

CA 5
USD Art 20 and 21

Note: Consolidated texts of Art 20 and 21 reproduced below, together with recital 24, included in CA 5. AMs ____ covered and fall.

Article 20
Contracts

1. Member States shall ensure that, when subscribing to services providing connection to a public communications network and/or publicly available electronic communications services, consumers, and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. The contract shall specify in a clear, comprehensive and easily accessible form at least:

- (a) the identity and address of the undertaking
- (b) the services provided, including in particular
 - whether or not access to emergency services and caller location information are being provided and/or any limitations for provision of emergency services under Article 26.
 - information on any other conditions limiting access to and/or use of services and applications, where such conditions are allowed under national law in accordance with Community law,
 - the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,
 - information on any procedures put in place by the provider in order to measure and shape traffic so as to avoid filling or overfilling a network link, and on how these may impact on service quality,
 - the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,
 - any restrictions imposed by the provider on the use of terminal equipment supplied;
- (c) where an obligation exists under Article 25, the subscriber's options as to whether or not to include his or her personal data in a directory, and the data concerned;

- (d) details of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, payment methods offered and any differences in costs due to payment method;
- (e) the duration of the contract and the conditions for renewal and termination of services and of the contract, including:
 - any minimum usage required to benefit from promotional terms,
 - any charges related to portability of numbers and other identifiers,
 - any charges due on termination of the contract, including cost recovery with respect to terminal equipment;
- (f) any compensation and the refund arrangements which apply if contracted service quality levels are not met;
- (g) the means of initiating procedures for the settlement of disputes in accordance with Article 34;
- (h) the type of action that might be taken by the undertaking providing connection to a public communications network and/or publicly available electronic communications services in reaction to security or integrity incidents or threats and vulnerabilities, as well as any compensation arrangements which apply if security or integrity incidents occur.

Member States may also require that the contract include any information which may be provided by the relevant public authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data, referred to in Article 21(4)(a) and relevant to the service provided.

[Par 2 deleted]

3. Member States shall ensure that subscribers have a right to withdraw from their contract without penalty upon notice of modification to the contractual conditions proposed by the undertakings providing electronic communications networks and/or services. Subscribers shall be given adequate notice, not shorter than one month, of any such modification, and shall be informed at the same time of their right to withdraw, without penalty, from their contract if they do not accept the new conditions. Member States shall ensure that national regulatory authorities are able to specify the format of such notifications.

Article 21
Transparency and publication of information

1. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, any charges due on termination of a contract and information on standard terms and conditions, in respect of access and use of their services provided to end-users and consumers in accordance with Annex II. Such information shall be published in a clear, comprehensive and easily accessible form. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.

2. National regulatory authorities shall encourage the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. Where such facilities are not available on the market free of charge or at a reasonable price, Member States shall ensure that national regulatory authorities are able to make such guides or techniques available themselves or through third party procurement. Third parties shall have a right to use free of charge the information published by undertakings providing public electronic communications networks and/or publicly available electronic communications services, for the purposes of selling or making available such interactive guides or similar techniques.

3. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications network and/or publicly available electronic communications services to inter alia:

(a) provide applicable tariff information to subscribers regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;

b) regularly remind subscribers of access conditions to emergency services or caller location information in the service they have subscribed to;

(b) inform subscribers of any change to the conditions limiting access to and/or use of services and applications, where such conditions are allowed under national law in accordance with Community law,

(c) information on any procedures put in place by the provider in order to measure and shape traffic so as to avoid filling or overfilling a network link, and on how these may impact on service quality,

(d) inform subscribers of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in

accordance with Article 12 of Directive 2002/58/EC (Directive on privacy and electronic communications); and

(e) regularly inform disabled subscribers of details of products and services designed for them.

If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation.

4. Member States may require that undertakings referred to in paragraph 3 distribute public interest information free of charge to existing and new subscribers, where appropriate, through the same means as those ordinarily used by undertakings for their communications with subscribers and free of charge. In such a case, that information shall be provided by the relevant public authorities in a standardised format and shall, inter alia, cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.

Recital 24

(24) The availability of transparent, up-to-date and comparable information on offers and services is a key element for consumers in competitive markets where several providers offer services. End-users and consumers of electronic communications services should be able to easily compare the prices of various services offered on the market based on information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should be able to require from undertakings providing electronic communications networks and/or services better transparency on information (including tariffs, consumption patterns, and other relevant statistics) and to ensure that third parties have the right to use, without charge, publicly available information published by such undertakings. National regulatory authorities should also be able to make price guides available, in particular where the market has not provided them free of charge or at a reasonable price. Undertakings should not be entitled to any remuneration for the use of information which had already been published and thus belongs in the public domain. In addition, end-users and consumers should be adequately informed of the price and the type of service offered before they purchase a service, in particular if a freephone number is subject to additional charges. National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, immediately prior to connecting the call, unless it is otherwise provided for by national law. When determining the categories of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services. Without prejudice to Directive 2000/31/EC on electronic commerce, undertakings should also, if required by Member States, provide subscribers with public interest information produced by the relevant public authorities, inter alia, on the most common acts of infringements and their legal consequences. Dissemination of such information should however not create an excessive burden on undertakings. The Member States should require this dissemination by the means used by the undertakings in their ordinary course of business for their communications with subscribers.