

Proposal for a Directive of the European Parliament and of the Council on the authorisation of electronic communications networks and services

(2000/C 365 E/18)

(Text with EEA relevance)

COM(2000) 386 final — 2000/0188(COD)

(Submitted by the Commission on 28 August 2000)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

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

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

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

Whereas:

- (1) The outcome of the public consultation on the 1999 review of the regulatory framework for electronic communications, as reflected in the Commission communication of 26 April 2000 ⁽¹⁾, has confirmed the need for a more harmonised and less onerous market access regulation for electronic communications services and networks throughout the Community.
- (2) Convergence between different electronic communications services and networks and their technologies requires the establishment of an authorisation system covering all similar services in a similar way regardless of the technologies used.
- (3) The least onerous system possible should be used to allow the provision of electronic communications services and networks in order to stimulate the development of new electronic communications services and to allow service providers and consumers to benefit from the economies of scale of the single market.
- (4) Those aims can be best achieved by general authorisation of all electronic communications services and networks without requiring any explicit decision or administrative act by the national regulatory authority and by limiting any procedural requirements to notification only.
- (5) It is necessary to include the rights of undertakings under general authorisations explicitly in such authorisations in order to ensure a level playing field throughout the

Community and to facilitate cross border negotiation of interconnection between public communications networks.

- (6) The granting of specific rights may continue to be necessary for the use of radio frequencies and numbers, including short codes, from the national numbering plan. Rights to numbers may also be allocated from a European numbering plan, including for example the virtual country code '3883' which has been attributed to Member countries of the European Conference of Post and Telecommunications (CEPT). Those rights of use should not be restricted except where this is unavoidable in view of the scarcity of radio frequencies and the need to ensure the efficient use thereof.
- (7) The conditions which may be attached to the general authorisation and to the specific rights of use, should be limited to what is strictly necessary to ensure compliance with essential requirements and obligations under Community law.
- (8) Specific obligations which may be imposed on providers of electronic communications services and networks in accordance with Community law by virtue of their significant market power as defined in Directive .../EC of the European Parliament and of the Council of ... (on a common regulatory framework for electronic communications networks and services) should be imposed separately from the general rights and obligations under the general authorisation.
- (9) The general authorisation should contain only conditions which are specific to the electronic communications sector. It should not be made subject to conditions which are already applicable by virtue of other existing national law which is not specific to the electronic communications sector.
- (10) Where the demand for radio frequencies in a specific range exceeds their availability, appropriate and transparent procedures should be followed for the assignment of such frequencies in order to avoid any discrimination and optimise use of those scarce resources.
- (11) Where the harmonised assignment of radio frequencies to particular undertakings has been agreed at European level, Member States should strictly implement such agreements in the granting of rights of use of radio frequencies from the national frequency usage plan.

⁽¹⁾ COM(2000) 239.

- (12) Providers of electronic communications services and networks may need a confirmation of their rights under the general authorisation with respect to interconnection and rights of way, in particular to facilitate negotiations with other, regional or local, levels of government or with service providers in other Member States. For this purpose the national regulatory authorities should provide declarations to undertakings upon request or automatically in response to a notification under the general authorisation.
- (13) The penalties for non-compliance with conditions under the general authorisation should be commensurate with the infringement. Save in exceptional circumstances, it would not be proportionate to withdraw the right to provide electronic communications services or the right to use radio frequencies or numbers where an undertaking did not comply with one or more of the conditions under the general authorisation. This is without prejudice to urgent measures which Member States may need to take in case of serious threats to public safety, security or health or to economic and operational interests of other undertakings. This Directive should also be without prejudice to any claims for compensation for damages between undertakings under national law.
- (14) Subjecting service providers to reporting and information obligations can be cumbersome, both for the undertaking and for the national regulatory authority concerned. Such obligations should therefore be proportionate, objectively justified and limited to what is strictly necessary. It is not necessary to require systematic and regular proof of compliance with all conditions under the general authorisation or attached to rights of use. Undertakings have a right to know the purposes for which the information they should provide will be used. The provision of information should not be a condition for market access. This Directive should be without prejudice to Member States' obligations to provide any information necessary for the defence of Community interests within the context of international agreements.
- (15) Administrative charges may be imposed on providers of electronic communications services in order to finance the activities of the national regulatory authority in managing the authorisation system and for the granting of rights of use. Such charges should be limited to cover the actual administrative costs for those activities. For this purpose transparency should be created in the income and expenditure of national regulatory authorities by means of annual reporting about the total sum of charges collected and the administrative costs incurred. This will allow undertakings to verify that administrative costs and charges are in balance. Administrative charges should not act as a barrier to market entry. Such charges should therefore be distributed in proportion to the turnover on the relevant services of the undertaking concerned as calculated over the accounting year preceding the year of the administrative charge. Small and medium-sized undertakings should not be required to pay administrative charges.
- (16) In addition to administrative charges, usage fees may be levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Such fees should not hinder the development of innovative services and competition in the market.
- (17) Member States may need to amend rights, conditions, procedures, charges and fees relating to general authorisations and rights of use where this is objectively justified. Such changes should be duly notified to all interested parties in good time giving them adequate opportunity to express their views on any such amendments.
- (18) The objective of transparency requires that service providers, consumers and other interested parties have easy access to any information regarding rights, conditions, procedures, charges, fees and decisions concerning the provision of electronic communications services, rights of use of radio frequencies and numbers, national frequency usage plans and national numbering plans. The national regulatory authorities have an important task in providing such information and keeping it up to date and in centralising all relevant information regarding rights of way where such rights are administered by other levels of government.
- (19) The proper functioning of the single market on the basis of the national authorisation regimes under this Directive should be monitored. On the basis of the findings of such monitoring, further harmonisation measures may be necessary where barriers to the single market remain. Directive (on a common regulatory framework for electronic communications networks and services) provides the procedural framework for any such measures.
- (20) The replacement of authorisations existing on the date of entry into force of this Directive by the general authorisation and the individual rights of use in accordance with this Directive should not lead to an increase in the obligations for service providers operating under an existing authorisation or to a reduction of their rights, unless this would have a negative effect on the rights and obligations of other undertakings,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective and scope

1. The aim of this Directive is to implement an internal market in electronic communications services through the harmonisation and simplification of authorisation rules and conditions in order to facilitate the provision of electronic communications services and networks throughout the Community.

2. This Directive shall apply to all authorisations relating to the provision of electronic communications services and networks.

Article 2

Definitions

For the purposes of this Directive, the definitions in Directive (on a common regulatory framework for electronic communications networks and services) shall apply.

Article 3

General authorisation of electronic communications services and networks

1. Member States shall not prevent an undertaking from providing electronic communications services or networks except where this is necessary to protect public security, safety or health.

2. The provision of electronic communications services or networks may only be subject to a general authorisation. The undertaking concerned may be required to submit a notification, but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, an undertaking may begin commercial activity, where necessary subject to the provisions on rights of use in Articles 5, 6 and 7.

3. The notification referred to in paragraph 2 shall not entail more than a declaration by a legal or natural person to the national regulatory authority of the intention to commence the provision of electronic communication networks or services and the submission of the minimal information which is required to allow the national regulatory authority to keep a register of providers of electronic communications services and networks. This information must be limited to what is necessary for the identification of the provider and the provider's contact persons, the provider's address and a short description of the service to be provided.

Article 4

Minimum list of rights derived from the general authorisation

Undertakings authorised pursuant to Article 3, shall have the right to:

(a) Provide electronic communications services to the public and negotiate interconnection with other providers of publicly available communications services covered by a general authorisation anywhere in the Community in accordance with Directive .../EC of the European Parliament and of the Council of ... (on access to, and

interconnection of, electronic communications networks and associated facilities).

(b) Establish electronic communications networks and be granted the necessary rights of way in accordance with Directive (on a common regulatory framework for electronic communications networks and services).

(c) Be given an opportunity to be designated to provide elements of a universal service obligation in part or all of the national territory in accordance with Directive .../EC of the European Parliament and of the Council of ... (on universal service and users' rights relating to electronic communications networks and services).

Article 5

Rights to use radio frequencies and numbers

1. Member States shall, where possible, in particular where the risk of harmful interference is negligible, not make the use of radio frequencies subject to the grant of individual rights of use but shall include the conditions for usage of such radio frequencies in the general authorisation.

2. Where it is necessary to grant individual rights to use radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking providing services under the general authorisation, subject to the provisions of Articles 6 and 7 and any other rules ensuring the efficient use of those resources in accordance with Directive (on a common regulatory framework for electronic communications networks and services).

Such rights of use shall be granted through open, non-discriminatory and transparent procedures. When granting rights of use, Member States shall specify whether those rights can be transferred and under which conditions, in accordance with Article 8 of Directive (on a common regulatory framework for electronic communications networks and services). Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned.

3. Decisions on rights of use shall be taken, communicated and published as soon as possible and within two weeks after receipt of the application by the competent authority in the case of numbers, and within six weeks in the case of radio frequencies.

4. Member States shall not limit the granting of rights of use except where this is necessary to ensure the efficient use of radio frequencies and in accordance with Article 7. Member States shall grant rights to use frequency where it is available.

*Article 6***Conditions attached to the general authorisation and to the rights of use for radio frequencies and rights of use for numbers**

1. The general authorisation for the provision of electronic communications services or networks and the rights of use for radio frequencies and rights of use for numbers shall be subject only to the conditions listed respectively in Parts A, B and C of the Annex. Such conditions shall be objectively justified in relation to the service concerned, non-discriminatory, proportionate and transparent.

2. Specific obligations which may be imposed on providers of electronic communications services and networks with significant market power under Article 8 of Directive (on access to, and interconnection of, electronic communications networks and associated facilities) or on those designated to provide universal service under Directive (on universal service and users' rights relating to electronic communications networks and services), shall be legally separate from the general rights and obligations under the general authorisation. In order to achieve transparency for undertakings, the criteria and procedures for imposing such specific obligations on individual undertakings, shall be referred to in the general authorisation.

3. The general authorisation shall only contain conditions which are specific for that sector as set out in Part A of the Annex and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation.

4. Member States shall not duplicate the terms of the general authorisation where they grant the right to use radio frequencies or numbers.

*Article 7***Procedure for limited granting of rights to use radio frequencies**

1. Where a Member State is considering to limit the granting of rights of use for radio frequencies, it shall:

- (a) give due weight to the need to maximise benefits for users and to facilitate the development of competition;
- (b) allow sufficient opportunity and a period of at least 30 days to enable all interested parties, including users and consumers, to express their views on any limitation;
- (c) publish its decision to limit the granting of rights of use, stating the reasons therefor;

(d) review the limitation at reasonable intervals or at the request of undertakings; and

(e) invite applications for rights of use.

2. Where a Member State finds that further rights to use radio frequencies can be granted, it shall publish that finding and invite applications for such rights.

3. Where the granting of rights of use for radio frequencies needs to be limited, Member States shall grant such rights on the basis of selection criteria which must be objective, non-discriminatory, detailed, transparent and proportionate. Any such selection must give due weight to the need to facilitate the development of competition and of innovative services and to maximise benefits for users.

4. Where comparative bidding procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 5(3) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than six months.

These time-limits shall be without prejudice to any applicable international agreements relating to the use of radio frequencies and of orbital positions.

*Article 8***Harmonised assignment of radio frequencies**

Where the usage of radio frequencies has been harmonised and access conditions and procedures have been agreed, in accordance with Decision (on a regulatory framework for radio spectrum policy in the Community) and other Community rules, Member States shall grant the right of use for radio frequencies in accordance therewith. They shall not impose any conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the harmonised assignment of radio frequencies.

*Article 9***Declarations to facilitate the exercise of rights of way and rights of interconnection**

At the request of an undertaking Member States shall, within one week, issue declarations confirming that that undertaking is authorised to apply for rights of way and/or to negotiate interconnection under the general authorisation in order to facilitate the exercise of those rights at other levels of government or in relation to other undertakings. Where appropriate such declarations may also be issued as an automatic reply following notification referred to in Article 3(2).

*Article 10***Compliance with the conditions of the general authorisation or for rights of use**

1. National regulatory authorities may require undertakings providing electronic communications services or networks covered by the general authorisation or enjoying rights of use for radio frequencies or numbers to provide information necessary to verify compliance with the conditions of the general authorisation or the rights of use, in accordance with Article 11.

2. Where a national regulatory authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or the rights of use, it shall notify the undertaking of those findings and give the undertaking a reasonable opportunity to state its views or remedy any breaches within one month after notification or within any other period agreed between the undertaking concerned and the national regulatory authority.

3. If the undertaking concerned does not remedy the breaches within the period as referred to in paragraph 2, the national regulatory authority shall take appropriate and proportionate measures aimed at ensuring compliance. The measures and the reasons on which they are based, shall be communicated to the undertaking concerned within one week of their adoption and at least one week before they take effect.

4. Where a breach of the conditions of the general authorisation or rights of use represents an immediate and serious threat to public safety, security or health or creates serious economic or operational problems for other providers or users of electronic communications services or networks, Member States may take urgent interim measures to remedy the situation. The undertaking concerned shall thereafter be given a reasonable opportunity to state its view and to propose any remedies.

5. Undertakings shall have the right to appeal against measures taken by Member States under this Article in accordance with the procedure referred to in Article 4 of Directive (on a common regulatory framework for electronic communications networks and services).

*Article 11***Information required under the general authorisation and for rights of use**

1. Without prejudice to information and reporting obligations under national legislation other than the general authorisation, Member States shall not require undertakings to provide more information under the general authorisation than is proportionate and objectively justified for:

- (a) systematic verification of compliance with conditions 1 and 2 of Part A, condition 6 of Part B and condition 5 of Part C

of the Annex and of compliance with obligations as referred to in Article 6(2);

- (b) case-by-case verification of compliance with conditions as set out in the Annex where a complaint has been received or where the national regulatory authority has other reasons to believe that a condition is not complied with;
- (c) comparative bidding procedures for radio frequencies;
- (d) publication of comparative overviews of quality and price of services for the benefit of consumers;
- (e) clearly defined statistical purposes;
- (f) market analysis for the purposes of Directive (on access to, and interconnection of, electronic communications networks and associated facilities) or Directive (on universal service and users' rights relating to electronic communications networks and services).

The information referred to in points (a), (b), (d), (e) and (f) of the first subparagraph may not be required prior to or as a condition for market access.

2. Where Member States require undertakings to provide information as referred to in paragraph 1, they shall inform them of the specific purpose for which this information is to be used.

*Article 12***Administrative charges**

1. Any administrative charges imposed on undertakings providing a service under the general authorisation shall:

- (a) in total, cover only the administrative costs incurred in the management, control and enforcement of the applicable general authorisation scheme and of the granting of rights of use; and
- (b) be apportioned between the individual undertakings in proportion to the turnover of each undertaking within the last accounting year on the services covered by the general authorisation, or for which the rights of use are granted, and provided within the national market of the Member State imposing the charges.

2. Undertakings with an annual turnover for the relevant services referred to in paragraph 1(b) of less than EUR 10 million shall be exempt from paying administrative charges.

3. Where Member States impose administrative charges, they shall publish a yearly overview of their administrative costs and of the total sum of the charges collected. If the total sum of the charges exceeds the administrative costs, appropriate adjustments shall be made in the following year.

*Article 13***Fees for rights of use and rights of way**

Member States may allow the assigning authority to impose fees for the rights to use radio frequencies, numbers or rights of way which reflect the need to ensure the optimal use of these resources. Such fees shall be non-discriminatory, transparent, objectively justified and proportionate in relation to their intended purpose and take into particular account the need to foster the development of innovative services and competition.

*Article 14***Amendment of rights and obligations**

Member States may amend the rights, conditions, procedures, charges and fees concerning general authorisations and rights of use or rights of way in objectively justified cases and in a proportionate manner. Member States shall give appropriate notice of their intention to make such amendments and allow interested parties, including users and consumers, a sufficient period of no less than four weeks to express their views on the proposed amendments.

*Article 15***Publication of information**

1. Member States shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations and rights of use is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.

2. Where charges, fees, procedures and conditions concerning rights of way are determined at different levels of government, Member States shall publish and keep up to date a register of all such charges, fees, procedures and conditions in an appropriate manner so as to provide easy access to that information for all interested parties.

*Article 16***Functioning of the internal market**

Where divergences between national charges, fees, procedures or conditions concerning general authorisation or the grant of rights of use create barriers to the internal market, the Commission may adopt measures to harmonise such charges, fees, procedures or conditions in accordance with the procedure referred to in Article 19(3) of Directive (on a common regulatory framework for electronic communications networks and services).

In order to identify any such barriers to the single market, the Commission shall periodically review the functioning of the national authorisation systems and the development of cross-border service provision within the Community and report to the European Parliament and to the Council.

*Article 17***Existing authorisations**

1. Member States shall bring authorisations already in existence on the date of entry into force of this Directive into line with the provisions of this Directive by 31 December 2001 at the latest.

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the obligations under authorisations already in existence, Member States may extend the validity of those rights and obligations until 30 June 2002 at the latest, provided that the rights of other undertakings under Community law are not effected thereby. Member States shall notify such extensions to the Commission and state the reasons therefor.

*Article 18***Transposition**

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

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

*Article 19***Entry into force**

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

*Article 20***Addressees**

This Directive is addressed to the Member States.

ANNEX

The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations (Part A), rights to use radio frequencies (Part B) and rights to use numbers (Part C) as referred to in Article 6(1) and Article 11(a).

A. Conditions which may be imposed by general authorisation

1. Financial contributions to the funding of universal service in conformity with Directive (on universal service and users' rights relating to electronic communications networks and services).
2. Administrative charges in conformity with Article 12 of this Directive.
3. Interoperability of services and interconnection of networks in conformity with Directive (on access to, and interconnection of, electronic communications networks and associated facilities).
4. Accessibility of numbers from the national numbering plan to end-users in conformity with Directive (on universal service and users' rights relating to electronic communications networks and services).
5. Environmental and town and country planning requirements, including conditions linked to the granting of access to public or private land and conditions linked to collocation and facility sharing in conformity with Directive (on a common regulatory framework for electronic communications networks and services).
6. Mandatory transmission of specified radio and TV broadcasts in conformity with Directive (on universal service and users' rights relating to electronic communications networks and services).
7. Personal data and privacy protection specific to the electronic communications sector in conformity with Directive (on the processing of personal data and the protection of privacy in the electronic communications sector).
8. Consumer protection rules specific to the electronic communications sector including conditions in conformity with Directive (on universal service and users' rights relating to electronic communications networks and services).
9. Obligations in relation to broadcasting content, in particular those concerning the protection of minors in accordance with Article 2(a)(2) of 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, as amended by Directive 97/36/EC of the European Parliament and of the Council.
10. Information to be provided under a notification procedure in accordance with Article 3(3) of this Directive and for other purposes as included in Article 11 of this Directive.
11. Enabling of legal interception by competent national authorities in conformity with Directive (on the processing of personal data and the protection of privacy in the electronic communications sector and Directive 95/46/EC).
12. Terms of use during major disasters to ensure communications between emergency services and authorities and broadcasts to the general public.
13. Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with Community law.

B. Conditions which may be attached to rights of use for radio frequencies

1. Designation of service for which the frequency shall be used, including conditions in relation to the content to be provided.
2. Efficient use of frequencies in conformity with Directive (on a common regulatory framework for electronic communications networks and services).
3. Avoidance of harmful interference.
4. Maximum duration in conformity with Article 5 of this Directive.
5. Transfer of rights and conditions for such transfer in conformity with Directive (on a common regulatory framework for electronic communications networks and services).

6. Usage fees in accordance with Article 13 of this Directive.
7. Any commitments which the undertaking obtaining the usage right has made in the course of a comparative bidding procedure.

C. Conditions which may be attached to rights of use for numbers

1. Designation of service for which the number shall be used.
 2. Efficient use of numbers in conformity with Directive (on a common regulatory framework for electronic communications networks and services).
 3. Number portability requirements in conformity with Directive (on universal service and users' rights relating to electronic communications networks and services).
 4. Maximum duration in conformity with Article 5 of this Directive.
 5. Transfer of rights and conditions for such transfer in conformity with Directive (on a common regulatory framework for electronic communications networks and services).
 6. Usage fees in accordance with Article 13 of this Directive.
-