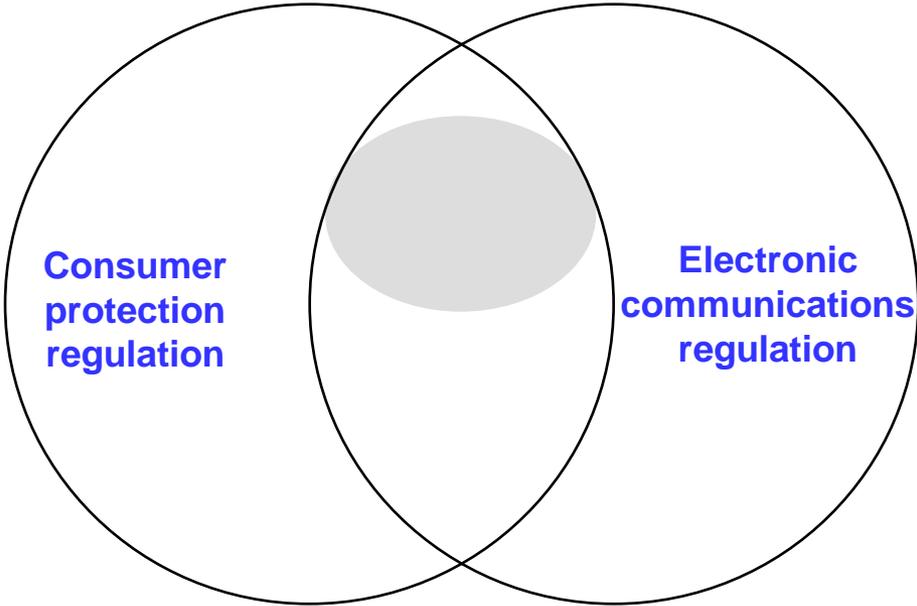




# **European legislation for communications user protection**

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March 2010**

# Focus within regulation

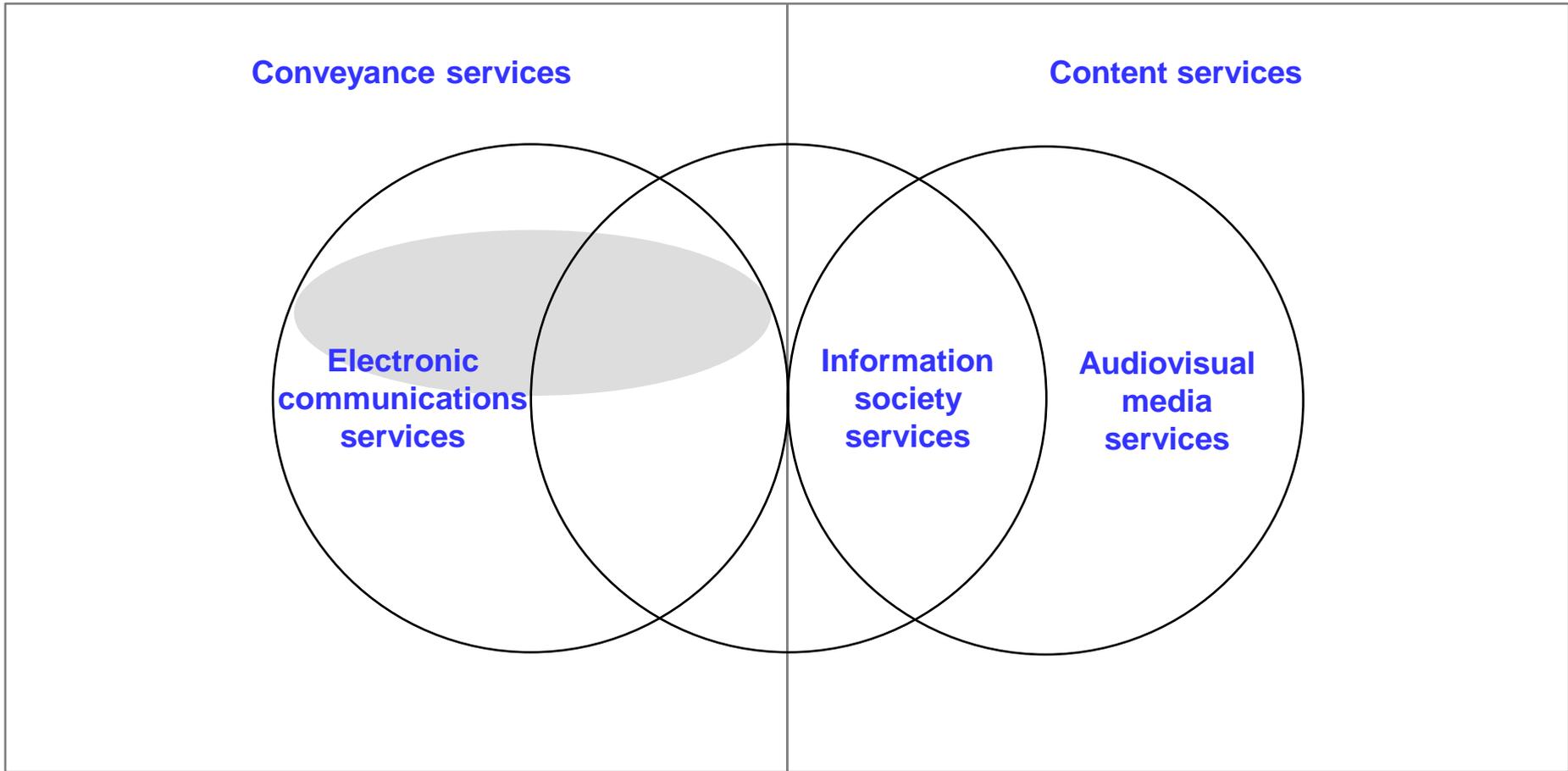


# Focus within consumer protection regulation for electronic communications

	Conveyance regulation	Content regulation
Telecommunications	Requiring the correctness of metering and billing systems	Monitoring video on demand
Broadcasting	Ensuring widespread coverage	Preventing invasion of privacy not justified by public interest

- The focus here is on **conveyance regulation** for **telecommunications**.
- However, problems can cross between services, if (for example):
  - Premium rate numbers are mentioned in television programmes.
  - Rogue internet diallers call premium rate numbers.
  - Downloaded applications can generate content as well as comprise it.
  - Mobile handsets offer micro-finance facilities to prepaid customers.

# Focus within services



# Electronic communications services

- An **electronic communications service** is a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks...; it does not include information society services ... which do not consist wholly or mainly in the conveyance of signals on electronic communications networks.

Source: Competition Directive Article 1(3) and Framework Directive Article 1(c).

# Information society services

- An **information society service** is a service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services, where:
  - “At a distance” means that the service is provided without the parties being simultaneously present. For instance, medical examinations of patients in surgeries and catalogue inspections by customers in shops are excluded.
  - “By electronic means” means that the service is sent initially and received ... by means of electronic equipment ..., and entirely ... conveyed ... by wire, by radio, by optical means or by other electromagnetic means. For instance, sales of entry tickets and medical consultations with doctors using telephones are excluded.
  - “At the individual request of a recipient of services” means that the service is provided through the transmission of data on individual request. For instance, radio and television broadcasts are excluded.

Source: Directive for the provision of information in the field of technical standards and regulations and of rules on Information Society services Article 1(2).

# Audiovisual media services

- An 'audiovisual media service' is a service ... which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks ....., and/or audiovisual commercial communication.

Source: Audiovisual Media Services Directive Article 1(a).

# Enlargement of the European Union (EU)



1951: 6 countries



1973: 9 countries



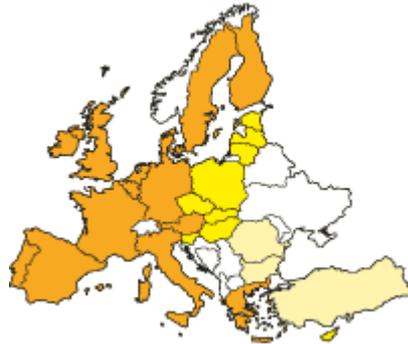
1981: 10 countries



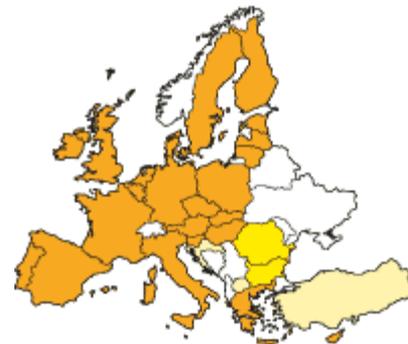
1986: 12 countries



1995: 15 countries



2004: 25 countries



2007: 27 countries

3 other countries also participate officially in the internal market (involving freedom of movement of goods, persons, services and capital).

# EU legal acts

- The European Commission (EC) designs legal acts.
- The types of binding legal act are:
  - **Regulations**. Applied directly in all Member States without transposition.
  - **Directives**. Required to be transposed into national law by relevant Member States by due dates.
  - **Decisions**. Applied directly to relevant Member States or individuals without transposition.
- The types of non-binding legal act are:
  - Recommendations.
  - Opinions.
- Binding acts are adopted after modification by the Council and the European Parliament (usually in the ‘co-decision’ procedure).

# Dates in telecommunications liberalisation in the EU

- **1987: Open Network Provision (ONP) proposed.**
- **1988: European Telecommunications Standards Institute (ETSI) started.**
- **1988: ONP started to make markets competitive for:**
  - **1988: Telecommunications equipment.**
  - **1990: Value added services and data networks.**
  - **1993: Private networks.**
  - **1994: Satellite communications and cable television networks.**
  - **1996: Mobile public voice telephony and leased lines.**
  - **1998: Fixed public voice telephony (and all telecommunications services).**
- **2002: New Regulatory Framework (NRF) adopted.**
- **2009: NRF revised.**

# Legislative timescales

- Typically, the adoption of a directive is:
  - Preceded by at least two years of consultation, drafting and revision.
  - Followed by at least two years of transposition.
- For the ONP:
  - Some countries were allowed to delay implementation.
  - Other countries liberalised several years early.
- For the NRF:
  - Primary legislation had been completed in 7 countries by the end of 2003, (the completion date required by the EU), 20 countries by the end of 2004, 24 countries by the end of 2005 and 25 countries by the end of 2006.
  - Secondary legislation was not in place in some countries at the end of 2006.
  - The review began in the middle of 2005.
  - The revisions were proposed formally in the middle of 2007.
  - The revisions were adopted finally at the end of 2009.
  - The transposition of the revisions is to happen by the middle of 2011.

# Development from the ONP to the NRF: competition policy

- **Flexibility in constraining abuses by operators:**
  - General and specific authorisations instead of licences.
  - Significant Market Power (SMP) as in competition law.
  - Market definitions and SMP determinations according to market state.
  - Treatment of competition failure using the least intrusive remedies.
  - Remedies *ex post* (after), not *ex ante* (before), failures except for SMP operators.
- **Emphasis on harmonisation between countries:**
  - Formalised co-operation of regulators with the EC.
  - EC veto on decisions on market definition and determination of SMP.
  - EC comment on remedies for failure of competition.
  - EC infringement procedures against countries.
- **Generalisation to handle convergence:**
  - Application to all transmission (including broadcasting).
  - Neutrality between technologies for delivering services.

# Development from the ONP to the NRF : consumer policy

- **Similar treatments of:**
  - **Universal service**
  - **Leased lines**
  - **Carrier selection**
  - **Number portability (excluding mobile numbers)**
  - **Local loop unbundling**
  - **Interconnection.**

# The need for and nature of possible remedies

- A market may need *ex ante* regulation if and only if:
  - There are substantial and persistent barriers to entry.
  - There is no effective competition behind the barriers to entry.
  - Competition law is unable to cure the competition failures.
- The *ex ante* regulation relates to:
  - Interconnection.
  - Access to the last mile.
  - Price control for several wholesale and some retail products.
  - Transparency (with wholesale reference offers).
  - Carrier selection.
  - Number portability.
  - Separate accounting.
  - Equivalence of access.

# The markets where such remedies may be warranted

- **Retail:**
  - Access to the public telephone network at a fixed location.
- **Wholesale:**
  - Call origination on the public telephone network at a fixed location.
  - Call termination on individual public telephone networks at a fixed location.
  - Physical network infrastructure access (including shared or unbundled) at a fixed location.
  - Broadband access (comprising non-physical) at a fixed location.
  - Terminating segments of leased lines irrespective of technology.
  - Voice call termination on individual mobile networks.

# Revisions to the NRF

- **More effective consolidation of the single market:**
  - Letting EC veto remedies for competition failures.
  - Replacing ERG with BEREC to help EC decisions.
  - Buttressing the independence of regulators from governments.
- **More rapid liberalisation of radio spectrum management:**
  - Achieving neutrality between technologies and between services.
  - Emphasising traded and unlicensed spectrum.
  - Reviewing for refarming existing allocated spectrum.
- **Simplification of competition policy:**
  - Reducing the number of markets to be regulated (from sixteen to seven).
  - Inhibiting suspensions of remedies during appeals against regulators.
  - Facilitating functional separation of SMP operators as a last resort.
- **Modification of consumer policy:**
  - Removing out-of-date provisions (such as those on leased lines).
  - Changing telephony user rights (to number portability).
  - Strengthening the monitoring and prevention of security breaches.

## Relevant organisations: BEREC

- Each EU Member State has an autonomous regulator of electronic communications.
- The Body of European Regulators of Electronic Communications (BEREC) comprises the national regulators serviced by an office.
- BEREC supersedes the European Regulators Group (ERG), which had very limited formal powers.
- BEREC may:
  - Advise national regulators especially on cross-border matters.
  - Offer opinions on proposed decisions of the EC or the national regulators.
  - Decide opinions by two-thirds majorities or, for opinions about EC analyses of measures by national regulators, one-half majorities.
- The EC may:
  - Comment on proposed decisions of national regulators.
  - Recommend or require the amendment or withdrawal of proposed decisions of national regulators after asking for the opinion of BEREC.
  - Initiate infringement proceedings against EU Member States.

## Relevant organisations: COCOM

- **The COmmunications COmmittee (COCOM) involves the national regulators and the EC.**
- **COCOM may invite to some sessions selected associations, among which currently are:**
  - **European Association for the Co-ordination of Consumer Representation in Standardisation (ANEC).**
  - **Bureau Européen des Unions de Consommateurs (BEUC).**
  - **International Telecommunications Users Group (INTUG).**
- **COCOM may advise the EC.**
- **Other groups set up like COCOM are:**
  - **Radio Spectrum Committee.**
  - **Radio Spectrum Policy Group.**
  - **Article 29 Working Party (from national regulators of data protection).**

# The NRF as it is now or soon will be (1)

- **Measures forming the NRF:**
  - Framework Directive.
  - Access Directive.
  - Authorisation Directive.
  - **Universal Service Directive.**
  - **Privacy and Electronic Communications Directive.**
  - Radio Spectrum Decision.
  - Recommendation on Relevant Markets.
  - Guidelines on Market Analysis and the Assessment of Significant Market Power.
- **Measures relevant to the NRF:**
  - Competition Directive.
  - Radio and Telecommunications Terminal Equipment Directive.
  - Data Protection Directive.
  - **Data Retention Directive.**
  - Electronic Commerce Directive.
  - Audio Visual Media Services Directive.
  - Unfair Commercial Practices Directive.
  - Regulation on Unbundled Access to the Local Loop.
  - Regulation on Consumer Protection Cooperation.

# The NRF as it is now or soon will be (2)

- **Measures dependent on the NRF**
  - **Regulation on Roaming on Public Mobile Telephone Networks.**
  - Decision on the Establishment of the European Regulators Group.
  - Decision on the Minimum Set of Leased Lines.
  - **Decision on Harmonised Numbers for Services of Social Value.**
  - Recommendation on Article 7 Notifications.
  - **Recommendation on Caller Location Information for Emergency Services.**
- **Measures revising the NRF:**
  - Directive amending the Framework Directive, the Access Directive and the Authorisation Directive.
  - **Directive amending the Universal Service Directive and the Privacy and Electronic Communications Directive.**
  - Regulation establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.

# Universal Service Directive (as amended): universal service

- **Availability and affordability.** Services must be available in all locations, at specified quality levels and with affordable prices, so as to let all users at fixed locations make and receive local, national and international telephone calls, facsimile communications and data communications, at rates allowing functional Internet access.
- **Public pay telephones.** Public pay telephones *or other public voice telephony access points* must be provided enough to meet the needs of users for geographical coverage, quantity, quality and accessibility to disabled users.
- **Disabled users.** Services that meet the needs of disabled users must be provided.
- **Users with low incomes.** Special tariffs or other aids to let users with low incomes use telephone services may be provided.

Throughout this presentation phrases in italics refer to provisions being added to the NRF and phrases in grey refer to provisions being removed from the NRF.

# Universal Service Directive (as amended): universal service

- **Directories.** Comprehensive directories updated at least once per year must be available to users.
- **Directories.** Customers may have entries in the directory.
- **Directory enquiry services.** Directory enquiry services must be provided, even from public pay telephones.
- **Operator assistance services.** Operator assistance services must be provided, even from public pay telephones.

# Universal Service Directive (as amended): universal service

- **Designation.** Different undertakings may be designated as having the Universal Service Obligation (USO) to provide different elements of universal service and to cover different locations.
- **Prices.** USO undertakings may be subject to price caps or common tariffs, including geographical averaging.
- **Quality.** USO undertakings must publish information on quality.
- **Financing.** USO undertakings may be compensated from public funds or other providers of electronic communications networks and services.

# Universal Service Directive (as amended): universal service

- **Itemised billing.** USO undertakings must provide free of charge itemised bills that do not identify calls that are free of charge.
- **Call barring.** USO undertakings must let users bar free of charge the making of calls to defined numbers or services.
- **Prepayment.** USO undertakings may be required to provide access to services on prepaid terms.
- **Phased payment.** USO undertakings may be required to let users phase payments for connections over time.
- **Non-payment.** USO undertakings must warn users about service interruptions or disconnections due to non-payment of bills and confine service interruptions to the services concerned as far as technically feasible.
- **Grace periods.** USO undertakings may provide periods of limited service before disconnections, during which only calls that are free of charge are allowed.

# Universal Service Directive (as amended): universal service

- **Tariff advice.** USO undertakings must provide information about cheaper alternative tariffs on request from users.
- **Cost control.** USO undertakings may be required to warn users free of charge about abnormal or excessive consumption.

# Universal Service Directive (as amended): universal service

- **“Must carry”**. Undertakings may be required to carry specified radio and television broadcasts.

# Universal Service Directive (as amended): market power

- **Analysis.** Undertakings may be determined to have Significant Market Power (SMP) following a market analysis.
- **Prices.** SMP undertakings must not charge excessive or predatory prices for retail services and must charge cost-based prices for leased line services in the minimum set.
- **Carrier selection.** SMP undertakings must let users select carriers call-by-call and by previous subscription.

# Universal Service Directive (as amended): contracts

- **Contracts.** Contracts must contain:
  - The undertaking names and addresses.
  - The services provided, the quality levels offered, the times for initial connections and the maintenance offered.
  - *Any limitations on access to emergency services and caller location information or on access to other services or applications.*
  - *Any procedures used for traffic measuring and shaping.*
  - *The options for including data in directories.*
  - The prices and the means of getting information on prices.
  - The contract durations and the rules about termination and renewal.
  - *Any minimum term or usage in promotions, any charges for porting numbers, and any charges for terminal equipment following termination.*
  - Any compensation and refund policy for failing to meet quality levels.
  - The dispute resolution arrangements.
  - *The undertaking responses to threats to security or integrity.*
- **Contracts.** *Contracts may be required to contain information about potentially unlawful service uses and personal data protection.*

# Universal Service Directive (as amended): user rights

- **Standard terms and conditions.** Information on standard terms and conditions must be available to users, covering:
  - The undertaking names and addresses.
  - The services provided and the maintenance offered.
  - The prices, the standard discounts applied, any special tariff schemes, *charges for terminal equipment, any other charges, and the contents of each price element.*
  - The contract durations *and the rules about termination.*
  - *Any charges for porting numbers and procedures for porting numbers.*
  - The compensation and refund policy.
  - The dispute resolution arrangements.
  - Any rights in relation to universal service.

# Universal Service Directive (as amended): user rights

- **Other terms and conditions.** Undertakings may be required to inform customers about:
  - Changes to any limitations on access to emergency services and caller location information or on access to other services or applications.
  - Any procedures used for traffic measuring and shaping.
  - The options for including data in directories.
- **Public interest.** Undertakings may be required to distribute information of public interest free of charge, including information about potentially unlawful service uses and personal data protection.

## Universal Service Directive (as amended): user rights

- **Price comparison aids.** The provision of price comparison aids *that are cheap to use* must be encouraged *and ensured if the market does not bring this about.*

# Universal Service Directive (as amended): user rights

- **Quality.** Undertakings may be required to publish information on quality.
- ***Minimum quality levels.*** *Undertakings may be required to observe minimum quality levels.*
- **Integrity.** Publicly available telephone services and access to emergency services at fixed locations should remain available even when there is catastrophic network breakdown.

## Universal Service Directive (as amended): numbering

- **Calling line identification.** Undertakings may be required to provide calling line identification.
- **Emergency services.** The emergency number (112) must be available free of charge to users *of services capable of making national calls*, even from public pay telephones.
- **Services of social value.** *Harmonised services of social value should use numbers in the range reserved and harmonised for them (116...).*
- **Specially tariffed services.** *Undertakings may be required to provide information on prices about particular services or numbers (before connecting calls, if appropriate).*
- **Call blocking.** *Undertakings must be prepared to block access to services or numbers case-by-case.*

# Universal Service Directive (as amended): disabled users

- **Disabled users.** *Undertakings may be required to ensure that disabled users have access to services equivalent to that of most users.*
- **Disabled users.** *The availability of terminal equipment for disabled users must be encouraged.*
- **Disabled users.** *Undertakings may be required to publish information on the measures taken for disabled users.*
- **Disabled users.** *Undertakings may be required to inform disabled users regularly about services and products designed for them.*

## Universal Service Directive (as amended): switching

- **Changes of terms and conditions.** Customers must receive notice of changes in contract terms and conditions one month in advance and may then withdraw from contracts without penalty.
- **Number portability.** Customers may switch service providers *in one day* while keeping their numbers (including mobile numbers).
- **Contract duration.** *Customers must not have contracts with durations of more than twenty-four months initially or with disincentives to switching.*
- **Contract duration.** *Customers may require to be given contracts with durations of no more than twelve months.*

# Universal Service Directive (as amended): empowerment

- **Consultation.** *Consultation mechanisms must ensure that regulatory decisions pay due attention to consumer interests.*
- **Dispute resolution.** There must be simple cheap out-of-court procedures for resolving disputes between users and undertakings.

# Privacy and Electronic Communications Directive (as amended): security

- **Security safeguards.** Undertakings must take measures to safeguard security *that may be audited against best practice and that at least:*
  - *Ensure that personal data can be accessed only by authorised personnel for legally authorised purposes.*
  - *Protect personal data against accidental or unlawful destruction, accidental loss or alteration, and unauthorised or unlawful storage, processing, access or disclosure.*
  - *Ensure the implementation of a security policy for processing personal data.*
- **Security breaches.** Undertakings must inform customers about possible security breaches and, for breaches outside the scopes of the measures taken by the undertakings, about remedies.
- **Security breaches.** Undertakings must inform the competent national authority about security breaches related to personal data.
- **Security breaches.** Undertakings must inform without undue delay individuals about security breaches likely to adversely affect their personal data.

Throughout this presentation phrases in italics refer to provisions being added to the NRF and phrases in grey refer to provisions being removed from the NRF.

# Privacy and Electronic Communications Directive (as amended): confidentiality

- **Itemised billing.** Customers may receive non-itemised bills.
- **Directories.** Customers may verify, correct, withdraw or prevent the publication of their directory entries free of charge.
- **Calling line identification.** Calling line identification must be suppressed free of charge at the request of the calling party call-by-call (except in tracing malicious, nuisance and emergency calls) and at the request of the called party.
- **Called line identification.** Called line identification must be suppressed free of charge at the request of the called party.

# Privacy and Electronic Communications Directive (as amended): confidentiality

- **Traffic data.** Non-anonymous traffic data must not be processed or stored (except in billing and in making communications) without the consent of the customers given after receiving information about the duration and purposes of the processing and the data to be processed.
- **Traffic data.** Customers must be able to withdraw their consent for the processing of traffic data at any time.
- **Location data.** Non-anonymous location data must not be processed or stored, without the prior consent of the customers given after receiving information about the duration and purposes of the processing, the data to be processed and any third party access to the data.
- **Location data.** Customers must be able to withdraw consent for the processing of location data at any time.
- **Location data.** Customers that have consented to the processing of location data must be able to use simple ways that are free of charge to withdraw consent for each connection or transmission.

# Privacy and Electronic Communications Directive (as amended): privacy

- **Downloads and uploads.** Information must not be stored in or extracted from the terminal equipment of users through the use of networks without the failure to refuse consent of the users given after receiving information about the purposes of the processing.
- **Spam.** Unsolicited commercial electronic communications must not be sent without the *prior* consent of the recipients *given free of charge*.
- **Legal proceedings.** *Undertakings and users may bring legal proceedings against spammers.*

# Privacy and Electronic Communications Directive (as amended): surveillance

- **Surveillance.** Communications must not be intercepted or stored without the consent of the participants, except to investigate crimes or safeguard security.
- **Surveillance.** *Undertakings must have procedures for responding to requests for access to personal data and must provide to the competent national authority, on demand, information about the procedures, the numbers of requests received, the legal justifications invoked and their responses.*

## Data Retention Directive: surveillance

- **Surveillance.** Undertakings must keep data about the source, destination, date, time, duration, type, equipment and location of users in every communication, for between six and twenty-four months.

# Recommendation on Caller Location Information for Emergency Services: emergency services

- **Emergency calls.** Undertakings should forward to emergency services the best information about the locations of callers as far as technically feasible, without discriminating between their own customers and other users (including users of public pay phones and roamers).
- **Location data.** Undertakings should keep location information (including address information) accurate and up-to-date.
- **Reverse calls.** Emergency services should be able to renew the location information through calling back.

# Regulation on Roaming on Public Mobile Telephone Networks: ceilings

2007-2008	2008-2009	2009-2010	2010-2011	2011-2012
Ceiling on average wholesale charges for making calls while roaming (€ per minute)				
0.30	0.28	0.26	0.22	0.19
Ceiling on maximum retail charges for making calls while roaming (€ per minute)				
0.49	0.46	0.43	0.35	0.31
Ceiling on maximum retail charges for receiving calls while roaming (€ per minute)				
0.24	0.22	0.19	0.15	0.11
Ceiling on average wholesale charges for sending SMS while roaming (€ per message)				
		0.04	0.04	0.04
Ceiling on maximum retail charges for sending SMS while roaming (€ per message)				
		0.11	0.11	0.11
Ceiling on maximum retail charges for receiving SMS while roaming (€ per message)				
		0.00	0.00	0.00
Ceiling on average wholesale charges for having data communications while roaming (€ per megabyte)				
		1.00	0.80	0.50

# Regulation on Roaming on Public Mobile Telephone Networks: user rights

- **Offers.** Customers must be actively offered tariffs having no subscription, fixed charges or recurring charges and adhering to the ceilings, be given full information on roaming charges when they take out subscriptions and be told without undue delay about any subsequent changes in the roaming charges.
- **Switching.** Customers can switch free of charge to or from tariffs having no subscription, fixed charges or recurring charges and adhering to the ceilings, after having a tariff for three months.
- **Prices.** Customers on roaming into other Member States can receive automatically free of charge basic information on the roaming charges for making and receiving calls and sending and receiving SMS and on the numbers to be used for getting detailed information and for making emergency calls.
- **Prices.** Customers on roaming into other Member States can receive on request detailed information on the roaming charges for making and receiving voice calls, sending and receiving SMS, sending and receiving MMS and having data communications.

# Regulation on Roaming on Public Mobile Telephone Networks: user rights

- **Offers.** Customers must be kept adequately informed of the charges for data communications, the risks of automatic and uncontrolled data roaming, and the ways of switching off automatic and uncontrolled data roaming.
- **Prices.** Customers on roaming into other Member States can receive automatically free of charge basic information on the roaming charges for having data communications.

# Regulation on Roaming on Public Mobile Telephone Networks: user rights

- **Data communications barring.** Customers can opt deliberately free of charge for facilities to state the accumulated data roaming in financial or volume terms and to restrict the accumulated data roaming over specified periods of use to specified limits.
- **Setting limits.** Undertakings must make available limits for specified periods of use, informing customers in advance of the financial and volume amounts; the default limit must not exceed €50 per month.
- **Nearing limits.** Customers on roaming into other Member States can receive automatically free of charge notifications when data roaming has reached 80% of the agreed limit.
- **Reaching limits.** Customers on roaming into other Member States can receive automatically free of charge notifications when data roaming would otherwise exceed the agreed limit, indicating the procedures and charges for continued data roaming and requiring deliberate consent by the customers for continuing chargeable data roaming.