

Proposal for a Directive of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services

(2000/C 365 E/14)

(Text with EEA relevance)

COM(2000) 393 final — 2000/0184(COD)

(Submitted by the Commission on 23 August 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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 current regulatory framework for telecommunications has been successful in creating the conditions for effective competition in the telecommunications sector during the transition from monopoly to full competition.
- (2) On 10 March 1999 the Commission presented a Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the convergence of the telecommunications, media and information technology sectors, and the implications for regulation — Results of the public consultation on the Green Paper ⁽¹⁾.
- (3) On 10 November 1999 the Commission presented a Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on next steps in radio spectrum policy — Results of the public consultation on the Green Paper ⁽²⁾.
- (4) On 10 November 1999, the Commission presented a Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled 'Towards a new framework for electronic communications infrastructure and associated services — The 1999 Communications Review' ⁽³⁾. In that Communication, the Commission reviewed the existing regulatory framework for telecommunications, in accordance with its obligation under

Article 8 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision ⁽⁴⁾, as amended by Directive 97/51/EC of the European Parliament and of the Council ⁽⁵⁾. It also presented a series of policy proposals for a new regulatory framework for electronic communications infrastructure and associated services for public consultation.

- (5) On 26 April 2000 the Commission presented a Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the results of the public consultation on the 1999 Communications Review and Orientations for the new Regulatory Framework ⁽⁶⁾. The Communication summarised the public consultation and set out certain key orientations for the preparation of a new framework for electronic communications infrastructure and associated services.
- (6) The Lisbon European Council of 23-24 March 2000 highlighted the potential for growth, competitiveness and job creation of the shift to a digital, knowledge-based economy. In particular, it emphasised the importance for Europe's businesses and citizens of access to an inexpensive, world-class communications infrastructure and a wide range of services.
- (7) The convergence of the telecommunications, media and information technology sectors means all transmission networks and services should be covered by a single regulatory framework. That regulatory framework consists of this Directive, four specific Directives: Directive (.../.../EC of the European Parliament and of the Council on the authorisation of electronic communications networks and services), Directive (.../.../EC of the European Parliament and of the Council on access to, and interconnection of, electronic communications networks and associated facilities), Directive (.../.../EC of the European Parliament and of the Council on universal service and users' rights relating to electronic communications networks and services), Directive (.../.../EC of the European Parliament and of the Council on the processing of personal data and the protection of privacy in the electronic communications sector) and Regulation ((EC) No .../... of the European Parliament and of the Council on unbundled access to the local loop) (hereinafter referred to as 'the Specific

⁽¹⁾ COM(1999) 108.

⁽²⁾ COM(1999) 538.

⁽³⁾ COM(1999) 539.

⁽⁴⁾ OJ L 192, 24.7.1990, p. 1.

⁽⁵⁾ OJ L 295, 29.10.1997, p. 23.

⁽⁶⁾ COM(2000) 239.

Measures'). It is necessary to separate the regulation of transmission from the regulation of content. This framework does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services and certain information society services. The content of television programmes is covered by Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁽¹⁾, as amended by Directive 97/36/EC of the European Parliament and of the Council⁽²⁾. The separation between the regulation of transmission and the regulation of content does not prejudice the taking into account of the links existing between them.

- (8) This Directive does not cover equipment within the scope of 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 conformity⁽³⁾, but does cover consumer equipment used for digital television.
- (9) Information society services are covered by Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of Information Society services, in particular electronic commerce, in the internal market (Directive on Electronic Commerce)⁽⁴⁾.
- (10) In accordance with Article 14 of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of electronic communications services is ensured.
- (11) In accordance with the principle of the separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities with a view to ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership laid down in Article 295 of the Treaty. National regulatory authorities should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.
- (12) Any party who is the subject of a decision by a national regulatory authority should have the right to appeal to an independent body established by the Member States. The appellate body should be able to consider the facts of the case and, pending the outcome of the appeal, the decision of the national regulatory authority should stand. This appeal procedure is without prejudice to the rights of legal entities or natural persons under national law.
- (13) National regulatory authorities need to gather information from market players in order to carry out their tasks effectively. Such information may also need to be gathered on behalf of the Commission, to allow it to fulfil its obligations under Community law. Requests for information should be proportionate and not impose an undue burden on undertakings. Information gathered by national regulatory authorities should be publicly available, except in so far as it is confidential. National regulatory authorities should have the same rights and duties of confidentiality in respect of exchange of information as a 'competent authority' for the purposes of Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty⁽⁵⁾, as last amended by Regulation (EC) No 1216/1999⁽⁶⁾.
- (14) It is important that national regulatory authorities consult all interested parties on proposed decisions and take account of their comments before adopting a final decision. In order to ensure that decisions at national level do not have an adverse effect on the single market or other Treaty objectives, national regulatory authorities should also notify certain draft decisions to the Commission and other national regulatory authorities to give them the opportunity to comment and to allow the Commission to require amendment or suspension of these decisions if necessary. This procedure is without prejudice to the notification procedure provided for in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of Information Society services⁽⁷⁾, as amended by Directive 98/48/EC⁽⁸⁾, and the Commission's prerogatives under the Treaty in respect of infringements of Community law.
- (15) National regulatory authorities should have a harmonised set of objectives and principles to underpin their actions. These should be the only objectives and principles governing the actions of the national regulatory authorities in carrying out their tasks under this regulatory framework.

⁽¹⁾ OJ L 298, 17.10.1989, p. 23.

⁽²⁾ OJ L 202, 30.7.1997, p. 60.

⁽³⁾ OJ L 91, 7.4.1999, p. 10.

⁽⁴⁾ OJ L 178, 17.7.2000, p. 1.

⁽⁵⁾ OJ 13, 21.2.1962, p. 204/62.

⁽⁶⁾ OJ L 148, 15.6.1999, p. 5.

⁽⁷⁾ OJ L 204, 21.7.1998, p. 37.

⁽⁸⁾ OJ L 217, 5.8.1998, p. 18.

- (16) Radio spectrum is an essential input for radio-based electronic communications services and, in so far as it relates to such services, should therefore be allocated and assigned by national regulatory authorities according to transparent, non-discriminatory and objective criteria. It is important that the allocation and assignment of radio spectrum is managed as efficiently as possible, in a manner consistent with the need to balance the requirements of commercial and non-commercial use of radio spectrum. Secondary trading of radio spectrum can be an effective means of increasing efficient use of spectrum, as long as there are sufficient safeguards in place to protect the public interest, in particular the need to ensure transparency and regulatory supervision of such transactions. Decision (...) of the European Parliament and of the Council on a regulatory framework for radio spectrum policy in the Community establishes a framework for harmonisation of radio spectrum, and action taken under this Directive should seek to facilitate the work under that Decision.
- (17) Access to numbering resources on the basis of transparent, objective and non-discriminatory criteria is essential for undertakings to compete in the electronic communications sector. All elements of national numbering plans should be managed by national regulatory authorities, including point codes used in network addressing. Where there is a need for harmonisation of numbering resources in the Community, this should be carried out by the Commission using its executive powers. Access by end-users to all numbering resources in the Community is a vital precondition for a single market. It should include freephone, premium rate and other non-geographic numbers, except where the called subscriber has chosen, for commercial reasons, to limit access from certain geographical areas. Tariffs charged to parties calling from outside the Member State concerned need not be the same as for those parties calling from inside that Member State. Numbering requirements in Europe, the need for the provision of pan-European and new services and the globalisation and synergy of the electronic communications market require the Community to harmonise national positions in accordance with the Treaty in international organisations and fora where numbering decisions are taken.
- (18) Timely, non-discriminatory procedures should be in place for the granting of rights of way, to guarantee the conditions for fair and effective competition. This Directive is without prejudice to national laws governing expropriation of property.
- (19) Facility sharing can be of benefit for town planning, public health or environmental reasons, and should be encouraged by national regulatory authorities on the basis of voluntary agreements. Compulsory facility sharing may be appropriate in some circumstances, but should be imposed on undertakings only after full public consultation.
- (20) There is a need for *ex-ante* obligations in certain circumstances in order to ensure the development of competitive market. The definition of significant market power in the Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP) ⁽¹⁾, as amended by Directive 98/61/EC ⁽²⁾, has proved effective in the initial stages of market opening as the threshold for *ex-ante* obligations, but now needs to be adapted to suit more complex and dynamic markets. For this reason, the definition used in this Directive is now based on the concept of dominance as defined in the case law of the Court of Justice and the Court of First Instance of the European Communities. Except in other cases mandated by international obligations of the Community and its Member States, *ex ante* regulatory obligations designed to ensure effective competition are justified only for undertakings which have financed infrastructure on the basis of special or exclusive rights in areas where there are legal, technical or economic barriers to market entry, in particular for the construction of network infrastructure, or which are vertically integrated entities owning or operating network infrastructure for delivery of services to customers and also providing services over that infrastructure, to which their competitors necessarily require access.
- (21) It is essential that such regulatory obligations should only be imposed where there is not effective competition and where national and Community competition law remedies are not sufficient to address the problem. It is necessary therefore for the Commission to draw up guidelines at Community level for national regulatory authorities to follow in assessing whether competition is effective in a given market and in assessing significant market power. Those guidelines will also address the issue of newly emerging markets, where *de facto* the market leader is likely to have a substantial market share but should not be subjected to inappropriate obligations. National regulatory authorities will need to cooperate with each other where the relevant market is found to be transnational.
- (22) The Community and the Member States have taken commitments in relation to standards and the regulatory framework of telecommunications networks and services in the World Trade Organisation.

⁽¹⁾ OJ L 199, 26.7.1997, p. 32.

⁽²⁾ OJ L 268, 3.10.1998, p. 37.

- (23) Standardisation should remain primarily a market-driven process. However, there may still be situations where it is appropriate to require compliance with specified standards at Community level to ensure interoperability in the single market. At national level, Member States are subject to the provisions of Directive 98/34/EC. Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals⁽¹⁾ did not mandate any specific digital television transmission system or service requirement. Through the Digital Video Broadcasting Group, European market actors have developed a family of television transmission systems that have been standardised by the European Telecommunications Standards Institute (ETSI) and have become International Telecommunications Union Recommendations.
- (24) In the event of a dispute between undertakings in the same Member State in an area covered by this Directive or the Specific Measures, an aggrieved party should be able to call on the national regulatory authority to resolve the dispute. National regulatory authorities should be able to impose a solution on the parties.
- (25) In addition to the rights of recourse granted under national or Community law, there is a need for a simple procedure to resolve cross-border disputes which lie outside the competence of a single national regulatory authority. This procedure, to be initiated at the request of either party in a dispute, but with the agreement of all parties, should be responsive, inexpensive and transparent. Where the Commission decides to establish a working group to assist it in resolving cross-border disputes, it should ensure that the group's membership is independent of the parties involved.
- (26) A single Committee should replace the 'ONP Committee' instituted by Article 9 of Directive 90/387/EEC and the Licensing Committee instituted by Article 14 of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services⁽²⁾.
- (27) National regulatory authorities and national competition authorities should have the right to exchange information, in order to allow them to cooperate fully together.
- (28) A high-level group composed of national regulatory authorities should be established. The primary function of this group should be to assist the Commission in securing the uniform application of this Directive and the Specific Measures in order to ensure consistency between Member States. Expert groups may be established to consider specific issues, for example in relation to consumer protection
- (29) The provisions of this Directive should be reviewed periodically, in particular with a view to determining the need for modification in the light of changing technological or market conditions.
- (30) In accordance with 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⁽³⁾, measures for the implementation of this Directive should be adopted by use of the advisory procedure provided for in Article 3 of that Decision or the regulatory procedure provided for in Article 5 of that Decision, as appropriate.
- (31) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, 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, by reason of the scale and effect of the action, be better achieved by the Community. This Directive confines itself to the minimum required in order to achieve that objective and does not go beyond what is necessary for that purpose.
- (32) The following Directives and Decisions should be repealed:
- Directive 90/387/EEC;
 - Council Decision 91/396/EEC of 29 July 1991 on the introduction of a single European emergency call number⁽⁴⁾;
 - Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines⁽⁵⁾, as last amended by Commission Decision 98/80/EC⁽⁶⁾;
 - Council Decision 92/264/EEC of 11 May 1992 on the introduction of a standard international telephone access code in the Community⁽⁷⁾;
 - Directive 95/47/EC;
 - Directive 97/13/EC;
 - Directive 97/33/EC;

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁴⁾ OJ L 217, 6.8.1991, p. 31.

⁽⁵⁾ OJ L 165, 19.6.1992, p. 27.

⁽⁶⁾ OJ L 14, 20.1.1998, p. 27.

⁽⁷⁾ OJ L 137, 20.5.1992, p. 21.

⁽¹⁾ OJ L 281, 23.11.1995, p. 51.

⁽²⁾ OJ L 117, 7.5.1997, p. 15.

- Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector ⁽¹⁾,
- Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment ⁽²⁾,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE, AIM AND DEFINITIONS

Article 1

Scope and aim

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks and associated facilities. It lays down the duties of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.
2. This Directive as well as the Specific Measures are without prejudice to obligations imposed by national law in accordance with Community law or by Community law in respect of services delivered using electronic communications networks and services.
3. This Directive is without prejudice to the provisions of Directive 1999/5/EC.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'electronic communications network' means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, networks used for radio and television broadcasting, and cable TV networks, irrespective of the type of information conveyed;
- (b) 'electronic communications service' means services provided for remuneration which consist wholly or mainly in the transmission and routing of signals on electronic communications networks, including telecommunications services and transmission services in networks

used for broadcasting, but excluding services providing, or exercising editorial control over, content transmitted using electronic communications networks and services;

- (c) 'public communications network' means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;
- (d) 'associated facilities' means those facilities associated with an electronic communications network and/or an electronic communications service, to which access is necessary for the competitive provision of electronic communications services on equal terms;
- (e) 'national regulatory authority' means the body or bodies charged by a Member State with any of the regulatory tasks assigned in this Directive and the Specific Measures;
- (f) 'user' means a legal entity or natural person using or requesting publicly available electronic communications services;
- (g) 'consumer' means any natural person who uses a publicly available electronic communications service for purposes which are outside his or her trade, business or profession;
- (h) 'universal service' means a set of services, defined in Directive (on universal service and users' rights relating to electronic communications networks and services), of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price;
- (i) 'subscriber' means any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;
- (j) 'Specific Measures' means Directive 2000/.../EC (on the authorisation of electronic communications networks and services), Directive 2000/.../EC (on access to, and interconnection of, electronic communications networks and associated facilities), Directive 2000/.../EC (on universal service and users' rights relating to electronic communications networks and services), Directive 2000/.../EC (on the processing of personal data and the protection of privacy in the electronic communications sector) and Regulation (EC) No ... (on unbundled access to the local loop);
- (k) 'Communications Committee' means the committee established under Article 19;
- (l) 'High-Level Communications Group' means the group established under Article 21.

⁽¹⁾ OJ L 24, 30.1.1998, p. 1;

⁽²⁾ OJ L 101, 1.4.1998, p. 24.

CHAPTER II

NATIONAL REGULATORY AUTHORITIES*Article 3***National Regulatory Authorities**

1. Member States shall ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Measures is undertaken by a competent body.

2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure full and effective structural separation of the regulatory function from activities associated with ownership or control.

3. Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently.

4. Member States shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall in addition publish the procedures for consultation and cooperation between those authorities, and between those authorities and national authorities entrusted with the implementation of competition law and national authorities entrusted with the implementation of consumer law, on matters of common interest. Member States shall ensure that there is no overlap between the tasks of those authorities.

5. National regulatory authorities and national competition authorities shall have the right to exchange information. In order to facilitate cooperation and the mutual exchange of information, national regulatory authorities shall have the same rights and duties of confidentiality in respect of exchange of information as a 'competent authority' for the purposes of Regulation No 17.

6. Member States shall notify to the Commission all national regulatory authorities assigned tasks under this Directive and the Specific Measures, and their respective responsibilities.

*Article 4***Right of appeal**

1. Member States shall ensure that a mechanism exists at national level under which a user or undertaking providing electronic communications networks and/or services has the right of appeal against a decision of a national regulatory authority to a body that is independent of government and the national regulatory authority concerned. The appeal body

shall be able to consider not only the procedure according to which the decision was reached, but also the facts of the case. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand.

2. The Member States shall ensure that decisions taken by appeal bodies can be effectively enforced.

3. Where the appeal body is not judicial in character, written reasons for its decision shall always be given. Furthermore, in such a case, its decision shall be subject to review by a court or tribunal.

4. The members of the appeal body shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office and their removal. At least the presiding member of the appeal body shall have the same legal and professional qualifications as members of the judiciary. The appeal body shall take its decisions following a procedure in which both sides are heard, and its decisions shall, by means determined by each Member State, be legally binding.

*Article 5***Provision of information**

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information necessary for national regulatory authorities to ensure compliance with Community law. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

2. Member States shall ensure that national regulatory authorities provide the Commission on request with the information necessary for it to carry out its tasks under the Treaty. The information requested by the Commission shall be proportionate to the performance of those tasks. Where appropriate, the Commission shall make information submitted to one national regulatory authority available to another such authority in the same or another Member State. Where information has been submitted in confidence, the Commission and the national regulatory authorities concerned shall maintain the confidentiality of the information provided.

3. Member States shall ensure that, acting in accordance with national rules on public access to information and subject to Community and national rules on commercial confidentiality, national regulatory authorities publish such information as would contribute to an open and competitive market.

4. National regulatory authorities shall publish the terms governing public access to information as referred to in paragraph 3, including detailed guidelines and procedures for obtaining such access. Any decision to refuse access to information shall give reasons and shall be made public.

Article 6

Consultation and transparency mechanism

1. Member States shall ensure that where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Measures, they give interested parties the chance to comment within a reasonable period. National regulatory authorities shall publish their national consultation procedures.

2. Where a national regulatory authority intends to take measures under Article 8 or Article 14(4) and (5) of this Directive or Article 8(2) of Directive 2000/. . ./EC (on access to and interconnection of electronic communications networks and associated facilities), it shall communicate the draft measure to the Commission and the national regulatory authorities in other Member States, together with the reasoning on which the measure is based. National regulatory authorities may make comments to the national regulatory authority concerned within the period for consultation determined in accordance with paragraph 1.

3. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, and shall communicate the resulting draft measure to the Commission without delay.

4. The measure shall take effect one month after the date of communication to the Commission unless the Commission notifies the national regulatory authority concerned that it has serious doubts as to the compatibility of the measure with Community law and in particular the provisions of Article 7. In such cases, the measure shall not take effect for a further two months. Within that period the Commission shall take a final decision, and if necessary, require the national regulatory authority concerned to amend or withdraw the draft measure. If the Commission does not take a decision within that period, the draft measure may be adopted by the national regulatory authority.

5. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 1 to 4, in order to safeguard competition and protect the interests of users, it may adopt measures immediately. It shall, without delay, communicate those measures, with full reasons, to the Commission and the other national regulatory authorities. The Commission shall verify the compatibility of those measures with Community law and in particular the provisions of Article 7. If necessary, the Commission shall require the national regulatory authority to amend or abolish those measures.

6. Omission on the part of the Commission to take action under paragraphs 4 and 5 shall not prejudice or in any way limit its rights to act under Article 226 of the Treaty in relation to any decision or measure of a national regulatory authority.

CHAPTER III

DUTIES OF NATIONAL REGULATORY AUTHORITIES

Article 7

Policy Objectives and Regulatory Principles

1. Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Measures, the national regulatory authorities take all reasonable measures which are aimed exclusively at achieving the objectives set out in paragraphs 2, 3 and 4. Those measures shall be proportionate to those objectives.

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Measures, in particular those designed to ensure fair competition, national regulatory authorities take the utmost account of the need for regulation to be technologically neutral; i.e. that it neither imposes nor discriminates in favour of the use of a particular type of technology.

2. The national regulatory authorities shall promote an open and competitive market for electronic communications networks, electronic communications services and associated facilities by:

- (a) ensuring that users derive maximum benefit in terms of choice, price, quality and value for money;
- (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- (c) encouraging efficient investment in infrastructure; and
- (d) ensuring the efficient allocation and assignment of radio spectrum.

3. The national regulatory authorities shall contribute to the development of the internal market by:

- (a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and electronic communications services at European level;
- (b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services; and

(c) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services.

4. The national regulatory authorities shall promote the interests of European citizens by:

(a) ensuring that all citizens have affordable access to a universal service specified in Directive 2000/.../EC (on universal service and users' rights relating to electronic communications networks and services);

(b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures;

(c) ensuring a high level of protection of personal data and privacy;

(d) requiring transparency of tariffs and conditions for using publicly available electronic communications services; and

(e) addressing the needs of specific social groups, in particular disabled users.

Article 8

Management of radio spectrum

1. Member States shall ensure the effective management of radio spectrum for electronic communication services in their territory. They shall ensure that the allocation and assignment of radio spectrum by national regulatory authorities is based on objective, transparent, non-discriminatory and proportionate criteria.

2. National regulatory authorities shall promote the harmonisation of use of radio spectrum across the Community, consistent with the need to ensure effective and efficient use thereof.

3. National regulatory authorities may use auctions or administrative pricing of spectrum in pursuit of the objectives set out in Article 7.

4. Member States may make provision for undertakings to trade rights to use radio spectrum with other undertakings only where such rights to use radio spectrum have been assigned by national regulatory authorities by auction. Decisions to make provision for trading of such rights of use in specific frequency bands shall be subject to the procedure set out in Article 6.

5. Member States shall ensure that an undertaking's intention to trade rights to use radio spectrum is notified to the national regulatory authority responsible for spectrum assignment and that any sales transaction takes place under the supervision and with the consent of that authority. National regulatory authorities shall ensure that interested parties are aware of an intended sale of rights to use radio

spectrum in order that they have the opportunity to make an offer for such rights of use. National regulatory authorities shall ensure that competition is not distorted as a result of any such transaction. Where radio spectrum use has been harmonised through Decision 2000/.../EC (on a regulatory framework for radio spectrum policy in the Community) or other Community measures, any such trading shall not result in change of use of that radio spectrum.

6. Decisions to allocate rights of use of spectrum shall be subject to the procedure set out in Article 6.

Article 9

Numbering, naming and addressing

1. Member States shall ensure that national regulatory authorities control the allocation and assignment of all national numbering resources and the management of the national numbering plan. Member States shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services.

2. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services. In particular, Member States shall ensure that an undertaking allocated a range of numbers does not discriminate against other providers of electronic communications services as regards the number sequences used to give access to their services.

3. Member States shall ensure that the national numbering plans, and all subsequent additions or amendments thereto, are published, subject only to limitations imposed on the grounds of national security.

4. National regulatory authorities shall support the harmonisation of numbering resources within the Community where that is necessary to support the development of pan-European services. Any such harmonisation shall take place in accordance with the procedure referred to in Article 19(2).

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

6. In order to ensure full global interoperability of services, the Community shall take all necessary steps to ensure the coordination of Member States' positions in international organisations and forums in which decisions are taken on issues relating to the numbering, naming and addressing of electronic communications networks and services.

Article 10

Rights of way

1. Member States shall ensure that the procedures used for the granting of rights to install facilities on, over or under public or private property are available to all providers of publicly available electronic communications networks on the basis of transparent and publicly available terms and conditions applied without discrimination and without delay.

2. Member States shall ensure that where local authorities retain ownership or control of undertakings operating electronic communications networks and/or services, there is effective structural separation of the function responsible for granting rights of way from activities associated with ownership or control.

Article 11

Co-location and facility sharing

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall encourage the sharing of such facilities or property, in particular where undertakings are deprived of access to viable alternatives because of the need to protect the environment, public health, public security or to meet town and country planning objectives.

2. Agreements for co-location or facility sharing shall normally be a matter for commercial and technical agreement between the parties concerned. The national regulatory authority may intervene to resolve disputes, as provided for in Article 17.

3. National regulatory authorities may impose the sharing of facilities or property (including physical co-location) on an undertaking operating an electronic communications network only after an appropriate period of public consultation during which all interested parties must be given an opportunity to express their views. Such sharing arrangements may include rules for apportioning the costs of facility or property sharing.

Article 12

Accounting separation and financial reports

1. Member States shall require undertakings providing public communications networks or publicly available electronic communications services which have special or exclusive rights for the provision of services in other sectors in the same or another Member State to:

(a) keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the

detailed attribution methods used, related to their activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs, or

(b) have structural separation for the activities associated with the provision of electronic communications networks or services.

A Member State may choose not to apply the requirements referred to in the first subparagraph to undertakings the annual turnover of which in activities associated with electronic communications networks or services in that Member State is less than EUR 50 million.

2. Undertakings providing public communications networks or publicly available electronic communications services shall provide financial information to their national regulatory authority promptly on request and to the level of detail required. National regulatory authorities may publish such information as would contribute to an open and competitive market, while respecting Community and national rules on commercial confidentiality.

3. The financial reports of undertakings providing public communications networks or publicly available electronic communications services shall be drawn up and submitted to independent audit and published. The audit shall be carried out in accordance with the relevant Community and national rules. This requirement shall also apply to the separate accounts required under paragraph 1(a).

CHAPTER IV

GENERAL PROVISIONS

Article 13

Undertakings with significant market power

1. Where the Specific Measures require national regulatory authorities to determine whether operators have significant market power, paragraphs 2 and 3 shall apply.

2. An undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

3. Where an undertaking has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking.

Article 14

Market analysis procedure

1. After consultation with national regulatory authorities through the High-Level Communications Group, the Commission shall issue a Decision on Relevant Product and Service Markets (hereinafter 'the Decision'), addressed to Member States. The Decision shall identify those product and service markets within the electronic communications sector, the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Measures, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall also publish Guidelines on market analysis and the calculation of significant market power (hereinafter 'the Guidelines').

The Commission may indicate in the Decision those markets which are transnational. In such markets, the national regulatory authorities concerned shall jointly conduct the market analysis and decide on any imposition of regulatory obligations under paragraphs 2 to 5 in a concerted fashion.

National regulatory authorities shall seek and receive the prior agreement of the Commission before using market definitions that are different from those identified in the Decision or before imposing sector-specific regulatory obligations on markets other than those identified in the Decision.

The Commission shall regularly review the Decision.

2. Within two months of the date of adoption of the Decision or any updating thereof, national regulatory authorities shall carry out an analysis of the product and service markets identified in the Decision, in accordance with the Guidelines. Member States shall ensure that national competition authorities are fully associated with that analysis. The national regulatory authorities' analysis of each market shall be published.

3. Where a national regulatory authority is required under Articles 16, 25 or 27 of Directive 2000/. . /EC (on universal service and users' rights relating to electronic communications networks and services), or Articles 7 or 8 of Directive 2000/. . /EC (on access to and interconnection of electronic communications networks and associated facilities) to determine whether to impose, maintain or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 2 whether a market identified in the Decision is effectively competitive in a specific geographic area in accordance with the Guidelines.

4. Where a national regulatory authority concludes that the market is effectively competitive, it shall not impose sector-specific regulatory obligations set out in the Specific Measures. In cases where such sector-specific regulatory obligations already exist, it shall withdraw such obligations placed on undertakings in that specific market. An appropriate period

of notice shall be given to parties affected by such a withdrawal of obligations.

5. Where a national regulatory authority determines that a market identified in the Decision is not effectively competitive in a specific geographic area in accordance with the Guidelines, it shall impose the sector-specific regulatory obligations set out in the Specific Measures, or maintain such obligations where they already exist.

6. Measures taken pursuant to paragraphs 4 and 5 shall be subject to the procedure set out in Article 6.

Article 15

Standardisation

1. The Commission shall draw up and publish in the *Official Journal of the European Communities* a List of standards and/or specifications to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities. Where necessary, the Commission may, acting in accordance with the procedure referred to in Article 19(2), request that standards be drawn up by European standardisation bodies.

2. Member States shall encourage the use of the standards and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability and to improve freedom of choice for users.

As long as standards and/or specifications have not been published in accordance with paragraph 1, Member States shall encourage the implementation of standards and/or specifications adopted by European standardisation bodies such as ETSI or the Joint European Standards Institution CEN/CENELEC.

In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunications Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Committee (IEC).

Where international standards exist, Member States shall take all reasonable measures to ensure that European standardisation bodies, such as ETSI or CEN/CENELEC use them, or the relevant parts of them, as a basis for the standards they develop, except where such international standards or relevant parts would be ineffective.

3. If the standards and/or specifications referred to in paragraph 1 have not been adequately implemented so that interoperability of services in one or more Member States cannot be ensured, the implementation of such standards and/or specifications may be made compulsory in accordance with paragraph 4, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users.

4. Where the Commission intends to make the implementation of certain standards and/or specifications compulsory, it shall publish a notice in the *Official Journal of the European Communities* and invite public comment by all parties concerned. The Commission, acting in accordance with the procedure referred to in Article 19(3), shall make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the List of standards and/or specifications referred to in paragraph 1.

5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, it shall, acting in accordance with the procedure referred to in Article 19(2), remove them from the List of standards and/or specifications referred to in paragraph 1.

6. Where the Commission considers that standards and/or specifications referred to in paragraph 4 no longer contribute to the provision of harmonised electronic communications services, it shall, acting in accordance with the procedure referred to in Article 19(3), remove them from the List of standards and/or specifications referred to in paragraph 1.

Article 16

Harmonisation measures

1. The Commission may, where appropriate, acting in accordance with the procedure referred to in Article 19(2), issue Recommendations to Member States. Member States shall ensure that national regulatory authorities take the utmost account of those Recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a Recommendation, it shall publish its reasoning.

2. Where the Commission finds, *inter alia*, that divergence in regulation at national level creates a barrier to the single market, or where the High-Level Communications Group advises that a binding harmonisation measure is necessary, the Commission may, acting in accordance with the procedure referred to in Article 19(3), adopt binding harmonisation measures.

Article 17

Dispute resolution between undertakings

1. In the event of a dispute arising in the field covered by this Directive or the Specific Measures between undertakings providing electronic communications networks or services in a single Member State, the national regulatory authority concerned shall, at the request of either party, issue a binding decision within two months to resolve the dispute. Member States shall ensure that all parties cooperate fully with the national regulatory authority.

2. In resolving a dispute, the national regulatory authority shall take into account, *inter alia*:

- (a) user interests,
- (b) regulatory obligations or constraints imposed on any of the parties,
- (c) the desirability of stimulating innovative market offerings, and of providing users with a wide range of electronic communications services at a national and at a Community level,
- (d) where appropriate, the availability of technically and commercially viable alternatives to the services or facilities requested,
- (e) the need to maintain the integrity of electronic communications networks and the interoperability of services,
- (f) the nature of the request in relation to the resources available to meet the request,
- (g) the relative market positions of the parties,
- (h) the public interest (e.g. the protection of the environment, public health and safety),
- (i) the promotion of competition,
- (j) the need to maintain a universal service.

3. The decision of the national regulatory authority shall be published. The parties concerned shall be given a full statement of the reasons on which it is based.

4. The procedure referred to in paragraphs 1, 2 and 3 shall not preclude either party bringing an action for damages before the national courts.

Article 18

Resolution of cross-border disputes

1. In the event of a cross-border dispute arising in the field covered by this Directive or the Specific Measures between parties in different Member States, which lies outside the competence of a single national regulatory authority, the procedure set out in paragraphs 2 to 5 shall be available.

2. Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with Article 17(2).

3. If the dispute is not resolved within two months of its referral to the national regulatory authorities concerned, either party may, with the agreement of all parties, submit to the Commission, with copies to all parties involved, a request for a decision on the dispute. In so doing, the parties renounce any further action under national law.

4. When the Commission receives a request as referred to in paragraph 3, it shall examine the case, assisted, where it considers it appropriate, by an expert working group, and issue a decision within three months. Member States shall ensure that all parties fully implement the decision.

5. In the event that no decision is issued under paragraph 4, the parties shall be free to take further action under national law.

Article 19

Committee

1. The Commission shall be assisted by a committee, composed of representatives of the Member States and chaired by the representative of the Commission ('the Communications Committee').

2. Where reference is made to this paragraph, the advisory procedure laid down in Article 3 of Decision 1999/468/EC shall apply, in compliance with Article 7 and Article 8 thereof.

3. 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 Article 7 and Article 8 thereof.

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

Article 20

Exchange of information

1. The Commission shall, where appropriate, inform the Communications Committee of the outcome of regular consultations with the representatives of network operators, service providers, users, consumers, manufacturers and trade unions.

2. The Communications Committee shall, taking account of the Community's electronic communications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding electronic communications networks and services.

Article 21

High-Level Communications Group

1. A High-Level Communications Group is hereby set up. It shall have advisory status and act independently.

2. The Group shall be composed of representatives designated by the national regulatory authorities. It shall elect its chairman. The Group's secretariat shall be provided by the Commission. The Group shall draw up its own rules of procedure, in agreement with the Commission.

3. Some tasks referred to in paragraph 4 may be carried out by expert groups created for that purpose. Representatives of national competition authorities and other relevant authorities

shall be invited where appropriate to participate in the work of the Group and the expert groups.

4. The Group and/or the expert groups shall:

(a) examine any question concerning the application of the national measures adopted under this Directive and the Specific Measures in order to promote the uniform application of such measures in all Member States;

(b) adopt agreed positions on the detailed application of Community legislation, with a view to facilitating pan-European services;

(c) advise the Commission on drawing up the Decision on Relevant Product and Service Markets referred to in Article 14;

(d) consider issues brought to their attention by Member States, national regulatory authorities, market players, or users, and propose solutions where appropriate;

(e) inform the Commission of any difficulties encountered in implementation of this Directive and the Specific Measures;

(f) endorse codes of practice, drawn up by the Group or the expert groups or by other interested parties, for use in Member States, on issues related to the application of Community legislation in the sector;

(g) monitor and publicise, if appropriate by means of a database, the activities of national regulatory authorities throughout the Community, in particular national consultations on specific regulatory issues and subsequent decisions by national regulatory authorities.

5. The Group shall inform the Commission of any divergences between the laws or practices of Member States which are likely to affect the Community market for electronic communications networks or services. The Group may, on its own initiative, give opinions or make recommendations on all matters relating to electronic communications networks or services in the Community.

6. The Group's opinions and recommendations shall be forwarded to the Commission and to the Communications Committee. The Commission shall inform the Group of what action, if any, it intends to take in response to its opinions and recommendations.

7. The Group and the expert groups shall take the utmost account of the views of interested parties, including consumers, users, network operators, service providers, manufacturers and relevant associations at Community level.

8. The Group shall submit an annual report of its activities and those of the expert groups to the European Parliament, the Council and the Commission. The report shall be made public.

Article 22

Publication of information

1. Member States shall ensure that up-to-date information pertaining to the application of this Directive and the Specific Measures is made publicly available in a manner that guarantees all interested parties easy access to that information. They shall publish a notice in their national Official Gazette describing how and where the information is published. The first such Notice shall be published before 1 January 2002, and thereafter a Notice shall be published whenever there is any change in the information contained therein.

2. Member States shall send to the Commission a copy of all such Notices at the time of publication. The Commission shall distribute the information to the Communications Committee and the High-Level Communications Group as appropriate.

Article 23

Review procedures

The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of entry into force of this Directive. For this purpose, the Commission may request from the Member States information, which shall be supplied without delay.

CHAPTER V

FINAL PROVISIONS

Article 24

Repeal

The following Directives and Decisions are repealed with effect from 1 January 2002:

- Directive 90/387/EEC;
- Decision 91/396/EEC;

- Directive 92/44/EEC, without prejudice to Articles 3, 4, 6, 7, 8 and 10 thereof;
- Decision 92/264/EEC;
- Directive 95/47/EC;
- Directive 97/13/EC;
- Directive 97/33/EC, without prejudice to Articles 4, 6, 7, 8, 11, 12 and 14 thereof;
- Directive 97/66/EC;
- Directive 98/10/EC, without prejudice to Articles 16 and 17 thereof.

Article 25

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 amendments to those provisions.

Article 26

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 27

Addressees

This Directive is addressed to the Member States.

ANNEX

LIST OF MARKETS TO BE INCLUDED IN THE INITIAL COMMISSION DECISION ON PRODUCT AND SERVICE MARKETS (ARTICLE 14)**1. Markets referred to in Directive (...) on universal service and users' rights relating to electronic communications networks and services**

Article 16 (Retail tariff regulation) and Article 25(2) (Carrier selection)

- the provision of connection to and use of the public telephone network at fixed locations

Article 27 (Leased lines)

- the provision of leased lines to end-users

2. Markets referred to in Directive (...) on access to, and interconnection of, electronic communications networks and associated facilities

Article 7 — *Markets defined under the former regulatory framework, where obligations should be reviewed*

Interconnection (Directive 97/33/EC, as amended by Directive 98/61/EC)

- call origination in the fixed public telephone network;
- call termination in the fixed public telephone network;
- transit services in the fixed public telephone network;
- call origination on public mobile telephone networks;
- call termination on public mobile telephone networks;
- leased line interconnection (interconnection of part circuits).

Network access and special network access (Directive 97/33/EC, Directive 98/10/EC)

- access to the fixed public telephone network, including unbundled access to the local loop;
- access to public mobile telephone networks, including carrier selection.

Wholesale leased line capacity (Directive 92/44/EEC as amended by Directive 97/51/EC)

- wholesale provision of leased line capacity to other suppliers of electronic communications networks or services.

3. Markets referred to in Regulation (...) on unbundled access to the local loop

- services provided over unbundled (copper) loops.
-