

**PROPOSAL FOR A DIRECTIVE ON UNIVERSAL SERVICE AND USERS' RIGHTS RELATING TO
ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES**

UNICE COMMENTS

I. GENERAL COMMENTS

UNICE appreciates the Commission's proposal to maintain the principle of universal service by delivering a minimum set of services to all in society. Broadband services do not fall into the scope of universal service - they are in the early stages of deployment. A policy requiring their provision would not address social exclusion but would represent an attempt to promote a specific technology – the domain of industrial policy.

UNICE fully agrees with the Rapporteur of the European Parliament that the focus of the draft Directive needs to be on areas that require public intervention and that will not be market delivered. Many of the proposed prescriptive and detailed consumer protection rules in the proposed Directive are clearly not needed as the communications market is rapidly evolving and will continue to do so in the coming years. UNICE wants to stress that consumers can already rely on extensive consumer protection legislation that exists in most Member States. In line with the 1999 Review regulation should be kept to a minimum and proportionate to the objective pursued.

UNICE agrees with the periodical review procedure to determine the scope of universal service as outlined in the proposed Directive. UNICE would like to urge the Parliament and Council not to broaden the scope of universal service prematurely. Identifying the right level of service would involve practical problems. The key question is what customers want to do – what services they wish to use. In all Member States operators and service providers are already successful in accommodating users' wishes. UNICE expect customers to differ widely in the amount of bandwidth they need. There is not a single technical solution. There are several potential delivery technologies, all with strengths and weaknesses (DSL, Satellite, Digital TV etcetera).

One of the core objectives of the Lisbon Summit was to make transition of the EU to a knowledge-based economy an objective that would be given further impetus and follow-up at the special Stockholm Summit on 23 and 24 March. UNICE would like to emphasise the work that is already being carried out in Member States to make the transition a reality. For example, in many Member States the market is already being proactive in developing innovative solutions to removing barriers to greater take-up of Internet services. Much progress has been made with improving access to the Internet for schools and public institutions. Special Internet access schemes for schools and public institutions is only one of a number of steps which can help to encourage a high level of Internet usage and a high PC penetration in the EU. Many governments are working hard to go online and achieve access for most services.

In line with the draft Report of the Parliament UNICE would like to put more emphasis on the concept of co-regulation as it has the potential to provide flexible, relevant and practical solutions. Member States should indeed be encouraged to set up co-regulatory measures involving consumer groups, users and regulators in order to replace some of the detailed and specific measures.

II. SPECIFIC COMMENTS

Article 4 - Provision of Access at Fixed Locations:

UNICE would like to make it clear that reference in Article 4 to “data rates that are sufficient to permit Internet access” should not lead to mandating a specific data rate at Community level. The currently available modems and connections to the public telephone network are generally sufficient to provide necessary data rates. Moreover, market forces will cater for the provision of sufficient data rates.

Article 16 - Retail price regulation:

Article 16 is in line with the principles of the 1999 Review as it states that where markets are competitive - or there is clear evidence they are becoming so - retail price controls obligations are no longer appropriate and should not apply. However, paragraph 3 gives the possibility to impose price controls on undertakings in newly emerging and competitive markets (e.g. voice over Internet, mobile) hence para 3 should be deleted. Moreover, where the wholesale market is competitive or subject to price controls, fair competition on the retail market will be ensured.

Article 11 – Quality of Service:

UNICE sees no conclusive arguments to regulate, via quality of service of designated undertakings, the introduction of additional performance targets. In any case, “Quality of Service” parameters should not be too prescriptive on an EU-wide basis, as different Member States will have differing needs depending on the level of competition in the market.

Article 27 - Leased lines:

UNICE welcomes the Commission's approach of encouraging NRAs to take account of this rapidly changing sector of the market and strongly supports introduction of the sunset clause. Most analogue-based services are now provided over digital architecture as analogue equipment becomes obsolete. Therefore, the minimum set of leased lines should be revised to cover 64 kbit/s and 2048 kbit/s services only. In line with the principle of reducing legislation the Directive should focus on the adjustment of the minimum set of leased lines to accommodate only for the provision of 64 kbit/s and 2048 kbit/s.

Article 28 - Additional Mandatory Services:

Article 28 seems to give Member States the opportunity to impose any obligation without compensation mechanisms for the specific undertakings, operators or service providers involved. This could potentially undermine the rest of the Directive, as it would allow significant divergence in application and practice between Member States.

Article 28 should therefore be amended to read:

“Member States may decide to make additional services, apart from universal service obligations as defined in Chapter II, publicly available in their own territory [...]. Undertakings, operators and service providers required to meet such obligations should be fully compensated by the Member State for the cost of conveying these services.”
