DIRECTIVES

DIRECTIVE 2009/136/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 November 2009

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Having regard to the opinion of the European Data Protection Supervisor [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

Whereas:

(1) The functioning of the five directives comprising the existing regulatory framework for electronic communications networks and services (Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) [5], Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) [6], Directive 2002/21/EC of the European Parliament and the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) [7], Directive 2002/22/EC (Universal Service Directive) [8] and Directive 2002/58/EC (Directive on privacy and electronic communications) [9] (together referred to as 'the Framework Directive and the Specific Directives')) is subject to periodic review by the Commission, with a view, in particular, to determining the need for modification in the light of technological and market developments.

(2) In that regard, the Commission presented its findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services.

(3) The reform of the EU regulatory framework for electronic communications networks and services, including the reinforcement of provisions for end-users with disabilities, represents a key step towards simultaneously achieving a Single European Information Space and an inclusive information society. These objectives are included in the strategic framework for the development of the information society as described in the Commission Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 1 June 2005 entitled 'i2010 – A European Information Society for growth and employment'.

(4) A fundamental requirement of universal service is to provide users on request with a connection to the public communications network at a fixed location and at an affordable price. The requirement is for the provision of local, national and international telephone calls, facsimile communications and data services, the provision of which may be restricted by Member States to the end-user's

[1] OJ C 224, 30.8.2008, p. 50.
[2] OJ C 257, 9.10.2008, p. 51.
[3] OJ C 181, 18.7.2008, p. 1.
[4] Opinion of the European Parliament of 24 September 2008 (not yet published in the Official Journal), Council Common Position of 16 February 2009 (OJ C 103 E, 5.5.2009, p. 40), Position of the European Parliament of 6 May 2009 and Council Decision of 26 October 2009.
[5] OJ L 108, 24.4.2002, p. 7.
[6] OJ L 108, 24.4.2002, p. 21.
[7] OJ L 108, 24.4.2002, p. 33.
[8] OJ L 108, 24.4.2002, p. 51.
[9] OJ L 201, 31.7.2002, p. 37.

primarylocation or residence. There should be no constraints on the technical means by which this is provided, allowing for wired or wireless technologies, nor any constraints on which operators provide part or all of universal service obligations.

(5) Data connections to the public communications network at a fixed location should be capable of supporting data communications at rates sufficient for access to online services such as those provided via the public Internet. The speed of Internet access experienced by a given user may depend on a number of factors, including the provider(s) of Internet connectivity as well as the given application for which a connection is being used. The data rate that can be supported by a connection to the public communications 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. Flexibility is required to allow Member States to take measures, where necessary, to ensure that a data connection is capable of supporting satisfactory data rates which are sufficient to permit functional Internet access, as defined by the Member States, taking due account of specific circumstances in national markets, for instance the prevailing bandwidth used by the majority of subscribers in that Member State, and technological feasibility, provided that these measures seek to minimise market distortion. Where such measures result in an unfair burden on a designated undertaking, taking due account of the costs and revenues as well as the intangible benefits resulting from the provision of the services concerned, this may be included in any net cost calculation of universal obligations. Alternative financing of underlying network infrastructure, involving Community funding or national measures in accordance with Community law, may also be implemented.

(6) This is without prejudice to the need for the Commission to conduct a review of the universal service obligations, which may include the financing of such obligations, in accordance with Article 15 of Directive 2002/22/EC (Universal Service Directive), and, if appropriate, to present proposals for reform to meet public interest objectives.

(7) For the sake of clarity and simplicity, this Directive only deals with amendments to Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications).

(8) Without prejudice to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity [1], and in particular the disability requirements laid down in Article 3(3)(f) thereof, certain aspects of terminal equipment, including consumer premises equipment intended for disabled end-users, whether their special needs are due to disability or related to ageing, should be brought within the scope of Directive 2002/22/EC (Universal Service Directive) in order to facilitate access to networks and the use of services. Such equipment currently includes receive-only radio and television terminal equipment as well as special terminal devices for hearing-impaired end-users.

(9) Member States should introduce measures to promote the creation of a market for widely available products and services incorporating facilities for disabled end-users. This can be achieved, inter alia, by referring to European standards, introducing electronic accessibility (eAccessibility) requirements for public procurement procedures and calls for tender relating to the provision of services, and by implementing legislation upholding the rights of disabled end-users.

(10) When an undertaking designated to provide universal service, as identified in Article 4 of Directive 2002/22/EC (Universal Service Directive), chooses to dispose of a substantial part, viewed in light of its universal service obligation, or all, of its local access network assets in the national territory to a separate legal entity under different ultimate ownership, the national regulatory authority should assess the effects of the transaction in order to ensure the continuity of universal service obligations in all or parts of the national territory. To this end, the national regulatory authority which imposed the universal service obligations should be informed by the undertaking in advance of the disposal. The assessment of the national regulatory authority should not prejudice the completion of the transaction.

(11) Technological developments have led to substantial reductions in the number of public pay telephones. In order to ensure technological neutrality and continued access by the public to voice telephony, national regulatory authorities should be able to impose obligations on undertakings to ensure not only that public pay telephones are provided to meet the reasonable needs of end-users, but also that alternative public voice telephony access points are provided for that purpose, if appropriate.

(12) Equivalence in disabled end-users' access to services should be guaranteed to the level available to other end-users. To this end, access should be functionally equivalent, such that disabled end-users benefit from the same usability of services as other end-users, but by different means.

[1] OJ L 91, 7.4.1999, p. 10.

(13) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. an electronic communications service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan, whether such a service is based on circuit switching or packet switching technology. It is the nature of such a service that it is bidirectional, enabling both the parties to communicate. A service which does not fulfil all these conditions, such as for example a 'click-through' application on a customer service website, is not a publicly available telephone service. Publicly available telephone services also include means of communication specifically intended for disabled end-users using text relay or total conversation services.

(14) It is necessary to clarify that the indirect provision of services could include situations where originating is made via carrier selection or pre-selection or where a service provider resells or re-brands publicly available telephone services provided by another undertaking.

(15) As a result of technological and market evolution, networks are increasingly moving to 'Internet Protocol' (IP) technology, and consumers are increasingly able to choose between a range of competing voice service providers. Therefore, Member States should be able to separate universal service obligations concerning the provision of a connection to the public communications network at a fixed location from the provision of a publicly available telephone service. Such separation should not affect the scope of universal service obligations defined and reviewed at Community level.

(16) In accordance with the principle of subsidiarity, it is for the Member States to decide on the basis of objective criteria which undertakings are designated as universal service providers, where appropriate taking into account the ability and the willingness of undertakings to accept all or part of the universal service obligations. This does not preclude that Member States may include, in the designation process, specific conditions justified on grounds of efficiency, including, inter alia, grouping geographical areas or components or setting minimum periods for the designation.

(17) National regulatory authorities should be able to monitor the evolution and level of retail tariffs for services that fall under the scope of universal service obligations, even where a Member State has not yet designated an undertaking to provide universal service. In such a case, the monitoring should be carried out in such a way that it would not represent an excessive administrative burden for either national regulatory authorities or undertakings providing such service.

(18) Redundant obligations designed to facilitate the transition from the regulatory framework of 1998 to that of 2002 should be deleted, together with other provisions that overlap with and duplicate those laid down in Directive 2002/21/EC (Framework Directive).

(19) The requirement to provide a minimum set of leased lines at retail level, which was necessary to ensure the continued application of provisions of the regulatory framework of 1998 in the field of leased lines, which was not sufficiently competitive at the time the 2002 framework entered into force, is no longer necessary and should be repealed.

(20) To continue to impose carrier selection and carrier preselection directly in Community legislation could hamper technological progress. These remedies should rather be imposed by national regulatory authorities as a result of market analysis carried out in accordance with the procedures set out in Directive 2002/21/EC (Framework Directive) and through the obligations referred to in Article 12 of Directive 2002/19/EC (Access Directive).

(21) Provisions on contracts should apply not only to consumers but also to other end-users, primarily micro enterprises and small and medium-sized enterprises (SMEs), which may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens for providers and the complexity related to the definition of SMEs, the provisions on contracts should not apply automatically to those other end-users, but only where they so request. Member States should take appropriate measures to promote awareness amongst SMEs of this possibility.

(22) As a consequence of technological developments, other types of identifiers may be used in the future, in addition to ordinary forms of numbering identification.

(23) Providers of electronic communications services that allow calls should ensure that their customers are adequately informed as to whether or not access to emergency services is provided and of any limitation on service (such as a limitation on the provision of caller location information or the routing of emergency calls). Such providers should also provide their customers with clear and transparent information in the initial contract and in the event of any change in the access provision, for example in billing

information. This information should include any limitations on territorial coverage, on the basis of the planned technical operating parameters of the service and the available infrastructure. Where the service is not provided over a switched telephony network, the information should also include the level of reliability of the access and of caller location information compared to a service that is provided over a switched telephony network, taking into account current technology and quality standards, as well as any quality of service parameters specified under Directive 2002/22/EC (Universal Service Directive).

(24) With respect to terminal equipment, the customer contract should specify any restrictions imposed by the provider on the use of the equipment, such as by way of 'SIM-locking' mobile devices, if such restrictions are not prohibited under national legislation, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost imposed in order to retain the equipment.

(25) Without imposing any obligation on the provider to take action over and above what is required under Community law, the customer contract should also specify the type of action, if any, the provider might take in case of security or integrity incidents, threats or vulnerabilities.

(26) In order to address public interest issues with respect to the use of communications services and to encourage protection of the rights and freedoms of others, the relevant national authorities should be able to produce and have disseminated, with the aid of providers, public interest information related to the use of such services. This could include public interest information regarding copyright infringement, other unlawful uses and the dissemination of harmful content, and advice and means of protection against risks to personal security, which may for example arise from disclosure of personal information in certain circumstances, as well as risks to privacy and personal data, and the availability of easy-to-use and configurable software or software options allowing protection for children or vulnerable persons. The information could be coordinated by way of the cooperation procedure established in Article 33(3) of Directive 2002/22/EC (Universal Service Directive). Such public interest information should be updated whenever necessary and should be presented in easily comprehensible printed and electronic formats, as determined by each Member State, and on national public authority websites. National regulatory authorities should be able to oblige providers to disseminate this standardised information to all their customers in a manner deemed appropriate by the national regulatory authorities. When required by Member States, the information should also be included in contracts. Dissemination of such information should however not impose an excessive burden on undertakings. Member States should require this dissemination by the means used by undertakings in communications with subscribers made in the ordinary course of business.

(27) The right of subscribers to withdraw from their contracts without penalty refers to modifications in contractual conditions which are imposed by the providers of electronic communications networks and/or services.

(28) End-users should be able to decide what content they want to send and receive, and which services, applications, hardware and software they want to use for such purposes, without prejudice to the need to preserve the integrity and security of networks and services. A competitive market will provide users with a wide choice of content, applications and services. National regulatory authorities should promote users' ability to access and distribute information and to run applications and services of their choice, as provided for in Article 8 of Directive 2002/21/EC (Framework Directive). Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any limiting conditions imposed on the use of electronic communications services by the service and/or network provider. Such information should, at the option of the provider, specify the type of content, application or service concerned, individual applications or services, or both. Depending on the technology used and the type of limitation, such limitations may require user consent under Directive 2002/58/EC (Directive on privacy and electronic communications).

(29) Directive 2002/22/EC (Universal Service Directive) neither mandates nor prohibits conditions imposed by providers, in accordance with national law, limiting end-users' access to and/or use of services and applications, but lays down an obligation to provide information regarding such conditions. Member States wishing to implement measures regarding end-users' access to and/or use of services and applications must respect the fundamental rights of citizens, including in relation to privacy and due process, and any such measures should take full account of policy goals defined at Community level, such as furthering the development of the Community information society.

(30) Directive 2002/22/EC (Universal Service Directive) does not require providers to monitor information transmitted over their networks or to bring legal proceedings against their customers on grounds of such information, nor does it make providers liable for that information. Responsibility for punitive action or criminal prosecution is a matter for national law, respecting fundamental rights and freedoms, including the right to due process.

(31) In the absence of relevant rules of Community law, content, applications and services are deemed lawful or harmful in accordance with national substantive and procedural law. It is a task for the Member States, not for providers of electronic communications networks or services, to decide, in accordance with due process, whether content, applications or services are lawful or harmful. The Framework Directive and the Specific Directives are without prejudice to 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) ([1]), which, inter alia, contains a 'mere conduit' rule for intermediary service providers, as defined therein.

(32) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users and consumers of electronic communications services should be able to easily compare the prices of various services offered on the market based on information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should be able to require from undertakings providing electronic communications networks and/or services greater transparency as regards information (including tariffs, consumption patterns and other relevant statistics) and to ensure that third parties have the right to use, without charge, publicly available information published by such undertakings. National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information where it has already been published and thus belongs in the public domain. In addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC (Directive on electronic commerce), undertakings should also, if required by Member States, provide subscribers with public interest information produced by the relevant public authorities regarding, inter alia, the most common infringements and their legal consequences.

(33) Customers should be informed of their rights with respect to the use of their personal information in subscriber directories and in particular of the purpose or purposes of such directories, as well as their right, free of charge, not to be included in a public subscriber directory, as provided for in Directive 2002/58/EC (Directive on privacy and electronic communications). Customers should also be informed of systems which allow information to be included in the directory database but which do not disclose such information to users of directory services.

(34) A competitive market should ensure that end-users enjoy the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over networks. In order to meet quality of service requirements, operators may use procedures to measure and shape traffic on a network link so as to avoid filling the link to capacity or overfilling the link, which would result in network congestion and poor performance. Those procedures should be subject to scrutiny by the national regulatory authorities, acting in accordance with the Framework Directive and the Specific Directives and in particular by addressing discriminatory behaviour, in order to ensure that they do not restrict competition. If appropriate, national regulatory authorities may also impose minimum quality of service requirements on undertakings providing public communications networks to ensure that services and applications dependent on the network are delivered at a minimum quality standard, subject to examination by the Commission. National regulatory authorities should be empowered to take action to address degradation of service, including the hindering or slowing down of traffic, to the detriment of consumers. However, since inconsistent remedies can impair the functioning of the internal market, the Commission should assess any requirements intended to be set by national regulatory authorities for possible regulatory intervention across the Community and, if necessary, issue comments or recommendations in order to achieve consistent application.

(35) In future IP networks, where provision of a service may be separated from provision of the network, Member States should determine the most appropriate steps to be taken to ensure the availability of publicly available telephone services provided using public communications networks and uninterrupted access to emergency services in the event of catastrophic network breakdown or in cases of force majeure, taking into account the priorities of different types of subscriber and technical limitations.

([1]) OJ L 178, 17.7.2000, p. 1.

(36) In order to ensure that disabled end-users benefit from competition and the choice of service providers enjoyed by the majority of end-users, relevant national authorities should specify, where appropriate and in light of national conditions, consumer protection requirements to be met by undertakings providing publicly available electronic communications services. Such requirements may include, in particular, that undertakings ensure that disabled end-users take advantage of their services on equivalent terms and conditions, including prices and tariffs, as those offered to their other end-users, irrespective of any additional costs incurred by them. Other requirements may relate to wholesale arrangements between undertakings.

(37) Operator assistance services cover a range of different services for end-users. The provision of such services should be left to commercial negotiations between providers of public communications networks and operator assistance services, as is the case for any other customer support service, and it is not necessary to continue to mandate their provision. The corresponding obligation should therefore be repealed.

(38) Directory enquiry services should be, and frequently are, provided under competitive market conditions, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services [1]. Wholesale measures ensuring the inclusion of end-user data (both fixed and mobile) in databases should comply with the safeguards for the protection of personal data, including Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications). The cost-oriented supply of that data to service providers, with the possibility for Member States to establish a centralised mechanism for providing comprehensive aggregated information to directory providers, and the provision of network access under reasonable and transparent conditions, should be put in place in order to ensure that end-users benefit fully from competition, with the ultimate aim of enabling the removal of retail regulation from these services and the provision of offers of directory services under reasonable and transparent conditions.

(39) End-users should be able to call and access the emergency services using any telephone service capable of originating voice calls through a number or numbers in national telephone numbering plans. Member States that use national emergency numbers besides '112' may impose on undertakings similar obligations for access to such national emergency numbers. Emergency authorities should be able to handle and answer calls to the number '112' at least as expeditiously and effectively as calls to national emergency numbers. It is important to increase awareness of '112' in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware, when travelling in any Member State, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material, that '112' can be used as a single emergency number throughout the Community. This is primarily the responsibility of the Member States, but the Commission should continue both to support and to supplement initiatives of the Member States to heighten awareness of '112' and periodically to evaluate the public's awareness of it. The obligation to provide caller location information should be strengthened so as to increase the protection of citizens. In particular, undertakings should make caller location information available to emergency services as soon as the call reaches that service independently of the technology used. In order to respond to technological developments, including those leading to increasingly accurate caller location information, the Commission should be empowered to adopt technical implementing measures to ensure effective access to '112' services in the Community for the benefit of citizens. Such measures should be without prejudice to the organisation of emergency services of Member States.

(40) Member States should ensure that undertakings providing end-users with an electronic communications service designed for originating calls through a number or numbers in a national telephone numbering plan provide reliable and accurate access to emergency services, taking into account national specifications and criteria. Network-independent undertakings may not have control over networks and may not be able to ensure that emergency calls made through their service are routed with the same reliability, as they may not be able to guarantee service availability, given that problems related to infrastructure are not under their control. For network-independent undertakings, caller location information may not always be technically feasible. Once internationally-recognised standards ensuring accurate and reliable routing and connection to the emergency services are in place, network-independent undertakings should also fulfil the obligations related to caller location information at a level comparable to that required of other undertakings.

(41) Member States should take specific measures to ensure that emergency services, including '112', are equally accessible to disabled end-users, in particular deaf, hearing-impaired, speech-impaired and deaf-blind users. This could involve the provision of special terminal devices for hearing-impaired users, text relay services, or other specific equipment.

[1] OJ L 249, 17.9.2002, p. 21.

(42) Development of the international code '3883' (the European Telephony Numbering Space (ETNS)) is currently hindered by insufficient awareness, overly bureaucratic procedural requirements and, in consequence, lack of demand. In order to encourage the development of ETNS, the Member States to which the International Telecommunications Union has assigned the international code '3883' should, following the example of the implementation of the '.eu' top-level domain, delegate responsibility for its management, number assignment and promotion to an existing separate organisation, designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure. That organisation should also have the task of developing proposals for public service applications using ETNS for common European services, such as a common number for reporting thefts of mobile terminals.

(43) Considering the particular aspects related to reporting missing children and the currently limited availability of such a service, Member States should not only reserve a number, but also make every effort to ensure that a service for reporting missing children is actually available in their territories under the number '116000', without delay. To that end, Member States should, if appropriate, inter alia, organise tendering procedures in order to invite interested parties to provide that service.

(44) Voice calls remain the most robust and reliable form of access to emergency services. Other means of contact, such as text messaging, may be less reliable and may suffer from lack of immediacy. Member States should, however, if they deem it appropriate, be free to promote the development and implementation of other means of access to emergency services which are capable of ensuring access equivalent to voice calls.

(45) Pursuant to its Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value [1], the Commission has asked Member States to reserve numbers in the '116' numbering range for certain services of social value. The appropriate provisions of that Decision should be reflected in Directive 2002/22/EC (Universal Service Directive) in order to integrate them more firmly into the regulatory framework for electronic communications networks and services and to facilitate access by disabled end-users.

(46) A single market implies that end-users are able to access all numbers included in the national numbering plans of other Member States and to access services using non-geographic numbers within the Community, including, among others, freephone and premium rate numbers. End-users should also be able to access numbers from the European Telephone Numbering Space (ETNS) and Universal International Freephone Numbers (UIFN). Cross-border access to numbering resources and associated services should not be prevented, except in objectively justified cases, for example to combat fraud or abuse (e.g. in connection with certain premium-rate services), when the number is defined as having a national scope only (e.g. a national short code) or when it is technically or economically unfeasible. Users should be fully informed in advance and in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes.

(47) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interests. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges and so on. This does not preclude the imposition of reasonable minimum contractual periods in consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications and should be implemented with the minimum delay, so that the number is functionally activated within one working day and the user does not experience a loss of service lasting longer than one working day. Competent national authorities may prescribe the global process of the porting of numbers, taking into account national provisions on contracts and technological developments. Experience in certain Member States has shown that there is a risk of consumers being switched to another provider without having given their consent. While that is a matter that should primarily be addressed by law enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process, including appropriate sanctions, as are necessary to minimise such risks, and to ensure that consumers are protected throughout the switching process without making the process less attractive for them.

(48) Legal 'must-carry' obligations may be applied to specified radio and television broadcast channels and complementary services supplied by a specified media service provider. Member States should provide a clear justification for the 'must carry' obligations in their national law so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, 'must carry' rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. 'Must carry' rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution and in order to ensure that they continue to be proportionate to the objectives to be achieved. Complementary services include, but are not limited to, services designed to improve accessibility for end-users with disabilities, such as videotext, subtitling, audio description and sign language.

[1] OJ L 49, 17.2.2007, p. 30.

(49) In order to overcome existing shortcomings in terms of consumer consultation and to appropriately address the interests of citizens, Member States should put in place an appropriate consultation mechanism. Such a mechanism could take the form of a body which would, independently of the national regulatory authority and service providers, carry out research into consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholder consultation. Furthermore, a mechanism could be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should, however, not allow for the systematic surveillance of Internet usage.

(50) Universal service obligations imposed on an undertaking designated as having universal service obligations should be notified to the Commission.

(51) Directive 2002/58/EC (Directive on privacy and electronic communications) provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, in particular the right to privacy and the right to confidentiality, with respect to the processing of personal data in the electronic communications sector, and to ensure the free movement of such data and of electronic communications equipment and services in the Community. Where measures aiming to ensure that terminal equipment is constructed so as to safeguard the protection of personal data and privacy are adopted pursuant to Directive 1999/5/EC or Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications [1], such measures should respect the principle of technology neutrality.

(52) Developments concerning the use of IP addresses should be followed closely, taking into consideration the work already done by, among others, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [2], and in the light of such proposals as may be appropriate.

(53) The processing of traffic data to the extent strictly necessary for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data, and the security of the related services offered by, or accessible via, these networks and systems, by providers of security technologies and services when acting as data controllers is subject to Article 7(f) of Directive 95/46/EC. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping 'denial of service' attacks and damage to computer and electronic communication systems.

(54) The liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public electronic communications networks. It is necessary to ensure that consumers and users are afforded the same level of protection of privacy and personal data, regardless of the technology used to deliver a particular service.

(55) In line with the objectives of the regulatory framework for electronic communications networks and services and with the principles of proportionality and subsidiarity, and for the purposes of legal certainty and efficiency for European businesses and national regulatory authorities alike, Directive 2002/58/EC (Directive on privacy and electronic communications) focuses on public electronic communications networks and services, and does not apply to closed user groups and corporate networks.

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

(57) The provider of a publicly available electronic communications service should take appropriate technical and organisational measures to ensure the security of its services. Without prejudice to Directive 95/46/EC, such measures should ensure that personal data can be accessed only by authorised personnel for legally authorised purposes, and that the personal data stored or transmitted, as

[1] OJ L 36, 7.2.1987, p. 31.
[2] OJ L 281, 23.11.1995, p. 31.

well as the network and services,are protected. Moreover, a security policy with respect to the processing of personal data should be established in order to identify vulnerabilities in the system, and monitoring and preventive, corrective and mitigating action should be regularly carried out.

(58) The competent national authorities should promote the interests of citizens by, inter alia, contributing to ensuring a high level of protection of personal data and privacy. To this end, competent national authorities should have the necessary means to perform their duties, including comprehensive and reliable data about security incidents that have led to the personal data of individuals being compromised. They should monitor measures taken and disseminate best practices among providers of publicly available electronic communications services. Providers should therefore maintain an inventory of personal data breaches to enable further analysis and evaluation by the competent national authorities.

(59) Community law imposes duties on data controllers regarding the processing of personal data, including an obligation to implement appropriate technical and organisational protection measures against, for example, loss of data. The data breach notification requirements contained in Directive 2002/58/EC (Directive on privacy and electronic communications) provide a structure for notifying the competent authorities and individuals concerned when personal data has nevertheless been compromised. Those notification requirements are limited to security breaches which occur in the electronic communications sector. However, the notification of security breaches reflects the general interest of citizens in being informed of security failures which could result in their personal data being lost or otherwise compromised, as well as of available or advisable precautions that they could take in order to minimise the possible economic loss or social harm that could result from such failures. The interest of users in being notified is clearly not limited to the electronic communications sector, and therefore explicit, mandatory notification requirements applicable to all sectors should be introduced at Community level as a matter of priority. Pending a review to be carried out by the Commission of all relevant Community legislation in this field, the Commission, in consultation with the European Data Protection Supervisor, should take appropriate steps without delay to encourage the application throughout the Community of the principles embodied in the data breach notification rules contained in Directive 2002/58/EC (Directive on privacy and electronic communications), regardless of the sector, or the type, of data concerned.

(60) Competent national authorities should monitor measures taken and disseminate best practices among providers of publicly available electronic communications services.

(61) A personal data breach may, if not addressed in an adequate and timely manner, result in substantial economic loss and social harm, including identity fraud, to the subscriber or individual concerned. Therefore, as soon as the provider of publicly available electronic communications services becomes aware that such a breach has occurred, it should notify the breach to the competent national authority. The subscribers or individuals whose data and privacy could be adversely affected by the breach should be notified without delay in order to allow them to take the necessary precautions. A breach should be considered as adversely affecting the data or privacy of a subscriber or individual where it could result in, for example, identity theft or fraud, physical harm, significant humiliation or damage to reputation in connection with the provision of publicly available communications services in the Community. The notification should include information about measures taken by the provider to address the breach, as well as recommendations for the subscriber or individual concerned.

(62) When implementing measures transposing Directive 2002/58/EC (Directive on privacy and electronic communications), the authorities and courts of the Member States should not only interpret their national law in a manner consistent with that Directive, but should also ensure that they do not rely on an interpretation of it which would conflict with fundamental rights or general principles of Community law, such as the principle of proportionality.

(63) Provision should be made for the adoption of technical implementing measures concerning the circumstances, format and procedures applicable to information and notification requirements in order to achieve an adequate level of privacy protection and security of personal data transmitted or processed in connection with the use of electronic communications networks in the internal market.

(64) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

(65) Software that surreptitiously monitors the actions of the user or subverts the operation of the user's terminal equipment to the benefit of a third party (spyware) poses a serious threat to the privacy of users, as do viruses. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted

spying programmes or viruses are inadvertently downloaded via electronic communications networks or are delivered and installed in software distributed on other external data storage media, such as CDs, CD-ROMs or USB keys. Member States should encourage the provision of information to end-users about available precautions, and should encourage them to take the necessary steps to protect their terminal equipment against viruses and spyware.

(66) Third parties may wish to store information on the equipment of a user, or gain access to information already stored, for a number of purposes, ranging from the legitimate (such as certain types of cookies) to those involving unwarranted intrusion into the private sphere (such as spyware or viruses). It is therefore of paramount importance that users be provided with clear and comprehensive information when engaging in any activity which could result in such storage or gaining of access. The methods of providing information and offering the right to refuse should be as user-friendly as possible. Exceptions to the obligation to provide information and offer the right to refuse should be limited to those situations where the technical storage or access is strictly necessary for the legitimate purpose of enabling the use of a specific service explicitly requested by the subscriber or user. Where it is technically possible and effective, in accordance with the relevant provisions of Directive 95/46/EC, the user's consent to processing may be expressed by using the appropriate settings of a browser or other application. The enforcement of these requirements should be made more effective by way of enhanced powers granted to the relevant national authorities.

(67) Safeguards provided for subscribers against intrusion into their privacy by unsolicited communications for direct marketing purposes by means of electronic mail should also be applicable to SMS, MMS and other kinds of similar applications.

(68) Electronic communications service providers make substantial investments in order to combat unsolicited commercial communications (spam). They are also in a better position than end-users in that they possess the knowledge and resources necessary to detect and identify spammers. E-mail service providers and other service providers should therefore be able to initiate legal action against spammers, and thus defend the interests of their customers, as part of their own legitimate business interests.

(69) The need to ensure an adequate level of protection of privacy and personal data transmitted and processed in connection with the use of electronic communications networks in the Community calls for effective implementation and enforcement powers in order to provide adequate incentives for compliance. Competent national authorities and, where appropriate, other relevant national bodies should have sufficient powers and resources to investigate cases of non-compliance effectively, including powers to obtain any relevant information they might need, to decide on complaints and to impose sanctions in cases of non-compliance.

(70) The implementation and enforcement of the provisions of this Directive often require cooperation between the national regulatory authorities of two or more Member States, for example in combating cross-border spam and spyware. In order to ensure smooth and rapid cooperation in such cases, procedures relating for example to the quantity and format of information exchanged between authorities, or deadlines to be complied with, should be defined by the relevant national authorities, subject to examination by the Commission. Such procedures will also allow the resulting obligations of market actors to be harmonised, contributing to the creation of a level playing field in the Community.

(71) Cross-border cooperation and enforcement should be reinforced in line with existing Community cross-border enforcement mechanisms, such as that laid down in Regulation (EC) No 2006/2004 (the Regulation on consumer protection cooperation) ([1]), by way of an amendment to that Regulation.

(72) The measures necessary for the implementation of Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications) should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([2]).

(73) In particular, the Commission should be empowered to adopt implementing measures on effective access to '112' services, as well as to adapt the Annexes to technical progress or changes in market demand. It should also be empowered to adopt implementing measures concerning information and notification requirements and security of processing. Since those measures are of general scope and are designed to amend non-essential elements of Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications) by supplementing them with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. Given that the conduct of the regulatory procedure with scrutiny within the normal time limits could, in certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of those measures.

([1]) OJ L 364, 9.12.2004, p. 1.
([2]) OJ L 184, 17.7.1999, p. 23.

(74) When adopting implementing measures on security of processing, the Commission should consult all relevant European authorities and organisations (the European Network and Information Security Agency (ENISA), the European Data Protection Supervisor and the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC), as well as all other relevant stakeholders, particularly in order to be informed of the best available technical and economic means of improving the implementation of Directive 2002/58/EC (Directive on privacy and electronic communications).

(75) Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications) should therefore be amended accordingly.

(76) In accordance with point 34 of the Interinstitutional Agreement on better law-making [1], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between Directives 2002/22/EC (Universal Service Directive) and 2002/58/EC (Directive on privacy and electronic communications) and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

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

1) Article 1 shall be replaced by the following:

'*Article 1*

Subject-matter and scope

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

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

3. This Directive neither mandates nor prohibits conditions, imposed by providers of publicly available electronic communications and services, limiting end-users' access to, and/or use of, services and applications, where allowed under national law and in conformity with Community law, but lays down an obligation to provide information regarding such conditions. National measures regarding end-users' access to, or use of, services and applications through electronic communications networks shall respect the fundamental rights and freedoms of natural persons, including in relation to privacy and due process, as defined in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4. The provisions of this Directive concerning end-users' rights shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EEC and 97/7/EC, and national rules in conformity with Community law.';

2) Article 2 shall be amended as follows:

(a) point (b) shall be deleted;

(b) points (c) and (d) shall be replaced by the following:

'(c) "publicly available telephone service" means a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan;

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

(c) point (e) shall be deleted;

(d) point (f) shall be replaced by the following:

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

[1] OJ C 321, 31.12.2003, p. 1.

3) Article 4 shall be replaced by the following:

'*Article 4*

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

1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.

2. The connection provided shall be capable of supporting voice, facsimile and data communications at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

3. Member States shall ensure that all reasonable requests for the provision of a publicly available telephone service over the network connection referred to in paragraph 1 that allows for originating and receiving national and international calls are met by at least one undertaking.';

4) Article 5(2) shall be replaced by the following:

'2. The directories referred to in paragraph 1 shall comprise, subject to the provisions of Article 12 of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (*), all subscribers of publicly available telephone services.

(*) OJ L 201, 31.7.2002, p. 37.';

5) the title of Article 6 and Article 6(1) shall be replaced by the following:

'Public pay telephones and other publics voice telephony access points

1. Member States shall ensure that national regulatory authorities may impose obligations on undertakings in order to ensure that public pay telephones or other public voice telephony access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other access points, accessibility to disabled end-users and the quality of services.';

6) Article 7 shall be replaced by the following:

'*Article 7*

Measures for disabled end-users

1. Unless requirements have been specified under Chapter IV which achieve the equivalent effect, Member States shall take specific measures to ensure that access to, and affordability of, the services identified in Article 4(3) and Article 5 for disabled end-users is equivalent to the level enjoyed by other end-users. Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users.

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

3. In taking the measures referred to in paragraphs 1 and 2, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Articles 17 and 18 of Directive 2002/21/EC (Framework Directive).';

7) in Article 8, the following paragraph shall be added:

'3. When an undertaking designated in accordance with paragraph 1 intends to dispose of a substantial part or all of its local access network assets to a separate legal entity under different ownership, it shall inform in advance the national regulatory authority in a timely manner, in order to allow that authority to assess the effect of the intended transaction on the provision of access at a fixed location and of telephone services pursuant to Article 4. The national regulatory authority may impose, amend or withdraw specific obligations in accordance with Article 6(2) of Directive 2002/20/EC (Authorisation Directive).';

8) Article 9(1) and (2) shall be replaced by the following:

'1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4 to 7 as falling under the universal service obligations and either provided by designated undertakings or available on the market, if no undertakings are designated in relation to those services, in particular in relation to national consumer prices and income.

2. Member States may, in the light of national conditions, require that designated undertakings provide to consumers tariff options or packages which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing the network referred to in Article 4(1) or from using the services identified in Article 4(3) and Articles 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings.';

9) Article 11(4) shall be replaced by the following:

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

10) the title of Chapter III shall be replaced by the following:

'REGULATORY CONTROLS ON UNDERTAKINGS WITH SIGNIFICANT MARKET POWER IN SPECIFIC RETAIL MARKETS';

11) Article 16 shall be deleted;

12) Article 17 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

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

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

(b) the national regulatory authority concludes that obligations imposed under Articles 9 to 13 of Directive 2002/19/EC (Access Directive) would not result in the achievement of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive).';

(b) paragraph 3 shall be deleted;

13) Articles 18 and 19 shall be deleted;

14) Articles 20 to 23 shall be replaced by the following:

'Article 20

Contracts

1. Member States shall ensure that, when subscribing to services providing connection to a public communications network and/or publicly available electronic communications services, consumers, and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. The contract shall specify in a clear, comprehensive and easily accessible form at least:

(a) the identity and address of the undertaking;

(b) the services provided, including in particular,

— whether or not access to emergency services and caller location information is being provided, and any limitations on the provision of emergency services under Article 26,

— information on any other conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law,

— the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,

— information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overfilling a network link, and information on how those procedures could impact on service quality,

— the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

— any restrictions imposed by the provider on the use of terminal equipment supplied;

(c) where an obligation exists under Article 25, the subscriber's options as to whether or not to include his or her personal data in a directory, and the data concerned;

(d) details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any differences in costs due to payment method;

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

— any minimum usage or duration required to benefit from promotional terms,

— any charges related to portability of numbers and other identifiers,

— any charges due on termination of the contract, including any cost recovery with respect to terminal equipment,

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

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

(h) the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.

Member States may also require that the contract include any information which may be provided by the relevant public authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data, referred to in Article 21(4) and relevant to the service provided.

2. Member States shall ensure that subscribers have a right to withdraw from their contract without penalty upon notice of modification to the contractual conditions proposed by the undertakings providing electronic communications networks and/or services. Subscribers shall be given adequate notice, not shorter than one month, of any such modification, and shall be informed at the same time of their right to withdraw, without penalty, from their contract if they do not accept the new conditions. Member States shall ensure that national regulatory authorities are able to specify the format of such notifications.

Article 21

Transparency and publication of information

1. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on any charges due on termination of a contract and on standard terms and conditions in respect of access to, and use of, services provided by them to end-users and consumers in accordance with Annex II. Such information shall be published in a clear, comprehensive and easily accessible form. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.

2. National regulatory authorities shall encourage the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. Where such facilities are not available on the market free of charge or at a reasonable price, Member States shall ensure that national regulatory authorities are able to make such guides or techniques available themselves or through third party procurement. Third parties shall have a right to use, free of charge, the information published by undertakings providing electronic communications networks and/or publicly available electronic communications services for the purposes of selling or making available such interactive guides or similar techniques.

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

(b) inform subscribers of any change to access to emergency services or caller location information in the service to which they have subscribed;

(c) inform subscribers of any change to conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law;

(d) provide information on any procedures put in place by the provider to measure and shape traffic so as to avoid filling or overfilling a network link, and on how those procedures could impact on service quality;

(e) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(f) regularly inform disabled subscribers of details of products and services designed for them.

If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.

4. Member States may require that the undertakings referred to in paragraph 3 distribute public interest information free of charge to existing and new subscribers, where appropriate, by the same means as those ordinarily used by them in their communications with subscribers. In such a case, that information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.

Article 22

Quality of service

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

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

3. In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, Member States shall ensure that national regulatory authorities are able to set minimum quality of service requirements on an undertaking or undertakings providing public communications networks.

National regulatory authorities shall provide the Commission, in good time before setting any such requirements, with a summary of the grounds for action, the envisaged requirements and the proposed course of action. This information shall also be made available to the Body of European Regulators for Electronic Communications (BEREC). The Commission may, having examined such information, make comments or recommendations thereupon, in particular to ensure that the envisaged requirements do not adversely affect the functioning of the internal market. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations when deciding on the requirements.

Article 23

Availability of services

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

15) the following Article shall be inserted:

'*Article 23a*

Ensuring equivalence in access and choice for disabled end-users

1. Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users:

(a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users; and

(b) benefit from the choice of undertakings and services available to the majority of end-users.

2. In order to be able to adopt and implement specific arrangements for disabled end-users, Member States shall encourage the availability of terminal equipment offering the necessary services and functions.';

16) Article 25 shall be amended as follows:

(a) the title shall be replaced by the following:

'Telephone directory enquiry services';

(b) paragraph 1 shall be replaced by the following:

'1. Member States shall ensure that subscribers to publicly available telephone services have the right to have an entry in the publicly available directory referred to in Article 5(1)(a) and to have their information made available to providers of directory enquiry services and/or directories in accordance with paragraph 2.';

(c) paragraphs 3, 4 and 5 shall be replaced by the following:

'3. Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services. National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 5 of Directive 2002/19/EC (Access Directive). Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.

4. Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access in accordance with Article 28.

5. Paragraphs 1 to 4 shall apply subject to the requirements of Community legislation on the protection of personal data and privacy and, in particular, Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications).';

17) Articles 26 and 27 shall be replaced by the following:

'*Article 26*

Emergency services and the single European emergency call number

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

2. Member States, in consultation with national regulatory authorities, emergency services and providers, shall ensure that undertakings providing end-users with an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan provide access to emergency services.

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

4. Member States shall ensure that access for disabled end-users to emergency services is equivalent to that enjoyed by other end-users. Measures taken to ensure that disabled end-users are able to access emergency services whilst travelling in other Member States shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive), and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article.

5. Member States shall ensure that undertakings concerned make caller location information available free of charge to the authority handling emergency calls as soon as the call reaches that authority. This shall apply to all calls to the single European emergency call number "112". Member States may extend this obligation to cover calls to national emergency numbers. Competent regulatory authorities shall lay down criteria for the accuracy and reliability of the caller location information provided.

6. Member States shall ensure that citizens are adequately informed about the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States.

7. In order to ensure effective access to "112" services in the Member States, the Commission, having consulted BEREC, may adopt technical implementing measures. However, these technical implementing measures shall be adopted without prejudice to, and shall have no impact on, the organisation of emergency services, which remains of the exclusive competence of Member States.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

Article 27

European telephone access codes

1. Member States shall ensure that the "00" code is the standard international access code. Special arrangements for making calls between locations adjacent to one another across borders between Member States may be established or continued. End-users in the locations concerned shall be fully informed of such arrangements.

2. A legal entity, established within the Community and designated by the Commission, shall have sole responsibility for the management, including number assignment, and promotion of the European Telephony Numbering Space (ETNS). The Commission shall adopt the necessary implementing rules.

3. Member States shall ensure that all undertakings that provide publicly available telephone services allowing international calls handle all calls to and from the ETNS at rates similar to those applied for calls to and from other Member States.';

18) the following Article shall be inserted:

'*Article 27a*

Harmonised numbers for harmonised services of social value, including the missing children hotline number

1. Member States shall promote the specific numbers in the numbering range beginning with "116" identified by Commission Decision 2007/116/EC of15 February 2007

on reserving the national numbering range beginning with "116" for harmonised numbers for harmonised services of social value (*). They shall encourage the provision within their territory of the services for which such numbers are reserved.

2. Member States shall ensure that disabled end-users are able to access services provided under the "116" numbering range to the greatest extent possible. Measures taken to facilitate disabled end-users' access to such services whilst travelling in other Member States shall be based on compliance with relevant standards or specifications published in accordance with Article 17 of Directive 2002/21/EC (Framework Directive).

3. Member States shall ensure that citizens are adequately informed of the existence and use of services provided under the "116" numbering range, in particular through initiatives specifically targeting persons travelling between Member States.

4. Member States shall, in addition to measures of general applicability to all numbers in the "116" numbering range taken pursuant to paragraphs 1, 2, and 3, make every effort to ensure that citizens have access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number "116000".

5. In order to ensure the effective implementation of the "116" numbering range, in particular the missing children hotline number "116000", in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted BEREC, may adopt technical implementing measures. However, these technical implementing measures shall be adopted without prejudice to, and shall have no impact on, the organisation of these services, which remains of the exclusive competence of Member States.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

(*) OJ L 49, 17.2.2007, p. 30.';

19) Article 28 shall be replaced by the following:

'*Article 28*

Access to numbers and services

1. Member States shall ensure that, where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, relevant national authorities take all necessary steps to ensure that end-users are able to:

(a) access and use services using non-geographic numbers within the Community; and

(b) access all numbers provided in the Community, regardless of the technology and devices used by the operator, including those in the national numbering plans of Member States, those from the ETNS and Universal International Freephone Numbers (UIFN).

2. Member States shall ensure that the relevant authorities are able to require undertakings providing public communications networks and/or publicly available electronic communications services to block, on a case-by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues.';

20) Article 29 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Without prejudice to Article 10(2), Member States shall ensure that national regulatory authorities are able to require all undertakings that provide publicly available telephone services and/or access to public communications networks to make available all or part of the additional facilities listed in Part B of Annex I, subject to technical feasibility and economic viability, as well as all or part of the additional facilities listed in Part A of Annex I.';

(b) paragraph 3 shall be deleted;

21) Article 30 shall be replaced by the following:

'*Article 30*

Facilitating change of provider

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

2. National regulatory authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that direct charges to subscribers, if any, do not act as a disincentive for subscribers against changing service provider.

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

4. Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. In any case, subscribers who have concluded an agreement to port a number to a new undertaking shall have that number activated within one working day.

Without prejudice to the first subparagraph, competent national authorities may establish the global process of porting of numbers, taking into account national provisions on contracts, technical feasibility and the need to maintain continuity of service to the subscriber. In any event, loss of service during the process of porting shall not exceed one working day. Competent national authorities shall also take into account, where necessary, measures ensuring that subscribers are protected throughout the switching process and are not switched to another provider against their will.

Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting or abuse of porting by them or on their behalf.

5. Member States shall ensure that contracts concluded between consumers and undertakings providing electronic communications services do not mandate an initial commitment period that exceeds 24 months. Member States shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months.

6. Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider.';

22) Article 31(1) shall be replaced by the following:

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

The obligations referred to in the first subparagraph shall be reviewed by the Member States at the latest within one year of 25 May 2011, except where Member States have carried out such a review within the previous two years.

Member States shall review "must carry" obligations on a regular basis.';

23) Article 33 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

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

In particular, Member States shall ensure that national regulatory authorities establish a consultation mechanism ensuring that in their decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services, due consideration is given to consumer interests in electronic communications.';

(b) the following paragraph shall be added:

'3. Without prejudice to national rules in conformity with Community law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities may promote cooperation between undertakings providing electronic communications networks and/or services and sectors interested in the promotion of lawful content in electronic communication networks and services. That cooperation may also include coordination of the public interest information to be provided pursuant to Article 21(4) and the second subparagraph of Article 20(1).';

24) Article 34(1) shall be replaced by the following:

'1. Member States shall ensure that transparent, non-discriminatory, simple and inexpensive out-of-court procedures are available for dealing with unresolved disputes between consumers and undertakings providing electronic communications networks and/or services arising under this Directive and relating to the contractual conditions and/or performance of contracts concerning the supply of those networks and/or services. Member States shall adopt measures to ensure that such procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Such procedures shall enable disputes to be settled impartially and shall not deprive the consumer of the legal protection afforded by national law. Member States may extend these obligations to cover disputes involving other end-users.';

25) Article 35 shall be replaced by the following:

'*Article 35*

Adaptation of annexes

Measures designed to amend non-essential elements of this Directive and necessary to adapt Annexes I, II, III, and VI to technological developments or changes in market demand shall be adopted by the Commission in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).';

26) Article 36(2) shall be replaced by the following:

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

27) Article 37 shall be replaced by the following:

'*Article 37*

Committee procedure

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

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.';

28) Annexes I, II, III shall be replaced by the text appearing in Annex I to this Directive, and Annex VI shall be replaced by the text appearing in Annex II to this Directive;

29) Annex VII shall be deleted.

Article 2

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

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

1) Article 1(1) shall be replaced by the following:

'1. This Directive provides for the harmonisation of the national provisions required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and confidentiality, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.';

2) Article 2 shall be amended as follows:

(a) point (c) shall be replaced by the following:

'(c) "location data" means any data processed in an electronic communications network or by an electronic communications service, indicating the geographic position of the terminal equipment of a user of a publicly available electronic communications service;';

(b) point (e) shall be deleted;

(c) the following point shall be added:

'(h) "personal data breach" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed in connection with the provision of a publicly available electronic communications service in the Community.';

3) Article 3 shall be replaced by the following:

'*Article 3*

Services concerned

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

4) Article 4 shall be amended as follows:

(a) the title shall be replaced by the following:

'Security of processing';

(b) the following paragraph shall be inserted:

'1a. Without prejudice to Directive 95/46/EC, the measures referred to in paragraph 1 shall at least:

— ensure that personal data can be accessed only by authorised personnel for legally authorised purposes,

— protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access or disclosure, and,

— ensure the implementation of a security policy with respect to the processing of personal data,

Relevant national authorities shall be able to audit the measures taken by providers of publicly available electronic communication services and to issue recommendations about best practices concerning the level of security which those measures should achieve.';

(c) the following paragraphs shall be added:

'3. In the case of a personal data breach, the provider of publicly available electronic communications services shall, without undue delay, notify the personal data breach to the competent national authority.

When the personal data breach is likely to adversely affect the personal data or privacy of a subscriber or individual, the provider shall also notify the subscriber or individual of the breach without undue delay.

Notification of a personal data breach to a subscriber or individual concerned shall not be required if the provider has demonstrated to the satisfaction of the competent authority that it has implemented appropriate technological protection measures, and that those measures were applied to the data concerned by the security breach. Such technological protection measures shall render the data unintelligible to any person who is not authorised to access it.

Without prejudice to the provider's obligation to notify subscribers and individuals concerned, if the provider has not already notified the subscriber or individual of the personal data breach, the competent national authority, having considered the likely adverse effects of the breach, may require it to do so.

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

4. Subject to any technical implementing measures adopted under paragraph 5, the competent national authorities may adopt guidelines and, where necessary, issue instructions concerning the circumstances in which providers are required to notify personal data breaches, the format of such notification and the manner in which the notification is to be made. They shall also be able to audit whether providers have complied with their notification obligations under this paragraph, and shall impose appropriate sanctions in the event of a failure to do so.

Providers shall maintain an inventory of personal data breaches comprising the facts surrounding the breach, its effects and the remedial action taken which shall be sufficient to enable the competent national authorities to verify compliance with the provisions of paragraph 3. The inventory shall only include the information necessary for this purpose.

5. In order to ensure consistency in implementation of the measures referred to in paragraphs 2, 3 and 4, the Commission may, following consultation with the European Network and Information Security Agency (ENISA), the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC and the European Data Protection Supervisor, adopt technical implementing measures concerning the circumstances, format and procedures applicable to the information and notification requirements referred to in this Article. When adopting such measures, the Commission shall involve all relevant stakeholders particularly in order to be informed of the best available technical and economic means of implementation of this Article.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(2).';

5) Article 5(3) shall be replaced by the following:

'3. Member States shall ensure that the storing of information, or the gaining of access to information already stored, in the terminal equipment of a subscriber or user is only allowed on condition that the subscriber or user concerned has given his or her consent, having been provided with clear and comprehensive information, in accordance with Directive 95/46/EC, inter alia, about the purposes of the processing. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communications network, or as strictly necessary in order for the provider of an information society service explicitly requested by the subscriber or user to provide the service.';

6) Article 6(3) shall be replaced by the following:

'3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services or

marketing, if the subscriber or user to whom the data relate has given his or her prior consent. Users or subscribers shall be given the possibility to withdraw their consent for the processing of traffic data at any time.';

7) Article 13 shall be replaced by the following:

'*Article 13*

Unsolicited communications

1. The use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail for the purposes of direct marketing may be allowed only in respect of subscribers or users who have given their prior consent.

2. Notwithstanding paragraph 1, where a natural or legal person obtains from its customers their electronic contact details for electronic mail, in the context of the sale of a product or a service, in accordance with Directive 95/46/EC, the same natural or legal person may use these electronic contact details for direct marketing of its own similar products or services provided that customers clearly and distinctly are given the opportunity to object, free of charge and in an easy manner, to such use of electronic contact details at the time of their collection and on the occasion of each message in case the customer has not initially refused such use.

3. Member States shall take appropriate measures to ensure that unsolicited communications for the purposes of direct marketing, in cases other than those referred to in paragraphs 1 and 2, are not allowed either without the consent of the subscribers or users concerned or in respect of subscribers or users who do not wish to receive these communications, the choice between these options to be determined by national legislation, taking into account that both options must be free of charge for the subscriber or user.

4. In any event, the practice of sending electronic mail for the purposes of direct marketing which disguise or conceal the identity of the sender on whose behalf the communication is made, which contravene Article 6 of Directive 2000/31/EC, which do not have a valid address to which the recipient may send a request that such communications cease or which encourage recipients to visit websites that contravene that Article shall be prohibited.

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

6. Without prejudice to any administrative remedy for which provision may be made, inter alia, under Article 15a(2), Member States shall ensure that any natural or legal person adversely affected by infringements of national provisions adopted pursuant to this Article and therefore having a legitimate interest in the cessation or prohibition of such infringements, including an electronic communications service provider protecting its legitimate business interests, may bring legal proceedings in respect of such infringements. Member States may also lay down specific rules on penalties applicable to providers of electronic communications services which by their negligence contribute to infringements of national provisions adopted pursuant to this Article.';

8) the following Article shall be inserted:

'*Article 14a*

Committee procedure

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

2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.';

9) in Article 15, the following paragraph shall be inserted:

'1b. Providers shall establish internal procedures for responding to requests for access to users' personal data based on national provisions adopted pursuant to paragraph 1. They shall provide the competent national authority, on demand, with information about those procedures, the number of requests received, the legal justification invoked and their response.';

10) the following Article shall be inserted:

'*Article 15a*

Implementation and enforcement

1. Member States shall lay down the rules on penalties, including criminal sanctions where appropriate, applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive and may be applied to cover the period of any breach, even where the breach has subsequently been rectified. The Member States shall notify those provisions to the Commission by 25 May 2011, and shall notify it without delay of any subsequent amendment affecting them.

2. Without prejudice to any judicial remedy which might be available, Member States shall ensure that the competent national authority and, where relevant, other national bodies have the power to order the cessation of the infringements referred to in paragraph 1.

3. Member States shall ensure that the competent national authority and, where relevant, other national bodies have the necessary investigative powers and resources, including the power to obtain any relevant information they might need to monitor and enforce national provisions adopted pursuant to this Directive.

4. The relevant national regulatory authorities may adopt measures to ensure effective cross-border cooperation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows.

The national regulatory authorities shall provide the Commission, in good time before adopting any such measures, with a summary of the grounds for action, the envisaged measures and the proposed course of action. The Commission may, having examined such information and consulted ENISA and the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC, make comments or recommendations thereupon, in particular to ensure that the envisaged measures do not adversely affect the functioning of the internal market. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations when deciding on the measures.'.

Article 3

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 (the Regulation on consumer protection cooperation), the following point shall be added:

'17. Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications): Article 13 (OJ L 201, 31.7.2002, p. 37).'.

Article 4

Transposition

1. Member States shall adopt and publish by 25 May 2011 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

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

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

Article 5

Entry into force

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

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 25 November 2009.

For the European Parliament	*For the Council*
The President	*The President*
J. BUZEK	Å. TORSTENSSON

ANNEX I

'ANNEX I

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

Part A: Facilities and services referred to in Article 10

(a) *Itemised billing*

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

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

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

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

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

(b) *Selective barring for outgoing calls or premium SMS or MMS, or, where technically feasible, other kinds of similar applications, free of charge*

i.e. the facility whereby the subscriber can, on request to the designated undertaking that provides telephone services, bar outgoing calls or premium SMS or MMS or other kinds of similar applications of defined types or to defined types of numbers free of charge.

(c) *Pre-payment systems*

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

(d) *Phased payment of connection fees*

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

(e) *Non-payment of bills*

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

(f) *Tariff advice*

i.e. the facility whereby subscribers may request the undertaking to provide information regarding alternative lower-cost tariffs, if available.

(g) *Cost control*

i.e. the facility whereby undertakings offer other means, if determined to be appropriate by national regulatory authorities, to control the costs of publicly available telephone services, including free-of-charge alerts to consumers in case of abnormal or excessive consumption patterns.

Part B: Facilities referred to in Article 29

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

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

(b) *Calling-line identification*

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

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

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

Part C: Implementation of the number portability provisions referred to in Article 30

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

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

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

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

ANNEX II

INFORMATION TO BE PUBLISHED IN ACCORDANCE WITH ARTICLE 21

(TRANSPARENCY AND PUBLICATION OF INFORMATION)

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

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

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

2. Description of services offered

2.1. Scope of services offered

2.2. Standard tariffs indicating the services provided and the content of each tariff element (e.g. charges for access, all types of usage charges, maintenance charges), and including details of standard discounts applied and special and targeted tariff schemes and any additional charges, as well as costs with respect to terminal equipment.

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

2.4. Types of maintenance service offered.

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

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

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

ANNEX III

QUALITY OF SERVICE PARAMETERS

Quality-of-Service Parameters, Definitions and Measurement Methods referred to in Articles 11 and 22

For undertakings providing access to a public communications network

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

For undertakings providing a publicly available telephone service

Call set up time (Note 2)	ETSI EG 202 057	ETSI EG 202 057
Response times for directory enquiry services	ETSI EG 202 057	ETSI EG 202 057
Proportion of coin and card operated public pay-telephones in working order	ETSI EG 202 057	ETSI EG 202 057
Bill correctness complaints	ETSI EG 202 057	ETSI EG 202 057
Unsuccessful call ratio (Note 2)	ETSI EG 202 057	ETSI EG 202 057
Version number of ETSI EG 202 057-1 is 1.3.1 (July 2008)		

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

ANNEX II

'ANNEX VI

INTEROPERABILITY OF DIGITAL CONSUMER EQUIPMENT REFERRED TO IN ARTICLE 24

1. *Common scrambling algorithm and free-to-air reception*

All consumer equipment intended for the reception of conventional digital television signals (i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S), for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, is to possess the capability to:

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

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

2. *Interoperability for analogue and digital television sets*

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

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