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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

{SEC(2007) 1472}
{SEC(2007) 1473}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Grounds for and objectives of the proposal

Ensuring a high level of protection of consumers' and users' rights, including the right to privacy and data protection in electronic communications, is one of the crucial elements of an inclusive Information Society, enabling the smooth development and wide take-up of new innovative services and applications. The EU framework for electronic communications networks and services is built on the premise that an open and competitive market offers the best means of promoting innovation and user choice. Recognising, however, that competition alone may not be sufficient to satisfy the needs of all citizens and protect users' rights, the competition-based approach of the framework is complemented by specific provisions safeguarding universal service and users' rights, as well as the protection of personal data.

This proposal is one of three legislative reform proposals to amend the current regulatory framework. This legislative reform proposal covers changes to the Universal Service Directive¹ and the Directive on privacy and electronic communications². A second legislative reform proposal³ covers changes to the other three directives. This is complemented by a third legislative proposal to create a European Electronic Communications Market Authority (hereinafter, "the Authority")⁴. The three legislative proposals are accompanied by an Impact Assessment⁵ and a Communication setting out the main policy lines and reporting on the public consultation⁶.

The present legislative reform proposal adapts the regulatory framework by strengthening certain consumers' and users' rights (in particular with a view to improving accessibility and promoting an inclusive Information Society), and ensuring that electronic communications are trustworthy, secure and reliable and provide a high level of protection for individuals' privacy and personal data. The proposal does not alter the current scope or concept of universal service in the EU, which will be subject to a separate consultation in 2008. It is in line with the Commission's Better Regulation Programme, which is designed to ensure that legislative interventions remain proportionate to the political objectives pursued, and forms part of the Commission's overall strategy to strengthen and complete the internal market.

More specifically, the objectives of the present proposal are two-fold:

1. Strengthening and improving consumer protection and user rights in the electronic communication sector, through — amongst other aspects — giving consumers more

¹ 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, OJ L 108, 24.4.2002.

² Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, OJ L 201, 31.7.2002.

³ COM(2007) 697.

⁴ COM(2007) 699.

⁵ SEC(2007) 1472.

⁶ COM(2007) 696.

information about prices and supply conditions, and facilitating access to and use of e-communications, including emergency services, for disabled users; and

2. Enhancing the protection of individuals' privacy and personal data in the electronic communications sector, in particular through strengthened security-related provisions and improved enforcement mechanisms.

- **General context**

As part of the renewed Lisbon strategy for growth and jobs, the Commission proposed in June 2005 a new strategy — the i2010 Initiative: A European Information Society for growth and employment — laying down broad policy orientation to promote an open and competitive digital economy. The creation of a Single European Information Space, which is one of the main pillars of the i2010 Initiative, includes the reform of the regulatory framework as one of its key challenges, with a particular emphasis on security and the protection of privacy and personal data. Furthermore, ensuring an adequate level of universal service provision is crucial for achieving an inclusive Information Society.

In line with the principles of better regulation, the framework provides for a periodic review to make sure that it keeps pace with technological and market developments. On 29 June 2006 the Commission presented a report⁷ to the European Parliament and the Council on the functioning of the regulatory framework for electronic communications networks and services. The Report noted that the framework had yielded considerable benefits for citizens, consumers, and businesses in terms of better choice, lower prices and more innovation, but there was room for improvement in the field of consumer protection and security to ensure that it kept pace with technological developments and remained effective for the coming decade.

- **Existing provisions in the area of the proposal**

The objective of this proposal is to amend two Directives: the Universal Service Directive and the Directive on privacy and electronic communications.

- **Consistency with the other policies and objectives of the Union**

The Universal Service Directive sets out sector-specific measures that complement existing EU law in the field of consumer protection. The Directive on privacy and electronic communications complement Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data by introducing specific provisions concerning the electronic communications sector.

2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

⁷ COM(2006) 334 final.

The Commission services launched a two-phase consultation starting at the end of 2005. The first phase included a call for input, which involved a public hearing with over 440 participants (held in January 2006) and around 160 submissions from stakeholders. In the call for input, stakeholders were invited to give their views on general topics relating to the regulation of electronic communications. These views were taken into account in the preparation of the Commission Communication of 29 June 2006 on the Review⁸, and the accompanying Staff Working document and the Impact Assessment. The publication of these documents launched the second phase of the public consultation, which lasted until October 2006. A public workshop was held in October 2006 to allow interested parties to express their views on the consultation documents. A total of 224 responses were received from a wide range of interested parties, both inside and outside the EU. 52 industry associations, 12 trade associations and worker's unions, and 15 user's associations sent written comments, as did 18 Member States and the European Regulators Group (ERG).

Summary of responses and how they have been taken into account

In general, the proposals made in the area of Universal Service were supported by consumer organisations and the ERG, as well as by most Member States. On the other hand, operators were generally in favour of self- and co-regulatory approaches. This was particularly the case for improving transparency of tariffs and facilitating the use of electronic communications services and equipment and access to emergency services for disabled users.

Concerning the proposals to enhance the security provisions of the Directive on privacy and electronic communications, the submissions showed wide support for the overall objectives, but the opinions expressed were more nuanced with respect to the proposed means for achieving these objectives. Generally speaking, Member States expressed cautious support for the Commission proposals, consumer organisations were also in favour and Data Protection Authorities considered that the Commission proposals did not always go far enough. On the other hand, the industry tended to favour alternatives that did not involve regulatory intervention. The results of the public consultation have been taken into account in the present proposal.

• Collection and use of expertise

Scientific/expertise domains concerned

Study "Preparing the next steps in regulation of electronic communications — a contribution to the review of the electronic communications regulatory framework" (Hogan & Hartson, Analysys), 2006

Summary of advice received and used

The study confirmed the general soundness of the regulatory framework, its objectives and the overall approach. However, it indicated the need for a number of adjustments to be made in certain areas.

The study examined measures safeguarding users' rights, as well as the privacy, security and confidentiality of on-line communications. It put forward a number of recommendations for change, including improving transparency and publication of information for end-users, the

⁸ See footnote 7.

introduction of security breach notification under the Directive on privacy and electronic communications, and an explicit right for national authorities to provide guidelines on security.

Means used to make the expert advice publicly available

The study is available at:

http://ec.europa.eu/information_society/policy/ecomm/library/ext_studies/index_en.htm#2006

• **Impact assessment**

The impact assessment report of June 2006 provided an initial analysis of a set of broad policy options. This analysis was refined following the public consultation. The second impact assessment published together with the present proposal focuses on more specific options for those proposals with the most far-reaching effects.

The groups affected most by the proposed changes are businesses, public administrations, citizens and European society at large, since all are users of electronic communications. This stakeholder group is not homogeneous and its members often have conflicting interests. The key players affected by the present proposals are electronic communications services providers and network operators, and national regulatory authorities (NRAs).

The impact assessment is available at:

http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/index_en.htm#communication_review

3. LEGAL ELEMENTS OF THE PROPOSAL

• **Summary of the proposed action**

The proposal aims to amend the existing Universal Service Directive and the Directive on privacy and electronic communications.

The main proposed amendments to the Universal Service Directive are the following:

- improving the transparency and publication of information for end-users;
- facilitating use of and access to e-communications for disabled users;
- facilitating the switching of suppliers by consumers through, among other things; strengthened provisions on number portability;
- improving obligations related to emergency services;
- ensuring basic connectivity and quality of service; and
- modernising specific provisions of the Directive to bring them into line with technology and market developments, including the deletion of a number of obsolete or redundant provisions.

As regards the Directive on privacy and electronic communications, the main proposals are as follows:

- introducing mandatory notification of security breaches resulting in users' personal data being lost or compromised;
- strengthening implementation provisions related to network and information security to be adopted in consultation with the Authority;
- strengthening implementation and enforcement provisions to ensure that sufficient measures are available at Member State level to combat spam;
- clarifying that the Directive also applies to public communications networks supporting data collection and identification devices (including contactless devices such as Radio Frequency Identification Devices);
- modernising certain provisions that have become outdated, including the deletion of some obsolete or redundant provisions.

- **Legal basis**

Article 95 EC

- **Subsidiarity principle**

The proposed action entails amendment of the existing EU regulatory framework and thus concerns an area in which the Community has already exercised its competence. The proposal therefore complies with the subsidiarity principle as set out in Article 5 of the EC Treaty. The regulatory model of the framework is based on the principle of decentralised regulation in Member States, giving national authorities responsibility for overseeing national markets according to common set of principles and procedures.

- **Proportionality principle**

This proposal complies with the proportionality principle in that it sets forth a minimum level of harmonisation, leaving the definition of the implementing measures to the Member States or the national regulatory authorities. When a higher level of harmonisation is required, provision is made for the Commission to adopt detailed technical implementing measures. This approach allows for *ex ante* regulation to be flexible enough to respond to on-going technology and market changes in the sector while respecting the objectives and principles defined by the legislator.

The proposed amendments do not go beyond what is necessary to achieve the aim of better regulating the sector and ensuring a high level of protection of users' rights. They comply with the principle of proportionality set out in Article 5 of the EC Treaty.

- **Choice of instruments**

Proposed instrument: directive.

Other means would not be adequate as the object of this proposal is to amend two existing directives.

4. BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

5. ADDITIONAL INFORMATION

- **Simplification**

The present proposal will simplify administrative procedures for public authorities withdrawing some outdated provisions, such as the obligation to determine a minimum set of leased lines and other obligations under the previous framework (retail tariffs, carrier selection and carrier pre-selection). Other simplifications are introduced for national regulatory authorities, which will be no longer required to submit information on the retail controls applied and the cost accounting systems used by the undertakings concerned.

Furthermore, it is proposed to repeal other outdated provisions including, for example, the measures to facilitate the transition between the “old” framework of 1998 and the 2002 framework.

The present proposal is included in the Commission’s rolling programme for the up-dating and simplification of the *acquis communautaire* and its Work and Legislative Programme under the reference 2007/INFSO/001.

- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of Commission Decision 2003/548/EC of 24 July 2003 on the minimum set of leased lines with harmonised characteristics and associated standards referred to in Article 18 of Directive 2002/22/EC (Universal Service Directive).⁹

- **Review/revision/sunset clause**

The Directives to be amended already include a regular review clause.

- **Correlation table**

Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Detailed explanation of the proposal**

Article 1: changes to the Universal Service Directive

⁹ OJ L186, 25.07.2003, p.43.

The aims of the proposed changes are as follows:

Improving the transparency and publication of information for users

In Article 21, paragraphs (2) to (6): the aim is to increase price transparency to the benefit of consumers by imposing on operators an obligation to publish comparable, adequate and up-to-date information in an easily accessible form (paragraph 2) and allowing third parties to use publicly available tariffs (e.g. for the purpose of selling or making available interactive guides) and national regulatory authorities to make such guide available when these are not available on the market (paragraph 3). NRAs are given powers to require from operators better tariff transparency (paragraph 4) as well as clear information on possible restrictions on access to all types of content and applications (paragraph 5). The possibility for the Commission to take implementing measures is intended to ensure, where appropriate, a minimum level of harmonisation in this area (paragraph 6).

Facilitating the use of and access to eCommunications for disabled users

In Article 7: this replaces the *possibility* for Member States to take specific measures for disabled users with an explicit *obligation* to do so.

In Article 22: this extends the NRAs' powers to request operators to publish information for end-users on the quality of their services to also include equivalent access for disabled end-users.

In Article 26(4): this imposes on Member States an obligation to ensure that disabled end-users are able to access emergency services with a view to achieving fully inclusive electronic communications.

In Article 33: this provides for a Community mechanism to address eAccessibility issues in order to ensure that disabled users have equivalent access to electronic communications services as enjoyed by other end-users (paragraph 4). Paragraph 3 requires the Member States to provide the Authority with information on the measures taken and the progress towards eAccessibility.

Improving caller location obligations related to emergency services

In Article 26: this modernises the Directive so as to take account of market and technological developments in order to ensure that users of a service offering outgoing calls are able to access emergency services (paragraph 2) and to strengthen the obligation to pass information to emergency authorities (paragraph 5). The possibility for the Commission to take implementing measures, in paragraph 7, is intended to ensure, where appropriate, a minimum level of harmonisation in this area.

Basic access and quality of service ("net neutrality and freedoms")

In Article 20(5): this provides for a transparency mechanism concerning possible restrictions on end-users' choice of lawful content and applications in order to empower end-users to make an informed choice of services, thus allowing them to reap the full benefits of technological developments in the Information Society.

In Article 22: this grants to the national regulatory authorities the power to prevent degradation of quality of service by setting minimum quality levels for network transmission

services for end-users. The possibility for the Commission to take implementing measures is intended to ensure, where appropriate, a minimum level of harmonisation in this area (paragraph 3).

Other consumers' and users' rights

In Article 9: this allows national regulatory authorities to monitor retail tariffs if no undertakings are designated as a universal service provider and clarifies the scope of application of special tariff options. Disability is added as a criterion in paragraph 3.

In Article 20(2)(h): this ensures that consumer contracts provide minimum of information related to security of electronic communications services.

In Article 20(4): this ensures that customers are duly informed by their provider of electronic communications services of whether or not access to emergency services is provided.

In Article 20(6): this ensures that end-users are clearly informed in advance of the conclusion of the contract (and regularly thereafter) of their obligations to respect copyright and related rights, as well as of the most common acts of infringements and their legal consequences. This is without prejudice to the provisions of Directive 2000/31/EC on electronic commerce¹⁰.

In Article 27(2) and (3): this aims to foster the development of the European Telephony Numbering Space (ETNS) which offers an opportunity for pan-European services to develop.

In Article 28(1) and (2): this fosters access to cross-border services, thereby contributing to the completion of the Internal Market for citizens and business.

In Article 30: in order to ensure that consumers can fully benefit from number portability, the right to number portability is no longer limited to publicly available telephone services (PATs), but is instead linked to the right to numbers from national numbering plans. In addition, the maximum time limit for the effective porting of numbers is set at one working day. Paragraph 4 introduces a procedure to allow for adjustments to future technological developments. This is complemented by amendments to Annex I, Part C. In addition, national regulatory authorities will have to ensure that consumers are not discouraged from changing service providers when it is in their interest.

In Article 31: in order to ensure that “must carry” rules are proportionate and adapted to market and technological developments, this strengthens the obligation of Member States to review and justify them.

In Article 33: the new sub-paragraph aims to ensure that the interests of consumers are adequately taken into account in the decision-making process of national regulatory authorities.

Technical adjustments to the wording of the Directive

In Article 1(1): this reflects the fact that certain aspects of terminal equipment are covered by the framework. This is in line with the provisions concerning access to and use of electronic communications, including terminal equipment, for disabled users.

¹⁰ OJ L 178, 17.7.2000, p. 1.

In Article 2(c): clarifies the definition of publicly available telephone service (PATs). It is in line with the amendment to Article 26, as the emergency services obligation is imposed only on certain providers. In addition, it is clarified that, where access to emergency services is mandated, users can make calls to the “112” number free of charge and without having to use any means of payment.

In Article 4: this makes a technical adjustment to the formulation of universal service by separating access from provision of electronic communications services. This does not affect the scope or the provision of universal service to consumers and end-users.

In Article 8(3): this allows national regulatory authorities to assess the effects of any intended disposal of the local access network to a separate legal entity by the universal service provider.

In Article 23: this amendment is in line with the introduction of a specific security chapter in the Framework Directive 2002/21/EC.

In Article 26(1): this amendment is in line with the modification to Article 2(c).

In Article 37: the Committee procedure is updated to reflect the amendments to Decision 1999/468/EC.

The following provisions are amended in order to reflect technological and market developments:

- Article 20(2) and (3)
- Article 25
- Article 27(1) and (2)
- Article 29
- Article 34
- Annexes I, II and III.¹¹

Removal of outdated or obsolete provisions

In Article 1(2): the reference to the retail provision of leased lines is obsolete and thus deleted (see changes to Article 18, below).

In Article 2(b): the definition is repealed as it is no longer necessary.

Article 16 is deleted as it concerned obligations imposed on Member States in order to facilitate the transition from the regulatory package of 1998 to the 2002 framework, which are now outdated.

¹¹ Consideration was also given to the continuing appropriateness of the provisions in Annex VI on the interoperability of digital consumer equipment. As the examination is still on-going, however, the availability of comitology powers enables the Commission to amend these provisions in a faster way (Articles 35 and 37).

Article 17(3) is deleted as redundant. This information is provided to the Commission by national regulatory authorities under the “Article 7 procedure”. Moreover, the Commission has the power to submit reasoned requests for information to the national regulatory authorities (Article 5(2) of the Framework Directive 2002/21/EC).

Article 18 is deleted as it is no longer necessary to maintain the obligation for a minimum set of leased lines. This obligation was justified at the time of the entry into force of the 2002 framework since the market was not yet sufficiently competitive at that time. This amendment also necessitates the deletion of Annex VII, as well as a minor adjustment to Article 35.

Article 19 is deleted as redundant. It was included in the Universal Service Directive in order to facilitate the transition from the old regulatory framework of 1998 to the 2002 framework. Carrier selection and carrier pre-selection are one of the obligations that may be imposed by national regulatory authorities on operators having significant market power. Such access obligations are more appropriately handled under the Access Directive 2002/19/EC.

Article 2: changes to the Directive on privacy and electronic communications

The aims of the proposed changes are as follows:

Notification of security breaches by network operators and ISPs

In Article 4(3): this ensures that end-users are notified about breaches of security resulting in their personal data being lost or otherwise compromised, and are informed about available/advisable precautions that they may take in order to minimise possible economic loss or social harm that could result from such a security breach.

In Article 4(4): this ensures a minimum level of harmonisation by granting to the Commission the possibility, where appropriate, to adopt technical implementing measures in the areas of security and breach notification, drawing on the expert advice provided by the Authority.

Improved enforcement mechanisms

In Article 13(6): this introduces the possibility for, in particular, Internet Service Providers to take legal action against spammers, which should become an important tool in the fight against unsolicited commercial communications in Europe.

In Article 15a: this enhances the implementation and enforcement mechanisms currently in place, in order to enable competent authorities to take effective and efficient action against infringements. In order to ensure harmonised conditions for the provision of services involving cross-border data flows, the Commission will have the powers to adopt technical implementing measures in this area, drawing on the expert advice provided by the Authority.

Technical adjustments to the wording of the Directive

In Article 2(e): this adapts the definition of “call” in order to ensure consistency throughout the Regulatory Framework.

In Article 3(1): this clarifies that the Directive applies to public communications networks supporting data collection and identification devices (including contactless devices such as Radio Frequency Identification Devices).

In Article 5(3): this ensures that use of “spyware” and other malicious software remains prohibited under EC law, regardless of the method used for its delivery and installation on a user’s equipment (distribution through downloads from the Internet or via external data storage media, such as CD-ROMs, USB sticks, flash drives etc.).

In Article 14a: this introduces a standard provision for the Committee procedure.

Removal of outdated or obsolete provisions

Article 3(2) and (3) are deleted as redundant. Because of technological progress, the exceptions justified by technical impossibility or disproportionate economic effort will be rendered obsolete by the time the present amendments become effective.

Article 3: amendment to the Regulation (EC) No 2006/2004 on consumer protection cooperation

Concerning protection of consumers against unsolicited commercial communications (spam), this amends the Regulation EC 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for enforcement of consumer protection laws (Regulation on consumer protection cooperation¹²) so as to reinforce the cross-border cooperation and enforcement in line with an existing Community mechanism laid down by that regulation.

¹² OJ L 364, 9.12.2004, p.1.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

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 Commission¹,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

After having consulted the European Data Protection Supervisor⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵,

Whereas:

- (1) The functioning of the five directives 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)⁶, 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)⁷, 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)⁸, 2002/22/EC of the European Parliament and the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)⁹ and 2002/58 EC

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ L 108, 24.4.2002, p. 7

⁷ OJ L 108, 24.4.2002, p. 21

⁸ OJ L 108, 24.4.2002, p. 33

⁹ OJ L 108, 24.4.2002, p. 51

of the European Parliament and the Council 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)¹⁰ which constitute the existing regulatory framework for electronic communications networks and services is subject to periodic review by the Commission, with a view in particular to determining the need for modification in the light of technological and market developments.

- (2) In that regard, the Commission presented its findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the Review of the EU Regulatory Framework for electronic communications networks and services.
- (3) The reform of the EU regulatory framework for electronic communications networks and service, including the reinforcement of provisions for users with disabilities, represents a key step towards achieving a Single European Information Space and at the same time an inclusive information society. These objectives are included in the strategic framework for the development of the information society as described in the Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions entitled “i2010 — A European Information Society for growth and employment”.
- (4) For the sake of clarity and simplicity, the present act only deals with the amendments to Directives 2002/22/EC and 2002/58/EC.
- (5) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. a service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls through a number or numbers in a national or international telephone numbering plan. A service which does not fulfil all these conditions is not a publicly available telephone service.
- (6) It is necessary to clarify the application of certain provisions to take account of situations where a service provider resells or re-brands publicly available telephone services provided by another undertaking.
- (7) As a result of technological and market evolutions, networks are increasingly moving to the “Internet Protocol” (IP) technology and consumers are increasingly able to choose between a range of competing voice service providers. Therefore, Member States should be able to separate universal service obligations concerning the provision of a connection to the public communications network at a fixed location from the provision of a publicly available telephone service (including calls to emergency services via the number “112”). Such separation should not affect the scope of universal service obligations defined and reviewed at Community level. Member States that use other national emergency numbers besides “112” may impose on undertakings similar obligations for access to those national emergency numbers.

¹⁰ OJ L 201, 31.7.2002, p. 37

- (8) National regulatory authorities should be able to monitor the evolution and the level of retail tariffs for services that fall under the scope of universal service obligations even when a Member State has not yet designated an undertaking to provide universal service.
- (9) Redundant obligations designed to facilitate the transition from the old regulatory framework of 1998 to the one of 2002 should be deleted, together with other provisions that overlap with and duplicate those laid down in Directive 2002/21/EC.
- (10) The requirement to provide a minimum set of leased lines at retail level, which was necessary to ensure the continued application of provisions of the regulatory framework of 1998 in the field of leased lines, which was not yet sufficiently competitive at the time the 2002 framework entered into force, is no longer necessary and should be repealed.
- (11) Continuing to impose carrier selection and carrier pre-selection directly by Community legislation could hamper technological progress. These remedies should rather be imposed by national regulatory authorities as a result of market analysis in accordance with the procedures in Directive 2002/21/EC.
- (12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services is provided, and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. Customers should also be kept well informed of possible actions that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.
- (13) The right of subscribers to withdraw from their contracts without penalty refers to modifications in contractual conditions which are imposed by the providers of electronic communications networks and/or services.
- (14) A competitive market should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them in Directive 2002/19/EC to ensure that users' access to particular types of content or applications is not unreasonably restricted.
- (15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic

communications services. They should also make price guides available where the market has not provided them. Operators should not be entitled to any remuneration for such use of tariffs which had already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. The Commission should be able to adopt technical implementing measures to ensure that end-users benefit from a consistent approach to tariff transparency in the Community.

- (16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over the networks. In particular, the Commission should be able to adopt implementing measures with a view to identifying the quality standards to be used by the national regulatory authorities.
- (17) In future IP networks where provision of a service may be separated from provision of the network, Member States should determine the most appropriate steps to be taken to ensure the availability of publicly available telephone services provided using public communications networks and uninterrupted access to emergency services in the event of catastrophic network breakdown or in cases of *force majeure*.
- (18) Operator assistance services cover a range of different services for end-users. The provision of such services should be left to commercial negotiations between providers of public communications networks and operator assistance services, as is the case for any other customer support service, and there is no need to continue to mandate their provision. Therefore, the corresponding obligation should be repealed.
- (19) End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number “112” at least as expeditiously and effectively as calls to other national emergency numbers. It is important to increase awareness of “112” in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware that “112” can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, operators should provide caller location information to emergency services in a “push” mode. In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be able to adopt technical implementing measures in order to ensure the effective implementation of “112” in the Community for the benefit of citizens of the European Union.
- (20) Member States should take specific measures to ensure that emergency services, including “112”, are equally accessible to disabled persons, in particular deaf, hearing-impaired, speech-impaired and deaf-blind users. This could involve the provision of

special terminal devices to hearing-impaired users, text relay services, or other specific equipment.

- (21) The countries to which the International Telecommunications Union assigned the international code “3883” have delegated administrative responsibility for the European Telephony Numbering Space (ETNS) to the electronic communications committee (ECC) of the European Conference of Postal and Telecommunications Administrations (CEPT). Technological and market developments show that ETNS represents an opportunity for pan-European services to develop, but that it is currently prevented from realising its potential by overly bureaucratic procedural requirements and a lack of coordination between national administrations. In order to foster the development of ETNS, its administration (which includes assignment, monitoring and development) should be transferred to the European Electronic Communications Market Authority established by Regulation (EC) No.../... of the European Parliament and of the Council of [...] ¹¹, hereinafter referred to as “the Authority”. The Authority should ensure coordination with those countries that share “3883” but are not Member States on behalf of the Member States to which “3883” has been assigned.
- (22) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States, and to access services, including Information Society services, using non-geographic numbers within the Community, including among others freephone and premium rate numbers. End-users should also be able to access numbers from the European Telephone Numbering Space (ETNS) and universal international freephone numbers (UIFN). Cross-border access to numbering resources and to the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, or when the number is defined as having a national scope only (e.g. national short code). Users should be fully informed in advance in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes. In order to ensure that end-users have effective access to numbers and services in the Community, the Commission should be able to adopt implementing measures.
- (23) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. This does not preclude imposing reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications, and should be implemented with the minimum of delay. In order to be able to adapt number portability to market and technological evolution, including the possible porting of subscriber’s personal directories and profile information stored within the network, the Commission should be able to take technical implementing measures in this area. Assessment of whether technology and market conditions are such as to allow for porting of numbers between networks providing services at a fixed location and

¹¹ OJ C [...], [...], p. [...].

mobile networks should in particular take into account prices for users and switching costs for undertakings providing services at fixed locations and mobile networks.

- (24) A television broadcast is a linear audiovisual media service as defined in the Audiovisual Media Services Directive of the European Parliament and of the Council of [...] 2007, which is provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule; a media service provider may provide a number of audio or audio visual programme schedules (channels). Legal “must-carry” obligations may be applied, but only to specified broadcast channels supplied by a specified media service provider. Member States should provide a clear justification for the “must carry” obligations in their national law so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders. One or more broadcast channels may be complemented by services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.
- (25) In order to overcome existing shortcomings in terms of consumer consultation and appropriately address the interests of citizens, Member States should put in place an appropriate consultation mechanism. Such a mechanism could take the form of a body which would, independently from the national regulatory authority as well as from service providers, carry out research on consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholders’ consultation. Where there is a need to address the facilitation of the access to and use of electronic communications services and terminal equipment for disabled users, and without prejudice to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity¹² and in particular the disability requirements pursuant to its Article 3(3)(f), the Commission should be able to adopt implementing measures.
- (26) Obligations imposed on an undertaking designated as having universal service obligations should be notified to the Commission.
- (27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public electronic communications networks. There is a need to ensure that consumers and users are afforded the same level of protection of privacy and personal data, regardless of the technology used to deliver a particular service.

¹² OJ L 91, 7.4.1999, p. 10. Directive as amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

- (28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that the fundamental rights of individuals, in particular the right to privacy and data protection, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.
- (29) A breach of security resulting in the loss or compromising personal data of an individual subscriber may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud. Therefore, subscribers concerned by such security incidents should be notified without delay and informed in order to be able to take the necessary precautions. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the users affected.
- (30) National regulatory authorities should promote the interests of the citizens of the European Union by inter alia contributing to ensuring a high level of protection of personal data and privacy. To this end, they must have the necessary means to perform their duties, including comprehensive and reliable data about actual security incidents that have led to the personal data of individuals being compromised.
- (31) Provision should be made for implementing measures to establish a common set of requirements to achieve an adequate level of privacy protection and security of personal data transmitted or processed in connection with the use of electronic communications networks in the internal market.
- (32) In setting detailed rules concerning the format and procedures applicable to the notification of security breaches, due consideration should be given to the circumstances of the breach, including whether or not the personal data had been protected by encryption or other means, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.
- (33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment. In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.
- (34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user's terminal equipment for the benefit of a third party (so-called "spyware") poses a serious threat to users' privacy. A high and equal level of protection of the

private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys.

- (35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers and thus defend the interests of their customers, as well as their own legitimate business interests.
- (36) The need to ensure an adequate level of protection of privacy and personal data transmitted and processed in connection with the use of electronic communications networks in the Community calls for effective implementation and enforcement powers in order to provide adequate incentives for compliance. National regulatory authorities should have sufficient powers and resources to investigate cases of non-compliance effectively, including the possibility to obtain any relevant information they might need, to decide on complaints and to impose sanctions in cases of non-compliance.
- (37) Cross border cooperation and enforcement should be reinforced in line with existing Community cross border enforcement mechanisms such as that laid down by the Regulation EC 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for enforcement of consumer protection laws (Regulation on consumer protection cooperation)¹³ by way of an amendment to that regulation.
- (38) The measures necessary for the implementation of the Universal Service Directive and the Directive on privacy and electronic communications 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.
- (39) In particular power should be conferred on the Commission to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of a general scope and are designed to supplement this Directive by adding new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. When, on imperative grounds of urgency, the normal time-limits for the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a (6) of the Decision.

¹³ OJ L 364, 9.12.2004, p.1.

(40) Directives 2002/22/EC and 2002/58/EC should therefore be amended accordingly.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2002/22/EC (Universal Service Directive)

Directive 2002/22/EC (Universal Service Directive) is amended as follows:

(1) Article 1 is replaced by the following:

‘Article 1

Subject-matter and scope

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. This Directive also includes provisions concerning consumer premises terminal equipment.
 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.’
- (2) In Article 2:
- (a) Point (b) is deleted.
 - (b) Point (c) is replaced by the following:

‘(c) “publicly available telephone service” means a service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls through a number or numbers in a national or international telephone numbering plan;’
- (3) Article 4 is replaced by the following:

‘Article 4

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

1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.
 2. The connection provided shall be capable of supporting voice facsimile and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.
 3. Member States shall ensure that all reasonable requests for provision of a telephone service over the network connection referred to in paragraph 1, allowing originating and receiving of national and international calls and calls to emergency services via the number “112”, are met by at least one undertaking.’
- (4) In Article 5, paragraph 2 is replaced by the following:
- ‘2. The directories in paragraph 1 shall comprise, subject to the provisions of Article 12 of Directive 2002/58/EC, all subscribers of publicly available telephone services.’
- (5) Article 7 is replaced by the following:

‘Article 7

Special measures for disabled users

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of publicly available telephone service, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.
 2. Member States shall 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.’
- (6) In Article 8, the following paragraph 3 is added:
- ‘3. When an operator designated in accordance with paragraph 1 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the national regulatory authority in a timely manner, in order to allow the national regulatory authority to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4. The national regulatory authority may impose conditions in

accordance with Article 6 (2) of Directive 2002/20/EC (Authorisation Directive).’

(7) In Article 9, paragraphs 1, 2 and 3 are replaced by the following:

- ‘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, or if no undertakings are designated in relation to those services, otherwise available in the market, in particular in relation to national consumer prices and income.
2. Member States may, in the light of national conditions, require that designated undertakings provide 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 network access referred to in Article 4(1), or the services identified in Articles 4(3), 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.
3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.’

(8) The title of Chapter III is replaced by the following:

**‘REGULATORY CONTROLS ON UNDERTAKINGS WITH SIGNIFICANT
MARKET POWER IN SPECIFIC RETAIL MARKETS’**

(9) Article 16 is deleted.

(10) Article 17 is amended as follows:

(a) Paragraph 1 is replaced by the following:

- ‘1. Member States shall ensure that national regulatory authorities impose appropriate regulatory obligations on undertakings identified as having significant market power on a given retail market in accordance with Article 14 of Directive 2002/21/EC (Framework Directive):
 - (a) where as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive) a national regulatory authority determines that a given retail market identified in accordance with Article 15 of Directive 2002/21/EC (Framework Directive) is not effectively competitive, and
 - (b) where the national regulatory authority concludes that obligations imposed under Directive 2002/19/EC (Access Directive), would not result in the achievement of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive).’

- (b) Paragraph 3 is deleted.
- (11) Articles 18 and 19 are deleted.
- (12) Articles 20 and 21 are replaced by the following:

‘Article 20

Contracts

1. This article shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and national rules in conformity with Community law.
2. Member States shall ensure that, where subscribing to services providing connection to a public communications network and/or publicly available telephone services, consumers have a right to a contract with an undertaking or undertakings providing such services and/or connection. The contract shall specify at least:
 - (a) the identity and address of the supplier;
 - (b) the 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, including direct costs for portability of numbers and other identifiers;
 - (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met;
 - (g) the method of initiating procedures for settlement of disputes in accordance with Article 34;
 - (h) the action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

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

3. The information listed in paragraph 2 shall also be included in contracts concluded between consumers and electronic communications services providers other than those providing connection to a public communications

network and/or publicly available telephone services. Member States may extend this obligation to cover other end-users.

4. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed whether or not access to emergency services is provided. Providers of electronic communications services shall ensure that customers are clearly informed of the lack of access to emergency services in advance of the conclusion of a contract and regularly thereafter.
5. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of a contract and regularly thereafter of any limitations imposed by the provider on their ability to access or distribute lawful content or run any lawful applications and services of their choice.
6. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of the contract and regularly thereafter of their obligations to respect copyright and related rights. Without prejudice to Directive 2000/31/EC on electronic commerce, this includes the obligation to inform subscribers of the most common acts of infringements and their legal consequences.
7. Subscribers shall have a right to withdraw from their contracts without penalty upon notice of modifications in the contractual conditions proposed by operators. 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, comparable, adequate and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of the services identified in Articles 4, 5, 6, and 7 is available to end-users and consumers, in accordance with the provisions of Annex II.
2. Member States shall ensure that undertakings providing public electronic communications networks and/or services publish comparable, adequate and up-to-date information on applicable prices and tariffs in respect of access and use of their services provided to consumers. Such information shall be published in an easily accessible form.

3. National regulatory authorities shall encourage the provision of information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available, when these are not available on the market. Third parties shall have a right to use without charge the tariffs published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.
4. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services to provide applicable tariff information to customers at the time and point of purchase to ensure that customers are fully informed of pricing conditions.
5. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services and/or networks to provide information required in accordance with Article 20(5) to customers in a clear, comprehensive and easily accessible form.
6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, having consulted the European Electronic Communications Market Authority (hereinafter referred to as “the Authority”), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).’

(13) Article 22 is amended as follows:

(a) Paragraph 1 is replaced by the following:

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

(b) The following paragraph 3 is added:

- ‘3. In order to prevent degradation of service and slowing of traffic over networks, the Commission may, having consulted the Authority, adopt technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority on undertakings providing public communications networks. These measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance

with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).'

- (14) Article 23 is replaced by the following:

‘Article 23

Availability of services

Member States shall take all necessary steps to ensure the availability of publicly available telephone services provided over public communications networks in the event of catastrophic network breakdown or in cases of *force majeure*. Member States shall ensure that undertakings providing publicly available telephone services take all reasonable steps to ensure uninterrupted access to emergency services.'

- (15) Article 25 is amended as follows:

- (a) The title is replaced by the following:

‘Telephone directory enquiry services’

- (b) Paragraph 3 is replaced by the following:

‘3. Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services in accordance with Article 5(1)(b).'

- (c) Paragraph 5 is replaced by the following:

‘5. Paragraphs 1, 2, 3 and 4 shall apply subject to the requirements of Community legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive 2002/58/EC.’

- (16) Articles 26, 27 and 28 are replaced by the following:

‘Article 26

Emergency services and the single European emergency call number

1. Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all end-users of services referred to in paragraph 2, including users of public pay telephones, are able to call the emergency services free of charge and without having to use any means of payment, by using the single European emergency call number “112”.

2. Member States shall ensure that undertakings providing a service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide access to emergency services.
3. Member States shall ensure that calls to the single European emergency call number "112" are appropriately answered and handled in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue in use.
4. Member States shall ensure that disabled end-users are able to access emergency services. In order to ensure that disabled end-users are able to access emergency services while travelling in other Member States, the measures taken may include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).
5. Member States shall ensure that caller location information is made available free of charge to authorities handling emergencies for all calls to the single European emergency call number "112".

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

6. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States. Member States shall submit a yearly report to the Commission and the Authority on the measures taken in that respect.
7. In order to ensure the effective implementation of "112" services in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted the Authority, may adopt technical implementing measures.

Those measures designed to amend non-essential elements of this Directive, by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).'

‘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 in the locations concerned shall be fully informed of such arrangements.

2. Those Member States to which the ITU assigned the international code “3883” shall entrust the Authority with sole responsibility for management of the European Telephony Numbering Space.
3. Member States shall ensure that all undertakings that provide publicly available telephone services handle all calls to and from the European telephony numbering space, at rates that do not exceed the maximum rate they apply for calls to and from other Member States.’

‘Article 28

Access to numbers and services

1. Member States shall ensure that national regulatory authorities take all necessary steps to ensure that:
 - (a) end-users are able to access and use services, including information society services, provided within the Community; and
 - (b) end-users are able to access all numbers provided in the Community, including those in the national numbering plans of Member States, those from the European Telephone Numbering Space and Universal International Freephone Numbers.

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse.

2. In order to ensure that end users have effective access to numbers and services in the Community, the Commission may, having consulted the Authority, adopt technical implementing measures. These measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).

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

(17) Article 29 is amended as follows:

- (a) Paragraph 1 is replaced by the following:
 - ‘1. Member States shall ensure that national regulatory authorities are able to require all undertakings that operate publicly available telephone services and/or public communications networks to make available to end-users

additional facilities listed in Annex I, Part B, subject to technical feasibility and economic viability.’

(b) Paragraph 3 is replaced by the following:

- ‘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 providing access to public communications networks and/or publicly available telephone services.’

(18) Article 30 is replaced by the following:

‘Article 30

Facilitating change of supplier

1. Member States shall ensure that all subscribers with numbers from the national numbering plan who so request can retain their number(s) independently of the undertaking providing the service in accordance with the provisions of Annex I, part C.
2. National regulatory authorities shall ensure that pricing between operators 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.
4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, no later than one working day from the initial request by the subscriber.
5. The Commission may, having consulted the Authority and taking into account technology and market conditions, amend Annex I in accordance with the procedure referred to in Article 37(2).

Such an amendment may, in particular provide for:

- (a) the portability of numbers between fixed and mobile networks;
- (b) the portability of subscriber identifiers and related information, in which case the provisions of paragraphs 2, 3 and 4 shall also apply to these identifiers.’
6. Without prejudice to any minimum contractual period, national regulatory authorities shall ensure that conditions and procedures for termination of contract do not act as a disincentive for changing suppliers of services.

(19) In Article 31, paragraph 1 is replaced by the following:

- ‘1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and television broadcast channels and accessibility 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 general interest objectives as clearly and specifically defined by each Member State in its national law and shall be proportionate and transparent.

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

Member States shall review “must carry” obligations at least every three years.’

(20) Article 33 is amended as follows:

- (a) In paragraph 1, the following second sub-paragraph is added:

‘In particular, Member States shall ensure that national regulatory authorities establish a consultation mechanism ensuring that in their decision-making process due consideration is given to consumer interests in electronic communications.

- (b) The following paragraphs 3 and 4 are added:

3. Member States shall submit a yearly report to the Commission and the Authority on the measures taken and the progress towards improving interoperability and use of, and access to, electronic communications services and terminal equipment by disabled end-users.
4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may, having consulted the Authority, take the appropriate technical implementing measures to address the issues raised in the report referred to in paragraph 3, following a public consultation. These measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(2).’

(21) Article 34(1) is replaced by the following:

- ‘1. Member States shall ensure that transparent, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications

networks and/or services, relating to the contractual conditions and/or performance of contracts concerning supply of such networks or services. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

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

- (22) Article 35 is replaced by the following:

‘Article 35

Adaptation of annexes

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

- (23) In Article 36, paragraph 2 is replaced by the following:

- ‘2. National regulatory authorities shall notify to the Commission the obligations imposed upon undertakings designated as having universal service obligations. Any changes affecting the obligations imposed upon undertakings or of the undertakings affected under the provisions of this Directive shall be notified to the Commission without delay.’

- (24) Article 37 is replaced by the following:

‘Article 37

Committee

1. The Commission shall be assisted by the Communications Committee, set up by Article 22 of Directive 2002/21/EC (Framework Directive).
2. Where reference is made to this paragraph, Article 5a (1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’

- (25) Annexes I, II and III are replaced by Annexes I, II and III to this Directive.

- (26) Annex VII is deleted.

Article 2

Amendments to Directive 2002/58/EC (Directive on privacy and electronic communications)

Directive 2002/58/EC (Directive on privacy and electronic communications) is amended as follows:

- (1) Article 2(e) is replaced by the following:

‘(e) “call” means a connection established by means of a publicly available telephone service allowing two-way communication;’

- (2) Article 3 is replaced by the following:

‘Article 3

Services concerned

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

- (3) Article 4 is amended as follows:

- (a) The title is replaced by the following:

‘Security of processing’

- (b) The following paragraphs 3 and 4 are added:

- ‘3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify the subscriber concerned and the national regulatory authority of such a breach. The notification to the subscriber shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the national regulatory authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.
4. In order to ensure consistency in implementation of the measures referred to in paragraphs 1, 2 and 3, the Commission may, following consultation with the European Electronic Communications Market Authority (hereinafter referred

to as “the Authority”), and the European Data Protection Supervisor, adopt technical implementing measures concerning *inter alia* the circumstances, format and procedures applicable to information and notification requirements referred to in this Article.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a (2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a (3).’

(4) In Article 5, paragraph 3 is replaced by the following:

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

(5) In Article 13, the following paragraph 6 is added:

‘6. Without prejudice to any administrative remedy for which provision may be made, *inter alia* under Article 15(a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this Article, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.’

(6) The following Article 14a is inserted:

‘Article 14a

Committee

1. The Commission shall be assisted by the Communications Committee set up by Article 22 of Directive 2002/21/EC (Framework Directive).
2. Where reference is made to this paragraph, Articles 5a (1) to (4) and 7 of Decision 1999/468/EC shall apply, having regard to the provision of Article 8 thereof.
3. Where reference is made to this paragraph, Article 5a (1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’

(7) The following Article 15a is inserted:

‘Article 15a

Implementation and enforcement

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the <time-limit for implementation of the amending act> at the latest and shall notify it without delay of any subsequent amendment affecting them.
2. Without prejudice to any judicial remedy which might be available, Member States shall ensure that the national regulatory authority has the power to order the cessation of the infringements referred to in paragraph 1.
3. Member States shall ensure that national regulatory authorities have all the investigative powers and resources necessary, including the possibility to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive.
4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with the Authority and the relevant regulatory authorities.

The measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a (2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a (3).’

Article 3

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of the consumer protection law (the Regulation on consumer protection cooperation¹⁴), the following point shall be added:

‘17. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of

¹⁴ OJ L 364, 9.12.2004, p.1.

privacy in the electronic communication sector: Article 13 as regards the protection of consumers (OJ L 2001, 31.07.2002, p.37).'

Article 4

Transposition

- (1) Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [...].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- (2) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

‘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 communications network at a fixed location and/or related publicly available telephone services, and

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

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

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

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

i.e. the facility whereby the subscriber can, on request to a designated undertaking that provides telephone services, 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 communications network and use of publicly available telephone services on pre-paid terms.

(d) Phased payment of connection fees

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

(e) Non payment of bills

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent

service interruption or disconnection is given to the subscriber beforehand. Any service interruption shall normally be confined to the service concerned. Exceptionally, in cases of fraud, persistent late payment or non-payment, Member States shall ensure that national regulatory authorities are able to authorise disconnection from the network as a result of non-payment of bills for services provided over the network. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only services 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 communications network supports the use of DTMF tones as defined in ETSI ETR 207 for end-to-end signalling throughout the network both within a Member State and between Member States.

- (b) Calling-line identification

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

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

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

Part C

Implementation of the number portability provisions referred to in Article 30

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

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

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

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

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

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

2. Description of services offered

2.1. Scope of the services offered

2.2. Standard Tariffs with an indication of what is included in each tariff element (e.g., charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes.

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

2.4. Types of maintenance service offered.

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

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

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

ANNEX III

QUALITY OF SERVICE PARAMETERS

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

For undertaking designated to provide access to a public communications network

PARAMETER (Note 1)	DEFINITION	MEASUREMENT METHOD
Supply time for initial connection	ETSI EG 201 769-1	ETSI EG 201 769-1
Fault rate per access line	ETSI EG 201 769-1	ETSI EG 201 769-1
Fault repair time	ETSI EG 201 769-1	ETSI EG 201 769-1

For undertaking designated to provide a publicly available telephone service

Call set up time (Note 2)	ETSI EG 201 769-1	ETSI EG 201 769-1
Response times for operator services	ETSI EG 201 769-1	ETSI EG 201 769-1
Response times for directory enquiry services	ETSI EG 201 769-1	ETSI EG 201 769-1
Proportion of coin and card operated public pay-telephones in working order	ETSI EG 201 769-1	ETSI EG 201 769-1
Bill correctness complaints	ETSI EG 201 769-1	ETSI EG 201 769-1
Unsuccessful call ratio (Note 2)	ETSI EG 201 769-1	ETSI EG 201 769-1

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

Note 1

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

Note 2

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