



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.10.1997  
COM(97) 480 final

97/ 0250(COD)

Proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

amending Directive 97/33/EC with regard to operator number portability and carrier  
pre-selection

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### **1. Background**

#### **a) Public consultation on the basis of a Commission Green Paper**

In November 1996 the Commission published its Green Paper on a Numbering Policy for Telecommunications Services in Europe<sup>1</sup>, presenting various options for a common approach towards certain numbering issues in order to reach the agreed goals of a competitive and liberalised single telecommunications market. A broad public consultation on these options provided the input for a more concrete plan of action, closely following the needs and demands of residential and business customers and new entrants in the telecommunications market while taking account of any constraints within existing telecommunications structures.

The consultation has demonstrated wide support for the Green Paper proposals to introduce call-by-call carrier selection, carrier pre-selection and operator number portability in order to enable the customer to benefit from a new competitive market. The comments also provided a useful basis to determine which services and service providers should be covered by the obligations relating to these numbering features. It also provided a clear indication of the timetable for their introduction.

#### **b) Commission Communication reporting on the outcome of the public Consultation**

The results of this consultation were set out in the Commission's Communication to the European Parliament and to the Council<sup>2</sup>. Drawing on those results, the Commission presented a number of policy conclusions and a concrete action plan to achieve the policy objectives.

With regard to numbering mechanisms, these objectives are :

- **by 1 January 1998**, call-by-call carrier selection should be offered by all fixed local access providers with significant market power in all Member States where full liberalisation is required by that date and in Member States where additional transition periods have been agreed, by the end of that period.
- **by 1 January 2000**, carrier pre-selection, (with the default carrier to be determined by the subscriber and with call-by-call override to be available to the user), should be offered by all fixed local access providers with significant market power in all Member States.
- **by 1 January 2000**, operator number portability should be offered by all fixed local access providers; whilst all operators should offer number portability for non-

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<sup>1</sup> COM(96)590 final, 20.11.1996

<sup>2</sup> COM (97) 203 final, 21.5.1997

geographic special service numbers (freephone, shared costs, premium rate services).

The legal principles underlying the policy objective of having a mechanism for call-by-call carrier selection by the dates set for liberalisation, is already implicit in the current legal framework for 1998. Article 12(6) of the Interconnection Directive requires that fair and equal treatment regarding numbering is given to all service providers. In practice this means that Member States must at least create a system of pre-fixes by which customers can reach service providers other than their local access provider. The Member States have confirmed their commitment to ensure the availability of call-by-call carrier selection by the dates set for liberalisation in a Council Resolution of 22 September 1997 on numbering policy for telecommunications services in Europe.

On the other two points, the action plan proposed the submission of legislative measures to create a legal basis for a synchronised introduction of carrier pre-selection throughout the internal market by 1 January 2000 as well as for an accelerated introduction of operator number portability by the same date.

#### c) Council Resolution

In its Resolution of 22 September 1997 the Council noted *"the wide support expressed during the consultation process for the introduction of appropriate numbering mechanisms favouring more competition throughout the Community"*. It considered that :

- *customers of at least all operators with significant market power providing fixed local public telephone services should have access to alternative operators through a non-discriminatory and user friendly mechanism for call-by call selection by 1 January 1998 or in those countries which have been granted an additional transition period by any later date agreed for the full liberalisation of voice telephony services;*
- *the introduction of carrier pre-selection, at least for operators with significant market power providing fixed local public telephone services, is needed as close as possible to, but not later than two years after, the deadlines for introduction of full liberalisation referred to in EU legislation in order to encourage competition in all sectors of the market and where this is necessary under the conditions which will be fixed in the forthcoming harmonisation Directive;*
- *with regard to number portability which is foreseen to be introduced in 2003 at the latest, Member States should make all necessary efforts to accelerate its introduction to a date as close as possible to the timetable established for full liberalisation and preferably not more than two years after that date.*

and invited the Commission to prepare proposals to the European Parliament and the Council on carrier pre-selection and number portability.

#### **d) European Parliament Resolution**

On 17 July 1997 the European Parliament also adopted a Resolution on the Green Paper on a Numbering Policy for Telecommunications Services in Europe, inter alia, calling on the Commission

- *"to make proposals for an amendment to the already existing directive for introducing carrier pre-selection for fixed local access providers with significant market power no later than 1 January 2000 throughout the Union, given the need for simultaneous Union-wide introduction in order to facilitate fair competition;*
- *"to introduce an amendment to an existing directive in order to introduce, as soon as possible, and no later than 1 January 2000, number portability (transferability of numbers when the service supplier changes, including non-geographical special service numbers);"*

#### **2. Scope and aim of the proposal**

The objective of the present proposal is to strengthen the existing provisions on equal qualitative and quantitative access to numbering resources for all market players in the Community's current legal framework for telecommunications. The availability of operator number portability and carrier pre-selection will make it easier for consumers to choose alternative service and network providers. This will enable them to benefit directly from competition in the telecommunications market. By offering consumers a non-discriminatory and user friendly way of choosing between different providers of telecommunications services, consumer choice can act as a catalyst in the process of achieving better quality telecommunications services at more competitive prices.

#### **3. The need to amend the Interconnection Directive and the principal changes proposed**

Given the need to ensure a clear and transparent regulatory framework for telecommunications and, given the fact that some of the principles set out in this proposal are related to the numbering provisions of the Interconnection Directive, the Commission believes that the most appropriate way of proceeding is through a limited and specific amendment of that Directive.

The following changes are proposed to the Interconnection Directive:

- Accelerating the date for the introduction of number portability by changing Article 12(5) of the Interconnection Directive which currently requires the

introduction of operator number portability for the fixed telecommunications networks in the major centres of population by 1 January 2003 at the latest.

The amendment set out in Article 1(1) of this proposal requires National Regulatory Authorities to encourage the early introduction of number portability and requires them to ensure its availability throughout a Member State by 1 January 2000.

- Add an obligation relating to carrier pre-selection to the numbering provisions (Article 12) in the Interconnection Directive and, in particular, to the existing obligations for "*fair and equal treatment of all providers of publicly available telecommunications services*".

Article 1(2) of this Directive therefore inserts a new Article 12(7) to the Interconnection Directive in order to create an obligation for National Regulatory Authorities to require the provision of carrier pre-selection within their networks from organisations operating fixed public telecommunications networks which enjoy significant market power by 1 January 2000 at the latest. The envisaged mechanism consists of a facility for subscribers to determine their own default service provider, for instance for international or long distance calls, while maintaining the possibility to override their pre-selected choice by dialling a short pre-fix on a call-by-call basis.

#### **4. Organisations covered**

On the basis of the results of the public consultation, the Commission has concluded that it would not be justified at this stage, to oblige local access providers without significant market power to offer carrier pre-selection. Such obligations would risk overregulating an emerging market.

The issue of whether a broader range of local access providers should be subject to specific obligations in this area, will be revisited as part of the general review of the functioning of the 1998 package, which is foreseen in the relevant Directives for 1999.

Secondly, the Commission considers that the need to oblige mobile operators to offer carrier selection, carrier pre-selection and number portability needs to be further examined. In some areas of the mobile market, there is already considerable competition, allowing users a choice of network operators, and, in many cases, also of service providers. Nevertheless, certain mobile markets are still in the early stages of development and it remains to be seen what level of competition will be reached. For these reasons, the Commission concludes from the consultation that it is not appropriate to apply such obligations to mobile operators at this stage. The Commission will re-evaluate the need for introduction of new numbering mechanisms facilitating consumer choice in the mobile sector by the end of 1998.

## **5. Carrier pre-selection and investment in alternative local infrastructure**

While the public consultation demonstrated a wide cross-sectoral and Europe-wide support for the introduction of carrier pre-selection, which was confirmed in Resolutions by the European Parliament and the Council, the Commission has also carefully considered the arguments brought forward by the minority of opponents to carrier pre-selection.

It has been argued that carrier pre-selection arrangements reduce the profit margins for local access providers by opening the market for long distance and international calls to stronger competition. Moreover, it would be more difficult for alternative local access providers to gain new customers because subscribers might see less reason to switch from the incumbent to a new entrant if the former were offering carrier pre-selection.

As expressed in the Communication reporting on the outcome of the public consultation, the Commission does not find the case against carrier pre-selection convincing, the main reasons for this assessment being that :

- A policy of maintaining barriers for services competition in order to stimulate infrastructure competition, does not lead to economic efficiency nor does it give customers the best deal. On the one hand a duopoly for local infrastructure is no guarantee for real competition regarding the offer of local access services and on the other hand, not having user friendly instruments to choose other service providers over the local network would lead to service tariffs staying higher than necessary. Moreover, residual barriers to service competition may create artificial incentives for infrastructure investment which may not be sustainable in the longer term.
- Carrier pre-selection would have to be offered as of 1 January 2000 by which time, due to the competitive forces in the liberalised EU telecommunications market, tariffs for international and long-distance calls will have come down significantly in any case. Alternative local access providers are fully aware of this and should, like all other market players, be preparing themselves for the new market situation. Incentive for investment in the local loop is likely to be driven increasingly by the provision of new multimedia services rather than by competition in traditional voice telephony.
- The requirement to offer carrier pre-selection will only be imposed on operators with significant market power. This will give alternative local access providers an important advantage because, unlike the incumbent operators, they will be able to continue to provide the complete telecommunications service package to their subscribers without the risk of these customers migrating to other service providers for parts of the package.
- Guarantees for the quality and availability of local access are included in the universal service obligations which are now firmly anchored in Community legislation. These obligations ensure that every citizen can access an affordable service of defined quality wherever they live in the Community.

## **6. Conclusion**

The proposed directive on operator number portability and carrier pre-selection has been requested by the European Parliament and by the Council. It reflects the results of the broad public consultation on numbering issues following the publication of the Numbering Green Paper. The proposed directive will provide consumers with the necessary user-friendly instruments to choose the telecommunications network and /or service providers which best suits their needs.

Proposal for a

**Directive of the European Parliament and of the Council**

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,

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

Acting in accordance with the procedure laid down in Article 189b of the Treaty

Whereas the Commission has organised a broad public consultation on the basis of a Green Paper on a Numbering policy for telecommunications services in Europe<sup>3</sup>

Whereas this consultation has 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 has adopted a Resolution on (.. 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 the European Parliament has adopted a Resolution on 17 July 1997 calling on the Commission to submit a proposal for an amendment to an already existing directive for introducing carrier pre-selection and number portability no later than 1 January 2000 throughout the Union

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<sup>3</sup> COM(96)590 final of 20 November 1996



**HAVE ADOPTED THIS DIRECTIVE:**

**Article 1**

Directive 97/33/EC<sup>4</sup> is hereby amended as follows :

1. Paragraph 5 of Article 12 shall be replaced by the following :

“5. National regulatory authorities shall encourage the earliest possible introduction of number portability whereby end-users who so request can retain their number(s) on the fixed public telephone network at a specific location independent of the organisation providing service, and shall ensure that this facility is available by 1 January 2000 at the latest.”

2. A new paragraph shall be inserted after paragraph 6 of Article 12 :

“7. National regulatory authorities shall require Organizations operating public telecommunications networks as set out in Part 1 of Annex I and notified by national regulatory authorities as Organizations having significant market power, to enable their subscribers 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, which allow the subscriber to choose these services by means of permanent pre-selection with a facility to override the pre-selected choice on a call-by-call basis by dialling a short prefix.”

**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 inform the Commission of the main provisions of national law which they adopt in the field governed by this Directive.

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<sup>4</sup> 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), OJ No L 199, 26.7.97, p.32.

**Article 3**

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

**Article 4**

This Directive is addressed to the Member States.

Done at Brussels

For the European Parliament

For the Council

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