

**Common position (EC) no 57/96 adopted by the Council on 12
September 1996 with a view to adopting Directive 96/ /EC of the
European Parliament and of the Council concerning the processing
of personal data and the protection of privacy in the
telecommunications sector, in particular in the integrated services
digital network (ISDN) and in the public digital mobile networks**

A. Article 1 - *Object and scope*

1. This Directive provides for the harmonization of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the telecommunications sector and to ensure the free movement of such data and of telecommunications equipment and services in the Community.
2. The provisions of this Directive particularise and complement [Directive 95/46/EC](#) for the purposes mentioned in paragraph 1. Moreover, they provide for protection of legitimate interests of subscribers who are legal persons.
3. This Directive shall not apply to the activities which fall outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on [European Union](#), and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law.

B. Article 2 - *Definitions*

In addition to the definitions given in [Directive 95/46/EC](#), for the purposes of this Directive:

- a. "subscriber" shall mean any natural or legal person who or which is party to a contract with the provider of publicly available telecommunications services for the supply of such services;
- b. "user" shall mean any natural person using a publicly available telecommunications service, for private or business purposes, without necessarily having subscribed to this service;
- c. "public telecommunications network" shall mean transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means, which are used, in all or in part, for the provision of publicly available telecommunications services;
- d. "telecommunications service" shall mean services whose provision consists wholly or partly in the transmission and routing of signals on telecommunications networks, with the exception of radio- and television broadcasting.

C. Article 3 - *Services concerned*

1. This Directive shall apply to the processing of personal data in connection with

the provision of publicly available telecommunications services in public telecommunications networks in the Community, in particular via the Integrated Services Digital Network ([ISDN](#)) and public digital mobile networks.

2. [Articles 8, 9](#) and [10](#) shall apply to subscriber lines connected to digital exchanges and, where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.
3. Cases where it would be technically impossible or require a disproportionate investment to fulfil the requirements of [Articles 8, 9](#) and [10](#) shall be notified to the Commission by the Member States.

D. Article 4 - Security

1. The provider of a publicly available telecommunications service must take appropriate technical and organizational measures to safeguard security of its services, if necessary in conjunction with the provider of the public telecommunications network with respect to network security. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.
2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available telecommunications service must inform the subscribers concerning such risk and any possible remedies, including the costs involved.

E. Article 5 - Confidentiality of the communications

Member States shall ensure via national regulations the confidentiality of communications by means of public telecommunications network and publicly available telecommunications services. In particular, they shall prohibit listening, tapping, storage or other kinds of interception or surveillance of communications, by others than users, without the consent of the users concerned, except when legally authorized.

F. Article 6 - Traffic and billing data

1. Traffic data relating to subscribers and users processed to establish calls and stored by the provider of a public telecommunications network and/or publicly available telecommunications service must be erased or made anonymous upon termination of the call without prejudice to the provisions of paragraphs 2, 3 and 4.
2. For the purpose of subscriber billing and interconnection payments, data indicated in the Annex may be processed. Such processing is permissible only up to the end of the period during which the bill may lawfully be challenged or payment may be pursued.
3. For the purpose of marketing its own telecommunications services, the provider of a publicly available telecommunications service may process the data referred to in paragraph 2, if the subscriber has given his consent.
4. Processing of traffic and billing data must be restricted to persons acting under the authority of providers of the public telecommunications networks and/or

publicly available telecommunications services handling billing or traffic management, customer enquiries, fraud detection and marketing the provider's own telecommunications services and it must be restricted to what is necessary for the purposes of such activities.

5. Paragraphs 1, 2, 3 and 4 shall apply without prejudice to the possibility for competent authorities to be informed of billing or traffic data in conformity with applicable legislation in view of settling disputes, in particular interconnection or billing disputes.

G. Article 7 - *Itemized billing*

1. Subscribers shall have the right to receive non-itemized bills.
2. Member States shall apply national provisions in order to reconcile the rights of subscribers receiving itemized bills with the right to privacy of calling users and called subscribers, for example by ensuring that sufficient alternative modalities for communications or payments are available to such users and subscribers.

H. Article 8 - *Presentation and restriction of calling and connected line identification*

1. Where presentation of calling-line identification is offered, the calling user must have the possibility via a simple means, free of charge, to eliminate the presentation of the calling-line identification on a per-call basis. The calling subscriber must have this possibility on a per-line basis.
2. Where presentation of calling-line identification is offered, the called subscriber must have the possibility via a simple means, free of charge for reasonable use of this function, to prevent the presentation of the calling line identification of incoming calls.
3. Where presentation of calling line identification is offered and where the calling line identification is presented prior to the call being established, the called subscriber must have the possibility via a simple means to reject incoming calls where the presentation of the calling line identification has been eliminated by the calling user or subscriber.
4. Where presentation of connected line identification is offered, the called subscriber must have the possibility via a simple means, free of charge, to eliminate the presentation of the connected line identification to the calling user.
5. The provisions set out in paragraph 1 shall also apply with regard to calls to third countries originating in the Community; the provisions set out in paragraphs 2, 3 and 4 shall also apply to incoming calls originating in third countries.
6. Member States shall ensure that where presentation of calling and/or connected line identification is offered, the providers of publicly available telecommunications services inform the public thereof and of the possibilities set out in paragraphs 1, 2, 3 and 4.

I. Article 9 - *Exceptions*

Member States shall ensure that the provider of a public telecommunications network and/or publicly available telecommunications service may override the elimination of

presentation of the calling line identification:

1. on a temporary basis, upon application of a subscriber requesting the tracing of malicious or nuisance calls; in this case, in accordance with national law, the data containing the identification of the calling subscriber will be stored and be made available by the provider of a public telecommunications network and/or publicly available telecommunications service;
2. on a per-line basis for organizations dealing with emergency calls and recognized as such by a Member State, including law enforcement agencies, ambulance services and fire brigades, for the purpose of answering such calls.

J. Article 10 - *Automatic call forwarding*

Member States shall ensure that any subscriber is provided, free of charge and via a simple means, with the possibility to stop automatic call forwarding by a third party to the subscriber's terminal.

K. Article 11 - *Directories of subscribers*

1. Personal data contained in printed or electronic directories of subscribers available to the public or obtainable through directory enquiry services should be limited to what is necessary to identify a particular subscriber, unless the subscriber has given his unambiguous consent to the publication of additional personal data. The subscriber shall be entitled, free of charge, to be omitted from a printed or electronic directory at his or her request, to indicate that his or her personal data may not be used for the purpose of direct marketing, to have his or her address omitted in part and not to have a reference revealing his or her sex, where this is applicable linguistically.
2. Member States may allow operators to require a payment from subscribers wishing to ensure that their particulars are not entered in a directory, provided that the sum involved is reasonable and does not act as a disincentive to the exercise of this right.
3. Member States may limit the application of this Article to subscribers who are natural persons.

L. Article 12 - *Unsolicited calls*

1. The use of automated calling systems without human intervention (automatic calling machine) or facsimile machines (fax) for the purposes of direct marketing may only be allowed in respect of subscribers who have given their prior consent.
2. Member States shall take appropriate measures to ensure that, free of charge, unsolicited calls for purposes of direct marketing, by means other than those referred to in paragraph 1, are not allowed either without the consent of the subscribers concerned or in respect of subscribers who do not wish to receive these calls, the choice between these options to be determined by national legislation.
3. Member States may limit the application of paragraphs 1 and 2 to subscribers who are natural persons.

M. Article 13 - Technical features and standardization

1. In implementing the provisions of this Directive, Member States shall ensure, subject to paragraphs 2 and 3, that no mandatory requirements for specific technical features are imposed on terminal or other telecommunications equipment which could impede the placing of equipment on the market and the free circulation of such equipment in and between Member States.
2. Where provisions of this Directive can be implemented only by requiring specific technical features, Member States shall inform the Commission according to the procedures provided for by Directive 83/189/EEC [footnote 7] which lays down a procedure for the provision of information in the field of technical standards and regulations.
3. Where required, the Commission will ensure the drawing up of common European standards for the implementation of specific technical features, in accordance with Community legislation on the approximation of the laws of the Member States concerning telecommunications terminal equipment, including the mutual recognition of their conformity, and Council Decision 87/95/EEC of 22 December 1986 on standardization in the field of information technology and telecommunications [footnote 8].

N. Article 14 - Extension of the scope of application of certain provisions of [Directive 95/46/EC](#)

1. Member States may adopt legislative measures to restrict the scope of the obligations and rights provided for in [Articles 5](#), [6](#) and [Article 8\(1\), \(2\), \(3\) and \(4\)](#), when such restriction constitutes a necessary measure to safeguard national security, defence, public security, the prevention, investigation, detection and prosecution of criminal offences or of unauthorized use of the telecommunications system, as referred to in [Article 13\(1\) of Directive 95/46/EC](#).
2. The provisions of Chapter III on judicial remedies, liability and sanctions of [Directive 95/46/EC](#) shall apply with regard to national provisions adopted pursuant to this Directive and with regard to the individual rights derived from this Directive.
3. The Working Party on the Protection of Individuals with regard to the Processing of Personal Data established according to [Article 29 of Directive 95/46/EC](#) shall carry out the tasks laid down in Article 30 of the abovementioned Directive also with regard to the protection of fundamental rights and freedoms and of legitimate interests in the telecommunications sector, which is the subject of this Directive.
4. The Commission, assisted by the Committee established by [Article 31 of Directive 95/46/EC](#), shall technically specify the Annex according to the procedure mentioned in this Article. The aforesaid Committee shall be convened specifically for the subjects covered by this Directive.

O. Article 15 - Implementation of the Directive

1. Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with this Directive by 24 October 1998 at the latest.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such a reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. By derogation from the last sentence of [Article 6\(3\)](#), consent is not required with respect to processing already under way on the date the national provisions adopted pursuant to this Directive enter into force. In those cases the subscribers shall be informed of this processing and if they do not express their dissent within a period to be determined by the Member State, they shall be deemed to have given their consent.
3. [Article 11](#) shall not apply to editions of directories which have been published before the national provisions adopted pursuant to this Directive enter into force.
4. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field governed by this Directive.

P. [Article 16](#) - Addressees

This Directive is addressed to the Member States.

Q. Annex - List of data

For the purpose referred to in [Article 6\(2\)](#) the following data may be processed:

Data containing the:

- number or identification of the subscriber station,
- address of the subscriber and the type of station,
- total number of units to be charged for the accounting period,
- called subscriber number,
- type, start time and duration of the calls made and/or the data volume transmitted,
- other information concerning payments such as advance payment, payments by instalments, disconnection and reminders.

1. Footnotes

7. No L 109, 26.4.1983, p. 8. Directive as last amended by Directive 94/10/EC (OJ No L 100, 19.4.1994, p. 30).

8. No L 36, 7.2.1987, p. 31. Decision as last amended by the 1994 Act of Accession