

Committee on the Internal Market and Consumer Protection
Rapporteur: Malcolm Harbour
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Annex I

COMPROMISE AMENDMENT 1

Article 4

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

1. Member States shall ensure that all reasonable requests for connection at a fixed location to a public communications network are met by at least one undertaking.
2. The connection provided shall be capable of supporting voice, facsimile and data communications, at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.
3. Member States shall ensure that all reasonable requests for provision of a ***publicly available*** telephone service over the network connection referred to in paragraph 1, allowing originating and receiving of national and international calls and calls to emergency services via the number "112" ***as well as via any other national emergency number***, are met by at least one undertaking.

Recital 4a (new)

(4a) The universal service is a protective network for people whose financial resources, geographical location or special social needs do not permit them to access the basic services available to the majority of citizens. The basic universal service obligation laid down in the current directive is to provide users who so request with a connection to the public telephone network from a fixed location and at an affordable price. As a result, it addresses neither mobile service nor broadband access to the Internet. This basic obligation is now confronted by technological and market developments in which mobile communications may be the primary form of access in many areas and networks are increasingly adopting the technology associated with mobile and broadband communications. These developments raise a need to assess whether the technical, social and economic conditions justifying the inclusion of mobile communications and broadband access in the universal service obligation are fulfilled, as well as related financing aspects. To this end, the Commission will present, no later than autumn 2008, a review of the scope of the universal service obligation and proposals for reform of Directive 2002/22/EC to meet the appropriate public interest objectives. That review will take account of economic competitiveness and include an analysis of social, commercial and technological conditions and of the risk of social exclusion. It will also address the technical and economic viability, estimated cost, cost allocation and funding models for any redefined universal service obligation. As questions relating to the scope of the universal service obligation will

therefore be fully dealt with in that separate procedure, the present act only deals with other aspects of Directive 2002/22/EC.

COMPROMISE AMENDMENT 2

Article 20

End-user interests and rights

- [1. Changed and moved to 1(2a) as per AM 105/142D]
2. Member States shall ensure that, where subscribing to services providing connection to a public communications network and/or *electronic communications* services, *consumers, and other end-users so requesting*, have a right to a contract with an undertaking or undertakings providing such services and/or connection. The contract shall specify *in a clear, comprehensive and easily accessible form* at least:
- (a) the identity and address of the supplier;
 - (b) services provided, *including in particular:*
 - *where access to emergency services and caller location information is to be provided under Article 26, the level of reliability of such access, where relevant, and whether access is provided in the whole of the national territory,*
 - *information on any restrictions imposed by the provider regarding a subscriber's ability to access, use or distribute lawful content or run lawful applications and services,*
 - *the service quality levels, with reference to any parameters specified under Article 22(2) as appropriate,*
 - *types of maintenance and customer support services offered, as well as how to contact customer support,*
 - *the time for the initial connection, and*
 - *any restrictions on the use of terminal equipment imposed by the provider;*
 - (c) *the subscriber's decision as to whether to include his or her personal data in a directory and the data concerned;*
 - (d) particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, *payment methods offered and any differences in costs due to payment method;*
 - (e) the duration of the contract, the conditions for renewal and termination of services and of the contract, including

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

- 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 method of initiating procedures for settlement of disputes in accordance with Article 34;

(h) the *type of* action that might be taken by the undertaking *providing connection and/or services* in reaction to security or integrity incidents or threats and vulnerabilities, *as well as any compensation arrangements which apply if security or integrity incidents occur.*

The contract shall also include any information provided by the relevant public authorities on the use of electronic communications networks and services to carry out unlawful activities or to disseminate harmful content, and the means of protection against risks to personal security, privacy and personal data, as referred to in Article 21(4a) and relevant to the service provided.

7. Subscribers have a right to withdraw from their contracts without penalty upon notice of modifications in the contractual conditions proposed by operators. Subscribers shall be given adequate notice, not shorter than one month, ahead of any such modifications and shall be informed at the same time of their right to withdraw, without penalty, from such contracts, if they do not accept the new conditions.

COMPROMISE AMENDMENT 3

Article 21

Transparency and publication of information

- [1. Deleted (merged into 21(2))]
2. Member States shall ensure that undertakings providing *connection to a public electronic communications networks and/or electronic communications services* publish *transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, any charges due on termination of a contract, and information on standard terms and conditions*, in respect of access and use of their services provided 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 shall be published.*
3. 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, by means of—interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available *themselves or through third parties*, when these are not available on the market *free of charge or at a reasonable price*. Third parties shall have a right to use without charge the *information* published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.
4. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing *connection to a public electronic communications network and/or 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 prior to connecting the call;*
 - (b) *regularly remind subscribers of any lack of reliable access to emergency services or caller location information in the service they have subscribed to;*
 - (c) *inform subscribers of any change to any restrictions imposed by the undertaking on their ability to access, use or distribute lawful content or run lawful applications and services of their choice;*
 - (d) *inform subscribers of their right to include their personal data in a directory and of the types of data concerned; and*

(e) regularly inform disabled subscribers of details of current products and services aimed at them.

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

4a. Member States shall ensure that national regulatory authorities oblige the undertakings referred to in paragraph 4 to distribute public interest information to existing and new subscribers when appropriate. Such information shall be produced 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 carry out unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringement of copyright and related rights, and their consequences; and

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

Significant additional costs incurred by an undertaking in complying with these obligations shall be reimbursed by the relevant public authorities.

COMPROMISE AMENDMENT 4

Recitals to Article 20, 21 and 22(3)

- (11a) *The provisions on contracts should apply not only to consumers but also to other end-users, primarily micro, small and medium-sized enterprises, who may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens on providers and 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.*
- (12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services *and caller location information* is provided, and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. *The information should include any limitations as to 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 such a service, taking into account current technology and quality standards, as well as any quality of service parameters specified under the provisions of Directive 2002/22/EC. 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 appropriate, be free to promote the development and implementation of other means of access to emergency services capable of ensuring access equivalent to voice calls.* Customers should also be kept well informed of possible *types of* actions that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.
- (12a) *With respect to terminal equipment, the customer contract should specify any restrictions imposed by the provider on the customer's use of the equipment, such as by way of "SIM-locking" mobile devices, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost in order to retain the equipment.*
- (12b) *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, as well as any arrangements implemented by the provider to provide compensation if such events occur.*

- (12c) *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, information related to the use of communications services. This information should include warnings regarding copyright infringement, other unlawful uses and 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, privacy and personal data. The information could be coordinated by way of the cooperation procedure established in Article 33(2a). Such public interest information should be produced either as a preventative measure or in response to particular problems, it should be updated whenever necessary and it should be presented in easy to comprehend 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 information to their customers in a manner deemed appropriate by the national regulatory authorities. Significant additional costs incurred by service providers for dissemination of such information, for example if the provider is obliged to send the information by post and thereby incurs additional postage costs, should be agreed between the providers and the relevant authorities and met by those authorities. The information should also be included in contracts.*
- (13) *Community rules on consumer protection and national rules in conformity with Community law should apply to Directive 2002/22/EC without exception.*

Merged recital 14 and 16 (14-14c)

- (14) *It should be the end-users' decision what lawful content they want to be able 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 with transparent offerings as provided for in Directive 2002/22/EC should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Such information should, in the choice of the provider, specify either the type of content, application or service concerned, or individual applications or services, or both. Depending on the technology used and the type of restriction and/or limitation, such restrictions and/or limitations may require user consent under Directive 2002/58/EC (Privacy Directive).*
- (14a) *A competitive market should also ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, usage restrictions and/or limitations and the slowing of traffic. Where there is a lack of effective competition, national*

regulatory authorities should use the remedies available to them *under the Directives constituting the regulatory framework for electronic communications networks and services* to ensure that users' access to particular types of content or applications is not unreasonably restricted. *It should also be possible for national regulatory authorities to issue guidelines setting minimum quality of service requirements under Directive 2002/22/EC and to take other measures in case such other remedies have, in their judgement, not been effective, in view of the interests of users and all other relevant circumstances. Such guidelines or measures could include the provision of a basic tier of unrestricted service.*

- (14b) *Management of networks in order to, for example, address congestion and capacity constraints and to enable new services should not per se be considered an example of a restriction requiring intervention, and due account should be taken of the right of network and service operators to diversify their offerings in a competitive market, including the imposition of reasonable usage restrictions, price differentiation and other legitimate competitive practices. Temporary non-compliance with any minimum quality of service requirements due to unforeseeable circumstances beyond the reasonable control of the service and/or network provider (force majeure) should not be subject to sanctions.*
- (14c) *Since inconsistent remedies will significantly impair the achievement of the internal market, the Commission should assess any guidelines or other measures set by national regulatory authorities for possible regulatory intervention across the Community and, if necessary, adopt technical implementing measures in order to achieve consistent application throughout the Community.*
- (15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services. They should also, *themselves or through third parties*, make price guides available where the market has not provided them *free of charge or at a reasonable price*. Operators should not be entitled to any remuneration for such use of tariffs which had already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. *National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by the national regulatory authorities, prior to connecting the call. 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 applying to it and whether it is offered by a provider who is not a provider of electronic communications services.

[(16) Merged into 14]

(15a) Customers should be informed about their rights with respect to the use of their personal information in directories of subscribers, in particular about the purpose(s) of such directories, as well as their right, free of charge, not to be included in a public subscriber directory, as stipulated in Directive 2002/58/EC. Where systems exist allowing information to be included in the directory database but not disclosed to users of directory services customers should also be informed of that possibility.

COMPROMISE AMENDMENT 5

Article 22(3) *"Net neutrality"*

A national regulatory authority may issue guidelines setting minimum quality of service requirements, and, if appropriate, take other measures, in order to prevent degradation of service and slowing of traffic over networks, and to ensure that the ability of users to access or distribute lawful content or to run lawful applications and services of their choice is not unreasonably restricted. Those guidelines or measures shall take due account of any standards issued under Article 17 of Directive 2002/21/EC (Framework Directive).

The Commission may, having examined such guidelines or measures and consulted [xxx], adopt technical implementing measures in that regard if it considers that the guidelines or measures may create a barrier to the internal market. These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).

COMPROMISE AMENDMENT 6

Article 26

Emergency services and the single European emergency call number

1. Member States shall ensure that, in addition to any other national emergency call numbers specified by the national regulatory authorities, all end-users of services referred to in paragraph 2, including users of public pay telephones, are able to call the emergency services free of charge and without having to use any means of payment, by using the single European emergency call number "112".
2. Member States, *in cooperation with national regulatory authorities, emergency services and providers*, shall ensure that undertakings providing *an electronic communications* service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide *reliable* access to emergency services.
3. Member States shall ensure that *the emergency services are able to appropriately respond to and handle all* calls to the single European emergency call number "112" in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue in use.
4. Member States shall ensure that disabled end-users *have access to* emergency services *equivalent to that enjoyed by other end-users*. In order to ensure that disabled end-users are able to access emergency services while travelling in other Member States, the measures taken *shall* include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).
5. Member States shall ensure that caller location information is made available free of charge, *and as soon as the emergency call reaches the authority* handling *the emergency. This shall also apply to* all calls to the single European emergency call number "112".
6. Member States shall ensure that *in addition to information about their national emergency numbers, all citizens of the Union* 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 the effective implementation of "112" services in the Member States, the Commission, having consulted [xxx], may adopt technical implementing measures.

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

Recital 19

End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number “112” at least as expeditiously and effectively as calls to other national emergency numbers. It is important to increase awareness of “112” in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware that “112” can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. ***This is primarily a responsibility for the Member States but the Commission should continue both to support and supplement initiatives by the Member States to further awareness of "112" and its periodical evaluations of the knowledge of "112" by the public.*** The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, operators should provide caller location information to emergency services in a “push” mode. In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be able to adopt technical implementing measures in order to ensure the effective implementation of “112” in the Community for the benefit of citizens of the European Union.

COMPROMISE AMENDMENT 7

Article 33

Consultation with interested parties

1. Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users, 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 consultation ***mechanisms*** ensuring that in their decision-making process due consideration is given to, ***and account taken of, issues related to end-users, including, in particular, disabled end-users.***

2. Where appropriate, interested parties may develop, with the guidance of national regulatory authorities, mechanisms, involving consumers, user groups and service providers, to improve the general quality of service provision by, inter alia, developing and monitoring codes of conduct and operating standards.

(2a) 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 shall also as far as appropriate promote cooperation between undertakings providing electronic communications networks and/or services and the sectors interested in the protection and promotion of lawful content in electronic communication networks and services. These co-operation mechanisms may also include coordination of the public interest information to be made available as set out in Article 21(4a) and Article 20(2).

3. ***deleted***

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may take the appropriate technical implementing measures, ***following a public consultation after having consulted [xxx]***. These measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 37(2).