

Directive 2002/19/EC of the European Parliament and of the Council
of 7 March 2002 on access to, and interconnection of, electronic
communications networks and associated facilities (Access Directive) (repealed)

CHAPTER III

OBLIGATIONS ON OPERATORS AND MARKET REVIEW PROCEDURES

f¹Article 13a

Functional separation

1 Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 9 to 13 have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access product markets, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

That business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating to price and service levels, and by means of the same systems and processes.

2 When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a proposal to the Commission that includes:

- a evidence justifying the conclusions of the national regulatory authority as referred to in paragraph 1;
- b a reasoned assessment that there is no or little prospect of effective and sustainable infrastructure-based competition within a reasonable time-frame;
- c an analysis of the expected impact on the regulatory authority, on the undertaking, in particular on the workforce of the separated undertaking and on the electronic communications sector as a whole, and on incentives to invest in a sector as a whole, particularly with regard to the need to ensure social and territorial cohesion, and on other stakeholders including, in particular, the expected impact on competition and any potential entailing effects on consumers;
- d an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems/markets failures identified.

3 The draft measure shall include the following elements:

- a the precise nature and level of separation, specifying in particular the legal status of the separate business entity;
- b an identification of the assets of the separate business entity, and the products or services to be supplied by that entity;
- c the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;
- d rules for ensuring compliance with the obligations;

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- e rules for ensuring transparency of operational procedures, in particular towards other stakeholders;
- f a monitoring programme to ensure compliance, including the publication of an annual report.

4 Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

5 An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9 to 13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to Article 8(3).]

Textual Amendments

- F1** Inserted by [Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services \(Text with EEA relevance\).](#)