

DIRECTIVE 98/61/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 24 September 1998
amending Directive 97/33/EC with regard to operator number portability and carrier pre-selection

THE EUROPEAN PARLIAMENT AND THE COUNCIL
 OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽³⁾,

Whereas the Commission organised a broad public consultation on the basis of a Green Paper on a numbering policy for telecommunications services in Europe;

Whereas this consultation underlined the importance of equal quantitative and qualitative access to numbering resources for all market players and the crucial significance of adequate numbering mechanisms, in particular for number portability and carrier selection, as key facilitators of consumer choice and effective competition in a liberalised telecommunications environment;

Whereas the Council adopted a resolution ⁽⁴⁾ on 22 September 1997 inviting the Commission to submit proposals to the European Parliament and to the Council regarding the accelerated introduction of number portability and regarding the introduction of carrier pre-selection;

Whereas on 17 July 1997 the European Parliament adopted a resolution ⁽⁵⁾ calling on the Commission to submit a proposal for an amendment to an already existing directive with a view to introducing carrier pre-selection and number portability;

Whereas, in the interests of the consumer and taking into account specific national market situations, national regulatory authorities may extend the obligation to provide carrier pre-selection with call-by-call override to organ-

isations operating public telecommunications networks without significant market power, where this does not impose a disproportionate burden on such organisations or create a barrier to entry in the market for new operators;

Whereas 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) ⁽⁶⁾ should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 97/33/EC is hereby amended as follows:

1. the following definitions shall be added to Article 2(1):

(h) "subscriber" means any natural or legal person who or which is party to a contract with the provider of publicly available telecommunications services for the supply of such services;

(i) "geographic number" means a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point of the subscriber to whom the number has been assigned;

2. the first subparagraph of Article 12(5) shall be replaced by the following:

'5. National regulatory authorities shall encourage the earliest possible introduction of operator number portability whereby subscribers who so request can retain their number(s) on the fixed public telephone network and the integrated services digital network (ISDN) independent of the organisation providing service, in the case of geographic numbers at a specific location and in the case of other than geographic numbers at any location, and shall ensure that this

⁽¹⁾ OJ C 330, 1. 11. 1997, p. 19, and OJ C 13, 17. 1. 1998, p. 10.

⁽²⁾ OJ C 73, 9. 3. 1998, p. 107.

⁽³⁾ Opinion of the European Parliament of 20 November 1997 (OJ C 371, 8. 12. 1997, p. 180), Council common position of 12 February 1998 (OJ C 91, 26. 3. 1998, p. 42) and Decision of the European Parliament of 14 May 1998 (OJ C 167, 1. 6. 1998). Council Decision of 20 July 1998.

⁽⁴⁾ OJ C 303, 4. 10. 1997, p. 1.

⁽⁵⁾ OJ C 286, 22. 9. 1997, p. 232.

⁽⁶⁾ OJ L 199, 26. 7. 1997, p. 32.

facility is available by 1 January 2000 at the latest or, in those countries which have been granted an additional transition period, as soon as possible after, but no later than two years after any later date agreed for full liberalisation of voice telephony services.'

3. the following paragraph shall be added to Article 12:

'7. National regulatory authorities shall require at least organisations operating public telecommunications networks as set out in Part 1 of Annex I and notified by national regulatory authorities as organisations having significant market power, to enable their subscribers, including those using ISDN, to access the switched services of any interconnected provider of publicly available telecommunications services. For this purpose facilities shall be in place by 1 January 2000 at the latest or, in those countries which have been granted an additional transition period, as soon as possible thereafter, but no later than two years after any later date agreed for full liberalisation of voice telephony services, which allow the subscriber to choose these services by means of pre-selection with a facility to override any pre-selected choice on a call-by-call basis by dialling a short prefix.

National regulatory authorities shall ensure that pricing for interconnection related to the provision of this facility is cost-orientated and that direct charges to consumers, if any, do not act as a disincentive for the use of this facility.'

4. the first sentence of Article 20(2) shall be replaced by the following:

'2. Deferment of the obligations under Article 12(5) and (7) may be requested where the Member States concerned can prove that they would impose an exces-

sive burden on certain organisations or classes of organisation.'

Article 2

1. Member States shall take the measures necessary to comply with this Directive before 31 December 1998. They shall forthwith inform the Commission thereof.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 24 September 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

J. FARNLEITNER