

Proposal for a Directive of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services

(2000/C 365 E/19)

(Text with EEA relevance)

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(Submitted by the Commission on 28 August 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

necessary for the kind of universal service defined by the member.

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

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

Having regard to the proposal from the Commission,

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

(5) A fundamental requirement of universal service is to provide users on request with a connection to the public telephone network at a fixed location, at an affordable price. The requirement is limited to a single network connection, and does not extend to the Integrated Services Digital Network (ISDN) which provides two or more connections capable of being used simultaneously. There should be no constraints on the technical means by which the connection is provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations. Connections to the public telephone network at a fixed location should be capable of supporting speech and data communications at rates sufficient for access to online services such as those provided via the public Internet. The data rate that can be supported by a single connection to the public telephone network depends on the capabilities of the subscriber's terminal equipment as well as the connection. For this reason it is not appropriate to mandate a specific data or bit rate at Community level. Currently available voice band modems typically offer a data rate of 56 kbit/s and employ automatic data rate adaptation to cater for variable line quality, with the result that the achieved data rate may be lower than 56 kbit/s. In specific cases where the connection to the public telephony network at a fixed location is clearly insufficient to support satisfactory Internet access, Member States should be able to require the connection to be brought up to the level enjoyed by the majority of subscribers so that it supports data rates sufficient for access to the Internet. Where such specific measures produce a net cost burden for those consumers concerned, the net effect may be included in any net cost calculation of universal service obligations.

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

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

Whereas:

- (1) The liberalisation of the telecommunications sector and increasing competition and choice for communications services go hand in hand with parallel action to create a harmonised regulatory framework which secures the delivery of universal service. The concept of universal service must evolve to reflect advances in technology, market developments and changes in user demand. The regulatory framework established for the full liberalisation of the telecommunications market in 1998 in the Community defined the minimum scope of universal service obligations and established rules for its costing and financing.
- (2) Under Article 153 of the Treaty, the Community is to contribute to the protection of consumers.
- (3) The Community and its Member States have taken commitments on the regulatory framework of telecommunications networks and services in the context of the World Trade Organisation (WTO) agreement on basic telecommunications. Any member of the WTO has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than

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

- (7) Directory information and a directory enquiry service constitutes an essential access tool for publicly available telephone services and is part of the universal service obligation. Users and consumers desire comprehensive directories and a directory enquiry service covering all listed telephone subscribers and their numbers (including fixed, mobile and personal telephone numbers) and want this information to be presented in a non-preferential fashion. Under Directive .../EC of the European Parliament and of the Council (concerning the processing of personal data and the protection of privacy in the electronic communications sector), subscribers have the right to determine which, if any, of their personal information is included in a public directory.
- (8) For the citizen, it is important for there to be adequate provision of public pay telephones, and for users to be able to call emergency telephone numbers and, in particular, the single European emergency call number ('112') free of charge from any telephone, including public pay telephones, without the use of coins or cards. Insufficient information about the existence of '112' deprives citizens of the additional safety ensured by the existence of this number at European level especially during their travel in other Member States.
- (9) Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs. Specific measures for disabled users could include, as appropriate, making available public text telephones or equivalent measures for deaf or speech-impaired people, providing services such as directory enquiry services or equivalent measures free of charge for blind or partially sighted people, and providing itemised bills in alternative format on request for blind or partially sighted people. Specific measures may also need to be taken to enable disabled users and users with special needs to access emergency services (112) and to give them a similar possibility to choose between different operators or service providers as other consumers. The provider of universal service should not take measures to prevent users from benefiting fully from services offered by different operators or service providers, in combination with its own services offered as part of universal service.
- (10) The importance of access to and use of the public telephone network at a fixed location is such that it should be available to anyone reasonably requesting it. In accordance with the principle of subsidiarity, it is for Member States to decide on the basis of objective criteria which undertakings have universal service obligations for the purposes of this Directive, taking into account the ability and, where appropriate, the willingness of undertakings to accept all or part of the universal service obligations. It is important that universal service obligations are fulfilled in the most efficient fashion so that users generally pay prices that correspond to efficient cost provision. It is likewise important that universal service operators maintain the integrity of the network as well as service continuity and quality. The development of greater competition and choice provide more possibilities for all or part of the universal service obligations to be provided by undertakings other than those with significant market power. Therefore, universal service obligations could in some cases be allocated to operators demonstrating the most cost effective means of delivering access and services. Corresponding obligations could be included as conditions in authorisations to provide publicly available services.
- (11) Member States should monitor the situation of consumers with respect to their use of publicly available telephone services and in particular with respect to affordability. The affordability of telephone service is related to the information which users receive regarding telephone usage expenses as well as the relative cost of telephone usage compared to other services, and is also related to their ability to control expenditure. Affordability therefore means giving power to consumers through obligations imposed on undertakings designated as having universal service obligations. These obligations include a specified level of itemised billing, the possibility for consumers selectively to block certain calls (such as high-priced calls to premium services), the possibility for consumers to control expenditure via pre-payment means and the possibility for consumers to offset or defray up-front connection fees. Such measures may need to be reviewed and changed in the light of market developments. Current conditions do not warrant a requirement for operators with universal service obligations to alert subscribers where a predetermined limit of expenditure is exceeded or an abnormal calling pattern occurs. Review of the relevant legislative provisions in future should consider whether there is a possible need to alert subscribers for these reasons.
- (12) Except in cases of persistent late payment or non-payment of bills, consumers should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium rate services, should continue to have access to essential telephone services pending resolution of the dispute. In some Member States such access may continue to be provided only if the subscriber continues to pay line rental charges.

- (13) Quality and price are key factors in a competitive market and national regulatory authorities should be able to monitor achieved quality of service for undertakings with significant market power or which have been designated as having universal service obligations. National regulatory authorities should also be able to monitor the achieved quality of services of other undertakings providing public telephone networks and/or publicly available telephone services to users at fixed locations. In relation to the quality of service attained by both types of undertakings, national regulatory authorities should be able to take appropriate corrective measures where they deem it necessary.
- (14) Member States may establish mechanisms for covering or financing the net cost of universal service obligations in cases where it is demonstrated that the obligations can only be provided at a loss or at a net cost which falls outside normal commercial standards. It is important to ensure that the net cost of universal service obligations is properly calculated and that any financing is undertaken with minimum distortion to the market and to undertakings, and is compatible with the provisions of Articles 87 and 88 of the Treaty.
- (15) Any calculation of the net cost of universal service should take due account of costs and revenues, as well as the intangible benefits resulting from providing universal service but should not hinder the general aim of ensuring that pricing structures reflect costs. Any net costs of universal service obligations should be calculated on the basis of transparent procedures.
- (16) When a universal service obligation represents an unfair burden on an undertaking, it is appropriate to allow Member States to establish mechanisms for efficiently recovering net costs. Recovery via general government budgets constitutes one method of recovering the net costs of universal service obligations. It is also reasonable for established net costs to be recovered from all users in a transparent fashion by means of levies on undertakings. In the case of cost recovery by means of levies on undertakings, Member States should ensure that the method of allocation amongst them is based on objective and non-discriminatory criteria and is in accordance with the principle of proportionality. This principle does not prevent Member States from exempting new entrants, which have not yet achieved any significant market presence. Any funding mechanism should ensure that market participants only contribute to the financing of universal service obligations, and not to other activities which are not directly linked to the provision of the universal service obligations. Recovery mechanisms should in all cases respect the principles of Community law, and in the case of fund sharing mechanisms those of non-discrimination and proportionality. Any funding mechanism should ensure that users in one Member State do not contribute to universal service costs in another Member State, for example when making calls from one Member State to another.
- (17) National regulatory authorities should satisfy themselves that those undertakings benefiting from universal service funding provide a sufficient level of detail of the specific elements requiring such funding in order to justify their request. Member States' schemes for the costing and financing of universal service obligations will be communicated to the Commission for verification of compatibility with the Treaty. There are incentives for designated operators to raise the assessed net cost of universal service obligations. Therefore Member States should ensure effective transparency and control of amounts charged to finance universal service obligations. In addition, the mechanism should be closely monitored and provision made for efficient procedures for timely appeal to an independent body for the settlement of disputes as to the amount to be paid, without prejudice to other available remedies under national law or Community law.
- (18) Communications markets continue to evolve in terms of the services used and the technical means used to deliver them to users. The universal service obligations at a Community level should be periodically reviewed with a view to proposing that the scope be changed or re-defined. Such a review should take account of evolving social, commercial and technological conditions and the fact that any change of scope should be subject to the twin test of services that become available to a substantial majority of the population, with a consequent risk of social exclusion for those who can not afford them. Care should be taken in any change of the scope of universal service obligations to ensure that certain technological choices are not artificially promoted above others, that a disproportionate financial burden is not imposed on sector undertakings (thereby endangering market developments and innovation) and that any financing burden does not fall unfairly on consumers with lower incomes. Any change of scope automatically means that any net cost can be financed via the methods permitted in this Directive. Member States are not permitted to impose on market players financial contributions which relate to measures which are not part of universal service obligations. Individual Member States remain free to impose special measures (outside the scope of universal service obligations) and finance them in conformity with Community law but not by means of contributions from market players.

(19) More effective competition across all access and service markets will give greater choice for users. The extent of effective competition and choice varies across the Community and varies within Member States between geographical areas and between access and service markets. Nevertheless an undertaking that previously had exclusive rights may retain significant market power in access markets and in some service markets. Some users may be entirely dependent on the provision of access and services by an undertaking with significant market power. In general for reasons of efficiency and to encourage effective competition, it is important that the services provided by an undertaking with significant market power reflect costs. For reasons of efficiency and social reasons, end user tariffs should reflect demand conditions as well as cost conditions, provided that this does not result in distortions of competition. There is a risk that an undertaking with significant market power may act in various ways to inhibit entry or distort competition, for example by charging excessive prices, setting predatory prices, compulsory bundling of retail services or showing undue preference to certain customers. Universal service obligations and the public interest imply that for some consumers, tariffs and tariff structures may need to depart from normal commercial conditions. Nevertheless, undertakings which have been found to have significant market power should be free of unnecessary regulation in markets where effective competition exists. Therefore, national regulatory authorities should have powers to establish, maintain and withdraw retail tariff regulations on an undertaking with significant market power. Price cap regulation, geographical averaging or similar instruments may be used to achieve the twin objectives of promoting effective competition whilst pursuing public interest needs, such as maintaining the affordability of publicly available telephone services for some consumers. Access to appropriate cost accounting information is necessary in order for national regulatory authorities to fulfil their regulatory duties in this area, including the imposition of any tariff controls.

(20) Contracts are an important tool for users and consumers to ensure a minimum level of transparency of information and legal security. Most service providers in a competitive environment will conclude contracts with their customers for reasons of commercial desirability. In addition to the provisions of this Directive, the requirements of existing Community consumer protection legislation relating to contracts, in particular Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts ⁽¹⁾ and Directive 97/7/EC of the European Parliament and of the

Council of 20 May 1997 on the protection of consumers in respect of distance contracts ⁽²⁾, apply to consumer transactions relating to electronic networks and services. Specifically, consumers should enjoy a minimum level of legal certainty in respect of their contractual relations with their direct telephone service provider, such that the contractual terms, conditions, quality of service, condition for termination of the contract and the service, compensation measures and dispute resolution are specified in their contracts. Where service providers other than direct telephone service providers conclude contracts with consumers, the same information should be included in those contracts as well. The measures to ensure transparency on prices, tariffs, terms and conditions will increase the ability of consumers to optimise their choices and thus to benefit fully from competition.

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

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

(23) All users and consumers should continue to enjoy access to operator assistance services whatever organisation provides access to the public telephone network.

⁽¹⁾ OJ L 95, 21.4.1993, p. 29.

⁽²⁾ OJ L 144, 4.6.1997, p. 19.

- (24) The provision of directory services is already open to competition. The provisions of this Directive complement the provisions of Directive (concerning the processing of personal data and protection of privacy in the electronic communications sector), by giving subscribers a right to have their personal data included in a printed or electronic directory. All service providers which assign telephone numbers to their subscribers are obliged to make relevant information available in a fair, cost-oriented, non-discriminatory manner.
- (25) It is important that users should be able to call the single European emergency number '112', and any other national emergency telephone numbers, free of charge, from any telephone, including public pay telephones, without the use of coins or cards. Member States should have already made the necessary organisational arrangements best suited to the national organisation of the emergency systems, in order to ensure that calls to this number are adequately answered and handled. Caller location information, to be made available to the emergency services, will improve the level of protection and the security of users of '112' services and assist the emergency services in the discharge of their duties, provided that the transfer of calls and associated data to the emergency services concerned is guaranteed. Steady information technology improvements will progressively support the simultaneous handling of several languages over the networks at a reasonable cost. This in turn will ensure additional safety for European citizens using the '112' emergency call number.
- (26) Easy access to international telephone services is vital for European citizens and European businesses. '00' has already been established as the standard international telephone access code for the Community. Special arrangements for making calls between adjacent locations across borders between Member States may be established or continued. All operators should be obliged to complete calls that use not only the European regional code '3883' but also any other regional codes that may be used in Europe.
- (27) Tone dialling and calling line identification facilities are normally available on modern telephone exchanges and can therefore increasingly be provided at little or no expense. Tone dialling is increasingly being used for user interaction with special services and facilities, including value added services, and the absence of this facility can prevent the user from making use of these services. Member States are not required to impose obligations to provide these facilities when they are already available. Directive [on the protection of personal data and privacy in the electronic communications sector] safeguards the privacy of users with regard to itemised billing, by giving them the means to protect their right to privacy when calling-line identification is implemented.
- (28) Number portability is a key facilitator of consumer choice and effective competition in a competitive telecommunications environment such that end users who so request should be able to retain their number(s) on the public telephone network independently of the organisation providing service. The provision of this facility between connections to the public telephone network at fixed and non-fixed locations is not appropriate at present, in particular due to the loss of tariff information to the consumer that would result. This provision could be subject to review.
- (29) Currently, Member States impose certain 'must-carry' obligations on networks established for the distribution of radio or television broadcasts to the public. Member States should be able to lay down proportionate obligations on undertakings under their jurisdiction, in the interest of legitimate public policy considerations, but such obligations should only be imposed where they are necessary to meet clearly defined general interest objectives and should be proportionate, transparent and limited in time. It would not be proportionate to extend such obligations to new networks such as the Internet. The undertakings on which such obligations fall should be appropriately compensated for the use of their network capacity on reasonable, transparent and non-discriminatory terms.
- (30) It is considered necessary to ensure the continued application of the existing provisions relating to leased line services in Community telecommunications legislation, in particular in Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines⁽¹⁾, as last amended by Commission Decision 98/80/EC of 7 January 1998⁽²⁾, until such time as national regulatory authorities determine, in accordance with the market analysis procedures laid down in Directive .../.../EC (on a common regulatory framework for electronic communications networks and services), that such provisions are no longer needed because a sufficiently competitive market has developed in their territory. For the time being these services constitute mandatory services to be provided without recourse to any compensation mechanisms.

⁽¹⁾ OJ L 165, 19.6.1992, p. 27.

⁽²⁾ OJ L 14, 20.1.1998, p. 27.

(31) Where a Member State seeks to ensure the provision of other specific services throughout its national territory, such obligations should be implemented on a cost-efficient basis and outside the scope of universal service obligations. As a reaction to the Commission's eEurope initiative, the Lisbon European Council called on Member States to ensure that all schools have access to the Internet and to multimedia resources by the end of 2001.

(32) In the context of a competitive environment, the views of interested parties, including users and consumers, should be taken into account by national regulatory authorities when dealing with issues related to users' and consumers' rights. Effective procedures should be available to deal with disputes between users and consumers, on the one hand, and undertakings providing publicly available communications services, on the other. Member States should take full account of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes ⁽¹⁾.

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

(34) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of setting a common level of universal service for telecommunications for all European users and of harmonising conditions for access to and use of public telephone networks at a fixed location and related publicly available telephone services cannot be realised satisfactorily at Member State level. The objective of achieving a harmonised framework for the regulation of electronic communications services, electronic communications networks and associated facilities cannot be sufficiently achieved by the Member States and can therefore be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(35) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽²⁾, they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE, AIMS AND DEFINITIONS

Article 1

Scope and aims

1. Within the framework of Directive (on a common regulatory framework for electronic communications networks and services), this Directive concerns the provision of electronic communications networks and services to users and consumers.

2. The aim of this Directive is to ensure the availability throughout the Community of good quality electronic communications services at an affordable price by means of effective competition and choice and to deal with circumstances in which users' and consumers' needs are not satisfactorily met by commercial means. It also aims to ensure interoperability of consumer digital television equipment.

Article 2

Definitions

The definitions given in Directive (on a common regulatory framework for electronic communications networks and services) shall apply.

The following definitions shall also apply:

(a) 'direct public telephone service provider' means an undertaking that provides publicly available telephone services and that also provides a subscriber with a connection to the public telephone network;

(b) 'subscriber' means any natural or legal person that is party to a contract with undertakings providing publicly available communications services for the supply of such services;

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

(d) 'public telephone network' means transmission systems and switching or routing equipment and other resources which are used to provide publicly available telephone services; it supports the transfer between network termination points of speech communications, and also other forms of communication, such as fax and data; connection to the public telephone network at a fixed location may take place via wireless as well as wire-line means;

⁽¹⁾ OJ L 115, 17.4.1998, p. 31.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

- (e) 'publicly available telephone service' means a service available to the public for originating and receiving national and international calls, and access to emergency services using the code 112 through a number or numbers in a national or international telephone numbering plan; it may include the provision of operator assistance, directory services, provision of public pay phones, provision of service under special terms and/or provision of special facilities for customers with disabilities or with special social needs;
- (f) 'network termination point' (NTP) means the physical point at which a subscriber is provided with access to a public communications network; in the case of networks involving switching or routing, the NTP is identified by means of a specific network address, which may be linked to a subscriber number or name; it represents a boundary for regulatory purposes between different systems; defining the location of NTP is the responsibility of the national regulatory authority;
- (g) 'geographic number' means a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the NTP of the subscriber to whom the number has been assigned.

CHAPTER II

UNIVERSAL SERVICE OBLIGATIONS

Article 3

Availability of universal service

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

Article 4

Provision of access at fixed locations

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

2. The connection provided shall be capable of allowing users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit Internet access.

Article 5

Directory enquiry services and directories

Member States shall ensure that, in respect of subscribers of direct public telephone service providers and in conformity with Article 12 of Directive (on processing of personal data and protection of privacy in the electronic communications sector):

- (a) a subscriber directory is available to users in a form approved by the national regulatory authority, whether printed or electronic, or both, and is updated on a regular basis, and at least once a year;
- (b) at least one telephone directory enquiry service covering all listed subscribers' numbers is available to all users, including users of public pay telephones;
- (c) undertakings that provide the services referred to in paragraphs (a) and (b) apply the principle of non-discrimination to the treatment of information that has been provided to them by other undertakings.

Article 6

Public pay telephones

1. Member States shall ensure that national regulatory authorities can impose obligations on undertakings in order to ensure that public pay telephones are provided to meet the reasonable needs of users in terms of the geographical coverage, the number of telephones and the quality of services.
2. A Member State may decide not to apply paragraph 1 in all or part of its territory on the basis of a consultation of interested parties as referred to in Article 29.
3. Member States shall ensure that it is possible to make emergency calls from public pay telephones using the single European emergency call number '112' and other national emergency numbers, all free of charge and without having to use coins or cards.

Article 7

Special measures for disabled users and users with special needs

1. Member States shall, where appropriate, take specific measures to ensure equivalent access to and affordability of publicly available telephone services, including access to emergency and directory services, for disabled users and users with special social needs.

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

Article 8

Designation of undertakings

1. Member States may, if necessary, designate one or more undertakings to guarantee the provision of universal service as identified in Articles 4 to 7, so that the whole of the national territory is covered. Member States may designate different undertakings or sets of undertakings to provide different elements of universal service.

2. In order to ensure efficient provision of access to and use of the public telephone network, Member States shall ensure that all undertakings have an opportunity to be designated as providing access and services at a fixed location in part or all of the national territory, if necessary by designating different undertakings to provide different elements (geographical or otherwise) of the universal service obligations.

3. When Member States designate undertakings in part or all of the national territory as having universal service obligations, they shall do so using an efficient, objective and transparent allocation mechanism. Such designation methods may include public tenders and public auctions, in order to ensure that universal service is provided in a cost-effective manner and as a means of determining the net cost of the universal service obligation.

Article 9

Level and structure of tariffs

1. National regulatory authorities shall monitor the evolution of the level and structure of retail tariffs of the publicly available telephone service provided at fixed locations by designated undertakings, in particular in relation to national consumer prices and income. They may, in the light of national conditions, require the designated undertakings to 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 specific social needs are not prevented from accessing or using the publicly available telephone service.

2. Member States may require undertakings with obligations under Article 4 to apply common tariffs throughout the territory, in the light of national conditions.

3. Member States may, as an alternative to the requirement for designated undertakings to provide special tariff options or

for undertakings to apply common tariffs, provide support to consumers identified as having specific economic or social needs, in particular by granting entitlement to the public telephone service at a specified tariff.

4. National regulatory authorities shall ensure that, where an undertaking has an obligation to provide special tariff options 1 or common tariffs, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

Article 10

Specific affordability provisions and control of expenditure

1. Member States shall ensure that designated undertakings, in providing facilities and services additional to the provision of a connection to the public telephone network and publicly available telephone services, establish tariffs in such a way that the user is not obliged to pay for facilities or services which are not necessary or not required for the service requested.

2. Member States shall ensure that designated undertakings provide the specific facilities and services set out in Annex I in order that consumers can monitor and control expenditure and avoid unwarranted disconnection of service.

Article 11

Quality of service of designated undertakings

1. National regulatory authorities shall ensure that all undertakings with obligations as referred to in Article 4 publish adequate and up-to-date information concerning their performance in the provision of access and services, based on parameters, definitions and measurement methods set out in Annex III. The published information shall also be supplied to the national regulatory authority.

2. National regulatory authorities shall be able to set performance targets for undertakings with universal service obligations under Article 4. In so doing, national regulatory authorities shall take account of views of interested parties, in particular as referred to in Article 29.

3. Persistent failure by an undertaking to meet performance targets may result in specific measures being taken in accordance with conditions set out in the general authorisation measures for the operator. National regulatory authorities shall be able to order independent audits of the performance data, paid for by the undertaking concerned, in order to ensure the accuracy and comparability of the data made available by undertakings with universal service obligations.

*Article 12***Costing of universal service**

1. Where necessary, national regulatory authorities may assess whether the provision of universal service represents an unfair burden on undertakings designated to provide universal service.

For that purpose, national regulatory authorities may:

- (a) calculate the net cost of the obligation in accordance with Annex IV, Part A; or
- (b) use an efficient, objective and transparent allocation mechanism such as public tendering or auction.

2. The calculation of the net cost of universal service obligations under paragraph 1(a) shall be audited by an independent body or organisation. The results of the cost calculation and the conclusions of the audit shall be open to the public.

*Article 13***Financing of universal service obligations**

1. Where, on the basis of the net cost calculation referred to in Article 12, and taking into account any market benefit which accrues to an undertaking designated to provide universal service, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States may decide:

- (a) to introduce a mechanism to compensate that undertaking for the determined net costs from the general government budget; or
- (b) to share the net cost of universal service obligations.

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

3. A sharing mechanism based on a Fund shall respect the principles of transparency, least market distortion, non-discrimination and proportionality, in accordance with the principles of Annex IV.

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

*Article 14***Transparency**

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

2. National regulatory authorities shall ensure that an annual report is published giving the calculated cost of universal service obligations, identifying the contributions made by all the parties involved, and identifying any market benefits, both financial and non-financial, that may have accrued to the undertaking(s) designated to provide universal service, where a Fund is actually in place and working.

3. Member States may require that contributions made by undertakings to finance universal service obligations be shown on users' bills.

*Article 15***Review of scope of universal service**

1. The Commission shall periodically review the scope of universal service, on the first occasion not later than two years after entry into force of this Directive, in particular with a view to proposing that the scope be changed or redefined.

2. This review shall be undertaken in the light of social, commercial and technological developments. The review process shall be undertaken in accordance with Annex V.

CHAPTER III

USER AND CONSUMER INTERESTS AND RIGHTS*Article 16***Retail tariff regulation**

1. Member States shall maintain all obligations relating to retail tariffs for the provision of access to and use of the public telephone network at fixed locations that were in force prior to the date of entry into force of this Directive under Article 17 of Directive 98/10/EC of the European Parliament and of the Council on the application of open network provision (ONP) to voice telephony and a universal service for telecommunications in a competitive environment⁽¹⁾, until a review has been carried out and a determination made in accordance with paragraph 2 of this Article.

⁽¹⁾ OJ L 101, 1.4.1998, p. 24.

2. Member States shall ensure that, on the entry into force of this Directive, and periodically thereafter, national regulatory authorities undertake a market analysis, in accordance with the procedure set out in Article 14(3) of Directive (on a common regulatory framework for electronic communications networks and services) to determine whether to maintain, amend or withdraw the obligations referred to in paragraph 1 of this Article. Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive (on a common regulatory framework for electronic communications networks and services).

3. Where as a result of a market analysis carried out in accordance with Article 14(3) of the Directive (on a common regulatory framework for electronic communications networks and services), national regulatory authorities determine that a market is not effectively competitive, they shall ensure that undertakings with significant market power in that market orient their tariffs towards costs, so as not to charge excessive prices or inhibit market entry, or restrict competition by setting predatory prices, showing undue preference to specific users or unreasonably bundling services. National regulatory authorities may apply appropriate retail price cap measures to such undertakings in order to protect user and consumer interests whilst promoting effective competition.

4. National regulatory authorities shall notify to the Commission the names of undertakings subject to retail tariff controls and, on request, submit information concerning the retail tariff controls applied and the cost accounting systems used by the undertakings concerned.

5. Member States shall ensure that, where an undertaking is subject to retail tariff regulation, the necessary and appropriate cost accounting systems are implemented and that the suitability of such systems is verified by a competent body which is independent of the organisation. National regulatory authorities shall ensure that a statement concerning compliance is published annually.

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

Article 17

Contracts

1. Member States shall ensure that users and consumers have a right to a contract with their direct public telephone service provider(s) that specifies:

(a) the identity and address of the supplier;

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

(c) the types of maintenance service offered;

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

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

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

(g) the method of initiating procedures for settlement of disputes in accordance with Article 30.

2. Where contracts are concluded between users or consumers and communications services providers other than direct public telephone service providers, the information in paragraph 1 shall also be included in such contracts.

3. Users and consumers shall be given adequate notice of any intention to modify contractual conditions and shall be free to withdraw from contracts if they do not accept the new conditions.

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

Article 18

Transparency and publication of information

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

Article 19

Quality of service

1. Member States shall ensure that national regulatory authorities are able to require undertakings that provide publicly available electronic communications services to publish comparable, adequate and up-to-date information for consumers on the quality of their services. The published information shall also be supplied to the national regulatory authority.

2. An obligation to publish quality of service information shall be imposed after taking account of the views of interested parties, including users and consumers, as referred to in Article 29, and after a period of public consultation on the measures proposed.

*Article 20***Interoperability of consumer digital television equipment**

1. Member States shall ensure the interoperability of consumer digital television equipment as set out in Annex VI.
2. The Commission may amend Annex VI in the light of market and technological developments in accordance with the procedure referred to in Article 33(2).

*Article 21***Operator assistance and directory enquiry services**

1. Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in publicly available directories.
2. Member States shall ensure that all direct public telephone service providers which assign telephone numbers to subscribers meet all reasonable requests to make available, for the purposes of the provision of directory services, the relevant information in an agreed format on terms which are fair, cost-oriented and non-discriminatory.
3. Member States shall ensure that all users provided with a connection to the public telephone network can access operator assistance services and directory enquiry services in accordance with Article 5(b).
4. Member States shall not maintain any regulatory restrictions which prevent users in one Member State from accessing directly the directory enquiry service in another Member State.
5. Paragraphs 1 to 4 apply subject to the requirements of Community legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive (concerning the processing of personal data and the protection of privacy in the electronic communications sector).

*Article 22***European emergency number**

1. Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all users of publicly available telephone services, including users of public pay telephones, are able to call the emergency services free of charge, by using the single European emergency call number '112'.
2. Member States shall ensure that calls to the single European emergency call number '112' are appropriately answered and handled in a manner best suited to the national organisation of emergency systems and within the technological possibilities of the networks.

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

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

*Article 23***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 subscribers to publicly available telephone services in the locations concerned shall be fully informed of such arrangements.
2. Member States shall ensure that all undertakings that operate public telephone networks handle all calls to and from the European telephone numbering space identified by the regional code '3883' or any other European regional codes that may be used.

*Article 24***Provision of additional facilities**

1. Member States shall ensure that national regulatory authorities are able to require all undertakings that operate public telephone networks to make available to users the facilities listed in Annex I, Part B, subject to technical feasibility and economic viability.
2. A Member State may decide not to apply paragraph 1 in all or part of its territory on the basis of a consultation as referred to in Article 29.

*Article 25***Number portability, carrier selection and carrier pre-selection**

1. Member States shall ensure that all subscribers of publicly available telephone services, including mobile services, who so request can retain their number(s) independently of the undertaking providing the service:
 - (a) in the case of geographic numbers, at a specific location; and
 - (b) in the case of numbers other than geographic numbers, at any location.

2. National regulatory authorities shall require undertakings notified as having significant market power for the provision of connection to and use of the public telephone network at fixed locations to enable their subscribers to access the services of any interconnected provider of publicly available telephone services:

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

User requirements for these facilities to be implemented on other networks or in other ways shall be assessed in accordance with the market analysis procedure laid down in Article 14 of Directive (on a common regulatory framework for electronic communications networks and services).

3. National regulatory authorities shall ensure that pricing for interconnection related to the provision of number portability under paragraph 1, and the use of the facility in paragraph 2, are cost oriented.

4. National regulatory authorities shall not impose tariffs for the porting of numbers in a manner that would distort competition, such as by imposing a common tariff across all undertakings.

Article 26

'Must carry' obligations

1. Member States may impose 'must carry' obligations, for the transmission of specified radio and television broadcasts, on undertakings under their jurisdiction providing electronic communications networks established for the distribution of radio or television broadcasts to the public. Such obligations shall only be imposed where they are necessary to meet clearly defined general interest objectives and shall be proportionate, transparent and limited in time.

2. Member States shall ensure that the undertakings subject to 'must carry' obligations receive appropriate compensation on reasonable, transparent and non-discriminatory terms taking into account the network capacity required.

CHAPTER IV

MANDATORY SERVICES AND LEASED LINES

Article 27

Availability of leased lines

1. Member States shall maintain all obligations on undertakings that were in force prior to the date of entry into force of this Directive under Articles 3, 4, 6, 7, 8 and 10 of Directive 92/44/EEC until a review has been carried out and a determination made in accordance with paragraph 2 of this Article.

2. Within one year after the entry into force of this Directive, and every two years thereafter, national regulatory authorities shall conduct a market analysis, in accordance with the procedure set out in Article 14(3) of Directive (on a common regulatory framework for electronic communications networks and services), to determine whether the provision of part or all of the minimum set of leased lines services in their territory is subject to effective competition and to determine whether to maintain, amend or withdraw obligations referred to in paragraph 1 of this Article. Measures taken shall be subject to the procedure set out in Article 6(2) to (5) of Directive (on a common regulatory framework for electronic communications networks and services).

3. Technical standards for the minimum set of leased lines with harmonised characteristics shall be published in the *Official Journal of the European Communities*, as part of the List of Standards referred to in Article 15 of Directive (on a common regulatory framework for electronic communications networks and services). The Commission may adopt amendments necessary to adapt the minimum set of leased lines to new technical developments and to changes in market demand, including the possible deletion of certain types of leased line from the minimum set, acting in accordance with the procedure referred to in Article 33(2) of this Directive.

Article 28

Additional mandatory services

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

CHAPTER V

GENERAL AND FINAL PROVISIONS

Article 29

Consultation with interested parties

1. Member States shall ensure that national regulatory authorities take into account the views of users, consumers, manufacturers, undertakings providing communications networks and service providers on issues related to all user and consumer rights concerning publicly available communications services.

2. In respect of quality of service issues, and in particular in response to complaints relating to quality of service, national regulatory authorities shall be able to determine whether to require publication of quality of service information of network operators and service providers. National regulatory authorities may specify, *inter alia*, the quality of service parameters to be measured, and the content, form and manner of information to be published, in order to ensure that users and consumers have access to comprehensive, comparable and user-friendly information. For services falling within universal service obligations, the parameters, definitions and measurement methods given in Annex III could be used.

*Article 30***Dispute resolution**

1. Member States shall ensure that transparent, simple and inexpensive procedures are available for dealing with users' and consumers' complaints. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation. They should follow, wherever possible, the principles set out in Recommendation 98/257/EC.

2. For disputes involving parties in different Member States, the provisions of Article 18 of the Directive on a common regulatory framework for electronic communications networks and services shall apply.

*Article 31***Technical adjustment**

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, acting in accordance with the procedure referred to in Article 33(2).

*Article 32***Notification and monitoring**

1. National regulatory authorities shall notify to the Commission by 31 December 2001 at the latest, and immediately in the event of any change thereafter:

- (a) the names of undertakings designated as having universal service obligations under Article 8(1);
- (b) the names of undertakings subject to retail tariff regulation under Article 16, and details of the relevant product/service and geographical markets;
- (c) the names of undertakings found to have significant market power for the purposes of Article 25(2);
- (d) the names of those undertakings which have obligations for provision of the minimum set of leased lines, in accordance with Article 27.

They shall notify the Commission of any changes without delay. The Commission shall make the information available in a readily accessible form, and shall distribute it to the Communications Committee and the High-Level Communications Group as appropriate.

2. The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than two years after the date of entry into force of this Directive. The Member States and national regulatory authorities shall supply the necessary information to the Commission for this purpose.

*Article 33***Committee**

1. The Commission shall be assisted by the Communications Committee, instituted by Article 19 of Directive (on a common regulatory framework for electronic communications networks and services).

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Articles 7 and Article 8 thereof.

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

*Article 34***Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2001 at the latest. They shall forthwith inform the Commission thereof.

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 provisions of national law which they adopt in the field governed by this Directive and of any subsequent modifications to those provisions.

*Article 35***Entry into force**

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

*Article 36***Addressees**

This Directive is addressed to the Member States.

ANNEX I

Description of facilities referred to in Article 10 (specific affordability provisions) and Article 24 (additional facilities)

PART A

Facilities and services referred to in Article 10:

(a) Itemised billing

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 shall be provided by designated undertakings (as established in Article 8) to consumers free of charge in order that they can (i) allow verification and control of the charges incurred in using the public telephone network at a fixed location and/or related publicly available telephone services, and (ii) adequately monitor their usage and expenditure and thereby exercise a reasonable degree of control over their bills.

Where appropriate, additional levels of detail may be offered to subscribers at reasonable tariffs or at no charge. A Member State may authorise its national regulatory authority not to apply the requirements of this paragraph in all or part of its territory if it is satisfied that this facility is widely available.

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

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

(c) Pre-payment systems

National regulatory authorities may require designated undertakings to provide means for consumers to pay for access to the public telephone network and use of public telephone services on pre-paid terms.

(d) Phased payment of connection fees

National regulatory authorities may require designated undertakings to allow consumers to pay for connection to the public telephone network on the basis of payments phased over time.

(e) Non-payment of bills

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

PART B

List of facilities referred to in Article 24:

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

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

(b) Calling-line identification

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

This facility should be provided in accordance with relevant legislation on protection of personal data and privacy, in particular Directive [...] concerning the processing of personal data and the protection of privacy in the electronic communications sector.

ANNEX II

Information to be published in accordance with Article 18

(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 18. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public telephone networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself.

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

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

2. Publicly available telephone services offered

2.1. Scope of the publicly available telephone service

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

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

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

2.4. Types of maintenance service offered

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

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

ANNEX III

Quality of service parameters in the context of universal service

Supply-time and quality-of-service parameters, definitions and measurement methods referred to Articles 11 and 19

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
Unsuccessful call ratio (Note 2)	ETSI EG 201 769-1	ETSI EG 201 769-1
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

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.

ANNEX IV

Calculating the net cost, if any, of universal service obligations and establishing any recovery or sharing mechanism in accordance with Articles 12 and 13

PART A: CALCULATION OF NET COST

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

In order to avoid the regulatory burden of calculating any net cost of universal service obligations where this subsequently proves to be unnecessary, national regulatory authorities shall consider all means to ensure appropriate incentives for undertakings (designated or not) to provide universal service obligations cost efficiently. Included is an assessment of the feasibility of assigning universal service obligations by tendering or auction methods.

In undertaking a calculation exercise, the net cost of universal service obligations shall be calculated as the difference between the net cost for an organisation of operating with the universal service obligations and operating without the universal service obligations. This applies whether the network in a particular Member State is fully developed or is still undergoing development and expansion. Due attention shall be given to correctly assess the costs that any universal service operator would have chosen to avoid had there been no universal service obligation. The net cost calculation should assess the benefits, both financial and non-financial, to the universal service operator.

The calculation shall be based upon the costs attributable to:

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

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

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

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

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

PART B: RECOVERY OF ANY NET COSTS OF UNIVERSAL SERVICE OBLIGATIONS

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

A sharing mechanism based on a Fund may also be used. A sharing mechanism based on a Fund should respect the principles of transparency, least market distortion, non-discrimination and proportionality. Least market distortion means that the contribution burden should be spread as wide as possible, subject to proportionality. Proportionality means that NRAs may choose not to require contributions from undertakings whose national turnover is less than a set limit.

Member States undertaking cost recovery via a Fund should give due consideration to collecting contributions via a VAT mechanism on operators and service providers so as to provide a transparent and consistent mechanism (to avoid the danger of double imposition of contributions on both outputs and inputs of operators and service providers) for collecting contributions.

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

ANNEX V

Process for reviewing the scope of universal service in accordance with Article 15

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

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

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

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

In proposing any change or redefinition of the scope of universal service obligations, the Commission may consider the following options:

- propose a change or redefinition of the scope of universal service obligations but require that any net costs are financed only via general government budgets; or
- propose a change or redefinition of the scope of universal service obligations and permit any net costs to be financed by mechanisms in conformity with this Directive.

Alternatively, the Commission may propose that specific services should become mandatory services to be provided under cost-oriented obligations in line with Chapter IV, and not be included in the scope of universal service obligations as specified in Chapter II.

ANNEX VI

Interoperability of digital consumer equipment (Article 20)

1. The Common Scrambling Algorithm and free-to-air reception

All consumer equipment intended for the reception of digital television, for sale or rent or otherwise made available in the Community, capable of de-scrambling digital television signals, shall possess the capability:

- to allow the de-scrambling of such signals according to the Common European Scrambling Algorithm as administered by a recognised European standardisation body, currently ETSI;
- to display signals that have been transmitted in clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement.

2. Interoperability for analogue and digital television sets

Any analogue television set with an integral screen of visible diagonal greater than 42 cm which is put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (as standardised by a recognised European standardisation body) permitting simple connection of peripherals, especially additional decoders and digital receivers.

Any digital television set with an integral screen of visible diagonal greater than 30 cm which is put on the market for sale or rent in the Community shall be fitted with at least one open interface socket (either standardised by a recognised European standardisation body or conforming to an industry-wide specification) permitting simple connection of peripherals, and able to pass all the elements of a digital television signal. Apart from video and audio streams, this includes conditional access information, the full application programme interface (API) command set of the connected devices, service information and copy protection information.

The above functionality may be updated from time to time under the procedure referred to in Article 20(2).
