

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communications networks and associated facilities (Access Directive) (repealed)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

Article 6

Conditional access systems and other facilities

1 Member States shall ensure that, in relation to conditional access to digital television and radio services broadcast to viewers and listeners in the Community, irrespective of the means of transmission, the conditions laid down in Annex I, Part I apply.

[^{F12} In the light of market and technological developments, the Commission may adopt implementing measures to amend Annex I. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).]

3 Notwithstanding the provisions of paragraph 1, Member States may permit their national regulatory authority, as soon as possible after the entry into force of this Directive and periodically thereafter, to review the conditions applied in accordance with this Article, by undertaking a market analysis in accordance with the first paragraph of Article 16 of Directive 2002/21/EC (Framework Directive) to determine whether to maintain, amend or withdraw the conditions applied.

Where, as a result of this market analysis, a national regulatory authority finds that one or more operators do not have significant market power on the relevant market, it may amend or withdraw the conditions with respect to those operators, in accordance with the procedures referred to in Articles 6 and 7 of Directive 2002/21/EC (Framework Directive), only to the extent that:

- a accessibility for end-users to radio and television broadcasts and broadcasting channels and services specified in accordance with Article 31 of Directive 2002/22/EC (Universal Service Directive) would not be adversely affected by such amendment or withdrawal, and
- b the prospects for effective competition in the markets for:
 - (i) retail digital television and radio broadcasting services, and
 - (ii) conditional access systems and other associated facilities,

would not be adversely affected by such amendment or withdrawal.

An appropriate period of notice shall be given to parties affected by such amendment or withdrawal of conditions.

4 Conditions applied in accordance with this Article are without prejudice to the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Textual Amendments

- F1** Substituted 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).

^{F2}Article 7

[^{F2}Review of former obligations for access and interconnection]

Textual Amendments

- F2** Deleted 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).

Article 8

Imposition, amendment or withdrawal of obligations

1 Member States shall ensure that national regulatory authorities are empowered to impose the obligations identified in [^{F1}Articles 9 to 13a].

2 Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), national regulatory authorities shall impose the obligations set out in Articles 9 to 13 of this Directive as appropriate.

3 Without prejudice to:

- the provisions of [^{F1}Articles 5(1) and 6],
- the provisions of Articles 12 and 13 of Directive 2002/21/EC (Framework Directive), Condition 7 in Part B of the Annex to Directive 2002/20/EC (Authorisation Directive) as applied by virtue of Article 6(1) of that Directive, Articles 27, 28 and 30 of Directive 2002/22/EC (Universal Service Directive) and the relevant provisions of [^{F1}Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)]⁽⁴⁾ containing obligations on undertakings other than those designated as having significant market power, or
- the need to comply with international commitments,

national regulatory authorities shall not impose the obligations set out in Articles 9 to 13 on operators that have not been designated in accordance with paragraph 2.

[^{F1}In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Articles 9 to 13 in this Directive, it shall submit this request to the Commission. The Commission shall take utmost account of the opinion of the Body of European Regulators for Electronic Communications (BEREC)⁽²⁾. The Commission, acting in accordance with Article 14(2), shall take a decision authorising or preventing the national regulatory authority from taking such measures.]

4 Obligations imposed in accordance with this Article shall be based on the nature of the problem identified, proportionate and justified in the light of the objectives laid down in Article 8 of Directive 2002/21/EC (Framework Directive). Such obligations shall only be imposed following consultation in accordance with Articles 6 and 7 of that Directive.

5 In relation to the third indent of the first subparagraph of paragraph 3, national regulatory authorities shall notify decisions to impose, amend or withdraw obligations on market players to the Commission, in accordance with the procedure referred to in Article 7 of Directive 2002/21/EC (Framework Directive).

Textual Amendments

- F1** Substituted 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 \(Text with EEA relevance\).](#)

Article 9

Obligation of transparency

[^{F1}1 National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, terms and conditions for supply and use, including any conditions limiting access to and/or use of services and applications where such conditions are allowed by Member States in conformity with Community law, and prices.]

2 In particular where an operator has obligations of non-discrimination, national regulatory authorities may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that undertakings are not required to pay for facilities which are not necessary for the service requested, giving a description of the relevant offerings broken down into components according to market needs, and the associated terms and conditions including prices. The national regulatory authority shall, *inter alia*, be able to impose changes to reference offers to give effect to obligations imposed under this Directive.

3 National regulatory authorities may specify the precise information to be made available, the level of detail required and the manner of publication.

[^{F1}4 Notwithstanding paragraph 3, where an operator has obligations under Article 12 concerning wholesale network infrastructure access, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II.]

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

[^{F15} The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). In implementing the provisions of this paragraph, the Commission may be assisted by BEREC.]

Textual Amendments

- F1** Substituted 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 \(Text with EEA relevance\).](#)

Article 10

Obligation of non-discrimination

1 A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations of non-discrimination, in relation to interconnection and/or access.

2 Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners.

Article 11

Obligation of accounting separation

1 A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations for accounting separation in relation to specified activities related to interconnection and/or access.

In particular, a national regulatory authority may require a vertically integrated company to make transparent its wholesale prices and its internal transfer prices *inter alia* to ensure compliance where there is a requirement for non-discrimination under Article 10 or, where necessary, to prevent unfair cross-subsidy. National regulatory authorities may specify the format and accounting methodology to be used.

2 Without prejudice to Article 5 of Directive 2002/21/EC (Framework Directive), to facilitate the verification of compliance with obligations of transparency and non-discrimination, national regulatory authorities shall have the power to require that accounting records, including data on revenues received from third parties, are provided on request. National regulatory authorities may publish such information as would contribute to an open and competitive market, while respecting national and Community rules on commercial confidentiality.

Article 12

Obligations of access to, and use of, specific network facilities

1 A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, *inter alia* in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

Operators may be required *inter alia*:

- [^{F1}a to give third parties access to specified network elements and/or facilities, including access to network elements which are not active and/or unbundled access to the local loop, to, *inter alia*, allow carrier selection and/or pre-selection and/or subscriber line resale offer;]
- b to negotiate in good faith with undertakings requesting access;
- c not to withdraw access to facilities already granted;
- d to provide specified services on a wholesale basis for resale by third parties;
- e to grant open access to technical interfaces, protocols or other key technologies that are indispensable for the interoperability of services or virtual network services;
- [^{F1}f to provide co-location or other forms of associated facilities sharing;]
- g to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;
- h to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;
- i to interconnect networks or network facilities[^{F1};]
- [^{F3}j to provide access to associated services such as identity, location and presence service.]

National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness.

[^{F1}2 When national regulatory authorities are considering the obligations referred in paragraph 1, and in particular when assessing how such obligations would be imposed proportionate to the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), they shall take account in particular of the following factors:

- a the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and/or access involved, including the viability of other upstream access products such as access to ducts;]
- b the feasibility of providing the access proposed, in relation to the capacity available;
- [^{F1}c the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;
- d the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;]
- e where appropriate, any relevant intellectual property rights;
- f the provision of pan-European services.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

[^{F33} When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with Article 17 of Directive 2002/21/EC (Framework Directive).]

Textual Amendments

- F1** Substituted 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 \(Text with EEA relevance\).](#)
- F3** 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 \(Text with EEA relevance\).](#)

Article 13

Price control and cost accounting obligations

[^{F11} A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned may sustain prices at an excessively high level, or may apply a price squeeze, to the detriment of end-users. To encourage investments by the operator, including in next generation networks, national regulatory authorities shall take into account the investment made by the operator, and allow him a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new investment network project.]

2 National regulatory authorities shall ensure that any cost recovery mechanism or pricing methodology that is mandated serves to promote efficiency and sustainable competition and maximise consumer benefits. In this regard national regulatory authorities may also take account of prices available in comparable competitive markets.

3 Where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that charges are derived from costs including a reasonable rate of return on investment shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, national regulatory authorities may use cost accounting methods independent of those used by the undertaking. National regulatory authorities may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

4 National regulatory authorities shall ensure that, where implementation of a cost accounting system is mandated in order to support price controls, a description of the cost accounting system is made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost

accounting system shall be verified by a qualified independent body. A statement concerning compliance shall be published annually.

Textual Amendments

- F1** Substituted 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 \(Text with EEA relevance\).](#)

^{F3}Article 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;

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- d rules for ensuring compliance with the obligations;
- 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

- F3** 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 \(Text with EEA relevance\).](#)

Article 13b

Voluntary separation by a vertically integrated undertaking

1 Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive) shall inform the national regulatory authority in advance and in a timely manner, in order to allow the national regulatory authority to assess the effect of the intended transaction, when they intend to transfer their local access network assets or a substantial part thereof to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products.

Undertakings shall also inform the national regulatory authority of any change of that intent as well as the final outcome of the process of separation.

2 The national regulatory authority shall assess the effect of the intended transaction on existing regulatory obligations under Directive 2002/21/EC (Framework Directive).

For that purpose, 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).

3 The legally and/or operationally separate business entity 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

- F3** 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 \(Text with EEA relevance\).](#)

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (1) [^{F1}OJ L 201, 31.7.2002, p. 37.]
- (2) [^{F1}Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.]

Textual Amendments

- F1** Substituted 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 \(Text with EEA relevance\).](#)