



# EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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Brussels, 4 February 2002

2000/0184 (COD)

PE-CONS 3672/01

ECO 399  
CODEC 1380

## LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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Subject : Directive of the European Parliament and of the Council of ..... on a common regulatory framework for electronic communications networks and services (Framework Directive)

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In accordance with Article 251(3) of the EC Treaty,  
this document will not be the subject of approval by the Council;  
it is intended solely for the information of delegates

**DIRECTIVE 2002/.../EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of**

on a common regulatory framework  
for electronic communications networks and services  
(Framework Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission <sup>1</sup>,

Having regard to the Opinion of the Economic and Social Committee <sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty <sup>3</sup>,

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<sup>1</sup> OJ C 365 E, 19.12.2000, p. 198 and OJ C 270 E, 25.9.2001, p. 199.

<sup>2</sup> OJ C 123, 25.4.2001, p. 56.

<sup>3</sup> Opinion of the European Parliament of 1 March 2001 (OJ C 277, 1.10.2001, p. 91), Council Common Position of 17 September 2001 (OJ C 337, 30.11.2001, p. 34) and Decision of the European Parliament of 12 December 2001 (not yet published in the Official Journal).  
Council Decision of .....

Whereas:

- (1) The current regulatory framework for telecommunications has been successful in creating the conditions for effective competition in the telecommunications sector during the transition from monopoly to full competition.
- (2) On 10 November 1999, the Commission presented a Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled "Towards a new framework for electronic communications infrastructure and associated services – The 1999 Communications Review". In that Communication, the Commission reviewed the existing regulatory framework for telecommunications, in accordance with its obligation under Article 8 of Council Directive 90/387/EEC of 28 June 1990 on the establishment of the internal market for telecommunications services through the implementation of open network provision <sup>1</sup>. It also presented a series of policy proposals for a new regulatory framework for electronic communications infrastructure and associated services for public consultation.
- (3) On 26 April 2000 the Commission presented a Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the results of the public consultation on the 1999 Communications Review and Orientations for the new Regulatory Framework. The Communication summarised the public consultation and set out certain key orientations for the preparation of a new framework for electronic communications infrastructure and associated services.

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<sup>1</sup> OJ L 192, 24.7.1990, p. 1. Directive as amended by Directive 97/51/EC of the European Parliament and of the Council (OJ L 295, 29.10.1997, p. 23).

- (4) The Lisbon European Council of 23 and 24 March 2000 highlighted the potential for growth, competitiveness and job creation of the shift to a digital, knowledge-based economy. In particular, it emphasised the importance for Europe's businesses and citizens of access to an inexpensive, world-class communications infrastructure and a wide range of services.
- (5) The convergence of the telecommunications, media and information technology sectors means all transmission networks and services should be covered by a single regulatory framework. That regulatory framework consists of this Directive and four specific Directives: Directive 2002/.../EC of the European Parliament and of the Council of ..... on the authorisation of electronic communications networks and services (Authorisation Directive) <sup>1</sup>, Directive 2002/.../EC of the European Parliament and of the Council of ..... on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) <sup>2</sup>, Directive 2002/.../EC of the European Parliament and of the Council of ..... on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) <sup>3</sup>, Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector <sup>4</sup>, (hereinafter referred to as "the Specific Directives"). It is necessary to separate the regulation of transmission from the regulation of content. This framework does not therefore cover the content of services delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services and certain information society

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<sup>1</sup> See p. ... of this Official Journal.

<sup>2</sup> See p. .... of this Official Journal.

<sup>3</sup> See p. ... of this Official Journal.

<sup>4</sup> OJ L 24, 30.1.1998, p. 1.

services, and is therefore without prejudice to measures taken at Community or national level in respect of such services, in compliance with Community law, in order to promote cultural and linguistic diversity and to ensure the defence of media pluralism. The content of television programmes is covered by Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities <sup>1</sup>. The separation between the regulation of transmission and the regulation of content does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection.

- (6) Audiovisual policy and content regulation are undertaken in pursuit of general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors. The Commission Communication "Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age", and the Council Conclusions of 6 June 2000 welcoming this Communication, set out the key actions to be taken by the Community to implement its audiovisual policy.
- (7) The provisions of this Directive and the Specific Directives are without prejudice to the possibility for each Member State to take the necessary measures to ensure the protection of its essential security interests, to safeguard public policy and public security, and to permit the investigation, detection and prosecution of criminal offences, including the establishment by national regulatory authorities of specific and proportional obligations applicable to providers of electronic communications services.

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<sup>1</sup> OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

- (8) This Directive does not cover equipment within the scope of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity<sup>1</sup>, but does cover consumer equipment used for digital television. It is important for regulators to encourage network operators and terminal equipment manufacturers to cooperate in order to facilitate access by disabled users to electronic communications services.
- (9) Information Society services are covered by Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of Information Society services, in particular electronic commerce, in the internal market (Directive on Electronic Commerce)<sup>2</sup>.
- (10) The definition of "Information Society service" in Article 1 of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of Information Society services<sup>3</sup> spans a wide range of economic activities which take place on-line. Most of these activities are not covered by the scope of this Directive because they do not consist wholly or mainly in the conveyance of signals on electronic communications networks. Voice telephony and electronic mail conveyance services are covered by this Directive. The same undertaking, for example an Internet service provider, can offer both an electronic communications service, such as access to the Internet, and services not covered under this Directive, such as the provision of web-based content.

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<sup>1</sup> OJ L 91, 7.4.1999, p. 10.

<sup>2</sup> OJ L 178, 17.7.2000, p. 1.

<sup>3</sup> OJ L 204, 21.7.1998, p. 37. Directive as amended by Directive 98/48/EC (OJ L 217, 5.8.1998, p. 18).

- (11) In accordance with the principle of the separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities with a view to ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership laid down in Article 295 of the Treaty. National regulatory authorities should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.
- (12) Any party who is the subject of a decision by a national regulatory authority should have the right to appeal to a body that is independent of the parties involved. This body may be a court. Furthermore, any undertaking which considers that its applications for the granting of rights to install facilities have not been dealt with in accordance with the principles set out in this Directive should be entitled to appeal against such decisions. This appeal procedure is without prejudice to the division of competences within national judicial systems and to the rights of legal entities or natural persons under national law.
- (13) National regulatory authorities need to gather information from market players in order to carry out their tasks effectively. Such information may also need to be gathered on behalf of the Commission, to allow it to fulfil its obligations under Community law. Requests for information should be proportionate and not impose an undue burden on undertakings. Information gathered by national regulatory authorities should be publicly available, except insofar as it is confidential in accordance with national rules on public access to information and subject to Community and national law on business confidentiality.

- (14) Information that is considered confidential by a national regulatory authority, in accordance with Community and national rules on business confidentiality, may only be exchanged with the Commission and other national regulatory authorities where such exchange is strictly necessary for the application of the provisions of this Directive or the Specific Directives. The information exchanged should be limited to that which is relevant and proportionate to the purpose of such an exchange.
- (15) It is important that national regulatory authorities consult all interested parties on proposed decisions and take account of their comments before adopting a final decision. In order to ensure that decisions at national level do not have an adverse effect on the single market or other Treaty objectives, national regulatory authorities should also notify certain draft decisions to the Commission and other national regulatory authorities to give them the opportunity to comment. It is appropriate for national regulatory authorities to consult interested parties on all draft measures which have an effect on trade between Member States. The cases where the procedures referred to in Articles 6 and 7 apply are defined in this Directive and in the Specific Directives. The Commission should be able after consulting the Communications Committee, to require a national regulatory authority to withdraw a draft measure where it concerns definition of relevant markets or the designation or not of undertakings with significant market power, and where such decisions would create a barrier to the single market or would be incompatible with Community law and in particular the policy objectives that national regulatory authorities should follow. This procedure is without prejudice to the notification procedure provided for in Directive 98/34/EC and the Commission's prerogatives under the Treaty in respect of infringements of Community law.

- (16) National regulatory authorities should have a harmonised set of objectives and principles to underpin, and should, where necessary, coordinate, their actions with the regulatory authorities of other Member States in carrying out their tasks under this regulatory framework.
- (17) The activities of national regulatory authorities established under this Directive and the Specific Directives contribute to the fulfilment of broader policies in the areas of culture, employment, the environment, social cohesion and town and country planning.
- (18) The requirement for Member States to ensure that national regulatory authorities take the utmost account of the desirability of making regulation technologically neutral, that is to say that it neither imposes nor discriminates in favour of the use of a particular type of technology, does not preclude the taking of proportionate steps to promote certain specific services where this is justified, for example digital television as a means for increasing spectrum efficiency.
- (19) Radio frequencies are an essential input for radio-based electronic communications services and, insofar as they relate to such services, should therefore be allocated and assigned by national regulatory authorities according to a set of harmonised objectives and principles governing their action as well as to objective, transparent and non-discriminatory criteria, taking into account the democratic, social, linguistic and cultural interests related to the use of frequency. It is important that the allocation and assignment of radio frequencies is managed as efficiently as possible. Transfer of radio frequencies can be an effective means of increasing efficient use of spectrum, as long as there are sufficient safeguards in place to

protect the public interest, in particular the need to ensure transparency and regulatory supervision of such transfers. Decision No /2002/EC of the European Parliament and of the Council of ..... on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) <sup>1</sup> establishes a framework for harmonisation of radio frequencies, and action taken under this Directive should seek to facilitate the work under that Decision.

- (20) Access to numbering resources on the basis of transparent, objective and non-discriminatory criteria is essential for undertakings to compete in the electronic communications sector. All elements of national numbering plans should be managed by national regulatory authorities, including point codes used in network addressing. Where there is a need for harmonisation of numbering resources in the Community to support the development of pan European services, the Commission may take technical implementing measures using its executive powers. Where this is appropriate to ensure full global interoperability of services, Member States should coordinate their national positions in accordance with the Treaty in international organisations and fora where numbering decisions are taken. The provisions of this Directive do not establish any new areas of responsibility for the national regulatory authorities in the field of Internet naming and addressing.
- (21) Member States may use, inter alia, competitive or comparative selection procedures for the assignment of radio frequencies as well as numbers with exceptional economic value. In administering such schemes, national regulatory authorities should take into account the provisions of Article 8.

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<sup>1</sup> See p. ... of this Official Journal.

- (22) It should be ensured that procedures exist for the granting of rights to install facilities that are timely, non-discriminatory and transparent, in order to guarantee the conditions for fair and effective competition. This Directive is without prejudice to national provisions governing the expropriation or use of property, the normal exercise of property rights, the normal use of the public domain, or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership.
- (23) Facility sharing can be of benefit for town planning, public health or environmental reasons, and should be encouraged by national regulatory authorities on the basis of voluntary agreements. In cases where undertakings are deprived of access to viable alternatives, compulsory facility or property sharing may be appropriate. It covers inter alia: physical co-location and duct, building, mast, antenna or antenna system sharing. Compulsory facility or property sharing should be imposed on undertakings only after full public consultation.
- (24) Where mobile operators are required to share towers or masts for environmental reasons, such mandated sharing may lead to a reduction in the maximum transmitted power levels allowed for each operator for reasons of public health, and this in turn may require operators to install more transmission sites to ensure national coverage.

- (25) There is a need for ex-ante obligations in certain circumstances in order to ensure the development of a competitive market. The definition of significant market power in the Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of Open Network Provision (ONP)<sup>1</sup> has proved effective in the initial stages of market opening as the threshold for ex-ante obligations, but now needs to be adapted to suit more complex and dynamic markets. For this reason, the definition used in this Directive is equivalent to the concept of dominance as defined in the case law of the Court of Justice and the Court of First Instance of the European Communities.
- (26) Two or more undertakings can be found to enjoy a joint dominant position not only where there exist structural or other links between them but also where the structure of the relevant market is conducive to coordinated effects, that is, it encourages parallel or aligned anti-competitive behaviour on the market.
- (27) It is essential that ex-ante regulatory obligations should only be imposed where there is not effective competition i.e. in markets where there are one or more undertakings with significant market power, and where national and Community competition law remedies are not sufficient to address the problem. It is necessary therefore for the Commission to draw up guidelines at Community level in accordance with the principles of competition law for national regulatory authorities to follow in assessing whether competition is effective in a given market and in assessing significant market power. National regulatory authorities should analyse whether a given product or service market is effectively competitive in a given geographical area, which could be the whole or a part of the territory of the Member State concerned or neighbouring parts of territories of Member States considered together. An

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<sup>1</sup> OJ L 199, 26.7.1997, p. 32. Directive as amended by Directive 98/61/EC (OJ L 268, 3.10.1998, p. 37).

analysis of effective competition should include an analysis as to whether the market is prospectively competitive, and thus whether any lack of effective competition is durable. Those guidelines will also address the issue of newly emerging markets, where de facto the market leader is likely to have a substantial market share but should not be subjected to inappropriate obligations. The Commission should review the Guidelines regularly to ensure that they remain appropriate in a rapidly developing market. National regulatory authorities will need to cooperate with each other where the relevant market is found to be transnational.

- (28) In determining whether an undertaking has significant market power in a specific market, national regulatory authorities should act in accordance with Community law and take into the utmost account the Commission guidelines.
- (29) The Community and the Member States have entered into commitments in relation to standards and the regulatory framework of telecommunications networks and services in the World Trade Organisation.
- (30) Standardisation should remain primarily a market-driven process. However there may still be situations where it is appropriate to require compliance with specified standards at Community level to ensure interoperability in the single market. At national level, Member States are subject to the provisions of Directive 98/34/EC. Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals <sup>1</sup> did not mandate any specific digital television transmission system or service requirement. Through the Digital Video Broadcasting Group, European market players have developed a family of television transmission systems that

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<sup>1</sup> OJ L 281, 23.11.1995, p. 51.

have been standardised by the European Telecommunications Standards Institute (ETSI) and have become International Telecommunication Union Recommendations. Any decision to make the implementation of such standards mandatory should follow a full public consultation. Standardisation procedures under this Directive are without prejudice to the provisions of Directive 1999/5/EC, Council Directive 73/23/EEC of 19 February 1973 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits <sup>1</sup> and Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility <sup>2</sup>.

- (31) Interoperability of digital interactive television services and enhanced digital television equipment, at the level of the consumer should be encouraged in order to ensure the free flow of information, media pluralism and cultural diversity. It is desirable for consumers to have the capability of receiving, regardless of the transmission mode, all digital interactive television services, having regard to technological neutrality, future technological progress, the need to promote the take-up of digital television, and the state of competition in the markets for digital television services. Digital interactive television platform operators should strive to implement an open Application Program Interface (API) which conforms to standards or specifications adopted by a European Standards Organisation. Migration from existing APIs to new open APIs should be encouraged and organised, for example by Memoranda of Understanding between all relevant market players. Open APIs facilitate interoperability, i.e. the portability of interactive content between delivery mechanisms, and full functionality of this content on enhanced digital television equipment. However, the need not to hinder the functioning of the receiving equipment and to protect it from malicious attacks, for example from viruses, should be taken into account.

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<sup>1</sup> OJ L 77, 26.3.1973.

<sup>2</sup> OJ L 139, 23.5.1989, p. 19.

- (32) In the event of a dispute between undertakings in the same Member State in an area covered by this Directive or the Specific Directives, for example relating to obligations for access and interconnection or to the means of transferring subscriber lists, an aggrieved party that has negotiated in good faith but failed to reach agreement should be able to call on the national regulatory authority to resolve the dispute. National regulatory authorities should be able to impose a solution on the parties. The intervention of a national regulatory authority in the resolution of a dispute between undertakings providing electronic communications networks or services in a Member State should seek to ensure compliance with the obligations arising under this Directive or the Specific Directives.
- (33) In addition to the rights of recourse granted under national or Community law, there is a need for a simple procedure to be initiated at the request of either party in a dispute, to resolve cross-border disputes which lie outside the competence of a single national regulatory authority.
- (34) A single Committee should replace the "ONP Committee" instituted by Article 9 of Directive 90/387/EEC and the Licensing Committee instituted by Article 14 of Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorisations and individual licences in the field of telecommunications services <sup>1</sup>.

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<sup>1</sup> OJ L 117, 7.5.1997, p. 15.

- (35) National regulatory authorities and national competition authorities should provide each other with the information necessary to apply the provisions of this Directive and the Specific Directives, in order to allow them to cooperate fully together. In respect of the information exchanged, the receiving authority should ensure the same level of confidentiality as the originating authority.
- (36) The Commission has indicated its intention to set up a European Regulators Group for Electronic Communications Networks and Services which would constitute a suitable mechanism for encouraging cooperation and coordination of national regulatory authorities, in order to promote the development of the internal market for electronic communications networks and services, and to seek to achieve consistent application, in all Member States, of the provisions set out in this Directive and the Specific directives, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in application of the relevant rules.
- (37) National regulatory authorities should be required to cooperate with each other and with the Commission in a transparent manner to ensure consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. This cooperation could take place, inter alia, in the Communications Committee or in a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of this Directive and the Specific Directives.

- (38) Measures that could affect trade between Member States are measures that may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in a manner which might create a barrier to the single market. They comprise measures that have a significant impact on operators or users in other Member States, which include, inter alia: measures which affect prices for users in other Member States. Measures which affect the ability of an undertaking established in another Member State to provide an electronic communications service, and in particular measures which affect the ability to offer services on a transnational basis; and measures which affect market structure or access, leading to repercussions for undertakings in other Member States.
- (39) The provisions of this Directive should be reviewed periodically, in particular with a view to determining the need for modification in the light of changing technological or market conditions.
- (40) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission <sup>1</sup>.
- (41) Since the objectives of the proposed action, namely achieving a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary for those objectives.

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<sup>1</sup> OJ L 184, 17.7.1999, p. 23.

(42) Certain Directives and Decisions in this field should be repealed.

(43) The Commission should monitor the transition from the existing framework to the new framework, and may in particular, at an appropriate time, bring forward a proposal to repeal Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop<sup>1</sup>,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### SCOPE, AIM AND DEFINITIONS

#### Article 1

##### Scope and aim

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.
2. This Directive as well as the Specific Directives are without prejudice to obligations imposed by national law in accordance with Community law or by Community law in respect of services provided using electronic communications networks and services.

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<sup>1</sup> OJ L 336, 30.12.2000, p. 4.

3. This Directive as well as the Specific Directives are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular relating to content regulation and audio-visual policy.

4. This Directive and the Specific Directives are without prejudice to the provisions of Directive 1999/5/EC.

## Article 2

### Definitions

For the purposes of this Directive:

- (a) "electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable TV networks, irrespective of the type of information conveyed;
- (b) "transnational markets" means markets identified in accordance with Article 15(4) covering the Community or a substantial part thereof.
- (c) "electronic communications service" means a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used

for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include Information Society services, as defined in Article 1 of Directive 98/34/EC, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;

- (d) "public communications network" means an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;
- (e) "associated facilities" means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service. It includes conditional access systems and electronic programme guides;
- (f) "conditional access system" means any technical measure and/or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;
- (g) "national regulatory authority" means the body or bodies charged by a Member State with any of the regulatory tasks assigned in this Directive and the Specific Directives;
- (h) "user" means a legal entity or natural person using or requesting a publicly available electronic communications service;
- (i) "consumer" means any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his or her trade, business or profession;

- (j) "universal service" means the minimum set of services, defined in Directive 2002/.../EC (Universal Service Directive), of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price;
- (k) "subscriber" means any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services;
- (l) "Specific Directives" means Directive 2002/.../EC (Authorisation Directive), Directive 2002/.../EC (Access Directive), Directive 2002/.../EC (Universal Service Directive) and Directive 97/66/EC;
- (m) "provision of an electronic communications network" means the establishment, operation, control or making available of such a network;
- (n) "end-user" means a user not providing public communications networks or publicly available electronic communications services.
- (o) "enhanced digital television equipment" means set top boxes intended for connection to television sets or integrated digital television sets, able to receive digital interactive television services;
- (p) "Application Program Interface (API)" means the software interfaces between applications, made available by broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television and radio services.

## CHAPTER II

### NATIONAL REGULATORY AUTHORITIES

#### Article 3

##### National Regulatory Authorities

1. Member States shall ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Directives is undertaken by a competent body.
2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
3. Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently.

4. Member States shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities, and between those authorities and national authorities entrusted with the implementation of competition law and national authorities entrusted with the implementation of consumer law, on matters of common interest. Where more than one authority has competence to address such matters, Member States shall ensure that the respective tasks of each authority are published in an easily accessible form.

5. National regulatory authorities and national competition authorities shall provide each other with the information necessary for the application of the provisions of this Directive and the Specific Directives. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.

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

## Article 4

### Right of appeal

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority, has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise.
2. Where the appeal body referred to in paragraph 1 is not judicial in character, written reasons for its decision shall always be given. Furthermore, in such a case, its decision shall be subject to review by a court or tribunal within the meaning of Article 234 of the Treaty.

## Article 5

### Provision of information

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

2. Member States shall ensure that national regulatory authorities provide the Commission, after a reasoned request, with the information necessary for it to carry out its tasks under the Treaty. The information requested by the Commission shall be proportionate to the performance of those tasks. Where the information provided refers to information previously provided by undertakings at the request of the national regulatory authority, such undertakings shall be informed thereof. To the extent necessary, and unless the authority that provides the information has made an explicit and reasoned request to the contrary, the Commission shall make the information provided available to another such authority in another Member State.

Subject to the requirements of paragraph 3, Member States shall ensure that the information submitted to one national regulatory authority can be made available to another such authority in the same or different Member State, after a substantiated request, where necessary to allow either authority to fulfil its responsibilities under Community law.

3. Where information is considered confidential by a national regulatory authority in accordance with Community and national rules on business confidentiality, the Commission and the national regulatory authorities concerned shall ensure such confidentiality.

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

5. National regulatory authorities shall publish the terms of public access to information as referred to in paragraph 4, including procedures for obtaining such access.

## Article 6

### Consultation and transparency mechanism

Except in cases falling within Articles 7(6), 20 or 21 Member States shall ensure that where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives which have a significant impact on the relevant market, they give interested parties the opportunity to comment on the draft measure within a reasonable period. National regulatory authorities shall publish their national consultation procedures. Member States shall ensure the establishment of a single information point through which all current consultations can be accessed. The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality.

## Article 7

### Consolidating the internal market for electronic communications

1. In carrying out their tasks under this Directive and the Specific Directives, national regulatory authorities shall take the utmost account of the objectives set out in Article 8, including insofar as they relate to the functioning of the internal market.

2. National regulatory authorities shall contribute to the development of the Internal Market by co-operating with each other and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, seek to agree on the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. In addition to the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

- (a) falls within the scope of Articles 15 or 16 of this Directive, Articles 5 or 8 of Directive 2002/.../EC (Access Directive) or Article 16 of Directive 2002/.../EC (Universal Service Directive); and
- (b) would affect trade between Member States,

it shall at the same time make the draft measure accessible to the Commission and the national regulatory authorities in other Member States, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission and other national regulatory authorities thereof. National regulatory authorities and the Commission may make comments to the national regulatory authority concerned only within one month or within the period referred to in Article 6 if that period is longer. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

- (a) defining a relevant market which differs from those defined in the Recommendation in accordance with Article 15(1); or

- (b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 16(3), (4) or (5),

and would affect trade between Member States and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8, then the draft measure shall not be adopted for a further two months. This period may not be extended. Within this period the Commission may, in accordance with the procedure referred to in Article 22(2), take a decision requiring the national regulatory authority concerned to withdraw the draft measure. This decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

5. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities and the Commission and may, except in cases covered by paragraph 4, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

6. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 3 and 4, in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission and the other national regulatory authorities. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

## CHAPTER III

### TASKS OF NATIONAL REGULATORY AUTHORITIES

#### Article 8

##### Policy Objectives and Regulatory Principles

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

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities take the utmost account of the desirability of making regulations technologically neutral.

National regulatory authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.

2. The national regulatory authorities shall promote competition in the provision of electronic communications networks, electronic communications services and associated facilities and services by inter alia:

- (a) ensuring that users, including disabled users, derive maximum benefit in terms of choice, price, and quality;

- (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector;
- (c) encouraging efficient investment in infrastructure, and promoting innovation; and
- (d) encouraging efficient use and ensuring the effective management of radio frequencies and numbering resources.

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

- (a) removing remaining obstacles to the provision of electronic communications networks, associated facilities and services and electronic communications services at European level;
- (b) encouraging the establishment and development of trans-European networks and the interoperability of pan European services; and end-to-end connectivity,
- (c) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;
- (d) cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.

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

- (a) ensuring all citizens have access to a universal service specified in Directive 2002/.../EC (Universal Service Directive);

- (b) ensuring a high level of protection for consumers in their dealings with suppliers, in particular by ensuring the availability of simple and inexpensive dispute resolution procedures carried out by a body that is independent of the parties involved;
- (c) contributing to ensuring a high level of protection of personal data and privacy;
- (d) promoting the provision of clear information, in particular requiring transparency of tariffs and conditions for using publicly available electronic communications services;
- (e) addressing the needs of specific social groups, in particular disabled users; and
- (f) ensuring that the integrity and security of public communications networks are maintained.

#### Article 9

##### Management of radio frequencies for electronic communications services

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.
2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and in accordance with the Decision No /2002/EC (Radio Spectrum Decision).

3. Member States may make provision for undertakings to transfer rights to use radio frequencies with other undertakings.

4. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies is notified to the national regulatory authority responsible for spectrum assignment and that any transfer takes place in accordance with procedures laid down by the national regulatory authority and is made public. National regulatory authorities shall ensure that competition is not distorted as a result of any such transaction. Where radio frequency use has been harmonised through the application of Decision No /2002/EC (Radio Spectrum Decision) or other Community measures, any such transfer shall not result in change of use of that radio frequency.

#### Article 10

##### Numbering, naming and addressing

1. Member States shall ensure that national regulatory authorities control the assignment of all national numbering resources and the management of the national numbering plans. Member States shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services. National regulatory authorities shall establish objective, transparent and non-discriminatory assigning procedures for national numbering resources.

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

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

4. Member States shall support the harmonisation of numbering resources within the Community where that is necessary to support the development of pan European services. The Commission may, in accordance with the procedure referred to in Article 22(3), take the appropriate technical implementing measures on this matter.

5. Where this is appropriate in order to ensure full global interoperability of services, Member States shall coordinate their positions in international organisations and forums in which decisions are taken on issues relating to the numbering, naming and addressing of electronic communications networks and services.

#### Article 11

#### Rights of way

1. Member States shall ensure that when a competent authority considers:
  - an application for the granting of rights to install facilities on, over or under public or private property to an undertaking authorised to provide public communications networks, or
  - an application for the granting of rights to install facilities on, over or under public property to an undertaking authorised to provide electronic communications networks other than to the public,

the competent authority:

- acts on the basis of transparent and publicly available procedures, applied without discrimination and without delay, and
- follows the principles of transparency and non-discrimination in attaching conditions to any such rights.

The abovementioned procedures can differ depending on whether the applicant is providing public communications networks or not.

2. Member States shall ensure that where public or local authorities retain ownership or control of undertakings operating electronic communications networks and/or services, there is effective structural separation of the function responsible for granting the rights referred to in paragraph 1 from activities associated with ownership or control.

3. Member States shall ensure that effective mechanisms exist to allow undertakings to appeal against decisions on the granting of rights to install facilities to a body that is independent of the parties involved.

#### Article 12

#### Co-location and facility sharing

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall encourage the sharing of such facilities or property.

2. In particular where undertakings are deprived of access to viable alternatives because of the need to protect the environment, public health, public security or to meet town and country planning objectives, Member States may impose the sharing of facilities or property (including physical co-location) on an undertaking operating an electronic communications network or take measures to facilitate the coordination of public works only after an appropriate period of public consultation during which all interested parties must be given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.

### Article 13

#### Accounting separation and financial reports

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

- (a) keep separate accounts for the activities associated with the provision of electronic communications networks or services, to the extent that would be required if these activities were carried out by legally independent companies, so as to identify all elements of cost and revenue, with the basis of their calculation and the detailed attribution methods used, related to their activities associated with the provision of electronic communications networks or services including an itemised breakdown of fixed asset and structural costs, or
- (b) have structural separation for the activities associated with the provision of electronic communications networks or services.

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

2. Where undertakings providing public communications networks or publicly available electronic communications services are not subject to the requirements of company law and do not satisfy the small and medium-sized enterprise criteria of Community law accounting rules, their financial reports shall be drawn up and submitted to independent audit and published. The audit shall be carried out in accordance with the relevant Community and national rules.

This requirement shall also apply to the separate accounts required under paragraph 1(a).

## CHAPTER IV

### GENERAL PROVISIONS

#### Article 14

##### Undertakings with significant market power

1. Where the Specific Directives require national regulatory authorities to determine whether operators have significant market power in accordance with the procedure referred to in Article 16, paragraphs 2 and 3 of this Article shall apply.

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

In particular, national regulatory authorities shall, when assessing whether two or more undertakings are in a joint dominant position in a market, act in accordance with Community law and take into the utmost account the Guidelines on market analysis and the assessment of significant market power published by the Commission pursuant to Article 15. Criteria to be used in making such an assessment are set out in Annex II.

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

### Article 15

#### Market definition procedure

1. After public consultation and consultation with national regulatory authorities the Commission shall adopt a Recommendation on Relevant Product and Service Markets (hereinafter "the Recommendation"). The Recommendation shall identify in accordance with Annex I hereto those product and service markets within the electronic communications sector, the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

The Commission shall regularly review the Recommendation.

2. The Commission shall publish, at the latest on the date of entry into force of this Directive, Guidelines for market analysis and the assessment of significant market power (hereinafter "the Guidelines") which shall be in accordance with the principles of competition law.
3. National regulatory authorities shall, taking the utmost account of the Recommendation and the Guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall follow the procedures referred to in Articles 6 and 7 before defining the markets that differ from those defined in the Recommendation.
4. After consultation with national regulatory authorities the Commission may, acting in accordance with the procedure referred to in Article 22(3), adopt a Decision identifying transnational markets.

#### Article 16

##### Market analysis procedure

1. As soon as possible after the adoption of the Recommendation or any updating thereof, national regulatory authorities shall carry out an analysis of the relevant markets, taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.
2. Where a national regulatory authority is required under Articles 16, 17, 18 or 19 of Directive 2002/.../EC (Universal Service Directive), or Articles 7 or 8 of Directive 2002/.../EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive.

3. Where a national regulatory authority concludes that the market is effectively competitive, it shall not impose or maintain any of the specific regulatory obligations referred to in paragraph 2 of this Article. In cases where sector specific regulatory obligations already exist, it shall withdraw such obligations placed on undertakings in that relevant market. An appropriate period of notice shall be given to parties affected by such a withdrawal of obligations.

4. Where a national regulatory authority determines that a relevant market is not effectively competitive, it shall identify undertakings with significant market power on that market in accordance with Article 14 and the national regulatory authority shall on such undertakings impose appropriate specific regulatory obligations referred to in paragraph 2 of this Article or maintain or amend such obligations where they already exist.

5. In the case of transnational markets identified in the Decision referred to in Article 15(4), the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the Guidelines and decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in paragraph 2 of this Article in a concerted fashion.

6. Measures taken according to the provisions of paragraphs 3, 4 and 5 of this Article shall be subject to the procedures referred to in Articles 6 and 7.

## Article 17

### Standardisation

1. The Commission, acting in accordance with the procedure referred to in Article 22(2), shall draw up and publish in the Official Journal of the European Communities a List of standards and/or specifications to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services. Where necessary, the Commission may, acting in accordance with the procedure referred to in Article 22(2) and following consultation of the Committee established by Directive 98/34/EC, request that standards be drawn up by the European Standards Organisations (European Committee for Standardisation (CEN), European Committee for Electrotechnical Standardisation (CENELEC), and European Telecommunications Standards Institute (ETSI)).
2. Member States shall encourage the use of the standards and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.

As long as standards and/or specifications have not been published in accordance with paragraph 1, Member States shall encourage the implementation of standards and/or specifications adopted by the European Standards Organisations.

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

Where international standards exist, Member States shall encourage the European Standards Organisations to use them, or the relevant parts of them, as a basis for the standards they develop, except where such international standards or relevant parts would be ineffective.

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

4. Where the Commission intends to make the implementation of certain standards and/or specifications compulsory, it shall publish a notice in the Official Journal of the European Communities and invite public comment by all parties concerned. The Commission, acting in accordance with the procedure referred to in Article 22(3), shall make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the List of standards and/or specifications published in the Official Journal of the European Communities.

5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall, acting in accordance with the procedure referred to in Article 22(2), remove them from the List of standards and/or specifications referred to in paragraph 1.

6. Where the Commission considers that standards and/or specifications referred to in paragraph 4 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall, acting in accordance with the procedure referred to in Article 22(3), remove them from this List of standards and/or specifications referred to in paragraph 1.

7. This Article does not apply in respect of any of the essential requirements, interface specifications or harmonised standards to which the provisions of Directive 1999/5/EC apply.

## Article 18

### Interoperability of digital interactive television services

1. In order to promote the free flow of information, media pluralism and cultural diversity, Member States shall encourage, in accordance with the provisions of Article 17(2) :
  - (a) providers of digital interactive TV services for distribution to the public in the Community on digital interactive TV platforms, regardless of the transmission mode, to use an open API ;
  - (b) providers of all enhanced digital TV equipment deployed for the reception of digital interactive television services on interactive digital TV platforms to comply with an open API in accordance with the minimum requirements of the relevant standards or specifications.
2. Without prejudice to Article 5(1)(b) of Directive 2002/.../ EC (Access Directive), Member States shall encourage proprietors of APIs to make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable providers of digital interactive TV services to provide all services supported by the API in a fully functional form.
3. Within one year after the date of application referred to in Article 28(1), second subparagraph, the Commission shall examine the effects of this Article. If interoperability and freedom of choice for users have not been adequately achieved in one or more Member States, the Commission may take action in accordance with the procedure laid down in Article 17(3) and (4).

## Article 19

### Harmonisation procedures

1. Where the Commission, acting in accordance with the procedure referred to in Article 22(2), issues Recommendations to Member States on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8, Member States shall ensure that national regulatory authorities take the utmost account of those Recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a Recommendation, it shall inform the Commission giving the reasoning for its position.
2. Where the Commission finds that divergence at national level in regulations aimed at implementing Article 10(4) creates a barrier to the single market, the Commission may, acting in accordance with the procedure referred to in Article 22(3), take the appropriate technical implementing measures.

## Article 20

### Dispute resolution between undertakings

1. In the event of a dispute arising in connection with obligations arising under this Directive or the Specific Directives between undertakings providing electronic communications networks or services in a Member State, the national regulatory authority concerned shall, at the request of either party, and without prejudice to the provisions of paragraph 2, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.

2. Member States may make provision for national regulatory authorities to decline to resolve a dispute through a binding decision where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8. The national regulatory authority shall inform the parties without delay. If after four months the dispute is not resolved, and if the dispute has not been brought before the courts by the party seeking redress, the national regulatory authority shall issue, at the request of either party, a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months.
3. In resolving a dispute, the national regulatory authority shall take decisions aimed at achieving the objectives set out in Article 8. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.
4. The decision of the national regulatory authority shall be made available to the public, having regard to the requirements of business confidentiality. The parties concerned shall be given a full statement of the reasons on which it is based.
5. The procedure referred to in paragraphs 1, 3 and 4 shall not preclude either party from bringing an action before the courts.

## Article 21

### Resolution of cross-border disputes

1. In the event of a cross-border dispute arising under this Directive or the Specific Directives between parties in different Member States, where the dispute lies within the competence of national regulatory authorities from more than one Member State, the procedure set out in paragraphs 2, 3 and 4 shall be applicable.

2. Any party may refer the dispute to the national regulatory authorities concerned. The national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8. Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives.

3. Member States may make provision for national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8. They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party seeking redress, and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8.

4. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.

## Article 22

### Committee

1. The Commission shall be assisted by a Committee ("the Communications Committee").
2. Where reference is made to this paragraph, Articles 3 and 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, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

4. The Committee shall adopt its rules of procedure.

### Article 23

#### Exchange of information

1. The Commission shall provide all relevant information to the Communications Committee on the outcome of regular consultations with the representatives of network operators, service providers, users, consumers, manufacturers and trade unions, as well as third countries and international organisations.
2. The Communications Committee shall, taking account of the Community's electronic communications policy, foster the exchange of information between the Member States and between the Member States and the Commission on the situation and the development of regulatory activities regarding electronic communications networks and services.

### Article 24

#### Publication of information

1. Member States shall ensure that up-to-date information pertaining to the application of this Directive and the Specific Directives is made publicly available in a manner that guarantees all interested parties easy access to that information. They shall publish a notice in their national Official Gazette describing how and where the information is published. The first such notice shall be published before the date of application referred to in Article 28(1), second subparagraph, and thereafter a notice shall be published whenever there is any change in the information contained therein.

2. Member States shall send to the Commission a copy of all such notices at the time of publication. The Commission shall distribute the information to the Communications Committee as appropriate.

### Article 25

#### Review procedures

The Commission shall periodically review the functioning of this Directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 28(1), second subparagraph. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay.

## CHAPTER V

### FINAL PROVISIONS

### Article 26

#### Repeal

The following Directives and Decisions are hereby repealed with effect from the date of application referred to in Article 28(1), second subparagraph:

- Directive 90/387/EEC,
- Council Decision 91/396/EEC of 29 July 1991 on the introduction of a single European emergency call number <sup>1</sup>,

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<sup>1</sup> OJ L 217, 6.8.1991, p. 31.

- Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines <sup>1</sup>,
- Council Decision 92/264/EEC of 11 May 1992 on the introduction of a standard international telephone access code in the Community <sup>2</sup>,
- Directive 95/47/EC,
- Directive 97/13/EC,
- Directive 97/33/EC,
- Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment <sup>3</sup>.

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<sup>1</sup> OJ L 165, 19.6.1992, p. 27. Directive as last amended by Commission Decision 98/80/EC (OJ L 14, 20.1.1998, p. 27).

<sup>2</sup> OJ L 137, 20.5.1992, p. 21.

<sup>3</sup> OJ L 101, 1.4.1998, p. 24.

## Article 27

### Transitional measures

Member States shall maintain all obligations under national law referred to in Article 7 of Directive 2002/..../EC (Access Directive) and Article 16 of Directive 2002/.../EC (Universal Service Directive) until such time as a determination is made in respect of those obligations by a national regulatory authority in accordance with Article 16 of this Directive.

Operators of fixed public telephone networks that were designated by their national regulatory authority as having significant market power in the provision of fixed public telephone networks and services under Annex I, Part 1 of Directive 97/33/EC or Directive 98/10/EC shall continue to be considered "notified operators" for the purposes of Regulation (EC) No 2887/2000 until such a time as the market analysis procedure referred to in Article 16 has been completed. Thereafter they shall cease to be considered "notified operators" for the purposes of the Regulation.

## Article 28

### Transposition

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive not later than .....<sup>\*</sup>. They shall forthwith inform the Commission thereof.

They shall apply those measures from .....<sup>\*\*</sup>.

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\* 15 months after the date of the entry into force of this Directive.

\*\* The first day after the expiry of this 15 month period.

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

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

#### Article 29

##### Entry into force

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

#### Article 30

##### Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President

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List of markets to be included in the initial Commission Recommendation on Relevant Product  
and Service Markets referred to in Article 15

1. Markets referred to in Directive 2002/.../EC (Universal Service Directive)

Article 16 – Markets defined under the former regulatory framework, where obligations should be reviewed.

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

The provision of leased lines to end users.

2. Markets referred to in Directive 2002/.../EC (Access Directive)

Article 7 – Markets defined under the former regulatory framework, where obligations should be reviewed.

Interconnection (Directive 97/33/EC)

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

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

access to the fixed public telephone network, including unbundled access to the local loop

access to public mobile telephone networks, including carrier selection

Wholesale leased line capacity (Directive 92/44/EEC)

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

3. Markets referred to in Regulation (EC) No 2887/2000

Services provided over unbundled (twisted metallic pair) loops.

4. Additional markets

The national market for international roaming services on public mobile telephone networks.

Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market the structure of which is considered to be conducive to co-ordinated effects. Without prejudice to the case law of the Court of Justice on joint dominance, this is likely to be the case where the market satisfies a number of appropriate characteristics, in particular in terms of market concentration, transparency and other characteristics mentioned below:

- mature market
- stagnant or moderate growth on the demand side
- low elasticity of demand
- homogeneous product
- similar cost structures
- similar market shares
- lack of technical innovation, mature technology
- absence of excess capacity
- high barriers to entry
- lack of countervailing buying power
- lack of potential competition
- various kind of informal or other links between the undertakings concerned
- retaliatory mechanisms
- lack or reduced scope for price competition.

The above is not an exhaustive list, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance.