking with

significant market power reflect costs. For reasons of efficiency and social reasons, end-user tariffs should reflect demand conditions as well as cost conditions, provided that this does not result in distortions of competition. There is a risk that an undertaking with significant market power may act in various ways to inhibit entry or distort competition, for example by charging excessive prices, setting predatory prices, compulsory bundling of retail services or showing undue preference to certain customers. Therefore, national regulatory authorities should have powers to impose, as a last resort and after due consideration, retail regulation on an undertaking with significant market power. Price cap regulation, geographical averaging or similar instruments, as well as non-regulatory measures such as publicly available comparisons of retail tariffs, may be used to achieve the twin objectives of promoting effective competition whilst pursuing public interest needs, such as maintaining the affordability of publicly available telephone services for some consumers. Access to appropriate cost accounting information is necessary, in order for national regulatory authorities to fulfil their regulatory duties in this area, including the imposition of any tariff controls. However, regulatory controls on retail services should only be imposed where national regulatory authorities consider that relevant wholesale measures or measures regarding carrier selection or pre-selection would fail to achieve the objective of ensuring effective competition and public interest.

(27) Where a national regulatory authority imposes obligations to implement a cost accounting system in order to support price controls, it may itself undertake an annual audit to ensure compliance with that cost accounting system, provided that it has the necessary qualified staff, or it may require the audit to be carried out by another qualified body, independent of the operator concerned.

(28) It is considered necessary to ensure the continued application of the existing provisions relating to the minimum set of leased line services in Community telecommunications legislation, in particular in Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines(6), until such time as national regulatory authorities determine, in accordance with the market analysis procedures laid down in Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)(7), that such provisions are no longer needed because a sufficiently competitive market has developed in their territory. The degree of competition is likely to vary between different markets of leased lines in the minimum set, and in different parts of the territory. In undertaking the market analysis, national regulatory authorities should make separate assessments for each market of leased lines in the minimum set, taking into account their geographic dimension. Leased lines services constitute mandatory services to be provided without recourse to any compensation mechanisms. The provision of leased lines outside of the minimum set of leased lines should be covered by general retail regulatory provisions rather than specific requirements covering the supply of the minimum set.

(29) National regulatory authorities may also, in the light of an analysis of the relevant market, require mobile operators with significant market power to enable their subscribers to access the services of any interconnected provider of publicly available telephone services on a call-by-call basis or by means of pre-selection.

(30) Contracts are an important tool for users and consumers to ensure a minimum level of transparency of information and legal security. Most service providers in a competitive environment will conclude contracts with their customers for reasons of commercial desirability. In addition to the provisions of this Directive, the requirements of existing Community consumer protection legislation relating to contracts, in particular Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts(8) and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts(9), apply to consumer transactions relating to electronic networks and services. Specifically, consumers should enjoy a minimum level of legal certainty in respect of their contractual relations with their direct telephone service provider, such that the contractual terms, conditions, quality of service, condition for termination of the contract and the service, compensation measures and dispute resolution are specified in their contracts. Where service providers other than direct telephone service providers conclude contracts with consumers, the same information should be included in those contracts as well. The measures to ensure transparency on prices, tariffs, terms and conditions will increase the ability of consumers to optimise their choices and thus to benefit fully from competition.

(31) End-users should have access to publicly available information on communications services. Member States should be able to monitor the quality of services which are offered in their territories. National regulatory authorities should be able systematically to collect information on the quality of services offered in their territories on the basis of criteria which allow comparability between service providers and between Member States. Undertakings providing communications services, operating in a competitive environment, are likely to make adequate and up-to-date information on their services publicly available for reasons of commercial advantage. National regulatory authorities should nonetheless be able to require publication of such information where it is demonstrated that such information is not effectively available to the public.

(32) End-users should be able to enjoy a guarantee of interoperability in respect of all equipment sold in the Community for the reception of digital television. Member States should be able to require minimum harmonised standards in respect of such equipment. Such standards could be adapted from time to time in the light of technological and market developments.

(33) It is desirable to enable consumers to achieve the fullest connectivity possible to digital television sets. Interoperability is an evolving concept in dynamic markets. Standards bodies should do their utmost to ensure that appropriate standards evolve along with the technologies concerned. It is likewise important to ensure that connectors are available on television sets that are capable of passing all the necessary elements of a digital signal, including the audio and video streams, conditional access information, service information, application program interface (API) information and copy protection information. This Directive therefore ensures that the functionality of the open interface for digital television sets is not limited by network operators, service providers or equipment manufacturers and continues to evolve in line with technological developments. For display and presentation of digital interactive television services, the realisation of a common standard through a market-driven mechanism is recognised as a consumer benefit. Member States and the Commission may take policy initiatives, consistent with the Treaty, to encourage this development.

(34) All end-users should continue to enjoy access to operator assistance services whatever organisation provides access to the public telephone network.

(35) The provision of directory enquiry services and directories is already open to competition. The provisions of this Directive complement the provisions of Directive 97/66/EC by giving subscribers a right to have their personal data included in a printed or electronic directory. All service providers which assign telephone numbers to their subscribers are obliged to make relevant information available in a fair, cost-oriented and non-discriminatory manner.

(36) It is important that users should be able to call the single European emergency number "112", and any other national emergency telephone numbers, free of charge, from any telephone, including public pay telephones, without the use of any means of payment. Member States should have already made the necessary organisational arrangements best suited to the national organisation of the emergency systems, in order to ensure that calls to this number are adequately answered and handled. Caller location information, to be made available to the emergency services, will improve the level of protection and the security of users of "112" services and assist the emergency services, to the extent technically feasible, in the discharge of their duties, provided that the transfer of calls and associated data to the emergency services concerned is guaranteed. The reception and use of such information should comply with relevant Community law on the processing of personal data. Steady information technology improvements will progressively support the simultaneous handling of several languages over the networks at a reasonable cost. This in turn will ensure additional safety for European citizens using the "112" emergency call number.

(37) Easy access to international telephone services is vital for European citizens and European businesses. "00" has already been established as the standard international telephone access code for the Community. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. The ITU has assigned, in accordance with ITU Recommendation E.164, code "3883" to the European Telephony Numbering Space (ETNS). In order to ensure connection of calls to the ETNS, undertakings operating public telephone networks should ensure that calls using "3883" are directly or indirectly interconnected to ETNS serving networks specified in the relevant European Telecommunications Standards Institute (ETSI) standards. Such interconnection arrangements should be governed by the provisions of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)(10).

(38) Access by end-users to all numbering resources in the Community is a vital pre-condition for a single market. It should include freephone, premium rate, and other non-geographic numbers, except where the called subscriber has chosen, for commercial reasons, to limit access from certain geographical areas. Tariffs charged to parties calling from outside the Member State concerned need not be the same as for those parties calling from inside that Member State.

(39) Tone dialling and calling line identification facilities are normally available on modern telephone exchanges and can therefore increasingly be provided at little or no expense. Tone dialling is increasingly being used for user interaction with special services and facilities, including value added services, and the absence of this facility can prevent the user from making use of these services. Member States are not required to impose obligations to provide

these facilities when they are already available. Directive 97/66/EC safeguards the privacy of users with regard to itemised billing, by giving them the means to protect their right to privacy when calling line identification is implemented. The development of these services on a pan-European basis would benefit consumers and is encouraged by this Directive.

(40) Number portability is a key facilitator of consumer choice and effective competition in a competitive telecommunications environment such that end-users who so request should be able to retain their number(s) on the public telephone network independently of the organisation providing service. The provision of this facility between connections to the public telephone network at fixed and non-fixed locations is not covered by this Directive. However, Member States may apply provisions for porting numbers between networks providing services at a fixed location and mobile networks.

(41) The impact of number portability is considerably strengthened when there is transparent tariff information, both for end-users who port their numbers and also for end-users who call those who have ported their numbers. National regulatory authorities should, where feasible, facilitate appropriate tariff transparency as part of the implementation of number portability.

(42) When ensuring that pricing for interconnection related to the provision of number portability is cost-oriented, national regulatory authorities may also take account of prices available in comparable markets.

(43) Currently, Member States impose certain "must carry" obligations on networks for the distribution of radio or television broadcasts to the public. Member States should be able to lay down proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Community law and should be proportionate, transparent and subject to periodical review. "Must carry" obligations imposed by Member States should be reasonable, that is they should be proportionate and transparent in the light of clearly defined general interest objectives, and could, where appropriate, entail a provision for proportionate remuneration. Such "must carry" obligations may include the transmission of services specifically designed to enable appropriate access by disabled users.

(44) Networks used for the distribution of radio or television broadcasts to the public include cable, satellite and terrestrial broadcasting networks. They might also include other networks to the extent that a significant number of end-users use such networks as their principal means to receive radio and television broadcasts.

(45) Services providing content such as the offer for sale of a package of sound or television broadcasting content are not covered by the common regulatory framework for electronic communications networks and services. Providers of such services should not be subject to universal service obligations in respect of these activities. This Directive is without prejudice to measures taken at national level, in compliance with Community law, in respect of such services.

(46) Where a Member State seeks to ensure the provision of other specific services throughout its national territory, such obligations should be implemented on a cost efficient basis and outside the scope of universal service obligations. Accordingly, Member States may undertake additional measures (such as facilitating the development of infrastructure or services in circumstances where the market does not satisfactorily address the requirements of end-users or consumers), in conformity with Community law. As a reaction to the Commission's e-Europe initiative, the Lisbon European Council of 23 and 24 March 2000 called on Member States to ensure that all schools have access to the Internet and to multimedia resources.

(47) In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to end-users' rights. Effective procedures should be available to deal with disputes between consumers, on the one hand, and undertakings providing publicly available communications services, on the other. Member States should take full account of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes(11).

(48) Co-regulation could be an appropriate way of stimulating enhanced quality standards and improved service performance. Co-regulation should be guided by the same principles as formal regulation, i.e. it should be objective, justified, proportional, non-discriminatory and transparent.

(49) This Directive should provide for elements of consumer protection, including clear contract terms and dispute resolution, and tariff transparency for consumers. It should also encourage the extension of such benefits to other categories of end-users, in particular small and medium-sized enterprises.

(50) The provisions of this Directive do not prevent a Member State from taking measures justified on grounds set out in Articles 30 and 46 of the Treaty, and in particular on grounds of public security, public policy and public morality.

(51) Since the objectives of the proposed action, namely setting a common level of universal service for telecommunications for all European users and of harmonising conditions for access to and use of public telephone networks at a fixed location and related publicly available telephone services and also achieving a harmonised framework for the regulation of electronic communications services, electronic communications networks and associated facilities, cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the action be better achieved at Community level, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(52) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission(12),

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE, AIMS AND DEFINITIONS

Article 1

Scope and aims

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

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

Article 2

Definitions

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

The following definitions shall also apply:

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

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

(c) "publicly available telephone service" means a service available to the public for originating and receiving national and international calls and access to emergency services through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance, directory enquiry services, directories, provision of public pay phones, provision of service under special terms, provision of special facilities for customers with disabilities or with special social needs and/or the provision of non-geographic services;

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

(e) "network termination point" (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name;

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

CHAPTER II

UNIVERSAL SERVICE OBLIGATIONS INCLUDING SOCIAL OBLIGATIONS

Article 3

Availability of universal service

1. Member States shall ensure that the services set out in this Chapter are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.

2. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

Article 4

Provision of access at a fixed location

1. Member States shall ensure that all reasonable requests for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location are met by at least one undertaking.

2. The connection provided shall be capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

Article 5

Directory enquiry services and directories

1. Member States shall ensure that:

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

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

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

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

Article 6

Public pay telephones

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

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

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

Article 7

Special measures for disabled users

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

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

Article 8

Designation of undertakings

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

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

Article 9

Affordability of tariffs

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

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

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

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

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

Article 10

Control of expenditure

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

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

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

Article 11

Quality of service of designated undertakings

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

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

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

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

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

6. Persistent failure by an undertaking to meet performance targets may result in specific measures being taken in accordance with Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)(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 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:

(a) as a result of a market analysis carried out in accordance with Article 16(3) a national regulatory authority determines that a given retail market identified in accordance with Article 15 of Directive 2002/21/EC (Framework Directive) is not effectively competitive, and

(b) the national regulatory authority concludes that obligations imposed under Directive 2002/19/EC (Access Directive), or Article 19 of this Directive would not result in the achievement of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive),

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

2. Obligations imposed under paragraph 1 shall be based on the nature of the problem identified and be proportionate and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework

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

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

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

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

Article 18

Regulatory controls on the minimum set of leased lines

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

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

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

Article 19

Carrier selection and carrier pre-selection

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

(a) on a call-by-call basis by dialling a carrier selection code; and

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

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

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

CHAPTER IV

END-USER INTERESTS AND RIGHTS

Article 20

Contracts

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

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

(a) the identity and address of the supplier;

(b) services provided, the service quality levels offered, as well as the time for the initial connection;

(c) the types of maintenance service offered;

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

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

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

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

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

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

4. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of proposed modifications in the contractual conditions. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions.

Article 21

Transparency and publication of information

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

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

Article 22

Quality of service

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

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

Article 23

Integrity of the network

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

Article 24

Interoperability of consumer digital television equipment

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

Article 25

Operator assistance and directory enquiry services

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

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

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

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

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

Article 26

Single European emergency call number

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

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

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

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

Article 27

European telephone access codes

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

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

Article 28

Non-geographic numbers

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

Article 29

Provision of additional facilities

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

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

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

Article 30

Number portability

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

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

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

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

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

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

Article 31

"Must carry" obligations

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

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

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 32

Additional mandatory services

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

Article 33

Consultation with interested parties

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

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

Article 34

Out-of-court dispute resolution

1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes, involving consumers, relating to issues covered by this Directive. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

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

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

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

Article 35

Technical adjustment

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

Article 36

Notification, monitoring and review procedures

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

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

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

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

Article 37

Committee

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

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

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

3. The Committee shall adopt its rules of procedure.

Article 38

Transposition

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

They shall apply those measures from 25 July 2003.

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

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

Article 39

Entry into force

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

Article 40

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 7 March 2002.

For the European Parliament

The President

P. Cox

For the Council

The President

J. C. Aparicio

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

(2) OJ C 139, 11.5.2001, p. 15.

(3) OJ C 144, 16.5.2001, p. 60.

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

(5) OJ L 24, 30.1.1998, p. 1.

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

(7) See page 33 of this Official Journal.

(8) OJ L 95, 21.4.1993, p. 29.

(9) OJ L 144, 4.6.1997, p. 19.

(10) See page 7 of this Official Journal.

(11) OJ L 115, 17.4.1998, p. 31.

(12) OJ L 184, 17.7.1999, p. 23.

(13) See page 21 of this Official Journal.

(14) OJ L 101, 1.4.1998, p. 24.

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

ANNEX I

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE) AND ARTICLE 29 (ADDITIONAL FACILITIES)

Part A: Facilities and services referred to in Article 10

(a) Itemised billing

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

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

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

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

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

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

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

(c) Pre-payment systems

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

(d) Phased payment of connection fees

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

(e) Non-payment of bills

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

Part B: List of facilities referred to in Article 29

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

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

(b) Calling-line identification

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

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

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

ANNEX II

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

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

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

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

2. Publicly available telephone services offered

2.1. Scope of the publicly available telephone service

Description of the publicly available telephone services offered, indicating what is included in the subscription charge and the periodic rental charge (e.g. operator services, directories, directory enquiry services, selective call barring, itemised billing, maintenance, etc.).

2.2. Standard tariffs covering access, all types of usage charges, maintenance, and including details of standard discounts applied and special and targeted tariff schemes.

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

2.4. Types of maintenance service offered.

2.5. Standard contract conditions, including any minimum contractual period, if relevant.

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

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

ANNEX III

QUALITY OF SERVICE PARAMETERS

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

>TABLE>

Note:

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

ANNEX IV

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

Part A: Calculation of net cost

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

National regulatory authorities are to consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently. In undertaking a calculation exercise, the net cost of universal service obligations is to be calculated as the difference between the net cost for a designated undertaking of operating with the universal service obligations and operating without the universal service

obligations. This applies whether the network in a particular Member State is fully developed or is still undergoing development and expansion. Due attention is to be given to correctly assessing the costs that any designated undertaking would have chosen to avoid had there been no universal service obligation. The net cost calculation should assess the benefits, including intangible benefits, to the universal service operator.

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

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

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

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

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

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

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

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

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

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

ANNEX V

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

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

- social and market developments in terms of the services used by consumers,

- social and market developments in terms of the availability and choice of services to consumers,

- technological developments in terms of the way services are provided to consumers.

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

- are specific services available to and used by a majority of consumers and does the lack of availability or non-use by a minority of consumers result in social exclusion, and

- does the availability and use of specific services convey a general net benefit to all consumers such that public intervention is warranted in circumstances where the specific services are not provided to the public under normal commercial circumstances?

ANNEX VI

INTEROPERABILITY OF DIGITAL CONSUMER EQUIPMENT REFERRED TO IN ARTICLE 24

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

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

- allow the descrambling of such signals according to the common European scrambling algorithm as administered by a recognised European standards organisation, currently ETSI;

- display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

2. Interoperability for analogue and digital television sets

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

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

ANNEX VII

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

Note:

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

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

1. Non discrimination

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

2. Cost orientation

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

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

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

3. Transparency

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

3.1. Technical characteristics, including the physical and electrical characteristics as well as the detailed technical and performance specifications which apply at the network termination point.

3.2. Tariffs, including the initial connection charges, the periodic rental charges and other charges. Where tariffs are differentiated, this must be indicated.

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

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

- information concerning the ordering procedure,

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

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

- the contractual period, which includes the period which is in general laid down in the contract and the minimum contractual period which the user is obliged to accept,

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

- any refund procedure.

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