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*****I**

REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and Directive 2002/20/EC on the authorisation of electronic communications networks and services (COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Committee on Industry, Research and Energy

Rapporteur: Catherine Trautmann

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and Directive 2002/20/EC on the authorisation of electronic communications networks and services
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))**

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0697),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0427/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic Affairs, the Committee on Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0321/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

**Proposal for a directive – amending act
Recital 1 a (new)**

Text proposed by the Commission

Amendment

(1a) Under Directive 2007/65/EC ("The Audiovisual Media Services Directive") a revision was carried out with the intention of ensuring optimal conditions of competitiveness and legal certainty for

information technologies and media industries and services in the European Union, as well as respect for cultural and linguistic diversity. In this context, a fair and balanced regulatory framework for electronic communications networks and services constitutes an essential pillar of the whole EU audiovisual sector.

Amendment 2

Proposal for a directive – amending act Recital 3

Text proposed by the Commission

(3) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. ***This is complemented through the establishment by Regulation [...]/EC of [date] of the European Parliament and of the Council of a European Electronic Communications Market Authority (hereinafter referred to as "the Authority")***. The reform also includes the definition of an efficient spectrum management strategy in order to achieve a Single European Information Space and the reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.

Amendment

(3) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. The reform also includes the definition of an efficient ***and coordinated*** spectrum management strategy in order to achieve a Single European Information Space and the reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.

Amendment 3

Proposal for a directive – amending act Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The objective of the EU regulatory

framework for electronic communications is to create a sustainable "ecosystem" for electronic communications, based on supply and demand: the former through effective and competitive infrastructure and service markets, the latter thanks to increasing information society developments.

Justification

Infrastructure-based competition is a prerequisite for a well functioning telecom market in the long run and one of the primary goals of this regulation.

Amendment 4

**Proposal for a directive – amending act
Recital 3 b (new)**

Text proposed by the Commission

Amendment

(3b) The aim is to progressively reduce ex ante sector specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. While the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that ex ante regulatory obligations should only be imposed where there is no effective and sustainable competition. Ex ante regulation should be reviewed as to the necessity of its continuation no later than three years after the date of transposition of this directive.

Amendment 5

**Proposal for a directive – amending act
Recital 3 c (new)**

Text proposed by the Commission

Amendment

(3c) In order to ensure a proportional and adapted approach to varying competitive

conditions, national regulatory authorities should be able to define markets on a sub-national basis and/or lift regulatory obligations in markets and/or geographic areas where there is effective infrastructure competition, even if they are not defined as separate markets.

Amendment 6

Proposal for a directive – amending act Recital 3 d (new)

Text proposed by the Commission

Amendment

(3d) A key issue for the coming years in order to achieve the goals of the Lisbon Agenda is to give appropriate incentives for investments in new high speed networks that will support innovation in content-rich internet services and strengthen international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and business across the European Union. It is therefore vital to foster sustainable investment in the development of these new networks, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency.

Amendment 7

Proposal for a directive – amending act Recital 3 e (new)

Text proposed by the Commission

Amendment

(3e) In its Communication “Bridging the Broadband Gap” of 20 March 2006, the Commission acknowledged that there is a territorial divide in the European Union regarding access to high speed broadband services. Despite the general increase in broadband connectivity, access in various

regions is limited because of high costs due to low density of population and remoteness. Commercial incentives to invest in broadband deployment in these areas often turn out to be insufficient. On the positive side, technological innovation is reducing deployment costs. In order to ensure that investment in new technologies in underdeveloped regions is ensured, electronic communications regulation should be consistent with other policy measures taken, such as state aid policy, structural funds or wider industrial policy aims.

Justification

The regulatory framework should also take into account the need for closing regional gaps in development. The specific importance of broadband roll out should be emphasised.

Amendment 8

**Proposal for a directive – amending act
Recital 3 f (new)**

Text proposed by the Commission

Amendment

(3f) Investment in R&D is of vital importance for the development of next generation fibre optics networks and for achieving flexible and efficient radio access thereby favouring enhanced competition and innovative applications and services to the benefit of consumers. The challenge is to deliver the next generation of ubiquitous and converged network and service infrastructures for electronic communications, IT and media.

Justification

Regulation has to favour investment in R&D for developing next generation wireline and wireless networks.

Amendment 9

**Proposal for a directive – amending act
Recital 3 g (new)**

Text proposed by the Commission

Amendment

(3g) Public policy should play a role in complementing the effective functioning of the electronic communications markets, addressing both the supply and demand side to stimulate the virtuous circle where development of better content and services depends on infrastructure deployment and vice versa. Public intervention should be proportionate and should neither distort competition nor inhibit private investment and should increase incentives to invest and lower entry barriers. In this respect, public authorities may support the rollout of future-proof high-capacity infrastructure. In so doing, public support should be attributed through open, transparent and competitive procedures, should not favour a priori any given technology and should provide access to infrastructure on a non-discriminatory basis.

Justification

Some guidelines are needed regarding national or local public authorities playing a role in the electronic communications market, may it be purely supportive or more engaged.

Amendment 10

**Proposal for a directive – amending act
Recital 3 h (new)**

Text proposed by the Commission

Amendment

(3h) The regulatory framework should also encompass the additional aims of: promoting consumer protection in the electronic communications sector by providing for accurate and comprehensive information, employing every possible means to that end, for transparency in terms of fees and charges, and for high

standards in the delivery of services; fully recognising the role of consumer associations in public consultations; ensuring that the competent authorities are provided with the powers to thwart possible rigging and act with the necessary effectiveness to stamp out any instances of fraud involving electronic communications services.

Justification

The idea is to stress that the need to protect consumers should feature prominently among the aims of the harmonised regulatory framework.

Amendment 11

**Proposal for a directive – amending act
Recital 3 i (new)**

Text proposed by the Commission

Amendment

(3i) The views of national regulatory authorities and industry stakeholders should be taken into account by the Commission when adopting measures under this Directive through the use of effective consultation to ensure transparency and proportionality. The Commission should issue detailed consultation documents, explaining the different courses of action being considered, and interested stakeholders shall be given a reasonable time in which to respond. Following the consultation, after having considered the responses, the Commission should give reasons for the resulting decision in a statement, which should include a description of how the views of those responding have been taken into account.

Justification

It is essential that the views of NRAs and industry stakeholders are taken into account in decisions at Community level, which decisions must be transparent and proportionate to the result to be achieved. For this to occur, full and effective consultation with national regulatory authorities and industry stakeholders is necessary. Reference to the Commission

may be replaced with ERG, see justification for the amendments to Recital (3).

Amendment 12

Proposal for a directive – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Without prejudice to Directive 1999/5/CE of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, it is necessary to clarify the application of certain aspects of terminal equipments concerning access for disabled end-users to ensure interoperability between terminal equipments and electronic communications networks and services.

Justification

If the access to terminal equipments is not assured for people with disabilities, they will not be able to access electronic communications networks and services neither. That is why, in order to ensure interoperability between both, a clear mention of what kind of terminal equipments, which are those concerning access for disabled end-users is required.

Amendment 13

Proposal for a directive – amending act Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The activities of national regulatory authorities and of the Commission under the framework for electronic communications contribute to the fulfilment of broader public policy objectives in the areas of culture, employment, the environment, social cohesion, regional development and town and country planning.

Justification

The regulatory framework should also take into account the need for closing regional gaps in development aiming to increase innovation and investment in all regions of the EU.

Amendment 14

Proposal for a directive – amending act

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) National electronic communications markets will continue to differ within the European Union. It is, therefore, essential that national regulatory authorities and the Body of European Regulators in Telecom ("BERT") possess the powers and knowledge in order to build a competitive EU "ecosystem" in electronic communications markets and services while understanding national and regional differences and respecting the requirements of subsidiarity;

Amendment 15

Proposal for a directive – amending act

Recital 16

Text proposed by the Commission

Amendment

(16) Radio frequencies should be considered a scarce public resource that has an important public and market value. It is in the public interest that spectrum is managed as efficiently and effectively as possible from an economic, social and environmental perspective and that obstacles to its efficient use are gradually withdrawn.

(16) Radio frequencies should be considered a scarce public resource that has an important public and market value. It is in the public interest that spectrum is managed as efficiently and effectively as possible from an economic, social and environmental perspective ***and taking account of the objectives of cultural diversity and of media pluralism***, and that obstacles to its efficient use are gradually withdrawn.

Justification

It needs to be ensured that spectrum management will continue to take cultural and media

pluralism aspects into account.

Amendment 16

Proposal for a directive – amending act Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Although spectrum management remains within the competence of the Member States, only coordination and, where appropriate, harmonisation at Community level can ensure that spectrum users derive the full benefits of the internal market and that EU interests can be effectively defended world-wide.

Justification

Spectrum management to be effective needs to be aligned with the broader international harmonisation agenda pursued by ITU and CEPT.

Amendment 17

Proposal for a directive – amending act Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) The spectrum management provisions of this Directive should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management of and harmonisation of the use of spectrum across the Community and globally.

Justification

Spectrum management to be effective needs to be aligned with the broader international harmonisation agenda pursued by ITU and CEPT.

Amendment 18

Proposal for a directive – amending act Recital 16 c (new)

Text proposed by the Commission

Amendment

(16c) In order to contribute to the fulfilment of the objectives laid down in Article 8a of Directive 2002/21/EC (Framework Directive), a spectrum-summit should be convened in 2010, driven by Member States, including the European Parliament, the Commission and all stakeholders. The summit should in particular contribute to :

- a) ensuring greater consistency in EU spectrum policies in general;***
- b) freeing spectrum for new electronic communications services once the digital switchover takes place;***
- c) providing guidance regarding the switchover from analogue to digital terrestrial television.***

Justification

Since it looks difficult to find common understanding between all interested parties, a summit in 2010 might be the ideal time to build consensus;

Amendment 19

Proposal for a directive – amending act Recital 16 d (new)

Text proposed by the Commission

Amendment

(16d) The switchover from analogue to digital terrestrial television should, as a result of the superior transmission efficiency of digital technology, free up a significant amount of spectrum in the European Union, the so-called "digital dividend". Member States should release

their digital dividends as quickly as possible, allowing citizens to benefit from the deployment of new, innovative and competitive services. To this end the obstacles existing at national level for the efficient (re)allocation of the digital dividend should be removed and a more coherent and integrated approach to the allocation of the digital dividend in the Community should be pursued.

Amendment 20

Proposal for a directive – amending act Recital 17

Text proposed by the Commission

(17) Radio frequencies should be managed so as to ensure that harmful interference is avoided. The basic concept of harmful interference should therefore be properly defined to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

Amendment

(17) Radio frequencies should be managed so as to ensure that harmful interference is avoided. The basic concept of harmful interference should therefore be properly defined ***by reference to existing internationally agreed frequency plans*** to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

Justification

Interference problems are one of the main reasons for the existence of national and international frequency plans. As frequencies cross borders beyond the EU, internationally binding agreements to avoid interference must be respected.

Amendment 21

Proposal for a directive – amending act Recital 20

Text proposed by the Commission

(20) Flexibility in spectrum management and access to spectrum should be increased through technology- and service-neutral authorisations to let spectrum users choose the best technologies and services to apply

Amendment

(20) Flexibility in spectrum management and access to spectrum should be increased through technology- and service-neutral authorisations to let spectrum users choose the best technologies and services to apply

in a frequency *band* (hereinafter referred to as the ‘principles of technology and service neutrality’). The administrative determination of technologies and services **should become the exception and should be clearly justified and subject to regular periodic review.**

in frequency *bands available to electronic communications services as identified in national frequency allocation tables and in the ITU Radio Regulations* (hereinafter referred to as the ‘principles of technology and service neutrality’). The administrative determination of technologies and services should **apply when general interest objectives are at stake.**

Justification

Necessary to ensure legal consistency with the definition of service neutrality proposed under Article 9 paragraph 4 subparagraph 1 of the Framework Directive.

Amendment 22

Proposal for a directive – amending act Recital 21

Text proposed by the Commission

(21) **Exceptions to** the principle of technology neutrality should be **limited** and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, or to ensure the protection of public health by limiting public exposure to electromagnetic fields, or to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, or **where strictly necessary** to comply with **an exception to the principle of service neutrality.**

Amendment

(21) **Restrictions on** the principle of technology neutrality should be **appropriate** and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, or to ensure the protection of public health by limiting public exposure to electromagnetic fields, or to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, or to comply with **a general interest objective in conformity with Community law.**

Justification

Ensure coherency with the text of the directive which – for technology neutrality - refers to “restrictions” and not “exceptions”. Restrictions should not be limited to exception to the principle of service neutrality but needs to comply with general interest objectives.

Amendment 23

Proposal for a directive – amending act
Recital 22

Text proposed by the Commission

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to *cope* with previously acquired rights. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, *or the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate*. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible. In order that the holder of the authorisation may choose freely the most efficient means to carry the content of services provided over radio frequencies, the content should not be regulated in the authorisation to use radio frequencies.

Amendment

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to *deal* with previously acquired rights *and the provisions of national frequency allocation plans and the ITU Radio Regulations*. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service *in order to take national public policy considerations into account* or to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, *the efficient use of radio frequencies and the effective management of spectrum*. Those objectives should include the promotion of *national audiovisual and media policies*, cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, *or to ensure that the above objectives are achieved*, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible. In order that the holder of the authorisation may choose freely the most efficient means to carry the content of services provided over radio frequencies, the content should not be regulated in the authorisation to use radio frequencies.

Justification

The question whether spectrum can be allocated in a service-neutral way should depend on a reasonable balance between public interest and commercial value. In practice, the Commission adheres to this approach, e.g. in its Communication on the Digital Dividend, where it proposes the allocation of specific services to specific spectrum (sub)bands.

Amendment 24

Proposal for a directive – amending act Recital 23

Text proposed by the Commission

(23) It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism in accordance with their own national law.

Amendment

(23) It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity, ***national audiovisual and media policies*** and media pluralism in accordance with their own national law.

Justification

Member States should have the power to define the scope and nature of exceptions to national audiovisual and media policies.

Amendment 25

Proposal for a directive – amending act Recital 26

Text proposed by the Commission

(26) Given the effect of the exceptions on the development of the internal market for electronic communications services, the EC should be able to harmonise the scope and nature of any exceptions to the principles of technology and service neutrality other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism, having regard to harmonised technical conditions for the availability and efficient use of radio frequencies under the Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community ("the Radio

Amendment

deleted

Spectrum Decision")1.

Justification

Ensure legal coherence with our proposal for modified Article 9c.

Amendment 26

**Proposal for a directive – amending act
Recital 29**

Text proposed by the Commission

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be ***given the power to grant the Authority specific responsibilities*** in the area of numbering. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism.

Amendment

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be ***able to consult BERT*** in the area of numbering. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism, ***as well as the establishment of a single EU front-up call number ensuring user-friendly access to these services.***

Amendment 27

**Proposal for a directive – amending act
Recital 31**

Text proposed by the Commission

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in ***an*** environmentally responsible way and independently of any obligation on an

Amendment

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in ***a fair, efficient and*** environmentally responsible way and independently of any obligation

¹ OJ L 108, 24.4.2002, p.1.

operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ***network elements and associated facilities such as*** ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings, ***notably of new fibre optic access networks. In particular, national regulatory authorities should be able to impose on operators obligations to provide a reference offer for granting access to their ducts in a fair and non-discriminatory way.***

Justification

Additions in accordance with amendments to Article 12. New entrants should be able to access the ducts of SMP operators in a fair and non-discriminatory way. This will facilitate infrastructure competition and the transition to a full competitive market. For the deployment of new networks the sharing of network elements and associated facilities can speed up and reduce their financial and environmental impact.

Amendment 28

Proposal for a directive – amending act Recital 32

Text proposed by the Commission

(32) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory

Amendment

(32) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory

authorities should therefore ensure the integrity and security of public communications networks are maintained. **The Authority** should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both **the Authority** and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in accordance with the assessed risks, taking into account the state of the art of such measures.

authorities should therefore ensure the integrity and security of public communications networks are maintained. **ENISA** should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both **ENISA** and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in accordance with the assessed risks, taking into account the state of the art of such measures.

Justification

ENISA will continue to be solely competent concerning the security of networks and services.

Amendment 29

Proposal for a directive – amending act Recital 33

Text proposed by the Commission

(33) Where there is a need to agree on a common set of security requirements, power should be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic communications networks and services in

Amendment

(33) Where there is a need to agree on a common set of security requirements, power should be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic communications networks and services in

the internal market. **The Authority** should contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

the internal market. **ENISA** should contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

Justification

ENISA will continue to be solely competent concerning the security of networks and services.

Amendment 30

**Proposal for a directive – amending act
Recital 39 a (new)**

Text proposed by the Commission

Amendment

(39a) Both investment and competition should be encouraged, so that consumer choice is protected and not undermined.

Justification

The Directives should make clear that competition is not to be sacrificed in the name of investment – for example through regulatory holidays.

Amendment 31

**Proposal for a directive – amending act
Recital 43**

Text proposed by the Commission

Amendment

(43) The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators,

(43) The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators,

including the vertically integrated operator's own downstream divisions. Functional separation **has** the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier for compliance with non-discrimination obligations to be verified and enforced. ***In exceptional cases, it may be justified as a remedy where there has been persistent failure to achieve effective non-discrimination in several of the markets concerned, and where there is little or no prospect of infrastructure competition within a reasonable timeframe after recourse to one or more remedies previously considered to be appropriate. However, it is very important to ensure that its imposition preserves the incentives of the concerned undertaking to invest in its network and that it does not entail any potential negative effects on consumer welfare. Its imposition requires a coordinated analysis of different relevant markets related to the access network, in accordance with the market analysis procedure set out in Article 16 of the Framework Directive. When performing the market analysis and designing the details of this remedy, national regulatory authorities should pay particular attention to the products to be managed by the separate business entities, taking into account the extent of network roll-out and the degree of technological progress, which may affect the substitutability of fixed and wireless services.*** In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.

including the vertically integrated operator's own downstream divisions. Functional separation **may have** the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier for compliance with non-discrimination obligations to be verified and enforced. In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.

Justification

Functional separation is already an accepted reality for some Member States; to impose remedies in "exceptional cases" is an interesting idea, but should be reevaluated in 2014 once the review will take place. By then, it will be better understood how functional separation will

lead to more competition and at the same time allow investment into new infrastructures.

Amendment 32

Proposal for a directive – amending act Recital 44 a (new)

Text proposed by the Commission

Amendment

(44a) The continuing market integration within the internal market for electronic communications networks and services requires better coordination in the application of the ex ante regulation as provided for under the legal framework for electronic communications.

Justification

A network of national regulatory authorities is the most suitable instrument to satisfy the requirements of the European telecommunications market. This amendment seeks to bring this opinion into line with the opinion tabled on the report on the proposal for a European Parliament and Council Regulation establishing the European Electronic Communications Market.

Amendment 33

Proposal for a directive – amending act Recital 46

Text proposed by the Commission

Amendment

(46) While it is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to achieve goals such as end-to-end connectivity or interoperability of services, it is however necessary to ensure that such obligations are imposed in conformity with the regulatory framework and in particular its notification procedures.

(46) While is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to achieve goals such as end-to-end connectivity or interoperability of services, ***or in order to promote efficiency, sustainable competition and maximum benefit for end-users***, it is however necessary to ensure that such obligations are imposed in conformity with the regulatory framework and in particular its notification procedures.

Justification

Currently unregulated access operators charge exorbitant prices for connecting directory enquiry calls and also impede the ability of the directory enquiry providers to set their own retail prices. There is no justification for access operators to charge any differently to other similar interconnection products which consist in the transport of traffic to and from an interconnection point. These problems need to be addressed in order to permit the benefits of competition in directory enquiry services to be fully delivered to end users and allow the removal of a regulated retail universal service for directory enquiries.

Amendment 34

Proposal for a directive – amending act Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) Where it is necessary to adopt harmonisation measures for the implementation of the Community's electronic communications policy which go beyond technical implementing measures, the Commission should submit a legislative proposal to the European Parliament and to the Council.

Justification

Harmonisation measures which involve adding new essential provisions to the regulatory framework should be dealt with a legislative proposal. Only the direct application of the rules set out in the framework or the addition of non-essential elements should be subject of Comitology procedures.

Amendment 35

Proposal for a directive – amending act Recital 49

Text proposed by the Commission

Amendment

(49) The introduction of the requirements of service and technology neutrality in assignment and allocation decisions, together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications and

(49) The introduction of the requirements of service and technology neutrality in assignment and allocation decisions, together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications and

audiovisual media services to the public, thereby also facilitating the achievement of general interest objectives. **Therefore**, certain general interest obligations imposed on broadcasters for the delivery of audiovisual media services **could be increasingly met without the need to grant individual rights to use spectrum. The use of specific criteria to assign spectrum to broadcasters would be justified only where this is essential to meet a particular** general interest objective set out in national law. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.

audiovisual media services to the public, thereby also facilitating the achievement of general interest objectives. **However**, certain general interest obligations imposed on broadcasters for the delivery of audiovisual media services **may require the use of specific criteria for spectrum allocation, when it appears to be essential to meet a specific** general interest objective set out in national law. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.

Justification

Recital 49 is not consistent with Recital 23 or with Article 5(2) of the Authorisation Directive. It is important to recognize the need to take into account cultural and media policy objectives, as set out by national law. The original formulation is also more restrictive than Article 5(2) of the Authorisation Directive as regards the granting of individual rights of use for broadcasting services.

Amendment 36

Proposal for a directive – amending act Recital 50

Text proposed by the Commission

(50) **In order to ensure equal treatment, no spectrum users should be exempted** from the obligation to pay **normal** fees or charges set for the use of the spectrum.

Amendment

(50) **Any exemption, full or partial**, from the obligation to pay **the** fees or charges set for the use of the spectrum **should be objective and transparent and based on the existence of other general interest obligations set out in national law.**

Justification

Inclusion of Guardans amendment 8. It must remain possible for Member States to maintain or introduce systems where the obligation to pay usage fees is replaced by an obligation to fulfil general interest objectives. Such systems are commonplace with regard to terrestrial frequencies where they serve media pluralism objectives.

Amendment 37

Proposal for a directive – amending act Recital 53

Text proposed by the Commission

(53) Removing legal and administrative barriers to a general authorisation or rights of use for spectrum or numbers with European implications should favour technology and service development and contribute to improving competition. While the coordination of technical conditions for the availability and efficient use of radio frequencies is organised pursuant to the Radio Spectrum Decision²⁸, it may also be necessary, in order to achieve internal market objectives, to coordinate or harmonise the selection procedures and conditions applicable to rights and authorisations in certain bands, to rights of use for numbers and to general authorisations. This applies in particular to electronic communications services that by their nature have an internal market dimension or cross-border potential, such as satellite services, the development of which would be hampered by discrepancies in spectrum assignment between Member States. The Commission, assisted by the Communications Committee and taking the utmost account of the opinion of the Authority, should therefore be able to adopt technical implementing measures to achieve such objectives. Implementing measures adopted by the Commission may require Member States to make available rights of use for spectrum and/or numbers throughout their territory and where necessary withdraw any other existing national rights of use. In such cases, Member States should not grant any new right of use for the relevant spectrum band or number range under national procedures.

Amendment

(53) Removing legal and administrative barriers to a general authorisation or rights of use for spectrum or numbers with European implications should favour technology and service development and contribute to improving competition. While the coordination of technical conditions for the availability and efficient use of radio frequencies is organised pursuant to the Radio Spectrum Decision²⁸, it may also be necessary, in order to achieve internal market objectives, to coordinate or harmonise the selection procedures and conditions applicable to rights and authorisations in certain bands, to rights of use for numbers and to general authorisations. This applies in particular to electronic communications services that by their nature have an internal market dimension or cross-border potential, such as satellite services, the development of which would be hampered by discrepancies in spectrum assignment between Member States ***and between the EU and third countries, taking into account the decisions of ITU and CEPT.*** The Commission, assisted by the Communications Committee and taking the utmost account of the opinion of the Authority, should therefore be able to adopt technical implementing measures to achieve such objectives. Implementing measures adopted by the Commission may require Member States to make available rights of use for spectrum and/or numbers throughout their territory and where necessary withdraw any other existing national rights of use. In such cases, Member States should not grant any new right of use for the relevant spectrum band or number range under national

procedures.

Amendment 38

Proposal for a directive – amending act Recital 57

Text proposed by the Commission

(57) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities to communicate with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

Amendment

(57) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities **and emergency services** to communicate **between themselves and** with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

Amendment 39

Proposal for a directive – amending act Recital 60

Text proposed by the Commission

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred to adopt implementing measures to update Annexes I and II to the Access Directive to market and

Amendment

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred to adopt implementing measures to update Annexes I and II to the Access Directive to market and

technological developments and for adopting implementing measures to harmonise the authorisation rules, procedures and conditions for the authorisation of electronic communications networks and services. Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***When, on imperative grounds of urgency, the normal time limits for this procedure cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of the above Decision.***

technological developments and for adopting implementing measures to harmonise the authorisation rules, procedures and conditions for the authorisation of electronic communications networks and services. Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***Given that the conduct of the regulatory procedure with scrutiny within the normal time-limits could, in certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of those measures.***

Justification

On imperative and justified grounds of urgency the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of Comitology measures.

Amendment 40

Proposal for a directive – amending act

Article 1 – point 1

Directive 2002/21/EC

Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework

Amendment

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment ***to facilitate access for disabled users and encourage the use of electronic communications by less favoured users.*** It lays down tasks of national regulatory

throughout the Community.

authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.

Justification

The amendment seeks to clarify the various aspects of terminal equipment which can ensure the accessibility of all telecommunication services.

Amendment 41

Proposal for a directive – amending act

Article 1 – point 2 – point c

Directive 2002/21/EC

Article 2 – point e

Text proposed by the Commission

(e) "associated facilities" means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include number or address translation systems, conditional access systems and electronic programme guides, as well as physical infrastructure such as ducts, masts, *street* cabinets, *and buildings*;

Amendment

(e) "associated facilities" means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include number or address translation systems, conditional access systems and electronic programme guides, as well as physical infrastructure such as *entries to buildings, building wiring, towers and other supporting constructions*, ducts, *conduits*, masts, *antennae, manholes and* cabinets *and all other network elements which are not active*.

Amendment 42

Proposal for a directive – amending act

Article 1 – point 2 – point e

Directive 2002/21/EC

Article 2 – point s

Text proposed by the Commission

(s) "harmful interference" means

Amendment

(s) "harmful interference" means

interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations.

interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable ***international***, Community or national regulations.

Amendment 43

Proposal for a directive – amending act

Article 1 – point 3

Directive 2002/21/EC

Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Member States shall ensure that national regulatory authorities exercise their powers independently, impartially and transparently. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Amendment

3. Member States shall ensure that national regulatory authorities exercise their powers independently, impartially and transparently ***and in a timely manner***. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Justification

Failure of NRAs to act in a timely manner, for example in relation to market reviews, can hold back competition and innovation in the market.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 3 a (new)

Directive 2002/21/EC

Article 3 – paragraph 3a (new)

Text proposed by the Commission

Amendment

(3a) In Article 3, the following paragraph is added:

"3a. Member States shall ensure that the goals of BERT in promoting greater regulatory coordination and coherence are actively supported by the respective national regulatory authorities.

Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the tasks assigned to them and to enable them to actively participate in and contribute to BERT. National regulatory authorities must have separate annual budgets and budgets shall be made public."

Justification

The addition of paragraph 3a ensures that the Member States ensure the establishment of the Body of Regulators in Telecom (BERT) comprised of all NRAs. BERT would be set up as an association of national regulatory authorities that would not have an independent legal personality, i.e., in particular this body would not be part of the direct or indirect Community administration. This avoids all conflicts with the MERONI case law.

Amendment 45

Proposal for a directive – amending act

Article 1 – point 3 b (new)

Directive 2002/21/EC

Article 3 – paragraph 3b (new)

Text proposed by the Commission

Amendment

(3b) In Article 3, the following paragraph is added:

"3b. Member States shall ensure that NRAs take utmost account of common positions issued by BERT when adopting their own decisions for their home markets."

Amendment 46

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise **available to it** to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account **and** that there is an effective appeal mechanism.'

Amendment

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions **effectively**. Member States shall ensure that the merits of the case are duly taken into account, that there is an effective appeal mechanism **and that proceedings before the appeal body are not unduly lengthy. Member States shall set time limits for consideration of such appeals.**

Justification

Effectiveness and reasonable duration are key aspects of appeal mechanisms. Expertise of appeal bodies should be internal and not just “available to it”.

Amendment 47

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Pending the outcome of any *the* appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures

Amendment

Pending the outcome of any appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures

may be granted if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.

may be granted, ***in accordance with the relevant national legislation***, if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.

Justification

The various procedural rights in the Member States should be taken into account.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 4 – point a a (new)

Directive 2002/21/EC

Article 4 – paragraph 2a (new)

Text proposed by the Commission

Amendment

(aa) The following paragraph is added:

"2a. Appeal bodies shall be entitled to request the opinion of BERT before taking a decision in the course of an appeal proceeding."

Justification

Appeal bodies should also be entitled to consult BERT should the case have an internal market impact. This mechanism would facilitate a progressive harmonisation in the application of the framework and improve the consistency of the electronic communications market.

Amendment 49

Proposal for a directive – amending act

Article 1 - point 5

Directive 2002/21/EC (Framework Directive)

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that undertakings providing electronic communications networks and services

1. Member States shall ensure that undertakings providing electronic communications networks and services

provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives.

Those undertakings shall also be required to submit information concerning future network or service developments that could have an impact on the wholesale services made available to competitors.

These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information ***and comply with Community and national law on business confidentiality.***

Amendment 50

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 6 – subparagraph 1

Text proposed by the Commission

Except in cases falling within Articles 7(10), 20, or 21, and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives ***which have a significant impact on the relevant market,*** or where they intend to provide for restrictions in accordance with Article 9(3) and 9(4), they give interested parties the opportunity to comment on the draft measure within a reasonable period.

Amendment

Except in cases falling within Articles 7(10), 20, or 21, and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives or where they intend to provide for restrictions in accordance with Article 9(3) and 9(4) ***which have a significant impact on the relevant market,*** they give interested parties the opportunity to comment on the draft measure within a reasonable period.

Justification

Syntax clarification.

Amendment 51

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 6 – subparagraph 4

Text proposed by the Commission

The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality.

Amendment

The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality. ***In the event of unwarranted dissemination of confidential information, the national regulatory authorities shall ensure that they adopt appropriate measures as soon as possible, at the request of the undertakings concerned.***

Amendment 52

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC

Article 7

Text proposed by the Commission

Article 7

Consolidating the internal market for electronic communications.

1. In carrying out their tasks under this Directive and the Specific Directives, national regulatory authorities shall take the utmost account of the objectives set out in Article 8, including insofar as they relate to the functioning of the Internal Market.
2. National regulatory authorities shall

Amendment

Article 7

Consolidating the internal market for electronic communications.

1. In carrying out their tasks under this Directive and the Specific Directives, national regulatory authorities shall take the utmost account of the objectives set out in Article 8, including insofar as they relate to the functioning of the Internal Market.
2. National regulatory authorities shall

contribute to the development of the *Internal Market* by working with the Commission and **the Authority** so as to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, work with the Commission and **the Authority** to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. Except where otherwise provided in implementing provisions adopted pursuant to Article 7a, upon completion of the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles 15 or 16 of this Directive, Articles 5 or 8 of Directive 2002/19/EC (Access Directive), and

(b) would affect trade between Member States,

it shall make the draft measure accessible to the Commission, **the Authority**, and the national regulatory authorities in other Member States, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission and other national regulatory authorities thereof. National regulatory authorities and the Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

(a) defining a relevant market which differs from those defined in the Recommendation in accordance with Article 15(1); or

(b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market

contribute to the development of the *internal market* by working with the Commission and **BERT in a transparent manner** so as to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, work with the Commission and **BERT** to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. Except where otherwise provided in implementing provisions adopted pursuant to Article 7a, upon completion of the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles 15 or 16 of this Directive, Articles 5 or 8 of Directive 2002/19/EC (Access Directive), and

(b) would affect trade between Member States,

it shall make the draft measure accessible to the Commission, **BERT**, and the national regulatory authorities in other Member States, **at the same time**, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission, **BERT** and other national regulatory authorities thereof. National regulatory authorities, **BERT** and the Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

(a) defining a relevant market which differs from those defined in the Recommendation in accordance with Article 15(1); or

(b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market

power, under Article 16(3), (4) or (5); *or*
(c) imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive),

and would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8, then the draft measure shall not be adopted for a further two months. This period may not be extended.

5. Within the two month period referred to in paragraph 4, the Commission may take a decision requiring the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of *the Authority* submitted in accordance with Article 5 of Regulation [...] /EC] before issuing a decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

6. Within three months of the Commission issuing a decision in accordance with paragraph 5 requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of

power, under Article 16(3), (4) or (5)

and would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8, then the draft measure shall not be adopted for a further two months. This period may not be extended.

5. Within the two month period referred to in paragraph 4, the Commission may take a decision requiring the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of **BERT** submitted in accordance with Article 5 of Regulation [...] /EC] before issuing a decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

6. Within three months of the Commission issuing a decision in accordance with paragraph 5 requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of

paragraph 3.

7. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities and the Commission and may, except in cases covered by paragraph 4, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission. Any other national body exercising functions under this Directive or the Specific Directives shall also take the utmost account of the comments of the Commission.

8. Where a draft measure has been amended in accordance with paragraph 6, the Commission may take a decision, requiring the national regulatory authority to impose a specific obligation under Articles 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) within a given time-limit.

In so doing, the Commission shall pursue the same policy objectives as set out for national regulatory authorities in Article 8. The Commission shall take the utmost account of the opinion of the Authority submitted in accordance with Article 6 of Regulation [.../EC], in particular in elaborating the details of the obligation(s) to be imposed.

9. The national regulatory authority shall communicate to the Commission all final measures which fall under conditions a) and b) in Article 7(3).

10. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 3 and 4, in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those

paragraph 3.

7. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, ***BERT*** and the Commission and may, except in cases covered by paragraph 4, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission. Any other national body exercising functions under this Directive or the Specific Directives shall also take the utmost account of the comments of the Commission.

10. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 3 and 4, in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those

measures, with full reasons, to the Commission, the other national regulatory authorities, and *the Authority*. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

measures, with full reasons, to the Commission, the other national regulatory authorities, and *BERT*. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

Amendment 53

Proposal for a directive – amending act

Article 1 – point 6 a (new)

Directive 2002/21/EC

Article –7 a (new)

Text proposed by the Commission

Amendment

(6a) The following Article is inserted:

"Article -7a

Procedure for the consistent application of remedies

1. Where a national regulatory authority intends to adopt a measure to impose, amend or withdraw an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) the Commission and the national regulatory authorities of the other Member States shall have a period of one month from the date of notification of the draft measure in which to make comments to the national regulatory authority concerned .

2. If the draft measure concerns the imposition, amendment or withdrawal of an obligation other than the obligation laid down in Article 13a of Directive 2002/19/EC (Access Directive), the Commission may, within the same period, notify the national regulatory authority concerned and BERT of the reasons why

it considers that the draft measure would create a barrier to the single market or why it has serious doubts as to its compatibility with Community law. In such case, the draft measure shall not be adopted for a further two months following the Commission's notification.

In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission or by any other national regulatory authority.

3. Within the two-month period referred to in paragraph 2, the Commission, BERT and the national regulatory authority concerned shall cooperate closely with the objective of identifying the most appropriate and effective measure in the light of the objectives laid down in Article 8, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

Within the same two-month period, BERT shall, acting by an absolute majority, adopt an opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure should be amended and providing specific proposals to that end. This opinion shall be reasoned and made public.

If BERT has confirmed the appropriateness and effectiveness of the draft measure, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission and BERT. The national regulatory authority shall make public how it has taken these comments into account.

If BERT has indicated that the draft measure should be amended, the Commission may, taking utmost account of BERT's opinion, adopt a decision

requiring the national regulatory authority concerned to amend the draft measure and providing reasons and specific proposals to that end.

4. If the draft measure concerns the imposition, amendment or withdrawal of the obligation laid down in Article 13a of Directive 2002/19/EC (Access Directive), the draft measure shall not be adopted for a further two-month period starting at the end of the one-month period referred to in paragraph 1.

4. If the draft measure concerns the imposition, amendment or withdrawal of the obligation laid down in Article 13a of Directive 2002/19/EC (Access Directive), the draft measure shall not be adopted for a further two-month period starting at the end of the one-month period referred to in paragraph 1.

Within the maximum period set out in the previous subparagraph, BERT shall, acting by an absolute majority, adopt an opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure should not be adopted and providing reasons. This opinion shall be reasoned and made public.

Only if the Commission and BERT have confirmed the appropriateness and effectiveness of the draft measure, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission and BERT. The national regulatory authority shall make public how it has taken these comments into account.

5. Within three months of the adoption by the Commission of a reasoned decision, in accordance with paragraph 3, subparagraph 4 of this Article, requiring a national regulatory authority to amend the draft measure, the national regulatory authority concerned shall amend or

withdraw the draft measure. If the draft measure is to be amended, the national regulatory authority shall undertake a public consultation in accordance with the consultation and transparency procedure referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with Article 7.

6. The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure."

Amendment 54

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/21/EC

Article 7a - paragraph 1

Text proposed by the Commission

1. The Commission may lay down ***implementing provisions*** in relation to Article 7 that define the form, content and level of details to be given in the notifications required in accordance with Article 7(3), the circumstances in which notifications would not be required, and the calculation of the time limits.

Amendment

1. The Commission, ***taking utmost account of the opinion of BERT***, may lay down ***recommendations and/or guidelines*** in relation to Article 7 that define the form, content and level of details to be given in the notifications required in accordance with Article 7(3), the circumstances in which notifications would not be required, and the calculation of the time limits.

Amendment 55

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/21/EC

Article 7a - paragraph 2

Text proposed by the Commission

2. The measures referred to in paragraph 1, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Amendment

deleted

On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

Justification

It remains vague what is meant by 'non-essential elements' in paragraph (2). Such proposed 'implementing measures' might have a considerable financial impact on undertakings. Any potential changes must be reserved to full scrutiny in a legislative procedure on EU-level or left to Member States.

Amendment 56

Proposal for a directive – amending act

Article 1 – point 8 – point a

Directive 2002/21/EC

Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Unless otherwise provided in Article 9 regarding radio frequencies, Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities do likewise.

Amendment

Unless otherwise provided in Article 9 regarding radio frequencies ***or unless otherwise required in order to fulfil the objectives laid down in paragraphs 2 to 4,*** Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities do likewise.

Justification

Technology neutrality is needed as a principle in order not to frustrate future technological innovation, but needs to be limited when it would be in frontal opposition to the primary objectives of the regulation.

Amendment 57

Proposal for a directive – amending act

Article 1 – point 8 – point b

Directives 2002/21/EC

Article 8 – paragraph 2 – point a

Text proposed by the Commission

a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality;

Amendment

a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality, **and that providers are compensated for any additional net cost that they can prove to have incurred as a result of the imposition of such public service obligations;**

Justification

Clarification restricting the extension of these obligations, and specifying that obligations in the interest of social compensation represent public service tasks, the provision of which may lead operators to incur additional net costs, and that these costs should be met by the public authorities on production of supporting documents. Making NRAs responsible for the delivery of content seems inappropriate.

Amendment 58

Proposal for a directive – amending act

Article 1 – point 8 – point b

Directive 2002/21/EC

Article 8 – paragraph 2 – point b

Text proposed by the Commission

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of content;

Amendment

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of **and access to content and services across all networks;**

Amendment 59

Proposal for a directive – amending act

Article 1 - point 8 - point b a (new)

Directive 2002/21/EC

Article 8 - paragraph 2 - point c

Text proposed by the Commission

Amendment

(ba) In paragraph 2, point (c) is replaced by the following:

"(c) encouraging *and facilitating* efficient *market-driven* investment in infrastructure, and promoting innovation; and"

Amendment 60

Proposal for a directive – amending act

Article 1 – point 8 – point b b (new)

Directive 2002/21/EC

Article 8 – paragraph 3 – point c

Text proposed by the Commission

Amendment

(bb) In paragraph 3, point (c) is deleted.

Justification

Point retaken in new paragraph 4a of Article 8.

Amendment 61

Proposal for a directive – amending act

Article 1 – point 8 – point e

Directive 2002/21/EC

Article 8 – paragraph 4 – point g

Text proposed by the Commission

Amendment

(g) applying the principle that end-users should be able to access and distribute any lawful content and use any lawful applications and/or services of their choice.

(g) applying the principle that end-users should be able to access and distribute any lawful content and use any lawful applications and/or services of their choice ***and for this purpose contributing to the promotion of lawful content in accordance with Article 33 of Directive 2002/22/EC (Universal Service Directive).***

Amendment 62

Proposal for a directive – amending act

Article 1 – point 8 – point e a (new)

Directive 2002/21/EC

Article 8 – paragraph 4 a (new)

(ea) The following new paragraph is inserted:

"4a. The national regulatory authorities shall, in pursuit of the policy objectives referred to in paragraphs 2, 3 and 4, apply objective, transparent, non-discriminatory and proportionate regulatory principles by, inter alia:

(a) promoting regulatory predictability through the continuity of remedies over several market reviews as appropriate;

(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;

(c) safeguarding competition to the benefit of consumers and promoting infrastructure-based competition wherever possible;

(d) promoting market driven investment and innovation in new and enhanced infrastructures including by encouraging investment sharing and by ensuring appropriate risk sharing among the investor and those undertakings enjoying access to the new facilities;

(d) taking due account of the variety of conditions relating to competition and consumers that exist in the different geographic areas within a Member State;

(e) imposing ex ante regulatory obligations only where there is no effective and sustainable competition and relaxing or lifting them as soon as there is."

Amendment 63

Proposal for a directive – amending act

Article 1 – point 8 a (new)

Directive 2002/21/EC

Article 8 a (new)

Text proposed by the Commission

Amendment

(8a) The following article is inserted:

"Article 8a

***Strategic planning and coordination of
radio spectrum policy in the European
Union***

1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European Union. To this end, they shall take into consideration, inter alia, economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of the EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and of avoiding harmful interference

2. Radio spectrum policy activities in the European Union shall be without prejudice to:

a) measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular with regard to content regulation and audio-visual and media policies;

***b) the provisions of Directive 1999/5/EC*;
and***

c) the right of Member States to organise and use their radio spectrum for the purposes of public order, public security and defence.

*

3. Member States shall ensure the coordination of radio spectrum policy approaches in the European Union and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in EU policy areas such as electronic communications, transport and research and development.

4. Member States shall ensure the effective coordination of the EU interests in international organisations competent in radio spectrum matters. Whenever necessary for ensuring this effective coordination, the Commission, taking due account of the opinion of the Radio Spectrum Policy Committee ("RSPC"), may propose to the European Parliament and the Council common policy objectives including, if necessary, a negotiation mandate.

5. A Radio Spectrum Policy Committee (the "RSPC") is hereby created in order to contribute to the fulfilment of the objectives set out in paragraphs 1, 3 and 4.

The RSPC shall provide advice to the European Parliament, the Council and the Commission on radio spectrum policy issues.

The RSPC shall be composed of high-level representatives from the competent national authorities responsible for radio spectrum policy in each Member State. Each Member State shall have one vote and the Commission shall not vote.

6. At the request of the European Parliament, the Council or the Commission or on its own initiative, the RSPC, acting by an absolute majority, shall adopt opinions.

7. The Commission, taking due account of the opinion of the RSPC, may submit a legislative proposal for establishing a radio spectrum action programme with

regard to the strategic planning and harmonisation of the use of radio spectrum in the European Union or other legislative measures with the aim of optimising the use of radio spectrum and of avoiding harmful interference.
8. The RSPC shall submit an annual activity report to the European Parliament and to the Council.

*** Directive 1999/5/EC** of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, OJ L 91, 7.4.1999, p. 10."

Amendment 64

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9

Text proposed by the Commission

Article 9

Management of radio frequencies for electronic communications services

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with *Article 8*. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non discriminatory and proportionate criteria.

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use

Amendment

Article 9

Management of radio frequencies for electronic communications services

1. ***Taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value***, Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with ***Articles 8 and 8a***. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non discriminatory and proportionate criteria. ***In so doing, they shall act in accordance with international agreements and may take public policy considerations into account.***

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use

thereof and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).

3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of **radio network or wireless access technology** may be used in the radio frequency bands **open to** electronic communications services.

Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of **radio network or wireless access technology** used where this is necessary to:

- (a) avoid harmful interference,
 - b) protect public health against electromagnetic fields,
 - (c) ensure maximisation of radio frequencies sharing **where the use of frequencies is subject to a general authorisation, or**
 - (d) **comply with a restriction** in accordance with paragraph 4 below.
4. Unless otherwise provided in the second subparagraph **or in the measures adopted pursuant to Article 9c**, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands **open to** electronic communications. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic

thereof **and in pursuit of benefits for the consumer such as economies of scale and interoperability of services. In so doing, they shall act** in accordance with **Articles 8a and 9c of this Directive, and with** Decision No 676/2002/EC (Radio Spectrum Decision).

3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall, ensure that all types of **technologies used for electronic communications services** may be used in the radio frequency bands **available for** electronic communications services **in accordance with the ITU Radio Regulations.**

Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of **technologies used for electronic communication services** where this is necessary to:

- (a) avoid **the possibility of** harmful interference,
- (b) protect public health against electromagnetic fields,
- (ba) ensure technical quality of service,**
- (c) ensure maximisation of radio frequency sharing,
- (ca) safeguard the efficient use of radio frequencies,**
- (d) **fulfil a general interest objective** in accordance with paragraph 4 below.

4. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands **available for** electronic communications **services in accordance with their national frequency allocation plans and with the ITU Radio Regulations.** The Member States may, however, provide for proportionate and

communications services to be provided.

Restrictions that require a service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, or, **as defined in national legislation in conformity with Community law**, the promotion of cultural and linguistic diversity and media pluralism.

A **restriction** which prohibits the provision of any other service in a specific band may only be provided for where justified by the need to protect safety of life services.

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4.

6. Paragraphs 3 and 4 shall apply to allocation and assignment of radio frequencies after **31 December 2009**.

Amendment 65

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 a

Text proposed by the Commission

Article 9a

Review of restrictions to existing rights

1. For a period of five years starting on **[1 January 2010]**, Member States **shall** ensure that holders of rights to use radio

non discriminatory restrictions to the types of electronic communications services to be provided.

Measures that require **an electronic communications** service to be provided in a specific band **available for electronic communications services** shall be justified in order to ensure the fulfilment of a general interest objective **as defined in national legislation** in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, or the promotion of **cultural and media policy objectives such as** cultural and linguistic diversity and media pluralism.

A **measure** which prohibits the provision of any other **electronic communications** service in a specific band may only be provided for where justified by the need to protect safety of life services.

5. Member States shall regularly review the necessity of the restrictions **and measures** referred to in paragraphs 3 and 4 **and shall make the results of these reviews public**.

6. Paragraphs 3 and 4 shall apply to **the** allocation and assignment of radio frequencies after **[date of transposition]**.

Amendment

Article 9a

Review of restrictions to existing rights

1. For a period of five years starting on **[date of transposition]**, Member States **may** ensure that holders of rights to use

frequencies which were granted before that date may submit an application to the competent national **regulatory** authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

Before adopting its decision the competent national **regulatory** authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and allow him a reasonable time limit to withdraw his application.

If the right holder withdraws his application, the right shall remain unchanged until its expiry or till the end of the 5 year period, whichever is the earlier date.

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, **an application for reassessment can only be made in respect of** the part of the radio frequencies which is necessary for the fulfilment of such objective. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective **as a result of application of Article 9(3) and (4)** shall be subject to a new assignment procedure in **conformity** with Article 7(2) of the Authorisation Directive.

3. After the five-year period referred to in paragraph 1, Member States shall take all appropriate measures to ensure that Article 9(3) and (4) apply to all remaining assignments and allocations of radio frequencies which existed at the date of entry into force of this Directive.

4. In applying this Article, Member States shall take appropriate measures to

radio frequencies which were granted before that date **and which will remain valid for a period of not less than five years after that date** may submit an application to the competent national authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

Before adopting its decision the competent national authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and allow him a reasonable time limit to withdraw his application.

If the right holder withdraws his application, the right shall remain unchanged until its expiry or till the end of the 5 year period, whichever is the earlier date.

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, **including the delivery of broadcasting services, the right to use** the part of the radio frequencies which is necessary for the fulfilment of that objective **shall remain unchanged**. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective shall be subject to a new assignment procedure in **accordance** with **Article 9(3) and (4) of this Directive and** Article 7(2) of the Authorisation Directive.

3. After the five-year period referred to in paragraph 1, Member States shall take all appropriate measures to ensure that Article 9(3) and (4) apply to all remaining assignments and allocations of radio frequencies which existed at the date of entry into force of this Directive.

4. In applying this Article, Member States shall take appropriate measures to

guarantee fair competition.

guarantee fair competition.

Amendment 66

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 b

Text proposed by the Commission

Article 9b

Transfer of Individual Rights to Use radio frequencies

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c ***without the prior consent of the national regulatory authority.***

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings.

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies is notified to the national ***regulatory*** authority responsible for ***spectrum assignment*** and is made public. Where radio frequency use has been harmonised through the application of the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.

Amendment

Article 9b

Transfer of Individual Rights to Use radio frequencies

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c, ***provided that such transfer or lease is in accordance with national procedures and national frequency allocation plans.***

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings ***in accordance with national procedures.***

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies, ***as well as the effective transfer thereof,*** is notified to the ***competent*** national authority responsible for ***granting individual rights to use radio frequencies*** and is made public. Where radio frequency use has been harmonised through the application of ***Article 9c and*** the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.

Amendment 67

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c

Text proposed by the Commission

Article 9c

*Radio Frequency Management
Harmonisation Measures*

In order to contribute to the development of the internal market, for the achievement of the principles of this Article, the Commission may adopt appropriate implementing measures to:

(a) ***harmonise the identification of*** the bands for which usage rights may be transferred or leased between undertakings;

(b) harmonise the conditions attached to such rights ***and the conditions, procedures, limits, restrictions, withdrawals and transitional rules applicable to such transfers or leases;***

(c) ***harmonise the specific measures to ensure fair competition where individual rights are transferred;***

(d) ***create an exception to*** the principle of services ***or technology*** neutrality, ***as well as to harmonise the scope and nature of any exceptions to these principles in accordance with Article 9(3) and (4) other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism.***

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). ***On imperative grounds of urgency, the***

Amendment

Article 9c

*Radio Frequency Management
Harmonisation Measures*

In order to contribute to the development of the internal market, for the achievement of the principles of ***Articles 8a, 9, 9a and 9b***, the Commission may adopt appropriate ***technical*** implement measures to:

(–a) apply the radio spectrum action programme established pursuant to Article 8a(7);

(a) ***identify*** the bands for which usage rights may be transferred or leased between undertakings;

(b) harmonise the conditions attached to such rights;

deleted

(d) ***identify the bands for which*** the principle of service neutrality ***shall apply;***

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Commission may use the urgency procedure referred to in Article 22(4). In the implementation of the provisions of this paragraph, the Commission may be assisted by the Authority in accordance with Article 10 Regulation [.../EC].

Amendment 68

Proposal for a directive – amending act

Article 1 – point 11 – point a

Directive 2002/21/EC

Article 10 – paragraph 2

Text proposed by the Commission

2. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives equal treatment to all providers *of publicly available electronic communications services*. In particular, Member States shall ensure that an undertaking assigned a range of numbers does not discriminate against other providers *of electronic communications services* as regards the number sequences used to give access to their services.

Amendment

2. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives equal treatment to all providers *and users of numbers across the European Union*. In particular, Member States shall ensure that an undertaking assigned a range of numbers does not discriminate against other providers *and users* as regards the number sequences used to give access to their services.

Justification

Failure to reform the numbering arrangements harms citizen, consumer and business interests in the EU. Art. 10 of the Framework Directive should be augmented with a stipulation to the effect that Member States shall remove restrictions in national numbering plans and associated rules which prevent the use of any kind of numbers anywhere in the EU, and shall remove any restrictions on the identity/classification of assignees of all types of numbers (this does not prevent attaching legitimate conditions to number assignment).

Amendment 69

Proposal for a directive – amending act

Article 1 – point 11 – point b

Directive 2002/21/EC

Article 10 – paragraph 4

Text proposed by the Commission

4. Member States shall support harmonisation **in numbering** within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter, which may include **establishing tariff principles for specific numbers or number ranges**. The implementing measures may grant **the Authority** specific responsibilities in the application of those measures.

The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). **On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4)**'

Amendment 70

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12

Text proposed by the Commission

Article 12

*Co-location and **facility** sharing for providers of electronic communications networks*

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of

Amendment

4. Member States shall support harmonisation **of specific numbers or numbering ranges** within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter which may include **ensuring cross-border access to national numbering used for essential services such as directory enquiries**. The implementing measures may grant **BERT** specific responsibilities in the application of those measures.

The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Amendment

Article 12

*Co-location and sharing **of network elements and associated facilities** for providers of electronic communications networks*

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of

property, national regulatory authorities shall be able to impose the sharing of such facilities or property, including entries to buildings, masts, antennae, ducts, manholes and *street* cabinets.

2. Member States may require that the holders of the rights referred to in paragraph 1 share facilities or property (including physical co-location) or take measures to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town and country planning objectives only after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.

property, national regulatory authorities shall, ***taking full account of the principle of proportionality***, be able to impose the sharing of such facilities or property, including entries to buildings, ***building wiring***, masts, antennae, ***towers and other supporting constructions***, ducts, ***conduits***, manholes and cabinets ***and all other network elements which are not active***

2. Member States may require that the holders of the rights referred to in paragraph 1 share facilities or property (including physical co-location) or take measures to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town and country planning objectives only after an appropriate period of public consultation, during which all interested parties shall be given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.

2a. Member States shall ensure that national regulatory authorities have the powers to require that the holders of the rights referred to in paragraph 1 share facilities or property (including physical co-location) in order to encourage efficient investment in infrastructure and the promotion of innovation, after an appropriate period of public consultation, during which all interested parties shall be given the opportunity to state their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing and shall ensure that there is an adequate sharing of risks between the undertakings concerned.

2b. Member States shall ensure that national regulatory authorities, based on information provided by the holders of the rights referred to in paragraph 1, establish a detailed inventory of the nature, availability and geographical

location of the facilities referred to in that paragraph, and make it available to interested parties.

2c. Member States shall ensure that the competent authorities establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to the public works referred to in paragraph 2 and also with respect to other appropriate public facilities or property which may include procedures that ensure that interested parties have information concerning appropriate public facilities or property and on-going and planned public works, that they are notified in a timely manner of such works, and that sharing is facilitated to the maximum extent possible.

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, and proportionate.

3. Measures taken by a national regulatory authority in accordance with **this Article** shall be objective, transparent, **non-discriminatory** and proportionate.

Amendment 71

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 a

Text proposed by the Commission

Amendment

Article 13a

Security and integrity

Article 13a

Security and integrity

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to safeguard the security of their networks or services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to safeguard the security of their networks or services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In

particular, measures shall be taken to prevent **or** minimise the impact of security incidents on users and on interconnected networks.

2. Member States shall ensure that undertakings providing public communications networks take **all necessary** steps to ensure the integrity of their networks so as to ensure the continuity of supply of services provided over those networks.

3. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the national **regulatory** authority of **any** breach of security or integrity that had a significant impact on the operation of networks or services.

Where appropriate, the national **regulatory** authority concerned shall inform the national **regulatory** authorities in other Member States **and the Authority**. Where disclosure of the breach is in the public interest, the national **regulatory** authority may inform the public.

Every three months, the national **regulatory** authority shall submit a summary report to the Commission on the notifications received and the action taken in accordance with this paragraph.

4. The Commission, taking the utmost account of the opinion of **the Authority**

particular, measures shall be taken to prevent **and** minimise the impact of security incidents on users and on interconnected networks.

2. Member States shall ensure that undertakings providing public communications networks take **appropriate** steps to ensure the integrity of their networks so as to ensure the continuity of supply of services provided over those networks. **Competent national authorities shall hold consultations with electronic communications service providers prior to adopting specific measures for the security and integrity of electronic communications networks.**

3. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the **competent** national authority of **a** breach of security or **loss of** integrity that had a significant impact on the operation of networks or services.

The rules on breach notifications shall apply in accordance with 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*.

Where appropriate, the **competent** national authority concerned shall inform the **competent** national authorities in other Member States **and ENISA**. Where disclosure of the breach is in the public interest, the **competent** national authority may inform the public.

Once a year, the **competent** national authority shall submit a summary report to the Commission on the notifications received and the action taken in accordance with this paragraph.

4. The Commission, taking the utmost account of the opinion of **ENISA**, may

issued in accordance with Article 4(3)(b) of Regulation [.../EC], may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements. ***The technical implementing measures shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.***

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

*OJ L 201, 31.7.2002, p. 37.

Amendment 72

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 b – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement Article 13a.

Amendment

1. Member States shall ensure that ***the competent*** national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement Article 13a. ***The binding instructions shall be proportionate and economically and technically sustainable and shall be implemented within a reasonable timeframe.***

Justification

It is necessary to consider proportionality, sustainability and reasonable timing as main guiding principles.

Amendment 73

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13b – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

Amendment

2. Member States shall ensure that *the competent* national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

Justification

Many NRAs do not have competence in security issues.

Amendment 74

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 b – paragraph 2 – point a

Text proposed by the Commission

(a) provide information needed to assess the security of their services and networks, including documented security policies; and

Amendment

(a) provide information needed to assess the security *and integrity* of their services and networks, including documented security policies; and

Justification

The costs should be borne by the undertakings concerned.

Amendment 75

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 b – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases of non-compliance.

3. Member States shall ensure that ***the competent*** national regulatory authorities have all the powers necessary to investigate cases of non-compliance, ***together with the effects on the security and integrity of the networks.***

Justification

As a logical consequence of the requirements laid down in Article 13a(3) to inform the NRA of any impact on security, the NRA must be empowered to investigate this.

Amendment 76

Proposal for a directive – amending act

Article 1 – point 15 – point a

Directive 2002/21/EC

Article 14 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

(a) In the second subparagraph of paragraph 2, the second sentence is deleted.

deleted

Justification

Joint dominance remains an untested and difficult concept in the telecoms sector in both an ex post and ex ante context, yet may become increasingly important as markets consolidate. It is important that guidance is not deleted but is rather clarified through the Framework.

Amendment 77

Proposal for a directive – amending act

Article 1 – point 15 – point b

Directive 2002/21/EC

Article 14 – paragraph 3

Text proposed by the Commission

Amendment

(b) Paragraph (3) is **deleted**.

(b) Paragraph 3 is **replaced by the following**:

"Where an undertaking has significant market power on a specific market and where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the undertaking, remedies aimed at preventing such leverage may be imposed in the linked market pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/EC (Access Directive), and where such remedies prove to be insufficient, remedies pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive) may be imposed."

Justification

Addressing leverage of dominance from one market into another is particularly vital in an industry characterised by vertical integration and convergence. Rather than deleting this measure – as the Commission has proposed – it should be refined to clarify that remedies such as non-discrimination, transparency, accounting separation – and prohibitions on anti-competitive bundling etc may be used ‘cross-market’ to address leverage problems. The existing provisions suggest that SMP would need to be found in the source and target leverage market in order to act. However, it is notable that this has not been used by regulators, is cumbersome and inconsistent with competition law, which does not require a ‘double dominance’ finding to address issues of leverage. The proposed changes would address this.

Amendment 78

Proposal for a directive – amending act

Article 1 – point 16 – point ba (new)

Directive 2002/21/EC

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(ba) The following paragraph is inserted:

"2a. At the latest by the date of entry into

force of Directive 2008/.../EC [of the European Parliament and of the Council of ... amending Directive 2002/21/EC...]⁺, the Commission shall publish guidelines for national regulatory authorities as regards decisions aimed at imposing, amending or withdrawing obligations on undertakings with significant market power."

⁺ OJ: Please insert the number and the date of this Directive.

Justification

The 2002 Framework directive establishes that European Commission publishes guidelines for market analysis and the assessment of significant market power but not for the identification of the appropriate remedies. There is clearly a missing element in the market analysis guidance tools provided the Commission: guidance on the selection of the appropriate remedies. The third part of a market analysis (i.e. the choice of the appropriate remedies) is the most crucial since it has the most concrete impact on the market. An erroneous choice of remedies may create irreparable distortions on market competitiveness and investment decisions. It is also the most complicated since it has varied possible outcomes and it entails, to a large extent, subjective evaluations. The need to provide guidance on the selection of regulatory obligations under the EU framework has indeed been recognised both by the Commission and the ERG.

Amendment 79

Proposal for a directive – amending act
Article 1 – point 16 – point d – subparagraph 2
Directive 2002/21/EC
Article 15 – paragraph 4

Text proposed by the Commission

This Decision, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).
On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4)

Amendment

This Decision, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

+

Justification

The urgency procedure is not justified for the adoption of this type of measures.

Amendment 80

Proposal for a directive – amending act

Article 1 – point 17 – point a

Directive 2002/21/EC

Article 16 – paragraph 1

Text proposed by the Commission

1. National regulatory authorities shall carry out an analysis of the relevant markets listed in the Recommendation, taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.

Amendment

1. National regulatory authorities shall carry out an analysis of the relevant markets **taking account of those markets** listed in the Recommendation **and** taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the national competition authorities.

Justification

To avoid giving the impression that the NRA have to analyse all markets identified in the recommendation, whereas (formally at least) the markets (and definitions) are given as a guide.

Amendment 81

Proposal for a directive – amending act

Article 1 – point 17 – point c

Directive 2002/21/EC

Article 16 – paragraph 7 – subparagraph 2

Text proposed by the Commission

The Commission, taking the utmost account of the opinion of the Authority issued in accordance with Article 6 of Regulation [.../EC], may adopt a decision requiring the national regulatory authority to designate certain undertakings as having significant market power and to impose specific obligations under Articles 8, 9 to 13a of Directive

Amendment

deleted

2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive) on those undertakings so designated. In so doing, the Commission shall pursue the same policy objectives as set out for national regulatory authorities in Article 8.

Justification

NRAs should be obliged to undertake market analysis within a given timeframe. If NRAs do not, or are unable to undertake such analysis, then BERT should provide an opinion. However the commission is not best placed to veto remedies.

Amendment 82

Proposal for a directive – amending act
Article 1 – point 18 – point a
Directive 2002/21/EC
Article 17 – paragraph 1

Text proposed by the Commission

(a) In paragraph 1, in the second sentence, the words 'acting in accordance with the procedure referred to in Article 22(2)' are replaced by 'may take appropriate implementing measures and'.

Amendment

(a) In paragraph 1, ***in the first sentence, the words 'Article 22(2)' are replaced by 'Article 22(3)'***; in the second sentence, the words 'acting in accordance with the procedure referred to in Article 22(2)' are replaced by 'take appropriate implementing measures and'.

Justification

It should not be left to the Commission to decide whether Parliament should have scrutiny powers or not.

Amendment 83

Proposal for a directive – amending act
Article 1 – point 18 – point aa (new)
Directive 2002/21/EC
Article 17 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

(aa) In paragraph 2, subparagraph 3 shall

be replaced by the following:

"In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC)."

Justification

CEPT develops conditions for spectrum use in Europe and this should be taken into account, particularly in the absence of an ETSI standard.

Amendment 84

Proposal for a directive – amending act

Article 1 – point 18 – point c

Directive 2002/21/EC

Article 17 – paragraph 6 a (new)

Text proposed by the Commission

6a. The implementing measures designed to amend non-essential elements of this Directive by supplementing it ***referred to in paragraphs 4 and 6*** shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).***

Amendment

6a. The implementing measures ***referred to in paragraphs 1, 4 and 6***, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Justification

All implementing measures under Article 17 should be adopted in accordance to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of this type of measures.

Amendment 85

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19

Text proposed by the Commission

Article 19

Harmonisation procedures

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives **may create** a barrier to the internal market, the Commission may, taking the utmost account of the opinion of **the Authority**, if any, issue **a recommendation or** a decision on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

2. Where the Commission issues a recommendation pursuant to paragraph 1, it shall act in accordance with the procedure referred to in Article 22(2). Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasoning for its position.

3. The decision mentioned in paragraph 1 designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). **On imperative grounds**

Amendment

Article 19

Harmonisation procedures

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives **creates** a barrier to the internal market, the Commission may, taking the utmost account of the opinion of **BERT**, if any, issue a decision on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

3. The decision mentioned in paragraph 1 designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).'

of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

4. Measures adopted pursuant to paragraph 1 may include the identification of a harmonised or coordinated approach for dealing with the following issues:

(a) Consistent implementation of regulatory approaches, including regulatory treatment of new services;

(b) Numbering, naming and addressing issues, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services;

(c) Consumer issues, *including* accessibility to electronic communications services and equipment by disabled end-users;

(d) Regulatory accounting.

5. The Authority may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

Amendment 86

Proposal for a directive – amending act Article 1 – point 22

Directive 2002/21/EC

Article 21 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Any party may refer the dispute to the national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the

4. Measures adopted pursuant to paragraph 1 may include the identification of a harmonised or coordinated approach for dealing with the following issues:

(a) Consistent implementation of regulatory approaches, including regulatory treatment of new services, *of sub-national markets and of cross-border business electronic communications services*;

(b) Numbering, naming and addressing issues, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services;

(c) Consumer issues *not included in Directive 2002/22/EC (Universal Service Directive)*, *in particular* accessibility to electronic communications services and equipment by disabled end-users;

(d) Regulatory accounting, *including the calculation of investment risk*.

Amendment

2. Any party may refer the dispute to the national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts *within BERT* in order to bring about a

dispute, in accordance with the objectives set out in Article 8.

resolution of the dispute, *as far as possible through the adoption of a joint decision*, in accordance with the objectives set out in Article 8. *Any obligations imposed on an undertaking by the national regulatory authorities in resolving a dispute shall comply with the provisions of this Directive and the Specific Directives.*

Justification

This amendment provides for the role of BERT in the resolution of cross-border disputes.

Amendment 87

Proposal for a directive – amending act

Article 1 – point 22

Directive 2002/21/EC

Article 21 – paragraph 3 – subparagraph 2

Text proposed by the Commission

They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party *seeking redress* and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8 and taking the utmost account of any recommendation issued by the Authority in accordance with Article 18 of Regulation [.../EC].

Amendment

They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party *whose rights have been violated* and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, *as far as possible through the adoption of a joint decision*, in accordance with the provisions set out in Article 8 and taking the utmost account of any recommendation issued by the Authority in accordance with Article 18 of Regulation [.../EC].

Amendment 88

Proposal for a directive – amending act

Article 1 - point 23

Directive 2002/21/EC (Framework Directive)

Article 21a

Text proposed by the Commission

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [*time-limit for implementation of the amending act*] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Amendment

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be **appropriate**, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [*time-limit for implementation of the amending act*] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Amendment 89

Proposal for a directive – amending act

Article 1 – point 24 – point (-a) (new)

Directive 2002/21/EC

Article 22 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(-a) The following new paragraph shall be added:

"1a. By way of derogation of paragraph 1, for the adoption of measures pursuant to Article 9c, the Commission shall be assisted by the Committee established under Article 3(1) of Decision 676/2002/EC ("the Radio Spectrum Committee")."

Amendment 90

Proposal for a directive – amending act

Article 1 – point 26

Directive 2002/21/EC

Annexes I and II

(26) *Annexes I and II are* deleted.

(26) *Annex I is* deleted. *Annex II is replaced by the following:*

"ANNEX II

Criteria to be used by national regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market *which is characterised by a lack of effective competition and in which no single undertaking has significant market power*. Without prejudice to the case law of the Court of Justice on joint dominance, this is likely to be the case where the market *is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of electronic communications:*

- [...]
- low elasticity of demand
- [...]
- similar market shares
- [...]
- **high legal or economic barriers to entry**
- *vertical integration with collective refusal to supply*
- **lack of countervailing buyer power**
- **lack of potential competition**
- [...]

The above list is indicative. It is not exhaustive, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance."

Justification

Joint dominance remains an untested and difficult concept in the telecoms sector in both ex post and ex ante context, yet may become increasingly important as markets consolidate. It is important that guidance is not deleted but is rather clarified through the Framework.

Amendment 91

Proposal for a directive – amending act

Article 2 – point 1

Directive 2002/19/EC

Article 2 – point a

Text proposed by the Commission

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services **or delivering** information society services or broadcast content services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual

Amendment

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, **including the delivery of** information society services or broadcast content services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; **access to the necessary subscriber information and to mechanisms for paying back sums invoiced to end users to the providers of directory services;** access

network services.

to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; *and* access to virtual network services.

Amendment 92

Proposal for a directive – amending act

Article 2 – point 1 a (new)

Directive 2002/19/EC

Article 2 – point e

Text proposed by the Commission

Amendment

(1a) In Article 2, point (e) is replaced by the following:

“(e) “local loop” means the physical circuit connecting the network termination point [...] to a distribution frame or equivalent facility in the fixed public *electronic communications* network.”

Amendment 93

Proposal for a directive – amending act

Article 2 – point 2

Directive 2002/19/EC

Article 4 – paragraph 1

Text proposed by the Commission

Amendment

‘1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings

‘1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services ***or delivering broadcast content or information society services***, in order to ensure provision and interoperability of services throughout the Community.

on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.’

Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.’

Justification

For consistency with the proposed definition of access.

Amendment 94

Proposal for a directive – amending act

Article 2 – point 2

Directive 2002/19/EC (Access Directive)

Article 4 – paragraph 1

Text proposed by the Commission

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.’

Amendment

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8. ***However the terms and conditions of interconnection shall not introduce unjustified barriers to interoperability.***

Amendment 95

Proposal for a directive – amending act

Article 2 – point 3 - point a

Directive 2002/19/EC

Article 5

Text proposed by the Commission

(a) *Paragraph 2 is* replaced by the following:

Amendment

(a) *Paragraphs 1 and 2* **are** replaced by the following:

1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, *investment and innovation*, and gives the maximum benefit to end-users.

In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article 8, national regulatory authorities shall be able to impose:

(a) to the extent that is necessary to ensure end-to-end connectivity *or fair and reasonable access to third-party services such as directory services*, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case *or to make their services interoperable including through mechanisms for paying back to service providers sums invoiced to end-users, on fair, transparent and reasonable terms.*

(b) to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6 *and* 7 of Directive 2002/21/EC (Framework Directive).

services specified by the Member State, obligations on operators to provide access to the other facilities referred to in Annex I, Part II on fair, reasonable and non-discriminatory terms.

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6, 7 *and - 7a* of Directive 2002/21/EC (Framework Directive).

When assessing the proportionality of the obligations and conditions to be imposed, national regulatory authorities shall take into account the different competitive conditions existing in the different areas within their Member States.

Amendment 96

Proposal for a directive – amending act

Article 2 – point 4

Directive 2002/19/EC

Article 6 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. 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). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4).***

Amendment

2. 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).

Justification

The urgency procedure is not justified for the adoption of this type of measures.

Amendment 97

Proposal for a directive – amending act

Article 2 – point 6 – point aa (new)

Directive 2002/19/EC

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

(aa) Paragraph 2 is replaced by the following:

‘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, as appropriate, impose the obligations set out in Articles 9 to 13 of this Directive in accordance with the procedure set out in Article -7a of Directive 2002/21/EC (Framework Directive).’

Justification

Inclusion of the alternative procedure to the veto on remedies.

Amendment 98

Proposal for a directive – amending act

Article 2 – point 6 a (new)

Directive 2002/19/EC

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

(6a) In Article 9, paragraph 1 is replaced by the following:

"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, restrictions on access to services and applications, traffic management policies, terms and conditions for supply and use, and prices."

Justification

National regulators need clear authority to impose transparency obligations regarding traffic management policies regarding any restrictions on end-user access and traffic management policies.

Amendment 99

Proposal for a directive – amending act

Article 2 – point 6 b (new)

Directive 2002/19/EC

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

(6b) In Article 9, paragraph 4 is replaced by the following:

"4. Notwithstanding paragraph 3, where an operator has been found to have SMP in a relevant market under Article 14 of the Framework Directive relating to local access at a fixed location, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II."

Justification

The amendment updates the description of access resulting from dominance in the local loop in the Access Directive to ensure technological neutrality and bring it into line with the new definition in the Commission's Relevant Markets. By the time the amendments are approved, many loops may be partly or wholly composed of fibre and thus technological neutrality is required to ensure the Framework is futureproof.

Amendment 100

Proposal for a directive – amending act

Article 2 – point 8

Directive 2002/19/EC

Article 12

Text proposed by the Commission

Amendment

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 *shall* be required inter alia:

(a) to give third parties access to specified network elements and/or facilities, including unbundled access to the local loop;

(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;

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, antennae or masts, manholes *and street* cabinets;

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, antennae *towers and other supporting constructions*, masts, manholes, cabinets

and other network elements which are not active;

(fa) to provide third parties with a reference offer for the granting of access to ducts;

(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;

(j) to provide access to associated services such as identity, location and presence capability.

(j) to provide access to associated services such as identity, location and presence capability.

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

2. When national regulatory authorities are considering whether to impose the obligations referred in paragraph 1, and in particular when assessing whether such obligations would be 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 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;

(c) the initial investment by the facility owner, bearing in mind *any public investment made* and the risks involved in making the investment, *including an appropriate risk-sharing among those undertakings enjoying access to these new facilities*;

(d) the need to safeguard competition in the long term, *in particular infrastructure-based competition*

(e) where appropriate, any relevant intellectual property rights;

(f) the provision of pan-European services.

3. 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(1)* of Directive 2002/21/EC (Framework Directive).’

3. 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).’

Amendment 101

Proposal for a directive – amending act

Article 2 – point 8 a (new)

Directive 2002/19/EC

Article 13 – paragraph 1

Text proposed by the Commission

Amendment

(8a) Article 13(1) is replaced by the following:

1. 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 might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. 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, and, without prejudice to Article 19(d) of Directive 2000/21/EC (Framework Directive), take into account the risks involved and the appropriate risk sharing among the investor and those undertakings enjoying access to the new facilities, including differentiated short-term and long-term risk sharing arrangements, .

Amendment 102

Proposal for a directive – amending act

Article 2 – point 8 b (new)

Directive 2002/19/EC

Article 13 – paragraph 4a (new)

Text proposed by the Commission

Amendment

(8b) In Article 13, the following paragraph is inserted:

"4a. National regulatory authorities shall ensure that access price regulation for long-term risk-sharing contracts is in line with the long-term incremental cost of an efficient operator, taking into account the operator's calculated rate of penetration of new markets and that access prices for short-term contracts include a risk premium. This risk premium shall be phased out with the increasing market penetration of new access. Margin squeeze tests shall not be applied to short-

term contracts when a risk premium is charged."

Justification

Paragraph 4a differentiates between access prices for cost-sharing contracts and short-term contracts. Margin squeeze tests shall apply in case of risk-sharing contracts this will not be the case for short-term contracts, otherwise the investor would lose necessary flexibility to set penetration prices. Penetration prices have to reflect the learning process of how new products are accepted; any regulation which would not allow flexibility in penetration prices would be counterproductive.

Amendment 103

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13 a

Text proposed by the Commission

Article 13a

Functional separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard 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 **request** to the Commission that includes.

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve

Amendment

Article 13a

Functional separation

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose, **as an exceptional measure**, an obligation on vertically integrated undertakings to place activities related to the wholesale provision of **fixed** access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard 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 that, the imposition **and enforcement over a reasonable timeframe** of appropriate obligations amongst those

effective competition following a coordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of *these* product markets;

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;

(c) a draft of the measure being proposed.

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) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;

identified in Articles 9-13, *while taking due account of regulatory best practice*, to achieve effective competition following a coordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has, failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of *the wholesale* product markets *analysed*;

(ab) evidence that there is no or little prospect of infrastructure-based competition within a reasonable timeframe;

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, *in particular on its workforce*, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and *notably* any potential entailing effects on consumers;

(ba) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems/market failures identified;

3. The *national regulatory authority shall include in its proposal a draft of the measure being proposed which* shall include the following elements:

(a) the precise nature and level of separation;

(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(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 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 - 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 paragraph 3 of Article 8.

(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(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 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 - 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 paragraph 3 of Article 8.

Amendment 104

Proposal for a directive – amending act

Article 2 – point 10 – point b

Directive 2002/19/EC

Article 14 – paragraph 4

Text proposed by the Commission

Amendment

4. Where reference is made to this paragraph, Article 5a (1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

deleted

Justification

The urgency procedure is not justified for the adoption of the measures proposed in the Access Directive.

Amendment 105

Proposal for a directive – amending act

Article 2 – point 10 a (new)

Directive 2002/19/EC

Annex II

(10a) Annex II is replaced by the following:

Annex II

Minimum list of items to be included in a reference offer for *wholesale network infrastructure access, including shared or fully unbundled access at a fixed location* to be published by operators with *significant market power (SMP)*

For the purposes of this Annex the following definitions apply:

- (a) "local sub-loop" means a partial local loop connecting the network termination point to a concentration point or a specified intermediate access point in the fixed public *electronic communications* network;**
- (b) "unbundled access to the local loop" means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;**
- (c) "full unbundled access to the local**

loop" means the provision to a beneficiary of access to the local loop or local sub-loop of the *SMP* operator *permitting* the use of the full *capacity* of the network infrastructure;

(d) "shared access to the local loop" means the provision to a beneficiary of access to the local loop or local sub-loop of the *SMP* operator, *permitting* the use of a *specified part of the capacity* of the network infrastructure such as a part of the frequency or equivalent;

A. Conditions for unbundled access

1. Network elements to which access is offered covering in particular the following elements *together with appropriate associated facilities*:

(a) *unbundled* access to local loops and local subloops;

(b) *shared* access at appropriate points in the network *permitting* equivalent functionality to unbundled access in circumstances where such access is technically or economically infeasible;

(ba) *duct* access enabling installation of access and backhaul networks;

2. Information concerning the locations of physical access sites including *street cabinets and distribution frames*(1), availability of local loops and subloops, ducts and backhaul in specific parts of the access network and availability within ducts;

3. Technical conditions related to access and use of local loops and subloops and ducts, including the technical characteristics of the twisted pair and/or optical fibre and/or equivalent, cable distributors, ducts and associated facilities;

4. Ordering and provisioning procedures, usage restrictions

B. Co-location services

1. Information on the SMP operator's existing relevant sites (2) or equipment locations and planned update thereof.

(Reminder of the Annex unchange)d

Amendment 106

Proposal for a directive – amending act

Article 3 – point 2 a (new)

Directive 2002/20/EC

Article 3 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

(2a) In Article 3, paragraph 2, the following subparagraph is added:

"Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall be treated similarly in all Member States and be subject to no more than one simplified notification per Member State concerned."

Amendment 107

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5

Text proposed by the Commission

Amendment

Article 5

Rights of use for radio frequencies and numbers

1. Member States shall ***not make the use of radio frequencies subject to the granting of individual rights of use but shall include the conditions for*** usage of such radio frequencies ***in the*** general authorisation, ***unless it is justified to*** grant individual rights in order to:

(a) avoid ***a serious risk*** of harmful

Article 5

Rights of use for radio frequencies and numbers

1. Member States shall ***facilitate the*** usage of radio frequencies ***under*** general authorisations. ***Member States may*** grant individual rights in order to:

(a) avoid ***the possibility*** of harmful

interference; *or*

(b) fulfil other objectives of general interest.

2. *Where it is necessary to grant individual rights of use for radio frequencies and numbers*, Member States shall grant *such* rights, upon request, to any undertaking *providing or using networks or services under the general authorisation*, subject to the provisions of Articles 6, 6a, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).

Without prejudice to specific criteria *defined in advance* by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures *shall also be* open, *except* in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

When granting rights of use, Member

interference,

(aa) ensure the technical quality of service;

(ab) ensure the efficient use of spectrum;

(b) fulfil other objectives of general interest *defined in national legislation in compliance with Community law;*

(ba) comply with a measure in accordance with Article 6a;

2. Member States shall grant *individual rights of use*, upon request, to any undertaking, subject to the provisions of Articles 6, 6a, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).

Without prejudice to specific criteria *and procedures adopted* by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through *open*, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures *may, exceptionally, not be* open in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined *and justified* in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

When granting rights of use, Member

States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provisions shall be in accordance with **Article 9b** of Directive 2002/21/EC (Framework Directive).

Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued **and defined in advance**.

Any individual right to use radio frequencies **that is** granted for ten years or more and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive **shall, every five years and for the first time five years after its issuance, be subject to a review in the light of the criteria in paragraph 1. If the criteria to grant individual rights of use** are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice **of not more than five years from the conclusion of the review**, or shall be made freely transferable or leaseable between undertakings.

3. Decisions on rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for electronic communications within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or

States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provisions shall be in accordance with **Article 9 and 9b** of Directive 2002/21/EC (Framework Directive).

Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued, **taking due account of the need to allow for an appropriate period for amortisation of investment**.

Where individual rights to use radio frequencies **are** granted for ten years or more and cannot be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive, **the competent national authority shall ensure the means to enable it to verify that the criteria to grant individual rights of use are still being applied and respected for the duration of the license**. If **these** criteria are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice **and after reasonable time has elapsed**, or shall be made freely transferable or leaseable between undertakings.

3. Decisions on **the granting of** rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for electronic communications **services** within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or

of orbital positions.

4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to three weeks.

With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

6. **National regulatory** authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with **Article 9(2)** of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. **For such purposes, Member States may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.**

Amendment 108

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6 a

Text proposed by the Commission

Article 6a

Harmonisation measures

1. **In order to achieve the objectives set out in Article 1, and without** prejudice to

of orbital positions.

4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to **a further** three weeks.

With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

6. **Competent national** authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with **Articles 8(2) and 9(2)** of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights.

Amendment

Article 6a

Harmonisation measures

1. **Without** prejudice to **Article 5(1)** and (2) of this Directive **and Articles 8a and 9 of**

Article 5(2) of this Directive, the Commission may adopt implementing measures:

(a) to identify radio frequency bands the use of which is to be made subject to general authorisations *or individual rights of use for radio frequencies*;

(b) to identify the numbering ranges to be harmonised at Community level

(c) to harmonise procedures for the granting of general authorisations or individual rights of use for radio frequencies or numbers;

(d) to harmonise the conditions specified in Annex II relating to general authorisations or individual rights of use for radio frequencies or numbers;

(e) to provide for the amendment or withdrawal of authorisations or rights of use and the procedures relating to point (d);

(f) to lay down procedures for the selection of undertakings to which individual rights of use for radio frequencies or numbers shall be granted by the national regulatory authorities, where appropriate in accordance with the provisions of Article 6b.

The measures listed in points (a) to (d) and (f), designed to amend non essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a(4).

2. The measures referred to in paragraph 1 may, where appropriate, provide for the possibility for the Member States to make a

Directive 2002/21/EC (Framework Directive), the Commission may adopt implementing measures:

(a) to identify radio frequency bands, the use of which is to be made subject to general authorisations;

(b) to identify the numbering ranges to be harmonised at Community level;

(c) to harmonise procedures for the granting of general authorisations or individual rights of use for radio frequencies or numbers *to undertakings providing pan-European electronic communications networks or services*;

(d) to harmonise the conditions specified in Annex II relating to general authorisations or individual rights of use for radio frequencies or numbers *to undertakings providing pan-European electronic communications networks or services*.

These measures, designed to amend non essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(3).

2. The measures referred to in paragraph 1 may, where appropriate, provide for the possibility for the Member States to make a

reasoned request for a partial exemption and/or a temporary derogation from those measures.

The Commission shall assess the justification for the request, taking into account the specific situation in the Member State, and may grant a partial exemption or temporary derogation or both provided this does not unduly defer the implementation of the implementing measures referred to in paragraph 1 or create undue differences in the competitive or regulatory situations between Member States.

3. In implementing the provisions of this Article, the Commission may be assisted by the European Electronic Communications Market Authority (hereinafter referred to as 'the Authority'). The Commission shall take the utmost account of the opinion of the Authority, if any, submitted in accordance with Article 11 of Regulation [].

reasoned request for a partial exemption and/or a temporary derogation from those measures.

The Commission shall assess the justification for the request, taking into account the specific situation in the Member State, and may grant a partial exemption or temporary derogation or both provided this does not unduly defer the implementation of the implementing measures referred to in paragraph 1 or create undue differences in the competitive or regulatory situations between Member States.

Amendment 109

Proposal for a directive – amending act Article 3 – point 5

Directive 2002/20/EC

Article 6 b (new)

Text proposed by the Commission

Article 6b

Common selection procedure for issuing rights

1. The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the Authority to make proposals for the selection of undertaking(s) to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [...].

Amendment

deleted

In such cases, the measure shall specify the period within which the Authority shall complete the selection, the procedure, rules and conditions applicable to the selection, and details of any charges and fees to be imposed on the holders of rights for use of radio frequencies and/or numbers, in order to ensure the optimal use of spectrum or numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.

2. Taking the utmost account of the opinion of the Authority, the Commission shall adopt a measure selecting the undertaking(s) to which individual rights of use for radio frequencies or numbers shall be issued. The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).

Justification

EU-wide selection procedures for the issuing of rights should be subject to specific legislative proposals not Comitology.

Amendment 110

Proposal for a directive – amending act
Article 3 – point 7
Directive 2002/20/EC
Article 8

Text proposed by the Commission

Amendment

(7) Article 8 is deleted.

deleted

Justification

The function and wording of this Article are satisfactory.

Amendment 111

Proposal for a directive – amending act
Article 3 – point 8 – point a
Directive 2002/20/EC
Article 10 – paragraph 3 – subparagraph 2

Text proposed by the Commission

In this regard, Member States shall empower the relevant authorities to impose financial penalties where appropriate. ***The measures and the reasons on which they are based shall be communicated to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measure.***

Amendment

In this regard, Member States shall empower the relevant authorities to impose:

- (a) dissuasive*** financial penalties where appropriate, ***which may include periodic penalties having retroactive effect; and***
- (b) orders to cease provision of a service or bundle of services, which would result in a significant detriment to competition, pending compliance with access obligations imposed following a market analysis under Article 16 of Directive 2002/21/EC (Framework Directive).***

Justification

The amendment proposes two explicit enforcement powers which are currently available to some, but not all regulators and which have proved useful in aiding enforcement. In particular, the ability to prevent a dominant operator from launching a service which would foreclose competition before access is made available to allow all to enter on a level playing field is important in ensuring that markets can be competitive (rather than monopolised) from the outset, which tends to boost roll-out and lower prices.

Amendment 112

Proposal for a directive – amending act
Article 3 – point 8 – point c
Directive 2002/20/EC
Article 10 – paragraph 5

Text proposed by the Commission

In cases of serious ***and*** repeated breaches of the conditions of the general

Amendment

In cases of serious ***or*** repeated breaches of the conditions of the general authorisation

authorisation or of the rights of use, or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

or of the rights of use, or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

Amendment 113

Proposal for a directive – amending act

Article 3 – point 8 – point d

Directive 2002/20/EC

Article 10 – paragraph 6

Text proposed by the Commission

6. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation rights of use or specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months.

Amendment

6. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation rights of use or specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services ***or other users of the radio spectrum***, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months.

Justification

Interim measures in case of such problem must protect all spectrum users.

Amendment 114

Proposal for a directive – amending act

Article 3 – point 8 – letter d a (new)

Directive 2002/20/EC

Article 10 – point 6 a (new)

Text proposed by the Commission

Amendment

***(da) The following paragraph is added:
‘6a. In accordance with their national laws, the Member States shall ensure that the measures taken by the national authorities under paragraphs 5 and 6 are subject to judicial review.’***

Amendment 115

Proposal for a directive – amending act

Article 3 – point 9a (new)

Directive 2002/20/EC

Article 11 – paragraph 1 – subparagraph 1 – point fa (new)

Text proposed by the Commission

Amendment

***(9a) In Article 11, paragraph 1, subparagraph 1, the following point is added:
“(fa) encouraging the efficient use and ensuring the effective management of radio frequencies.”***

Justification

Spectrum trading encourages spectrum efficiency and should eliminate spectrum hoarding. However accurate figures on spectrum usage from undertakings would help BERT and NRAs accurately assess spectrum usage.

Amendment 116

Proposal for a directive – amending act

Article 3 – point 11

Directive 2002/20/EC

Article 14 a – paragraph 4

Text proposed by the Commission

Amendment

4. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. **deleted**

Justification

The type of Comitology measures adopted pursuant to the Authorisation Directive does not justify the employment of the urgency.

Amendment 117

Proposal for a directive – amending act

Article 3 – point 11 a

Directive 2002/21/EC

Article 14 a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(11 a) In Article 14a the following new paragraph shall be added:

"1a. By way of derogation from paragraph 1, for the adoption of measures pursuant to Article 6a (1), points (a), (c) and (d), the Commission shall be assisted by the Committee established under Article 3(1) of Decision 676/2002/EC ("the Radio Spectrum Committee")."

Amendment 118

**Proposal for a directive – amending act
Article 3 a (new)**

Text proposed by the Commission

Amendment

**Article 3a
Review procedure**

1. The Commission shall periodically review the functioning of this Directive and of Directives 2002/21/EC (Framework Directive), 2002/19/EC (Access Directive) and 2002/20/EC (Authorisation Directive) and report to the European Parliament and to the Council no later than three years after the date of application referred to in Article 5(1). In its report, the Commission shall assess whether, in the light of developments in the market and with regard to both competition and consumer protection there is continued need for the provisions on sector specific ex ante regulation laid down in Articles 8 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive) or whether they should be amended or repealed. For this purpose, the Commission may request information from the national regulatory authorities and BERT, which shall be supplied without undue delay.

2. If the Commission finds that the provisions referred to in paragraph 1 need to be amended or repealed it shall submit a proposal to the European Parliament and the Council without undue delay.

Amendment 119

**Proposal for a directive – amending act
Annex I – point 3 – point a
Directive 2002/20/EC
Annex I – part A – point 4**

Text proposed by the Commission

Amendment

4. Accessibility of numbers from the national numbering *plan* to end-users, numbers from ETNS and UIFN, and conditions in conformity with Directive 2002/22/EC (Universal Service Directive).

4. Accessibility of numbers from the national numbering *plans of Member States* to end users, numbers from ETNS and UIFN, and conditions in conformity with Directive 2002/22/EC (Universal Service Directive).

Justification

Cross-border access to numbers is required for the internal market.

Amendment 120

Proposal for a directive – amending act

Annex I – point 3 – point g

Directive 2002/20/EC

Annex I – part A – point 19

Text proposed by the Commission

Amendment

19. Compliance with national measures implementing Directive 2001/29/EC of the European Parliament and of the Council and Directive 2004/48/EC of the European Parliament and of the Council.

deleted

Justification

It would be more efficient and welcome if discussion on the protection of copyright and related issues on electronic communications networks would be dealt with within the Content Online consultation. This initiative intends to create the right environment for a dialogue where all stakeholders from across the electronic value chain can work together to find solutions that are based on self-regulation and will be supported by all stakeholders.

Amendment 121

Proposal for a directive – amending act

Annex I – point 3 – point ga (new)

Directive 2002/20/EC

Annex I – part A – point 19a (new)

Text proposed by the Commission

Amendment

(ga) The following point is added:

"19a. Transparency obligations on public communications network providers to ensure end-to-end connectivity, including unrestricted access to content, services and applications, in conformity with the objectives and principles set out in Article 8 of Directive 2002/21/EC, disclosure regarding restrictions on access to services and applications and regarding traffic management policies and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure."

Justification

The existing set of conditions do not explicitly include transparency obligations for the purpose of ensuring that end-user access rights are protected. It is particularly important that NRAs have enough information to evaluate public communications networks providers' compliance with their obligations to permit end-users to have access to content, services and applications of their choice. The general authorisation conditions provide a mechanism for ensuring transparency among communications network providers that do not have significant market power.

Amendment 122

Proposal for a directive – amending act

Annex I – point 4 – point c

Directive 2002/20/EC

Annex I – part B – point 4

Text proposed by the Commission

Amendment

(c) In point 4 the terms 'subject to any changes in the national frequency plan' are deleted.

deleted

Amendment 123

Proposal for a directive – amending act
Annex I – point 4 – point d
Directive 2002/20/EC
Annex I – part B – point 7

Text proposed by the Commission

7. Voluntary commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.

Amendment

7. Voluntary commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure. ***If such a commitment corresponds de facto to one or more of the obligations listed in Articles 9 to 13a of Directive 2002/19/EC (Access Directive), that commitment shall be considered as having expired by 1 January 2010 at the latest.***

Justification

Regulatory obligations shall only be imposed on undertakings with significant power in a market justifying ex ante regulation. Prior to the 2002 framework, the obtainment of usage rights had sometimes been made conditional upon 'voluntary commitment' by new entrants which corresponded to such regulatory obligations (non-discrimination obligations etc). To avoid perpetuated regulation irrespective of market power, such 'voluntary commitments' shall be regarded to be expired after a transition period.

Amendment 124

Proposal for a directive – amending act
Annex I – point 4a (new)
Directive 2002/20/EC
Annex I – part C – point 1

Text proposed by the Commission

Amendment

(4a) In Part C, point 1 is replaced by the following:

"1. Designations of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply to specific number ranges for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC

(Framework Directive)."

Justification

Specific number ranges refer to particular types of service (free phone, national rate, local rate). It is important that NRAs can ensure that the charges operators levy for these services are within the range expected by customers. For example, customers could reasonably expect a (non-geographic) national rate number to be charged at their normal national rate.

Amendment 125

Proposal for a directive – amending act

Annex II

Directive 2002/20/EC

Annex II – point 1 – point d

Text proposed by the Commission

Amendment

(d) the method of determining usage fees for the right of use of the radio frequencies;

(d) the method of determining usage fees for the right of use of the radio frequencies, ***without prejudice to systems defined by Member States where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives;***

Justification

It must remain possible for Member States to maintain or introduce systems where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives. Such systems are commonplace with regard to terrestrial broadcastings frequencies where they serve media pluralism objectives.

EXPLANATORY STATEMENT

1. SPECTRUM REFORM

Spectrum, like other natural resources (sun, water, air), is a public good; market mechanisms, whilst constituting effective tools to derive optimal economic value (private and public), are not able alone to serve the general interest and provide public goods indispensable for achieving an information society for all. A combined policy and market approach is therefore required.

1.1 Accommodating flexibility (service and technology neutrality, trading, etc.) and harmonisation goals

Better coordination and more flexibility are required if we want to achieve an efficient exploitation of this scarce resource. However, an adequate balance should be struck between flexibility and the degree of harmonisation which is also needed in order to increase the internal market added value of spectrum (i.e. fixing specific spectrum bands for specific services and technologies such as GSM, UMTS, MCA and MSS).

The development of an absolute 'harmonisation agenda' (full command & control approach) is not compatible with an 'idealistic' neutrality regime (full market approach). That is why a mixed spectrum management regime, based on balanced combinations of options (scope of harmonisation vs. service neutrality, standardisation vs. technology neutrality, spectrum assignment modes) is preferable.

A gradual rather than a revolutionary spectrum reform seems realistic and preferable:

- Non-interference as well as compatibility with ITU radio regulations should be a precondition for reforms introduced;
- The scope and nature of service and technology neutrality should be consistent with ITU definitions;
- Technology neutrality should be pursued with clear rules on interoperability obligations and under which conditions standards could be imposed;
- Service neutrality should be understood as covering only electronic communication services, within their respective national frequency allocation tables and ITU regulations;
- Spectrum trading should be voluntary and compatible with the primary usage of the relevant band;
- General authorisations should remain a manageable principle and could be developed if there's a demand, even though it is a fact that most authorisations are individual rights of use;
- Member States should guarantee spectrum efficiency, and so impose the reduction, withdrawal or sale of radio frequencies in case of inefficient use;
- More spectrum should be harmonised for license-exempt spectrum on a non-interference basis.

1.2 Enhanced Commission's coordination role

Spectrum does not know of frontiers. An effective use of spectrum in the Member States requires a stronger EU coordination, in particular regarding the development of pan-European services and the negotiation of international agreements.

While spectrum management remains a national competence, only an EU approach ensures that EU interests can be effectively defended at world level. As in the case of commercial policy, power should be conferred upon the Community to conduct international negotiations based on clear mandates granted by the EU co-legislators.

1.3 Digital Dividend

The issue of the digital dividend requires an immediate political response; we can not wait until the reform Directives enter into force. The main guiding principle to allocate the spectrum released by the switchover should be social, cultural and economic value (better public service, wireless broadband to underserved areas, growth and jobs, etc.) and not only increasing public revenues. A coordinated EU approach is necessary to:

- Ensure that Member States undertake cost benefit analysis to determine the appropriate allocation of spectrum;
- Develop a common methodology for the cost benefit analysis;
- Identify bands that could be harmonised for well-defined pan-European or interoperable services at EU level or to promote efficient use and social benefit;
- Propose, if appropriate, binding legislation for harmonising these services.

2. IMPROVING EFFECTIVE AND CONSISTENT IMPLEMENTATION

A consistent implementation of the telecom framework is decisive for achieving a well functioning electronic communications internal market and a competitive information society economy to the benefit of consumers and enterprises..

The current balance of power between the Commission ('guardian' of markets definition and significant market power designation) and NRAs (responsible for implementation at local level) has worked reasonably well. However, there is room for improving the consistency both regarding national decisions with internal market impact and the application of remedies.

2.1 National Regulatory Authorities

A consistent application requires, first and foremost, independent and adequately resourced national regulatory authorities (NRAs). The rapporteur welcomes the independence provisions proposed by the Commission and stresses that these should not be compromised in the Interinstitutional negotiations.

An effective regulatory framework requires also the existence of specialised appeal bodies and effective appeal mechanisms (i.e. reasonable time limits for taking decisions) in order to prevent abuse of appeal procedures. Appeal bodies should also be entitled to consult BERT should the case have an internal market impact.

2.2 Consistent implementation through effective co-regulation

The most appropriate means to ensure consistency and effectiveness in a system where competences are distributed is through co-regulation. Only with such a cooperative and collaborative approach between the Commission and NRAs can results be achieved without altering the delicate institutional balance of powers or undermining the subsidiarity elements of the regulation. The Commission should play more the role of arbitrator and facilitator rather than of judge or sanction-taker.

This new co-regulation role should not undermine but complement the Commission's right of initiative to lead the co-regulation agenda, to propose to the co-legislators binding legislation to address consistency problems.

2.2.1 Remedies

A dispute resolution procedure, rather than a veto mechanism, should be put in place to engage actively all the parties concerned, the Commission, the individual NRAs, BERT and the stakeholders in searching for constructive solutions regarding the imposition of remedies.

The rapporteur puts forward in Amendment 17 an alternative procedure for the consistent application of remedies. The procedure is based upon the principle that only if the Commission and BERT (acting by a simple majority) agree that the proposed remedy is not appropriate the Commission could issue a reasoned decision requesting the NRA concerned to amend the draft measure. Functional separation, due to its far-reaching character, is subject to a special treatment whereby the Commission and BERT have to agree that it is the only effective remedy in order for the concerned NRA to be able to impose it.

3. TRANSITION TOWARDS FULL COMPETITION

While accepting the transitory nature of ex-ante regulation a gradual approach should be followed removing regulation only and if markets become effectively competitive. In this regard, the introduction of a qualified revision clause (requesting the Commission to monitor continuously the level of competition of regulated markets and to conduct periodic reviews) might be an adequate approach.

In addition, care should be taken on assessing the implications on competition of new access technologies (fibre networks), which could call for adapted methodological and regulatory tools to ensure that competition in these new markets is preserved and that, at the same time, adequate incentives for deploying these new networks are provided. The Commission is therefore urged to take due account of the political debate on the regulation of these new access networks and to adopt any recommendation on this matter in complete accordance with it.

3.1 Sub-national markets

In order to deregulate where it is no more needed, a more nuanced approach to market analyses, including sub-national markets is needed. Regulatory obligations could be lifted in geographic areas where competition is considered to have successfully taken off and, conversely, re-introduced or reinforced in non-competitive areas of markets that are considered competitive at national level. This could diminish the risk of dominant operators cross-subsidising between non competitive and competitive regions. NRAs should address in their market analysis this possibility.

4. NEXT GENERATION NETWORKS

How we treat next generation access is, together with spectrum, the two most important policy questions in the telecom sector today. Taking them into account in the Directives provides a complete view of the sector, in order to favour coherent investment.

Fibre networks offer much higher capacities than other telecommunications transport technologies. This new technological reality calls for a review and adaptation of the current electronic communications regulation with the triple objective of promoting investment (both by incumbents and new entrants), securing competition and consumer's choice, and fostering its rapid deployment as far as possible throughout the territory (and not only in densely populated areas).

While it is acknowledged that full infrastructure competition (parallel high capacity fibre access networks) is preferable and thus should be pursued as a primary goal, such deployment would probably not be feasible or economical in all countries or in all geographic areas within the different countries, as the current degree of deployment of competing networks already shows. Where not feasible, an open network approach favouring shared investments and, if necessary, mandating non-discriminatory access would be needed. When sharing is not feasible regulation should ensure that the investment risk is adequately borne by all operators accessing it.

In sum, regulators should have at their disposal an effective toolbox to pursue competition, investment and consumer benefits. This could involve, depending on the degree of competition in an area, making it mandatory to share in-building wiring, mandating access to passive infrastructure (such as access to ducts, poles and rights-of-way and inside wiring) and backhaul facilities, promoting shared investments and the use of demand aggregation or extending unbundling requirements to these new networks.

5.6.2008

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Draftsman: Karsten Friedrich Hoppenstedt

SHORT JUSTIFICATION

The proposed reform of the regulatory framework for the telecommunications sector must be geared towards promoting competition more effectively, safeguarding investment and consolidating the internal market in electronic communications in order to continue the process of liberalisation. Consumer protection and network security also have to be taken into account, as do cultural aspects.

Given the fast-changing nature of the markets and advances in telecommunications, a flexible approach capable of responding to future developments is required.

A future-oriented approach is also essential to ensure the proposed regulatory framework can cope with the challenge of next generation networks (NGN). The development of broadband NGN network infrastructures raises important policy issues relating to location and competition, and firms require a high level of certainty as regards the planning and legal situation. Giving the national regulatory authorities the possibility of imposing facility-sharing and the granting of access to masts, ducts and buildings will encourage investment in glass fibre networks and enable new players to access the market. When the relevant decisions are made, care must be taken to ensure that the measures are proportionate and economic. The development of networks may also be encouraged by risk- and cost-sharing. Furthermore, when market definitions are drawn up it should be ascertained whether geographic areas at subnational level are competitive, so that they can be deregulated accordingly.

It has already been stated repeatedly that there is a need for enhanced coordination at

supranational level. The requisite mechanisms should, however, be based on existing and developed structures to enable their potential to be exploited more speedily, effectively and rigorously. A network of national regulatory authorities should be set up, therefore, to perform tasks which cannot be carried out at national level. A strongly centralised system at Community level embodied in a European authority, on the other hand, would be at risk of failing to take specific national circumstances sufficiently into account. There does not appear to be sufficient political or economic justification for strengthening centralised authorities at the expense of the national regulatory authorities.

It should also be pointed out that the comitology procedure is not the appropriate procedure for laying down or amending rules affecting essential components of telecommunications law. The frequent recourse to comitology procedures prescribed in the proposal should be curtailed accordingly.

When analysing and defining national market conditions, the national regulators must be able to decide independently on the relevant proportionate measure to remedy the competition problem in question. The draft proposal, by giving the Commission a right of final decision, in other words the possibility of requiring regulatory authorities to place specific obligations on firms, would introduce a centralised European regulatory system. This power of intervention would create the risk that national circumstances would not be taken sufficiently into account and a 'one-size-fits-all' approach would be applied.

With reference to the new criteria for according the Commission an additional right of veto, the emphasis should be on concertation, with the network of national regulatory authorities acting as a higher authority with the power of deciding whether measures taken by the national regulatory authorities are appropriate.

To achieve the goal of efficient and market-oriented spectrum management, as a general rule the allocation of spectrum use rights should be technology- and service-neutral. Spectrum allocation - with the exception of narrowly defined pan-European services - must, however, fall within the exclusive preserve of the Member States and when public interest objectives (such as media pluralism) are involved, specific technology constraints must be possible. So the proposal for a regulation must leave Member States sufficient discretion to grant exceptions to the principle of technology and service neutrality in the case of broadcasting services.

Spectrum trading is one possible means of ensuring efficient and economic use of broadcasting frequencies, provided the national regulatory authorities are included in decisions on spectrum trading. It is a matter for the Member States to decide whether and in what circumstances a more market-oriented approach, such as spectrum trading, can be contemplated in the case of broadcasting frequencies.

The decisions of international bodies such as CEPT, RRC and WRC must be taken into account to ensure that EU telecommunications legislation is consistent with other spectrum coordination instruments.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Electronic communications services are a fast-developing sector, characterised by a high level of technological innovation and highly dynamic markets. There is a need to scrutinise regularly the accuracy of regulation in such changing markets and technology with the aim of achieving the most from competition regarding prices, services and infrastructure. In order to ensure that EU citizens will continue to be able fully to participate in the global information society, innovation and the roll-out of high-speed next generation networks able to satisfy future customer demands for more bandwidth and services should be a priority in the application of this Directive.

Amendment 2

Proposal for a directive – amending act Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) The regulatory framework has to meet the new investment and innovation challenges, recognising the need to encourage both investment, in capacity as well as new infrastructure, and sustainable competition, so that consumer choice is extended and not undermined.

Amendment 3

Proposal for a directive – amending act Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) In its Communication of 20 March 2006 entitled "Bridging the Broadband Gap", the Commission acknowledged that there is a territorial divide in Europe regarding access to high-speed broadband services. Moreover, commercial incentives to invest in broadband deployment in areas with currently low broadband connection often turn out to be insufficient. In order to ensure investment in broadband services and new technologies in underdeveloped regions, this Directive should be consistent with other policy measures, such as State aid policy, structural funds or wider industrial policy aims.

Justification

Closing regional gaps on broadband access and new technologies should also be addressed via the current legislation.

Amendment 4

Proposal for a directive – amending act Recital 22

Text proposed by the Commission

Amendment

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or

the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible. ***In order that the holder of the authorisation may choose freely the most efficient means to carry the content of services provided over radio frequencies, the content should not be regulated in the authorisation to use radio frequencies.***

the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible.

Justification

As recognized in Recital 5 of the Framework Directive, the separation between the regulation of transmission and the regulation of content should not prejudice taking into account the links existing between them, and particularly in order to guarantee media pluralism, cultural diversity and consumer protection. It must therefore remain possible for Member States to link the granting of individual rights of use with commitments related to the provision of particular content services.

Amendment 5

Proposal for a directive – amending act Recital 23

Text proposed by the Commission

(23) It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism in accordance with their own national law.

Amendment

(23) It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism in accordance with their own national law. ***In so doing, Member States may take into account the cultural relevance of broadcasting and professional wireless microphone systems for multimedia-based audio, video and live productions.***

Justification

Broadcasting as well as media productions in connection with cultural events, for instance events with international character like the Olympic Games, depend on reliable transmission frequencies.

Amendment 6

Proposal for a directive – amending act Recital 31

Text proposed by the Commission

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

Amendment

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings. ***The sharing of ducts should be extended to cover all public infrastructure (water, sewage, electricity, gas) through which electronic communications infrastructure can be deployed to create a level playing field and improve possibilities for the roll-out of alternative infrastructure.***

Justification

Exploring all potentials - i.e. not only telecom incumbents' ducts but also all public infrastructure (electricity, gas and sewage ducts) will help promote a fair playing field enabling the deployment of a new additional infrastructure provided that access is guaranteed to more than one players.

Amendment 7

Proposal for a directive – amending act Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) The management of telephony networks and services has historically been characterised by a high level of international cooperation to ensure harmonisation of technical standards and promote interoperability. Internet has achieved interoperability through open global standards for inter-network routing, while the development of services using Internet has depended upon the freedom to create new technical standards and protocols without regulatory intervention; that freedom has enabled unprecedented innovation in the creation of information society services and other, non-commercial services, yielding enormous economic and social gains for people in the European Union. Each tradition for the development and coordination of technical standards has benefited society in its respective sphere. The national regulatory authorities should recognise the importance of innovation and diversity in Internet protocols and services, and the importance of regulatory forbearance in achieving those objectives.

Justification

NRAs should not use powers to promote harmonisation in electronic communications networks in ways that would constrain the development of innovation on the Internet.

Amendment 8

**Proposal for a directive – amending act
Recital 39 a (new)**

Text proposed by the Commission

Amendment

(39a) There is a need to encourage both investment and competition, so that consumer choice is protected and not undermined.

Justification

The Directives should make clear that competition is not to be sacrificed in the name of investment – for example through regulatory holidays.

Amendment 9

**Proposal for a directive – amending act
Recital 44 a (new)**

Text proposed by the Commission

Amendment

(44a) The continuing integration of markets within the internal market for electronic communications services and networks requires in the future closer coordination of the application of the regulatory instruments provided for in the legal framework.

Justification

A network of national regulatory authorities is the most suitable instrument to satisfy the requirements of the European telecommunications market.

This amendment seeks to bring this opinion into line with the opinion tabled on the report on the proposal for a European Parliament and Council Regulation establishing the European Electronic Communications Market.

Amendment 10

**Proposal for a directive – amending act
Recital 45 a (new)**

Text proposed by the Commission

Amendment

(45a) The approach used to date to ensure uniform application of the law in the internal market, namely exchanging information and experience between national regulatory authorities, has proved satisfactory. Therefore, a procedure for joint decision-taking should pursue the objective of enhancing cooperation between national regulatory authorities. In view of the wide variety of problems with which the national regulatory authorities are faced and the often differing market conditions in the Member States, the only adequate and sufficient solution compatible with the requirements of the subsidiarity principle is one based on the use of existing decentralised powers.

Justification

A network of national regulatory authorities is the most suitable instrument to satisfy the requirements of the European telecommunications market.

This amendment seeks to bring this opinion into line with the opinion tabled on the report on the proposal for a European Parliament and Council Regulation establishing the European Electronic Communications Market.

Amendment 11

**Proposal for a directive – amending act
Recital 46 a (new)**

Text proposed by the Commission

Amendment

(46a) A network of national regulatory authorities for Electronic Communications Markets (the Network) should be established and should be provided with staff and equipment in order to guarantee the smooth running of joint decision-taking procedures. Funding

by the European Union is the only way of ensuring the independence of joint decision-taking. In this connection the secretariat should only supply work equipment to the joint body, and is not itself involved in decision-taking by the national regulatory authorities.

Justification

A network of national regulatory authorities is the most suitable instrument to satisfy the requirements of the European telecommunications market.

This amendment seeks to bring this opinion into line with the opinion tabled on the report on the proposal for a European Parliament and Council Regulation establishing the European Electronic Communications Market.

Amendment 12

**Proposal for a directive – amending act
Recital 50**

Text proposed by the Commission

Amendment

(50) In order to ensure equal treatment, no spectrum users should be exempted from the obligation to pay the normal fees or charges set for the use of the spectrum.

deleted

Justification

It must remain possible for Member States to maintain or introduce systems where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives. Such systems are commonplace with regard to terrestrial broadcasting frequencies.

This concept will be difficult to implement e.g. it would force holders of satellite dishes to register them, leading to the burdensome administration of millions of registry entries.

Amendment 13

**Proposal for a directive – amending act
Recital 60 a (new)**

Text proposed by the Commission

Amendment

(60a) Activities pursued under this Directive should acknowledge the work of international and regional organisations related to radio spectrum management, e.g. the International Telecommunication Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), to ensure the efficient management, and harmonisation of use of spectrum across the Community. Member States and the Commission should recognise the content of international agreements entered into by Member States pursuant to the ITU Radio Regulations in the implementation of this Directive.

Justification

The importance of the ITU in establishing internationally binding regulations for the efficient use of spectrum and orbit usage based on efficient, rational and cost-effective utilisation cannot be ignored. To ensure the efficient use of spectrum it is essential that operators comply with and rely on the filing and coordination procedures under the ITU to ensure that a network or system can be successfully coordinated and brought into use.

Amendment 14

Proposal for a directive – amending act

Article 1 – point 2 – point c

Directive 2002/21/EC

Article 2 – point e

Text proposed by the Commission

Amendment

(e) “associated facilities” means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include

(e) “associated facilities” means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include

number or address translation systems, conditional access systems and electronic programme guides, as well as physical infrastructure such as ducts, masts, street cabinets, and buildings;

number or address translation systems, conditional access systems and electronic programme guides, as well as physical infrastructure such as ducts, **including those of other public and private infrastructures such as water, sewage, gas and electricity**, masts, street cabinets, and buildings;

Justification

Exploring all potentials - i.e. not only telecom incumbents' ducts but also all public infrastructure (electricity, gas and sewage ducts) will help promote a fair playing field enabling the deployment of a new additional infrastructure provided that access is guaranteed to more than one players.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 2 – point e

Directive 2002/21/EC

Article 2 – point s

Text proposed by the Commission

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously **degrades**, **obstructs** or repeatedly **interrupts** a radio communications service operating in accordance with the applicable Community or national regulations.

Amendment

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services, **which technically obstructs the joint use of frequencies** or which **may** otherwise seriously **degrade**, **obstruct** or repeatedly **interrupt** a radio communications service operating in accordance with the applicable **international**, Community or national regulations.

Justification

Member States should be able to provide restrictions not only where such interference has been observed but also where it is likely that harmful interference occurs. In view of the seriousness of interference problems between one-way and two-way (receive and transmit) services, it is essential to provide protection against harmful interference, in line with internationally-agreed frequency plans, and particularly the ITU Geneva Plan (GE-O6). National legal systems must have the room to secure the common usage of spectrum.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 3

Directive 2002/21/EC

Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Member States shall ensure that national regulatory authorities exercise their powers independently, impartially and transparently. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Amendment

3. Member States shall ensure that national regulatory authorities exercise their powers independently, impartially and transparently **and in a timely manner**. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Justification

Failure of NRAs to act in a timely manner, for example in relation to market reviews, can hold back competition and innovation in the market.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 3 a (new)

Directive 2002/21/EC

Article 3 a (new)

Text proposed by the Commission

Amendment

(3a) The following article shall be inserted:

"Article 3a

***Network of National Regulatory
Authorities for Electronic
Communications Markets***

***Member States shall jointly establish a
Network of National Regulatory
Authorities for Electronic
Communications Markets (the Network)
in accordance with the modalities defined
in Regulation (EC) No [.../...]¹.***

***¹ Regulation establishing the Network of National
Regulatory Authorities for the European
Electronic Communications Markets."***

***(This amendment applies throughout the
text. Adopting it will necessitate
corresponding changes throughout.)***

Justification

The European Electronic Communications Market Authority should be substituted by the Network of National Regulatory Authorities. The European Electronic Communications Market Authority creates a large bureaucracy, counters the principle of subsidiarity, contradicts the long-term goal to replace ex-ante regulation by competition law and in addition shows a lack of independence.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected

by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

Member States should limit the time allowed for consideration of such appeals.

Justification

Currently appeal processes can be held up for as much as several years, by which time it is too late to address the original problem.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Pending the outcome of any the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures may be granted if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.

Amendment

Pending the outcome of any the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures may be granted ***only*** if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.

Justification

It's necessary to clarify, that interim measures may not be granted for other reasons.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 4 – point b

Directive 2002/21/EC

Article 4 – paragraph 3

Text proposed by the Commission

3. Member States shall collect information on the subject of appeals, the number of requests for appeal, the duration of the appeal proceedings, the number of decisions to grant interim measures taken in accordance with paragraph 1 and the reasons for such decisions. Member States shall make available such information to the Commission and the **European Communications Market Authority** (*hereinafter referred to as 'the Authority'*) on an annual basis.

Amendment

3. Member States shall collect information on the subject of appeals, the number of requests for appeal, the duration of the appeal proceedings, the number of decisions to grant interim measures taken in accordance with paragraph 1 and the reasons for such decisions. Member States shall make available such information to the Commission and the **Network** on an annual basis.

Justification

The European Electronic Communications Market Authority should be substituted by the Network of National Regulatory Authorities. The European Electronic Communications Market Authority creates a large bureaucracy, counters the principle of subsidiarity, contradicts the long-term goal to replace ex-ante regulation by competition law and in addition shows a lack of independence.

Amendment 21

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/21/EC

Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this

Amendment

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this

Directive and the Specific Directives.
Those undertakings shall also be required to submit information concerning future network or service developments that could have an impact on the wholesale services made available to competitors.

These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

Directive and the Specific Directives.
These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information. ***Undertakings shall also provide advance indication of significant potential restrictions to wholesale services made available to competitors. Commercial confidentiality, as provided by Community or national law, shall be respected.***

Justification

Future network or service developments are often highly confidential and to force companies to disclose information relating to the developments themselves might jeopardise innovation. However some advance notice of potential impact at the wholesale level is desirable. It needs to be clear that commercial confidentiality should be respected.

Amendment 22

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 5

Text proposed by the Commission

5. Within the *two month* period referred to in paragraph 4, the Commission may take a decision requiring the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of the **Authority** submitted in accordance with Article 5 of Regulation [...../EC] before issuing a decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals

Amendment

5. In relation to measures referred to in paragraph 4(a) and (b) and within the *two-month* period referred to in paragraph 4, the Commission may take a decision requiring the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of the **Network** submitted in accordance with Article 5 of Regulation [...../EC] before issuing a decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers

for amending the draft measure.

that the draft measure should not be adopted together with specific proposals for amending the draft measure.

Justification

A more balanced solution should be chosen: instead of giving the Commission an outright veto over remedies, a "regulatory dialogue" on the appropriateness and effectiveness of the remedy should be setup, involving the national regulatory authority proposing the remedy and the Network of national regulatory authorities. The objective of this dialogue, during which the views of market participants should be duly taken into account by all participants, is to arrive at a joint view on what would represent the most appropriate and effective remedy.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. In relation to measures referred to in paragraph 4(c), the indication of serious doubts by the Commission shall open a regulatory dialogue between the national regulatory authority and the Network with the objective of identifying the most appropriate and effective measure to remedy the competition problem concerned, while taking due account of the views of market participants and the consistency of such measures in the internal market. That regulatory dialogue may under no circumstances exceed the two-month period referred to in paragraph 4.

If, at the end of the regulatory dialogue, the Network confirms, the appropriateness of the measure with a majority of two-thirds the national regulatory authority may adopt the measure. If the Network does not so confirm, the Commission may state its serious doubts by a decision requiring the national regulatory authority to withdraw

its draft measure.

The national regulatory authority has the right to withdraw the draft measure at any stage of the regulatory dialogue.

Justification

A more balanced solution should be chosen: instead of giving the Commission an outright veto over remedies, a "regulatory dialogue" on the appropriateness and effectiveness of the remedy should be setup, involving the national regulatory authority proposing the remedy and the Network of national regulatory authorities. The objective of this dialogue, during which the views of market participants should be duly taken into account by all participants, is to arrive at a joint view on what would represent the most appropriate and effective remedy.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 6

Text proposed by the Commission

6. Within three months of the Commission issuing a decision in accordance with **paragraph 5** requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

Amendment

6. Within three months of the Commission issuing a decision in accordance with **paragraph 5 or 5a** requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

Justification

A more balanced solution should be chosen: instead of giving the Commission an outright veto over remedies, a "regulatory dialogue" on the appropriateness and effectiveness of the remedy should be setup, involving the national regulatory authority proposing the remedy and the Network of national regulatory authorities. The objective of this dialogue, during which the views of market participants should be duly taken into account by all participants, is to arrive at a joint view on what would represent the most appropriate and effective remedy.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 8

Text proposed by the Commission

Amendment

8. Where a draft measure has been amended in accordance with paragraph 6, the Commission may take a decision, requiring the national regulatory authority to impose a specific obligation under Articles 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) within a given time-limit.

deleted

In so doing, the Commission shall pursue the same policy objectives as set out for national regulatory authorities in Article 8. The Commission shall take the utmost account of the opinion of the Authority submitted in accordance with Article 6 of Regulation [.../EC], in particular in elaborating the details of the obligation(s) to be imposed.

Justification

The Commission's proposal would constitute a serious precedent in internal market legislation as an EU body would substitute the decision of a national authority. This completely undermines the system of checks and balances of the EU Treaty, whereby national authorities implement Community law subject to Court control and possible Commission infringement procedures.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/21/EC

Article 7a – paragraph 2

Text proposed by the Commission

Amendment

2. The measures referred to in paragraph 1, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4). *deleted*

Justification

It remains vague what is meant by 'non-essential elements' in paragraph (2). Such proposed 'implementing measures' might have a considerable financial impact on undertakings. Any potential changes must be reserved to full scrutiny in a legislative procedure on EU-level or left to Member States.

Amendment 27

Proposal for a directive – amending act

Article 1 – point 8 – point e a (new)

Directive 2002/21/EC

Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(ea) The following paragraph shall be added:

"4a. The national regulatory authorities shall aim at creating the proper regulatory environment for competitive investment in new access networks, which constitutes a unique opportunity for innovation and for platform-based competition paving the way to deregulation. Such a regulatory environment should, inter alia:

(a) be predictable for a period consistent with the time needed for the profitability of heavy investments;

(b) aim at the maximum geographical reach of platform-based competition;

- (c) enable competitive advantage to be derived from faster geographical roll out; thus encouraging network deployments;*
- (d) attract resources from financial markets for high upfront investments in new access networks; and*
- (e) allow flexible commercial agreements on investments and risk-sharing between new access networks operators."*

Justification

The current regulatory regime must be adapted to the investment challenges regarding the roll-out of Next Generation Access Networks. Regulation must enable market players to invest in NGAs and thus must take into account the risks involved.

Amendment 28

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

Amendment

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria. ***In so doing, Member States shall respect international agreements and may take public policy considerations into account.***

Justification

As frequencies cross borders beyond the EU, internationally binding agreements to avoid interference must be respected.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 2

Text proposed by the Commission

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).

Amendment

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof, ***which can contribute to realisation of economy scales and the interoperability of services for the consumer benefit*** and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).

Amendment 30

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to ***Article 9c***, Member States shall ***ensure that*** all types of radio network or wireless access technology ***may be used*** in the radio frequency bands ***open*** to electronic communications services.

Amendment

3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to ***Articles 9c and 9d***, Member States shall, ***insofar as possible, facilitate the use of*** all types of radio network or wireless access technology in the radio frequency bands ***allocated*** to electronic communications services, ***in accordance with their respective national frequency plan and the ITU Radio Regulations.***

Justification

References to the 2002 EC Spectrum Decision and the ITU Radio Regulations are essential to ensure consistency between EU rules, and compliance of EU rules with international rules reflected in national frequency allocation tables. The effective management of spectrum is the responsibility of the NRA and requires compliance with ITU procedures.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) ensure maximisation of radio frequencies sharing where the use of frequencies is subject to a general authorisation, or

(c) comply with an obligation under an international agreement relating to the use of frequencies or the ITU Radio Regulations,

Justification

References to the 2002 EC Spectrum Decision and the ITU Radio Regulations are essential to ensure consistency between EU rules, and compliance of EU rules with international rules reflected in national frequency allocation tables. The effective management of spectrum is the responsibility of the NRA and requires compliance with ITU procedures.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 2 – point c a (new)

Text proposed by the Commission

Amendment

**(ca) safeguard efficient use of spectrum,
or**

Justification

The general philosophy of spectrum policy should strive at ensuring efficient use of the spectrum.

Amendment 33

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4

Text proposed by the Commission

4. Unless otherwise provided in the second subparagraph ***or in the measures adopted pursuant to Article 9c***, Member States shall ***ensure that*** all types of electronic communications services ***may be provided*** in the radio frequency bands open to electronic communications. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.

Restrictions that require ***a*** service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, ***the avoidance of inefficient*** use of radio frequencies, or, ***as defined in national legislation in conformity with Community law***, the promotion of cultural and linguistic diversity and media pluralism.

A restriction which prohibits the provision of any other service in a specific band may only be provided for where justified by the need to protect safety of life services.

Amendment

4. Unless otherwise provided in the second subparagraph, Member States shall, ***insofar as possible, facilitate the use of*** all types of electronic communications services in the radio frequency bands open to electronic communications, ***in accordance with their respective national frequency plan and the ITU Radio Regulations***. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.

Restrictions that require ***an electronic communications*** service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective in conformity with Community law, such as safety of life, ***the provision of universal or public services***, the promotion of social, regional or territorial cohesion, ***the efficient*** use of radio frequencies ***and the effective management of spectrum to take into account international commitments and practices*** or the promotion of cultural and linguistic diversity and media pluralism.

A restriction which prohibits the provision of any other ***electronic communications*** service in a specific band may only be provided for where justified by the need to protect safety of life services ***or to ensure the fulfilment of a general interest as defined in national legislation in conformity with Community law, such as the promotion of cultural and linguistic diversity and media pluralism***.

Justification

References to the 2002 EC Spectrum Decision and the ITU Radio Regulations are essential to ensure consistency between EU rules, and compliance of EU rules with international rules reflected in national frequency allocation tables. The effective management of spectrum is the responsibility of the NRA and requires compliance with ITU procedures.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4.

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4. ***It lies within the competence of the Member States to define the scope and nature of any exception.***

Justification

Definition of cultural and media policies are national competences and this needs to be taken into account sufficiently.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9a

Text proposed by the Commission

Amendment

Article 9a deleted

Justification

The forced review of existing rights is likely to introduce major business uncertainty and does not take into account the commercial reality of many operators whose investments based on frequencies usage rights cover periods of 15 years or more.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9b – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures ***adopted pursuant to Article 9c without the prior consent of the national regulatory authority.***

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings.

Amendment

1. ***Where appropriate,*** Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures ***in accordance with national procedures.***

Justification

Spectrum trading falls under subsidiarity and thus should be dealt with according to national provisions.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9b – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies is notified to the national regulatory authority responsible for spectrum assignment and is made public. Where radio frequency use has been harmonised through the application of the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.

Amendment

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies ***as well as the effective transfer*** is notified to the ***competent national*** authority responsible for spectrum assignment and is made public. Where radio frequency use has been harmonised through the application of the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.

Justification

The competent authority is not always the same authority as the national regulatory authority as defined in the Framework Directive.

Amendment 38

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c – paragraph 1– points from a to d

Text proposed by the Commission

(a) **harmonise the identification of** the bands for which usage rights may be transferred or leased between undertakings;

(b) harmonise the conditions attached to such rights and the conditions, procedures, limits, restrictions, withdrawals and transitional rules applicable to such transfers or leases;

(c) harmonise the specific measures to ensure fair competition where individual rights are transferred;

(d) create an exception to the principle of service or technology neutrality, as well as to harmonise the scope and nature of any exceptions to the principle of service or technology neutrality in accordance with paragraphs Article 9(3) and (4) other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism.

Amendment

(a) **identify and recommend** the bands for which usage rights may be transferred or leased between undertakings, **including frequencies planned by Member States for certain services which, as a result of technological development, will make full use of the digital dividend but excluding frequencies planned by Member States for broadcasting services;**

(d) create an exception to the principle of service or technology neutrality, as well as to harmonise the scope and nature of any exceptions to the principle of service or technology neutrality in accordance with paragraphs Article 9(3) and (4) other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism **including broadcasting services and having regard to the need for better access to the information society for all citizens.**

Justification

The measures which are proposed to be adopted in comitology are much broader than just 'non-essential elements of the Directive. On the other hand a lot of harmonisation can be conducted and has been conducted successfully on the basis of the existing Radio Spectrum Decision (676/2002/EC). Therefore b and c of the article should be deleted. Referring to recital 23 it lies within the competence of the Member States to define media policies.

Amendment 39

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c – paragraph 2

Text proposed by the Commission

Amendment

These measures designed to amend nonessential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4). In the implementation of the provisions of this paragraph, the Commission may be assisted by the Authority in accordance with Article 10 Regulation [.../EC].

deleted

Amendment 40

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 d (new)

Text proposed by the Commission

Amendment

Article 9d

Impact of international rules and provisions

1. To ensure the efficient use and effective management of spectrum across the Community, Member States and the Commission shall take into account the rules and regulations of the ITU, in particular the Radio Regulations, as amended from time to time, in the implementation of this Directive.

2. The Commission shall monitor developments regarding radio spectrum in third countries and in international organisations, including the ITU, which

may have implications for the implementation of this Directive.

3. Member States shall inform the Commission of any difficulties created, de jure or de facto, by existing international agreements, third countries or international organisations, including the ITU, in relation to the implementation of this Directive.

4. The Commission shall report regularly on the results of the application of paragraphs 1, 2 and 3 to the European Parliament and the Council and may propose measures with the aim of securing the implementation of the principles and objectives of this Directive, where appropriate. When necessary, common policy objectives shall be agreed to ensure Community coordination among Member States.

5. Measures taken pursuant to this Article shall be without prejudice to the Community's and Member States' rights and obligations under relevant international agreements.

Justification

To ensure efficient spectrum use it is essential that operators comply with and can rely on the filing and coordination procedures under the internationally binding rules and procedures of the ITU in order to ensure that a network or system can be successfully coordinated and brought into use. The international rights and obligations of administrations regarding their own and other administrations' frequency assignments are derived from the recording of the assignments in the ITU Master International Frequency Register, or the conformity of the assignments with an ITU frequency plan.

Amendment 41

Proposal for a directive – amending act

Article 1 – point 11 – point -a (new)

Directive 2002/21/EC

Article 10 – paragraph 1

Text proposed by the Commission

Amendment

(-a) Paragraph 1 shall be replaced by the following:

"1. Member States shall ensure that national regulatory authorities control the assignment of all national numbering resources and the management of the national numbering plans. Member States shall ensure that adequate numbers and numbering ranges are provided [...]. National regulatory authorities shall establish objective, transparent and non-discriminatory assigning procedures for national numbering resources."

Justification

Failure to reform the numbering arrangements harms citizen, consumer and business interests in the EU, especially in an environment where numbers from certain major European and non-European countries are, de jure or de facto, available world-wide. In addition, the currently existing restrictions (which are not contained in the directives but are common practice at national level) run contrary to the internal market goals.

Amendment 42

Proposal for a directive – amending act

Article 1 – point 11 – point a

Directive 2002/21/EC

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

2. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives equal treatment to all providers ***of publicly available electronic communications services***. In particular, Member States shall ensure that an undertaking assigned a range of numbers does not discriminate against other providers ***of electronic communications services*** as regards the number sequences

2. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives equal treatment to all providers ***and users of numbers across the European***. In particular, Member States shall ensure that an undertaking assigned a range of numbers does not discriminate against other providers ***and users*** as regards the number sequences used to give access to their services.

used to give access to their services.

Justification

Failure to reform the numbering arrangements harms citizen, consumer and business interests in the EU, especially in an environment where numbers from certain major European and non-European countries are, de jure or de facto, available world-wide. In addition, the currently existing restrictions (which are not contained in the directives but are common practice at national level) run contrary to the internal market goals.

Amendment 43

Proposal for a directive – amending act

Article 1 – point 11 – point b

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

4. Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter, ***which may include establishing tariff principles for specific numbers or number ranges. The implementing measures may grant the Authority specific responsibilities in the application of those measures.***

4. Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter.

Justification

The Commission's amendment would lead to an expansion of retail regulation via prescription of tariff principles. It constitutes a breach of the systematic of the regulatory framework, which foresees price regulation of retail services only in the case of an SMP-finding on a retail market under Art. 17 of the Universal Service Directive. To introduce a sweeping new competence for price-setting for regulators is in violation of the aim of better regulation and the overarching principle that regulation should in principle be confined to the wholesale level.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12 – paragraph 1

Text proposed by the Commission

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall be able to impose the sharing of such facilities or property, including entries to buildings, masts, antennae, ducts, manholes and street cabinets.

Amendment

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall be able to impose the sharing of such facilities or property, ***taking full account of the principle of proportionality***, including entries to buildings, masts, antennae, ducts, manholes and street cabinets.

Amendment 45

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12 – paragraph 3

Text proposed by the Commission

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, and proportionate.

Amendment

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall ***take into account the security interests of the undertaking and general security interests as well as the need to ensure a clear delineation of responsibilities of the undertakings involved to prevent harmful interferences between users. Measures shall also*** be objective, transparent, and proportionate.

When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may, where necessary, lay down technical or operational conditions to be met by the

provider and/or beneficiaries of such access to ensure normal operation of the network. Beneficiaries of access may be subjected to specific non-discriminatory conditions that ensure that scarce resources are used efficiently, especially in terms of network deployment. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with Article 17(1).

Justification

Stresses the need to take the justified security interests of the parties involved into account.

Amendment 46

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. To ensure that measures under paragraph 1 are proportionate, national regulatory authorities shall investigate the availability of all ducts including those of telecommunications operators, energy providers, local communities and sewage pipes, capable of carrying telecommunications lines in the area where access is requested.

Justification

Exploring all potentials - i.e. not only telecom incumbents' ducts but also all public infrastructure (electricity, gas and sewage ducts) will help promote a fair playing field enabling the deployment of a new additional infrastructure provided that access is guaranteed to more than one players.

Amendment 47

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 3 – subparagraph 3

Text proposed by the Commission

Every three months, the national regulatory authority shall submit a summary report to the Commission on the notifications received and the action taken in accordance with this paragraph.

Amendment

Once a year, the national regulatory authority shall submit a summary report to the Commission on the notifications received and the action taken in accordance with this paragraph.

Justification

In order to avoid unnecessary bureaucracy and extra administrative load, national regulatory authorities should submit the reports only once a year.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. The Commission, taking the utmost account of the opinion of the **Authority issued in accordance with Article 4(3)(b) of Regulation [.../EC]**, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

Amendment

4. The Commission, taking the utmost account of the opinion of the **national regulatory authorities and the European Network and Information Security Agency**, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements. **The technical implementing measures shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.**

Justification

The Authority should not have competence in security matters which should reside with ENISA.

In individual cases Member States should have the possibility to use higher standards than the harmonized base-line to meet the goals set out in paragraphs 1 and 2.

Amendment 49

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13b – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement Article 13a.

Amendment

1. Member States shall ensure that ***the relevant*** national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement Article 13a.

Justification

Many NRAs do not have competence in security issues.

Amendment 50

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13b – paragraph 2 – introductory part

Text proposed by the Commission

2. Member States shall ensure that national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

Amendment

2. Member States shall ensure that ***the relevant*** national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

Justification

Many NRAs do not have competence in security issues.

Amendment 51

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13b – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases of non-compliance.

Amendment

3. Member States shall ensure that ***the relevant*** national regulatory authorities have all the powers necessary to investigate cases of non-compliance.

Justification

Many NRAs do not have competence in security issues.

Amendment 52

Proposal for a directive – amending act

Article 1 - point 18 – point a a (new)

Directive 2002/21/EC

Article 17 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

(aa) In Article 17(2), subparagraph 3 shall be replaced by the following:

"In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) or the International Electrotechnical

Commission (IEC)."

Justification

CEPT develops conditions for spectrum use in Europe and this should be taken into account, particularly in the absence of an ETSI standard.

Amendment 53

Proposal for a directive – amending act

Article 2 – point 3 – point a

Directive 2002/19/EC

Article 5 – paragraph 2 – subparagraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

When assessing the proportionality of the obligations to be imposed, national regulatory authorities shall take into account the different competitive conditions existing in the different geographic areas within their Member State.

In the event that a geographic area is found to be competitive, national regulatory authorities shall remove unnecessary obligations, adapted to market needs. In that respect, national regulatory authorities shall take into account the need to safeguard infrastructure competition.

Justification

Ex-ante regulation as a rule must be limited to economic bottlenecks only. Thus, if in certain regions effective competition has developed, regulation must be removed accordingly.

Amendment 54

Proposal for a directive – amending act

Article 2 – point 7

Directive 2002/19/EC

Article 9 – paragraph 5

Text proposed by the Commission

Amendment

5. 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). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the *Authority*.

5. 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). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the *national regulatory authorities*.

Amendment 55

Proposal for a directive – amending act

Article 2 – point 8 - point a

Directive 2002/19/EC

Article 12 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(a) In paragraph 1, point (f) is replaced by the following:

deleted

‘(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, antennae or masts, manholes and street cabinets;’

Justification

Facility sharing is already being coped with under Art. 12 FD. Thus, Art. 12 para. 1 lit. (f) is redundant.

Amendment 56

Proposal for a directive – amending act

Article 2 – point 8 a (new)

Directive 2002/19/EC

Article 13 – paragraph 1 and 3

(8a) Article 13 is amended as follows:

(a) In paragraph 1, the following subparagraph shall be added:

"If a national regulatory authority regulates access in relation to new generation access networks, it may require that operators seeking access bear a reasonable share of the risk incurred by the investing operator. Risk-sharing contracts may include an upfront payment covering the risk premium for a certain amount of access in particular regions or may take the form of long-term access contracts with minimum quantities for given time periods."

(b) In paragraph 3, the following subparagraph shall be added:

"In order to promote incentives for investments in new high-speed networks, when access fees are stipulated, the operator providing the access shall be entitled to a rate of return that corresponds at least to the capital costs related to the investment and the risk specific to the investment."

Justification

Regulation of NGNs may take into account the risk associated with the investment decision. Risk sharing can be achieved by enabling access on the basis of an upfront payment or on the basis of long term access contracts with minimum purchase quantities. Short-term contracts without minimum quantities may include a price-premium which covers the investment risk of the investor under the assumption that the full investment risk is being born by the investor. Long-term access contracts may reflect the time period necessary to allow amortisation of investment costs in new markets.

The key issue for the coming years is to give appropriate incentives for investments in new high speed networks that will support innovation in content-rich internet services. Such networks have enormous potential to deliver benefits to consumers across the European Union. It is therefore vital that there is no impediment to sustainable investment in the development of these new networks, while boosting competition and consumer choice.

Amendment 57

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) avoid **a serious risk** of harmful interference; or

(a) avoid **any risk** of harmful interference **or competitive distortions**; or

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

It is imperative to ensure that spectrum allocation does not distort competition in the market.

Amendment 58

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) safeguard and ensure efficient use of spectrum.

Justification

The general philosophy of spectrum policy should strive at ensuring efficient use of spectrum.

Amendment 59

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Without prejudice to specific criteria

Without prejudice to specific criteria **and**

defined in advance by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 60

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 5 a (new)

Text proposed by the Commission

Amendment

In taking a decision on rights of use, due account shall be taken of the need to allow for an appropriate amortisation period for investment.

Justification

For many new platforms and services, investment will need to be amortized over a period

exceeding ten or, at any rate, five years. It is not uncommon to have to sustain substantial losses during the first couple of years of operation. It would be disproportionate to introduce a rigid requirement for national regulatory authorities to conduct a formal review of all spectrum licenses every five years.

Amendment 61

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 3

Text proposed by the Commission

3. Decisions on rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for *electronic communications* within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

Amendment

3. Decisions on rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for *specific purposes* within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 62

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. Where it has been decided, after

Amendment

4. Where it has been decided, after

consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to three weeks.

consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by **a further period of** up to three weeks.

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 63

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 5

Text proposed by the Commission

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

Amendment

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7. ***Member States shall take into account legacy investments and the level of competition.***

Justification

Safeguard for making sure that legacy investments are taken into due account. Otherwise former investments might be devalued. This would severely distort the market and would negatively affect future investment decisions.

Amendment 64

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 6

Text proposed by the Commission

Amendment

6. National regulatory authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Article 9(2) of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. ***For such purposes, Member States may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.***

6. National regulatory authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Article 9(2) of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights.

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 65

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

1. In order to achieve the objectives set out in Article 1, and without prejudice to Article 5(2) of this Directive, the Commission may adopt implementing measures:

1. In order to achieve the objectives set out in Article 1, and without prejudice to Article 5(2) of this Directive ***and the Radio Spectrum Decision***, the Commission may adopt implementing measures:

Justification

The reference to the Radio Spectrum Decision is crucial to achieve an integrated policy approach and coherent treatment of harmonisation measures.

Amendment 66

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

(a) to identify radio frequency bands the use of which is to be made subject to general authorisations or individual rights of use for radio frequencies;

Amendment

(a) to identify radio frequency bands ***providing pan-European networks or electronic communications services***, the use of which is to be made subject to general authorisations or individual rights of use for radio frequencies;

Justification

The scope of the article is far to open. Moreover, the wording is not in line with the principle of checks and balance. It is important to ensure that Member States' competences regarding frequencies are not undermined by new centralized procedures at EU level. Insofar it is appropriate to refer this article to pan-European services.

Amendment 67

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

(c) to harmonise procedures for the granting of general authorisations or individual rights of use for radio frequencies or numbers;

Amendment

(c) to harmonise procedures for the granting of general authorisations or individual rights of use for radio frequencies ***providing pan-European networks or electronic communications services*** or numbers;

Justification

The scope of the article is far to open. Moreover, the wording is not in line with the principle of checks and balance. It is important to ensure that Member States' competences regarding frequencies are not undermined by new centralized procedures at EU level. Insofar it is appropriate to refer this article to pan-European services.

Amendment 68

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) to harmonise the conditions specified in Annex II relating to general authorisations or individual rights of use for radio frequencies or numbers; ***deleted***

Justification

It should be left to subsidiarity how conditions relating to general authorisations or individual rights of use should be defined in each Member State.

Amendment 69

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – point f

Text proposed by the Commission

Amendment

(f) to lay down procedures for the selection of undertakings to which individual rights of use for radio frequencies or numbers shall be granted by the national regulatory authorities, where appropriate in accordance with the provisions of Article 6b.

(f) to lay down procedures for the selection of undertakings ***providing pan-European networks or electronic communications services*** to which individual rights of use for radio frequencies or numbers shall be granted by the national regulatory authorities, where appropriate in accordance with the provisions of Article 6b.

Justification

The scope of the article is far to open. Moreover, the wording is not in line with the principle of checks and balance.

Amendment 70

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6 b

Text proposed by the Commission

1. The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the **Authority** to make proposals for the selection of undertaking(s) to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [...].

In such cases, the measure shall specify the period within which the **Authority** shall complete the selection, the procedure, rules and conditions applicable to the selection, and details of any charges and fees to be imposed on the holders of rights for use of radio frequencies and/or numbers, in order to ensure the optimal use of spectrum or numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.

2. Taking the utmost account of the opinion of the **Authority**, the Commission shall adopt a measure selecting the undertaking(s) to which individual rights of use for radio frequencies or numbers shall be issued. The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).

Amendment

1. The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the **Radio Spectrum Policy Group (RSPG)** to make proposals for the selection of undertaking(s) **providing pan-European networks or electronic communications services** to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [...].

In such cases, the measure shall specify the period within which the **RSPG** shall complete the selection, the procedure, rules and conditions applicable to the selection, and details of any charges and fees to be imposed on the holders of rights for use of radio frequencies and/or numbers, in order to ensure the optimal use of spectrum or numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.

2. Taking the utmost account of the opinion of the **RSPG**, the Commission shall adopt a measure selecting the undertaking(s) **providing pan-European networks or electronic communications services** to which individual rights of use for radio frequencies or numbers shall be issued. The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).

Justification

The Authority should not have competence over spectrum policy and this should remain with the RSPG.

Article 6 b is not in line with the principle of subsidiarity. It is important to ensure that Member States' competences regarding frequencies are not undermined by new centralized procedures at EU level. Insofar it is appropriate to refer this article to pan-European services.

Amendment 71

Proposal for a directive – amending act

Article 3 – point 13

Directive 2002/20/EC

Article 17 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States **shall** bring authorisations already in existence on **31 December 2009** into conformity with Articles 5, 6, 7, and Annex I of this Directive **by [31 December 2010] at the latest.**

Amendment

1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States **may** bring **general** authorisations **and rights of use** already in existence on **the date of entry into force of this Directive** into conformity with Articles 5, 6, 7, and Annex I of this Directive **by ...** *.

** Two years from the date of entry into force of this Directive.*

Justification

The forced review of existing rights is likely to introduce major business uncertainty and does not take into account the commercial reality of many operators whose investments based on frequencies usage rights cover periods of 15 years or more.

Amendment 72

Proposal for a directive – amending act

Annex II

Directive 2002/20/EC

Annex II

Text proposed by the Commission

Amendment

Annex deleted

Justification

Consequence of deletion of article 6a.1(d).

PROCEDURE

Title	Electronic communications networks and services		
References	COM(2007)0697 – C6-0427/2007 – 2007/0247(COD)		
Committee responsible	ITRE		
Opinion by Date announced in plenary	ECON 10.12.2007		
Drafts(wo)man Date appointed	Karsten Friedrich Hoppenstedt 15.1.2008		
Discussed in committee	1.4.2008	6.5.2008	19.5.2008
Date adopted	3.6.2008		
Result of final vote	+	44	
	-	0	
	0	0	
Members present for the final vote	Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, David Casa, Manuel António dos Santos, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Donata Gottardi, Dariusz Maciej Grabowski, Benoît Hamon, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Florencio Luque Aguilar, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, Olle Schmidt, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser		
Substitute(s) present for the final vote	Dragoş Florin David, Mia De Vits, Harald Ettl, Ján Hudacký, Janusz Lewandowski, Theodor Dumitru Stolojan		
Substitute(s) under Rule 178(2) present for the final vote	Edit Bauer		

26.6.2008

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Draftsman: Marian Zlotea

SHORT JUSTIFICATION

This proposal amends the Framework¹, Authorisation² and Access³ Directives, which the Commission proposed in November 2007. Your Draftsman welcomes the 'Better Regulation' proposals in the package with strong support overall since the package is very important in improving a true European internal market in the field of telecommunication. The aim of the package is to enhance investment, innovation and consumer benefits in electronic communications, in other words to support and further develop a regulatory framework for the digital economy that is future-proof, market-oriented and exploits the advantages brought by the completion of the internal market, which your Draftsman also strongly supports.

Although your Draftsman welcomes the proposal on common regulatory framework for networks and services, access, interconnection and authorisation of electronic communications, he is of the opinion that there is scope for improvement.

Spectrum Management

The EU needs to rapidly move on to better forms of spectrum management which combine openness, flexibility and harmonization. There is a clear need for flexibility in spectrum

¹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ L 108, 24.4.2002)

² Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ L 108, 24.4.2002)

³ 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 (OJ L 108, 24.4.2002)

utilisation and maximised efficiency.

A '*harmonized*' view of *spectrum management*, which would bring 27 different national spectrum management schemes into line, would be useful to improve pan-European and cross-border services. A single spectrum regime returns technology and services benefits to users and thus economic and social and benefits (e.g. in volume production of standard equipment, lowering prices and the barrier to entry for new users).

In that respect, attention should be paid to frequency management and network planning to avoid interferences as far as possible, as technology neutral harmonisation can not solve the problems of interference.

The introduction by the Commission of *flexibility in assignment of spectrum to a specific technology or services* is welcomed by your draftsman. Allowing more flexible uses will lead to more innovation and consumer benefit. However, some bands may need to be reserved for one application across the EU (emergency services, for example) so caution with technical and service neutrality may be necessary.

Therefore, a gradual approach, rather than a revolutionary reform seems preferable. While technology neutrality will lead to innovative and technology developments, to the benefit of the consumer, it should be complemented by trading to ensure competition.

The Commission seeks to add market-based *spectrum trading* with secondary trading and auctions to the 'traditional method'. Spectrum trading by itself does not necessarily improve flexibility in spectrum use. It should however ease access to the spectrum and lead to more intensive (hence more valuable) use of the spectrum. Therefore, your Draftsman supports the establishment of tradability of rights of use throughout the EU for selected bands, when individual rights of use are granted.

New coordination and regulatory powers

The Commission proposes that National Regulatory Authorities should be given the power to mandate *functional separation* on dominant operators where it would help to increase competition for consumers and provide a level playing field for operators. Your draftsman fully supports the Commission proposal, recognising that this remedy may not be suitable in every Member States, but it should be a remedy available for NRAs to use.

Under the current proposal, Commission's power is extended. Commission has powers to veto NRA dominance designations and to issue Recommendations on all issues and Decisions on numbers. Your Draftsman is against the current proposals which would give the Commission such veto powers.

Facilitating access

The current regulatory framework already foresees the imposition of the least burdensome authorisation scheme, i.e. recourse to general authorisations as the preferred approach. However, in practice, spectrum usage rights are more frequently assigned through individual usage rights. The proposals confirm the general authorisation approach and establish it as the default method. They consequently introduce an obligation to justify cases where individual usage rights are to be issued. Such justification can be that it is necessary to prevent interference or to fulfil objectives of general interest. The rationale underlying this proposal is two-fold: (i) to prevent individual licences from being used as assignment methods where not

necessary, and thereby overall to reduce the hurdle to access spectrum; (ii) technological progress increasingly allows the collective use of spectrum.

Your Draftsman is convinced that the protection of consumers requires strengthened measures and therefore suggests amendments which are improvements on these consumer protection issues. With regard to the duties and power of national regulatory authorities, the proposal sets out further measures regarding consumer protection. Your Draftsman seeks to strengthen and clarify the role of the authorities in order to attain improvements on these consumer protection issues.

Furthermore, as recognized by the Commission, a fully functioning European retail market has not yet been achieved. Therefore, further concrete proposals are necessary to reach a true internal market.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The objective of the EU regulatory framework for electronic communications is to create a sustainable "ecosystem" for electronic communications, based on supply and demand: the former through effectively competitive product or service markets, the latter thanks to increasing information society developments.

Justification

A sustainable environment for competition and investment in the telecommunications sector relies both on supply and demand. While the economic regulation relies usually more on supply, it is necessary not to forget the demand side.

Amendment 2

Proposal for a directive – amending act Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) Next generation networks have enormous potential to deliver benefits to businesses and consumers across the European Union. It is therefore vital that a lack of regulatory clarity does not act as an impediment to sustainable investment in the development of these new networks, while boosting competition and consumer choice.

Amendment 3

Proposal for a directive – amending act Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) In its Communication “Bridging the Broadband Gap” of 20 March 2006, the Commission acknowledged that there is a territorial divide in Europe regarding access to high speed broadband services. Despite the general increase in broadband connectivity, access in various regions is limited because of high costs due to low density of population and remoteness. Commercial incentives to invest in broadband deployment in these areas often turn out to be insufficient. On the positive side, technological innovation is reducing deployment costs. In order to ensure investment in new technologies in underdeveloped regions, telecoms regulation needs to be consistent with other policy measures taken, such as state aid policy, structural funds or wider industrial policy aims.

Justification

The regulatory framework should also take into account the need for closing regional gaps in development. The specific importance of broadband roll out should be emphasised.

Amendment 4

**Proposal for a directive – amending act
Recital 16 a (new)**

Text proposed by the Commission

Amendment

(16a) The spectrum management provisions of this Directive should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunication Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management and harmonisation of the use of spectrum across the Community and globally.

Justification

Spectrum management to be effective needs to be aligned with the broader international harmonisation agenda pursued by ITU and CEPT.

Amendment 5

**Proposal for a directive – amending act
Recital 19 a (new)**

Text proposed by the Commission

Amendment

(19a) Although spectrum management remains within the competence of the Member States, only coordination and, where appropriate, harmonisation at Community level can ensure that spectrum users derive the full benefits of the internal market and that EU interests can be effectively defended world-wide.

Justification

Spectrum management to be effective needs to be aligned with the broader international harmonisation agenda pursued by ITU and CEPT.

Amendment 6

Proposal for a directive – amending act

Recital 22

Text proposed by the Commission

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible. ***In order that the holder of the authorisation may choose freely the most efficient means to carry the content of services provided over radio frequencies, the content should not be regulated in the authorisation to use radio frequencies.***

Amendment

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible.

Justification

As pointed out in recital 5 of the framework directive, the separation between the regulation of transmission and the regulation of content must not prejudice the taking into account of the

links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection. Member States must therefore conserve the freedom to make the granting of individual user rights dependent on commitments regarding the provision of specific service content.

Amendment 7

Proposal for a directive – amending act Recital 29

Text proposed by the Commission

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be given the power to grant the Authority specific responsibilities in the area of numbering. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism.

Amendment

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be given the power to grant the Authority specific responsibilities in the area of numbering. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism, ***as well as the establishment of a single European front-up call number ensuring user-friendly access to these services.***

Amendment 8

Proposal for a directive – amending act Recital 31

Text proposed by the Commission

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National

Amendment

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National

regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings. ***The sharing of ducts should be extended to cover all public infrastructure (water, sewage, electricity, gas) through which electronic communications infrastructure can be deployed to create a level playing field and improve possibilities for the roll out of alternative infrastructure.***

Justification

New generation services will not run along the current copper wires; a whole new infrastructure will be deployed, for which the bottleneck is the physical ducts through which connections will be deployed. Real duct sharing – i.e. including not only telecoms incumbents' ducts but also, for example all public infrastructure (electricity, gas, sewage ducts) - enables more than one player to have access to infrastructure to provide their services.

Amendment 9

Proposal for a directive – amending act Recital 50

Text proposed by the Commission

Amendment

(50) In order to ensure equal treatment, no spectrum users should be exempted from the obligation to pay the normal fees or charges set for the use of the spectrum.

deleted

Justification

Member States must remain free to maintain or introduce alternatives replacing the compulsory payment of user fees with the obligation to meet general interest objectives. Such arrangements, which seek to achieve media pluralism, are common practice with regard to the allocation of terrestrial broadcasting frequencies.

Amendment 10

Proposal for a directive – amending act Recital 57

Text proposed by the Commission

(57) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities to communicate with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

Amendment

(57) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities **and emergency services** to communicate **between themselves and** with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

Amendment 11

Proposal for a directive – amending act Recital 60

Text proposed by the Commission

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to the security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred **to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments and for adopting implementing measures to harmonise the authorisation rules,**

Amendment

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to the security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred **on the Commission by the Framework and Authorisation Directives to harmonise the regulatory treatment of pan-European services, such as global telecommunications services.**

procedures and conditions for the authorisation of electronic communications networks and services. Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. When, on imperative grounds of urgency, the normal time limits for this procedure cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of the above Decision.

Amendment 12

Proposal for a directive – amending act Recital 60 a (new)

Text proposed by the Commission

Amendment

(60a) It is the responsibility of the Member States to encourage cooperation arrangements between the parties concerned in order to promote efficient on-line services and a high level of consumer confidence. In particular, companies supplying electronic communications networks and/or services and other stakeholders should be encouraged to cooperate so as to promote legal content and protect on-line content. Such cooperation could for example be achieved on a wider scale without prejudice to the regulatory framework, by the drafting of negotiated and agreed codes of conduct between stakeholders. The introduction of such codes of conduct has already been envisaged in numerous Community instruments, for example Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular

electronic commerce, in the Internal Market ('Directive on electronic commerce')¹, Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights², and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data³. Such cooperation between stakeholders is essential to promoting on-line content, in particular European cultural content, and to realise the potential of the information society.

¹ OJ L 178, 17.7.2000, p. 1.

² OJ L 157, 30.4.2004, p. 45; corrected version in OJ L 195, 2.6.2004, p. 16.

³ OJ L 281, 23.11.1995, p.31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

Justification

This recital stresses the need to encourage good cooperation between stakeholders to promote on-line content and realise the potential of the information society.

Amendment 13

Proposal for a directive – amending act

Article 1 – point 1

Directive 2002/21/EC

Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework

Amendment

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment, ***including access for disabled end-users***. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised

throughout the Community.

application of the regulatory framework throughout the Community.

Justification

There is a need to clarify that the aspects of terminal equipments addressed are accessibility aspects.

Amendment 14

Proposal for a directive – amending act

Article 1 - point 3

Directive 2002/21/EC

Article 3 - paragraph 3 - subparagraph 1

Text proposed by the Commission

Member States shall ensure that national regulatory authorities exercise their powers independently, impartially *and* transparently. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Amendment

Member States shall ensure that national regulatory authorities exercise their powers independently, impartially, transparently *and in a timely manner*. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Justification

In order to ensure competition and innovation in the market, NRAs have to act in a timely manner, for example in relation to market reviews.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 4 – point (a)

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that effective mechanisms exist at national level under

Amendment

Member States shall ensure that effective mechanisms exist at national level under

which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise **available to it** to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account **and** that there is an effective appeal mechanism.

which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions **effectively**. Member States shall ensure that the merits of the case are duly taken into account, that there is an effective appeal mechanism **and that proceedings before the appeal body are not unduly lengthy**.

Justification

Effectiveness and reasonable duration are key aspects of appeal mechanisms. Expertise of appeal bodies should be internal and not just "available to it".

Amendment 16

Proposal for a directive – amending act

Article 1 - point 4

Directive 2002/21/EC

Article 4 - paragraph 1 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall set time limits for consideration of such appeals.

Justification

Currently appeal processes can be held up for as much as several years, by which time it is too late to address the original problem. A time limit has therefore to be set.

Amendment 17

Proposal for a directive – amending act

Article 1 - point 5

Directive 2002/21/EC

Article 5 - paragraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. Those undertakings shall also be required to submit information concerning future network or service developments that could have an impact on the wholesale services made available to competitors. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 6 a (new)

Text proposed by the Commission

Amendment

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. Those undertakings shall also be required to submit information concerning future network or service developments that could have an impact on the wholesale services made available to competitors. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information, ***while ensuring business confidentiality in accordance with Community and national law.***

Amendment

Article 6a

Procedure for the consistent implementation of proposed solutions

1. Where a national regulatory authority seeks to take a measure imposing, amending or withdrawing an obligation to be met by an operator under Article 16, together with Articles 5 and 9 to 13, under

Articles 13a and 13b of Directive 2002/19/EC (Access Directive) or under Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission and the national regulatory authorities of the other Member States shall have a period of one month following the date of notification of the draft measure within which to forward their observations to the national regulatory authority concerned.

2. If the proposed measure involves the imposition, amendment or withdrawal of an obligation other than those laid down in Articles 13a and 13b of Directive 2002/19/EC (Access Directive), the Commission may, within the same period, notify the national regulatory authority concerned and the Body of European Regulators in Telecommunications (BERT) of the reasons for which it considers that the proposed measure obstructs the internal market, or if it has serious doubts regarding the compatibility of the proposed measure with Community law. In this case, adoption of the proposed measure shall be postponed for a further two months following that notification.

In the absence of such a notification, the national regulatory authority concerned may adopt the proposed measure, taking account of all observations of the Commission or any other national regulatory authority.

3. During the two month period provided for in paragraph 2, the Commission, BERT and the national regulatory authority concerned shall cooperate closely in order to identify the most effective and appropriate measure to achieve the objectives set out in Article 8, taking account of the opinions of market operators and the need to ensure consistent regulatory practice.

Within the same period, BERT may, by simple majority, adopt a reasoned opinion

confirming the advisability and effectiveness of the proposed measure, or indicate whether it should be amended, submitting specific proposals to this effect. That opinion shall be made public.

If the opinion of BERT indicates that the proposed measure should be amended, the Commission may, taking full account of this opinion, adopt a reasoned decision requiring the national regulatory authority concerned to amend the proposed measure, submitting specific proposals to this effect.

If the opinion of BERT confirms the suitability and effectiveness of the proposed measure, the national regulatory authority concerned may adopt the proposed measure, taking full account of all the recommendations of the Commission and BERT.

4. If the proposed measure concerns the imposition, amendment or withdrawal of an obligation under Articles 13a and 13b of Directive 2002/19/EC (Access Directive), the adoption of the proposed measure shall be postponed by a further two months after the expiry of the deadline laid down in Article 7(3).

During that two month period, the Commission, BERT and the national regulatory authority concerned shall cooperate closely in order to identify the most effective and suitable measure to achieve the objectives set out in Article 8, taking account of the opinions of market operators and the need to ensure consistent regulatory practice.

During the same period, BERT may, by simple majority, issue a reasoned opinion confirming the suitability and effectiveness of the draft measure, or indicate that it should not be implemented. That opinion shall be made public.

After confirmation by the Commission

and BERT of the suitability and effectiveness of the proposed measure, the national regulatory authority concerned may adopt that measure, taking full account of all the recommendations of the Commission and BERT.

5. Within three months of the adoption by the Commission of a reasoned decision under paragraph 3 requiring the national regulatory authority concerned to amend a proposed measure, the national regulatory authority should amend or withdraw the proposed measure. If the proposed measure is amended, the national regulatory authority shall carry out public consultation pursuant to Article 6 and refer the proposed measure as amended back to the Commission pursuant to Article 7.

Justification

A new 'coregulation' procedure is proposed based on close cooperation between the Commission, the BERT and the national regulatory authorities. Rather than a 'sanction' veto imposed from above, this procedure involves consideration by peers in order to achieve a solution. In order for the Commission to take a decision along these lines, the Commission and the BERT (by simple majority vote) must agree on the need to amend a measure proposed by a national regulatory authority. Otherwise, the national regulatory authority must take full account of observations by the Commission and BERT.

Amendment 19

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC

Article 7- paragraph 2

Text proposed by the Commission

2. National regulatory authorities shall contribute to the development of the Internal Market by working with the Commission and the Authority so as to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, work with

Amendment

2. National regulatory authorities shall contribute to the development of the Internal Market by working with the Commission and the Authority ***in a transparent manner*** so as to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end,

the Commission and the Authority to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

they shall, in particular, work with the Commission and the Authority to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive),

deleted

Justification

The veto is replaced by the mechanism set out in Article 6a (new).

Amendment 21

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 6

Text proposed by the Commission

Amendment

6. Within three months of the Commission issuing a decision in accordance with paragraph 5 requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and

deleted

re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

Justification

The veto on remedies is replaced by the mechanism set out in Article 6a (new).

Amendment 22

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC

Article 7- paragraph 8

Text proposed by the Commission

Amendment

8. Where a draft measure has been amended in accordance with paragraph 6, the Commission may take a decision, requiring the national regulatory authority to impose a specific obligation under Articles 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) within a given time-limit.

deleted

In so doing, the Commission shall pursue the same policy objectives as set out for national regulatory authorities in Article 8. The Commission shall take the utmost account of the opinion of the Authority submitted in accordance with Article 6 of Regulation [.../EC], in particular in elaborating the details of the obligation(s) to be imposed.

Justification

To improve consistency, without altering the delicate institutional balance of powers or undermining the subsidiarity elements of the Regulation, the Commission should play the role of an arbitrator rather than of a judge.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 9

Text proposed by the Commission

9. The national regulatory authority shall communicate to the Commission all final measures which fall under **conditions a) and b)** in Article 7(3).

Amendment

9. The national regulatory authority shall communicate to the Commission all final measures which fall under Article 7(3).

Justification

The veto on remedies is replaced by the mechanism contained in Article -7a (new).

Amendment 24

Proposal for a directive – amending act

Article 1 – point 8 – point b

Directive 2002/21/EC

Article 8 – paragraph 2 – point b

Text proposed by the Commission

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of content;

Amendment

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, **taking State aid rules into account**, in particular for the delivery of content;

Justification

The proposed expansion of the NRA’s objective to promote competition “in particular for the delivery of content” should be rejected. The market for content delivery is already competitive. Accordingly, the market of broadcasting transmission services has already been removed from the list of recommended markets susceptible to ex-ante regulation. It stays unclear why this change is introduced. The addition moreover undermines the aim of a level playing field in competition, if competition in one areas judged more important than in another.

Amendment 25

Proposal for a directive – amending act

Article 1 - point 8 - point b a (new)

Directive 2002/21/EC

Article 8 - paragraph 2 - point c

Text proposed by the Commission

Amendment

(ba) In paragraph 2, point (c) shall be replaced by the following:

"(c) encouraging and facilitating efficient market-driven investment in infrastructure, and promoting innovation; and"

Amendment 26

Proposal for a directive – amending act

Article 1 – point 8 – point e

Directive 2002/21/EC

Article 8 – paragraph 4 – point g a (new)

Text proposed by the Commission

Amendment

(ga) ensuring the cooperation of undertakings providing electronic communications networks and services with the sectors interested in the protection and the promotion of lawful content over electronic communication networks and services.

Amendment 27

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radiofrequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radiofrequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria ***and avoid***

distorting competition.

Justification

Effective management of radio spectrum for electronic communication services should require the competent authorities to take into account competition aspects when allocation and assigning radio frequencies and avoid any distortions to competition. The proposed wording is consistent with that in recital 28 of the Commission's proposal for the framework directive.

Amendment 28

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) avoid distortion of competition,

Justification

Effective management of radio spectrum for electronic communication services should require the competent authorities to take into account competition aspects when allocation and assigning radio frequencies and avoid any distortions to competition. The proposed wording is consistent with that in recital 28 of the Commission's proposal for the framework directive.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands ***open*** to electronic communications. The Member States may, however, provide for proportionate and non-discriminatory

Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands ***available to electronic communications services as identified in their national allocation tables and in ITU radio broadcasting***

restrictions to the types of electronic communications services to be provided.

regulations. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.

Justification

Service neutrality must be limited to the possibilities provided by ITU radio broadcasting regulations determining which services can operate together within the various band widths.

Amendment 30

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Restrictions that require a service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, *or, as defined in national legislation in conformity with Community law*, the promotion of cultural and linguistic diversity and media pluralism.

Amendment

Restrictions that require a *particular electronic communication* service to be provided in a specific band shall be justified *only* in order to ensure the fulfilment of a general interest objective *as defined in national legislation* in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, the promotion of cultural and linguistic diversity and media pluralism *or the provision of radio and television broadcasting services*.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 3

Text proposed by the Commission

A restriction which prohibits the provision of any other service in a specific band may

Amendment

A restriction which prohibits the provision of any other *electronic communication*

only be provided for where justified by the need to protect safety of life services.

service in a specific band may only be provided for where justified by the need to protect safety of life services *or to ensure the fulfilment of a general interest as defined in national legislation in conformity with Community law, such as the promotion of cultural and linguistic diversity and media pluralism.*

Justification

It is important that the definition of cultural and media policies remains in the hands of Member States and that legal safeguards and flexibility on national level are guaranteed in this matter.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4.

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4. *It lies within the competence of the Member States to define the scope and nature of any exception.*

Justification

It is important that the definition of cultural and media policies remains in the hands of Member States and that legal safeguards and flexibility on national level are guaranteed in this matter.

Amendment 33

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9a – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. For a period of five years starting on **[1 January 2010]**, Member States *shall* ensure that holders of rights to use radio frequencies which were granted before that

1. For a period of five years starting on **[date of transposition]**, Member States *may* ensure that holders of rights to use radio frequencies which were granted

date may submit an application to the competent national regulatory authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

before that date may **for a period of five years** submit an application to the competent national regulatory authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

Justification

No review should be necessary regarding rights expiring before the end of the five-year transitional period.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9a – paragraph 2

Text proposed by the Commission

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, ***an application for reassessment can only be made in respect of*** the part of the radio frequencies which is necessary for the fulfilment of such objective. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective ***as a result of application of*** Article 9(3) and (4) ***shall be subject to a new assignment procedure in conformity with*** Article 7(2) of the Authorisation Directive.

Amendment

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, ***including the supply of broadcasting services, the right to use*** the part of the radio frequencies which is necessary for the fulfilment of such objective ***shall remain unchanged until its expiry***. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective ***shall be included in a new assignment procedure under*** Article 9(3) and (4) ***of this Directive and*** Article 7(2) of ***Directive 2002/20/EC*** (the Authorisation Directive).

Justification

Operators should be able to continue offering and further developing (for example through HD TV) their broadcasting services after transition to digital technology. The digital dividend which is not used for broadcasting should be reassigned to other purposes under the new rules.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9b – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c ***without the prior consent of the national regulatory authority.***

Amendment

Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c, ***provided that the transfer or lease is in accordance with national procedures and that the change does not affect the service provided within those bands.***

Justification

Radio frequency interchangeability should not lead to any imbalance regarding service diversity or to speculation. However, national procedures cannot be ignored since spectrum management is the responsibility of the national authorities.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c

Text proposed by the Commission

In order to contribute to the development of the internal market, for the achievement of the principles of this Article, the Commission may adopt appropriate implementing measures to:

Amendment

In order to contribute to the development of the internal market, ***and without prejudice to Article 8a,*** for the achievement of the principles of this Article, the Commission may adopt appropriate ***technical*** implementing measures to:

(-a) harmonise the rules relating to the availability and efficient use of radio frequencies in accordance with

the procedure set out in Annex IIa;

(-aa) ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio frequencies in accordance with the procedure set out in Annex IIa;

(a) *harmonise the identification of* the bands for which usage rights may be transferred or leased between undertakings;

(a) *identify* the bands for which usage rights may be transferred or leased between undertakings, *excluding radio frequencies allocated or planned by Member States for broadcasting services;*

(b) harmonise the conditions attached to such rights *and the conditions, procedures, limits, restrictions, withdrawals and transitional rules applicable to such transfers or leases;*

(b) harmonise the conditions attached to such rights;

(c) harmonise the specific measures to ensure fair competition where individual rights are transferred;

(c) harmonise the specific measures to ensure fair competition where individual rights are transferred.

(d) create an exception to the principle of services or technology neutrality, as well as to harmonise the scope and nature of any exceptions to these principles in accordance with Article 9(3) and (4) other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism.

These implementing measures are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, and in particular those relating to the promotion of cultural and linguistic diversity and media pluralism.

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Measures adopted pursuant to points (a) to (c) of the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory

On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4). In the implementation of the provisions of this paragraph, the Commission may be assisted by the ***Authority in accordance with Article 10 Regulation [../EC]***.

procedure with scrutiny referred to in Article 22(3). In the implementation of the provisions of this paragraph, the Commission may be assisted by the ***Radio Spectrum Policy Committee***.

Justification

Bringing the Commission's implementing powers of the Radio Spectrum Decision within the Framework Directive must go along with the inclusion in the Directive of a clause equivalent to Article 1(4) of the Radio Spectrum Decision. In view of Member States' competence for cultural and media policy, the Commission should not identify broadcasting bands as bands for which usage rights might be transferred or leased. Under Article 9b, the transfer or lease of individual rights is subject to national procedures, and the Commission should thus not harmonize these procedures.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 11 – point (b)

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter, which may include establishing tariff principles for specific numbers or number ranges. The implementing measures may grant the Authority specific responsibilities in the application of those measures.

Amendment

Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter, which may include establishing tariff principles for specific numbers or number ranges, ***as well as establishing a single European front-up call number ensuring user-friendly access to these services***. The implementing measures may grant the Authority specific responsibilities in the application of those measures.

Amendment 38

Proposal for a directive – amending act

Article 1 - point 13

Directive 2002/21/EC

Article 12 - paragraph 3

Text proposed by the Commission

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, **and** proportionate.

Amendment

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, proportionate **and based on non-discriminatory criteria.**

Amendment 39

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. To ensure that measures adopted under paragraph 1 are proportionate, national regulatory authorities will investigate the availability of all ducts, including those of telecommunications operators, energy providers, local communities and sewage pipes, capable of carrying telecommunications lines in the area where access is requested.

Justification

In order to foster infrastructure roll-out access to ducts should not be artificially confined to ducts of telecommunications operators but should encompass all ducts available. The more ducts are available the better the chances for sustainable competition due to third party network roll-out.

Amendment 40

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 3 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the national regulatory authority of **any** breach of security or integrity that had a significant impact on the operation of networks or services.

Amendment

Member States shall ensure, **where appropriate**, that undertakings providing public communications networks or publicly available electronic communications services notify the national regulatory authority of **a serious** breach of security or integrity that had a significant impact on the operation of networks or services.

Amendment 41

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 3 – subparagraph 2

Text proposed by the Commission

Where appropriate, the national regulatory authority concerned shall inform the national regulatory authorities in other Member States and the Authority. **Where disclosure of the breach is in the public interest, the national regulatory authority may inform the public.**

Amendment

Where appropriate, the national regulatory authority concerned shall inform the national regulatory authorities in other Member States and the Authority.

Amendment 42

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 3 – subparagraph 3

Text proposed by the Commission

Every **three months**, the national regulatory authority shall submit a summary report to the Commission on the notifications received and the action taken in accordance with this paragraph.

Amendment

Every **year**, the national regulatory authority shall submit a summary report to the Commission on the notifications received and the action taken in accordance with this paragraph.

Amendment 43

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 – paragraph 4 – subparagraph 1

Text proposed by the Commission

The Commission, taking the utmost account of the opinion of the Authority issued in accordance with Article 4(3)(b) of Regulation [.../EC], may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

Amendment

The Commission, taking the utmost account of the opinion of the Authority issued in accordance with Article 4(3)(b) of Regulation [.../EC], may ***encourage the dissemination and exchange of best practices among undertakings and competent national authorities and*** adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

Justification

The Commission can play a positive role in coordinating and favouring the sharing of best practices, without necessarily imposing binding measures.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 4 – subparagraph 2

Text proposed by the Commission

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

Amendment

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 22(3) ***where industry-led self-regulatory initiatives have not achieved an adequate level of security in the internal market in one or more Member States***. On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article

22(4).

Amendment 45

Proposal for a directive – amending act

Article 1 - point 17

Directive 2002/21/EC

Article 16 - paragraph 5 - subparagraph 2

Text proposed by the Commission

Amendment

The Commission, taking the utmost account of the opinion of the Authority, may issue a decision designating one or more undertakings as having significant market power on that market, and imposing one or more specific obligations under Articles 9 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive). In so doing, the Commission shall pursue the policy objectives set out in Article 8.

deleted

Justification

To improve consistency without altering the delicate institutional balance of powers or undermining the subsidiarity elements of the Regulation, the Commission should play the role of an arbitrator rather than of a judge.

Amendment 46

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 4 – point a

Text proposed by the Commission

Amendment

(a) Consistent implementation of regulatory approaches, including regulatory treatment of new services;

(a) Consistent implementation of regulatory approaches, including regulatory treatment of *pan-European services, such as global telecommunications services, and* new services;

Justification

Pan-European telecommunications services with its current lead example of global telecommunications services (GTS) offered to multinational companies with offices in a number of European countries are one of the areas where the Commission should have the power to ensure a harmonised regulatory approach within the EU.

Amendment 47

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 4 – point c

Text proposed by the Commission

Amendment

(c) Consumer issues, **including** accessibility to electronic communications services and equipment by disabled end-users;

(c) Consumer issues **not included in Directive 2002/22/EC, in particular** accessibility to electronic communications services and equipment by disabled end-users;

Justification

Only consumer issues not covered by the Universal Service Directive should be regulated on the basis of this Article.

Amendment 48

Proposal for a directive – amending act

Article 2 – point 8 – point b a (new)

Directive 2002/19/EC

Article 12 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development and of the benefits for consumers, taking into account the nature and type of interconnection and access involved, including the viability of other upstream access options;

Justification

Infrastructure competition, while a primary goal of this regulation, needs to be assessed

according to the benefit to the consumer too. Competition should be promoted as deep as possible in the value chain.

Amendment 49

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point a

Text proposed by the Commission

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets.

Amendment

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets ***and that this measure would be the most effective and efficient means to enforce remedies aimed at addressing such failures.***

Justification

Since functional separation can provide a means to simplify enforcement for the Authority and regulated operator, it should be possible for Regulators to make use of this measure on a forward-looking basis and not only after there is a long-standing failure of enforcement which means that remedies have been ineffective over an extended period (and thus competition has failed to develop). It is important to refer to 'effective' competition as some infrastructure competition could exist without being sufficient to provide an effective constraint on the dominant operator.

Amendment 50

Proposal for a directive – amending act

Article 3 – point 2

Directive 2002/20/EC

Article 3 – paragraph 2 – subparagraphs 1 a and b (new)

Text proposed by the Commission

Amendment

Global telecommunications services shall be subject to no more than a simplified notification process with specified registration of electronic communications service activity as “global telecommunications services”.

Global telecommunications services are managed business data and voice services for multinational companies located in different countries and often different continents. They are inherently cross-border and, within Europe, pan-European.

Amendment 51

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – introductory wording

Text proposed by the Commission

Amendment

Member States ***shall not make*** the use of radio frequencies ***subject to the granting of individual rights of use but shall include the conditions for usage of such radio frequencies in*** the general authorisation, ***unless it is justified to*** grant individual rights in order to:

Member States shall ***facilitate*** the use of radio frequencies ***within the framework of*** the general authorisation. ***Member States may*** grant individual rights in order to:

Justification

General authorisations may be a viable solution in the long term once the technology has developed. However, the granting of individual rights should remain the normal procedure for spectrum allocation.

Amendment 52

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) fulfil other objectives of general interest.

(b) fulfil other objectives of general interest, ***including the provision of broadcasting services.***

Amendment 53

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 5

Text proposed by the Commission

Amendment

*Any individual **right** to use radio frequencies **that is** granted for ten years or more and **that** may not be transferred or leased between undertakings *as allowed by Article 9b of the Framework Directive shall, every five years and for the first time five years after its issuance, be subject to a review in the light of the criteria in paragraph 1. If* the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice ***of not more than five years from the conclusion of the review***, or shall be made freely transferable or leaseable between undertakings.*

Where individual **rights** to use radio frequencies **are** granted for ten years or more and may not be transferred or leased between undertakings *under Article 9b of the Framework Directive, the national regulatory authority shall ensure that it has the means to verify that* the criteria to grant **those** individual rights of use **continue to apply and to be complied with for the duration of the licence. If those criteria** are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice ***and after a reasonable period***, or shall be made freely transferable or leaseable between undertakings. ***When such a decision is taken, due account shall be taken of the need to accord a suitable period for amortization of investments.***

Justification

There are numerous new platforms and services on which investment must be recouped over a period exceeding ten or at least five years. It is not unusual to sustain considerable losses during the first one or two years of operation. It would be disproportionate to require the national regulatory authority on an inflexible basis to carry out a formal review every five years of all broadcasting spectrum licences.

Amendment 54

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) to harmonise procedures for the granting of general authorisations or individual rights of use for radio frequencies or numbers;

deleted

Justification

The granting of general authorisations is a long-term objective and harmonisation should not be envisaged at this stage.

Amendment 55

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6b

Text proposed by the Commission

Amendment

Article 6b

deleted

Common selection procedure for issuing rights

1. The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the Authority to make proposals for the selection of undertaking(s) to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [..].

In such cases, the measure shall specify the period within which the Authority shall complete the selection, the procedure, rules and conditions applicable to the selection, and details of any charges and fees to be imposed on the holders of rights for use of radio frequencies and/or numbers, in order to ensure the optimal use of spectrum or

numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.

2. Taking the utmost account of the opinion of the Authority, the Commission shall adopt a measure selecting the undertaking(s) to which individual rights of use for radio frequencies or numbers shall be issued. The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).

Justification

Regarding the granting of these rights, selection should be carried out by means of specific legal proposals throughout the EU and not through the comitology procedure.

Amendment 56

Proposal for a directive – amending act

Annex I – point 4 a (new)

Directive 2002/20/EC

Annex – Part C – point 1

Text proposed by the Commission

Amendment

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply to specific number ranges for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC.

Amendment 57

Proposal for a directive – amending act

Annex II – point 1

Directive 2002/20/EC

Annex II – point 1 – point d

Text proposed by the Commission

(d) the method of determining usage fees for the right of use of the radio frequencies;

Amendment

(d) the method of determining usage fees for the right of use of the radio frequencies, ***without prejudice to the mechanisms adopted by the Member States to replace the user fee obligation with the obligation to fulfil specific general interest objectives;***

Justification

Member States must remain free to maintain or introduce mechanisms to replace user fee obligations with obligations to fulfil specific general interest objectives. These mechanisms, which are intended to meet media pluralism objectives, are commonly applicable to terrestrial broadcasting frequencies.

PROCEDURE

Title	Electronic communications networks and services			
References	COM(2007)0697 – C6-0427/2007 – 2007/0247(COD)			
Committee responsible	ITRE			
Opinion by Date announced in plenary	IMCO 10.12.2007			
Drafts(wo)man Date appointed	Marian Zlotea 31.1.2008			
Discussed in committee	28.2.2008	26.3.2008	6.5.2008	28.5.2008
Date adopted	16.6.2008			
Result of final vote	+: 33	-: 0	0: 0	
Members present for the final vote	Cristian Silviu Buşoi, Charlotte Cederschiöld, Janelly Fourtou, Evelyne Gebhardt, Martí Grau i Segú, Małgorzata Handzlik, Malcolm Harbour, Edit Herczog, Iliana Malinova Iotova, Kurt Lechner, Lasse Lehtinen, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Bill Newton Dunn, Zita Pleštinská, Karin Riis-Jørgensen, Giovanni Rivera, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Salvador Domingo Sanz Palacio, Christel Schaldemose, Andreas Schwab, Eva-Britt Svensson, Jacques Toubon, Bernadette Vergnaud			
Substitute(s) present for the final vote	Giovanna Corda, Jan Cremers, Dragoş Florin David, Manuel Medina Ortega, Rovana Plumb, Anja Weisgerber			

11.6.2008

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Draftsman: Ignasi Guardans Cambó

SHORT JUSTIFICATION

With the "AMVS Directive" the EU delivered a strong message intended to ensure the optimal conditions of competitiveness and legal certainty for Europe's ICT and its media industries and services, as well as respect for cultural and linguistic diversity. The current review of the "telecom package" needs to be read and amended with the same spirit and political intentions. The best possible balance needs to be found among the needs of all current and future users of electronic networks, their legitimate business interests and general interest public policy concerns, as well as the rights and interests of consumers.

Radio frequencies are a scarce public resource that has an important public and market value, but also that they are essential to the fulfilment of some general interest public policy objectives. Thus, spectrum needs to be managed not only efficiently and effectively, but also with due attention to the public interest from an economic, social or cultural perspective. In this context some restrictions to the principles of service neutrality, and its impact in the transfer of individual rights to use radio frequencies should be imposed. The role of Member States in this public policy decisions needs to be respected.

The importance to protect electronic communications services providers and in particular AVMS providers against harmful interference cannot be underestimated. This requires some small changes in the text, to properly put in context European spectrum regulation with other internationally binding decisions and instruments which cannot be ignored.

Finally, a proposal is made to underline the indispensable role of NRA in the protection and

the promotion of lawful content over electronic communications networks and services.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Under Directive 2007/65/EC, the so-called "Audiovisual media services Directive", a revision was carried out with the intention of ensuring optimal conditions of competitiveness and legal certainty for information technologies and media industries and services in the EU, as well as respect for cultural and linguistic diversity. In this context, a fair and balanced regulatory framework for electronic communications networks and services constitutes an essential pillar of the whole European audiovisual sector.

Amendment 2

Proposal for a directive – amending act Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The views of national regulatory authorities, industry stakeholders and audiovisual media services providers should be taken into account by the Commission when making decisions under this Directive through the use of effective consultation to ensure transparency and proportionality. The Commission should issue detailed consultation documents, explaining the

different courses of action being considered, and interested stakeholders should be given a reasonable time in which to respond. Having considered the responses, the Commission should give reasons for the resulting decision in a statement following the consultation, including a description of how the views of those responding have been taken into account.

Justification

It is essential that the views of NRAs, industry stakeholders and audiovisual media services providers are taken into account in decisions at Community level, which decisions must be transparent and proportionate to the result to be achieved.

Amendment 3

**Proposal for a directive – amending act
Recital 16**

Text proposed by the Commission

(16) Radio frequencies should be considered a scarce public resource that has an important public and *market* value. ***It is in the public interest that spectrum is managed as*** efficiently and effectively ***as possible*** from an economic, social and environmental perspective and ***that*** obstacles to its efficient use ***are*** gradually withdrawn.

Amendment

(16) Radio frequencies ***are the property of Member States. They*** should be considered a scarce public resource that has an important public and *economic* value, ***and which is essential for the fulfilment of certain general interest public policy objectives. Spectrum should therefore be managed*** efficiently and effectively, ***with due attention being paid to the public interest*** from an economic, social, *cultural* and environmental perspective, and obstacles to its efficient use ***should be*** gradually withdrawn.

Amendment 4

Proposal for a directive – amending act Recital 17

Text proposed by the Commission

(17) Radio frequencies should be managed so as to ensure that harmful interference is avoided. The basic concept of harmful interference should therefore be properly defined to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

Amendment

(17) Radio frequencies should be managed so as to ensure that harmful interference is avoided. The basic concept of harmful interference should therefore be properly defined **by taking account of existing internationally agreed frequency plans** to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

Justification

Interference problems are one of the main reasons for the existence of national and international frequency plans. As frequencies cross borders beyond the EU, internationally binding agreements to avoid interference must be respected.

Amendment 5

Proposal for a directive – amending act Recital 20

Text proposed by the Commission

(20) Flexibility in spectrum management and access to spectrum should be increased through technology- and service-neutral authorisations to let spectrum users choose the best technologies and services to apply in **a** frequency **band** (hereinafter referred to as the ‘principles of technology and service neutrality’). The administrative determination of technologies and services **should become the exception and should be clearly justified and subject to regular periodic review.**

Amendment

(20) Flexibility in spectrum management and access to spectrum should be increased through technology- and service-neutral authorisations to let spectrum users choose the best technologies and services to apply in frequency **bands available to electronic communications services as identified in national frequency allocation tables and in the International Telecommunication Union (ITU) Radio Regulations** (hereinafter referred to as the ‘principles of technology and service neutrality’). The administrative determination of technologies and services should **apply when general interest objectives are at stake.**

Justification

Necessary to ensure legal consistency with the definition of service neutrality proposed under Article 9 paragraph 4 subparagraph 1 of the Framework Directive.

Amendment 6

Proposal for a directive – amending act

Recital 21

Text proposed by the Commission

(21) **Exceptions to** the principle of technology neutrality should be **limited** and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, or to ensure the protection of public health by limiting public exposure to electromagnetic fields, or to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, or **where strictly necessary** to comply with **an exception to the principle of service neutrality**.

Amendment

(21) **Restrictions on** the principle of technology neutrality should be **appropriate** and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, or to ensure the protection of public health by limiting public exposure to electromagnetic fields, or to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, or to comply with **a general interest objective in conformity with Community law**.

Justification

Ensure coherency with the text of the directive which – for technology neutrality - refers to “restrictions” and not “exceptions”. Restrictions should not be limited to exception to the principle of service neutrality but needs to comply with general interest objectives.

Amendment 7

Proposal for a directive – amending act

Recital 22

Text proposed by the Commission

(22) Spectrum users should **also** be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. **It should be possible for exceptions to the principle of service neutrality which require** the provision of a specific service to meet

Amendment

(22) Spectrum users should be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. **On the other hand, spectrum use may also be explicitly assigned to** the provision of a specific service **or through a specific technology** to

clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives *should* include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. ***Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible. In order that the holder of the authorisation may choose freely the most efficient means to carry the content of services provided over radio frequencies, the content should not be regulated in the authorisation to use radio frequencies.***

meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of inefficient use of spectrum. Those objectives include the promotion of ***cultural and media policy objectives such as*** cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law.

Amendment 8

Proposal for a directive – amending act Recital 23

Text proposed by the Commission

(23) It lies within the competence of the Member States to define the scope and nature of any ***exception regarding*** the promotion of cultural and linguistic diversity and media pluralism in accordance with their *own* national law.

Amendment

(23) It lies within the competence of the Member States to define the scope and nature of any ***assignment of radio frequencies to ensure*** the promotion of ***cultural and media policy objectives such as*** cultural and linguistic diversity and media pluralism in accordance with their national law, ***internationally agreed radio frequency plans and general principles of Community law.***

Justification

Necessary to ensure legal consistency in wording with amendment proposed under Article 9 (4) of the Framework Directive. This amendment complements the rapporteur's amendment 6.

Amendment 9

Proposal for a directive – amending act Recital 24

Text proposed by the Commission

Amendment

(24) As the allocation of spectrum to specific technologies or services is an exception to the principles of technology and service neutrality and reduces the freedom to choose the service provided or technology used, any proposal for such allocation should be transparent and subject to public consultation.

deleted

Justification

Legal consistency with proposal for amendment to Article 6.1.

Amendment 10

Proposal for a directive – amending act Recital 47 a (new)

Text proposed by the Commission

Amendment

(47a) Where it is necessary to adopt harmonisation measures for the implementation of the Community's electronic communications and spectrum policy which go beyond technical implementing measures, the Commission should submit a legislative proposal to the European Parliament and the Council.

Amendment 11

Proposal for a directive – amending act Recital 49

Text proposed by the Commission

Amendment

(49) The introduction of the requirements of service and technology neutrality in assignment and allocation decisions,

(49) The introduction of the requirements of service and technology neutrality in assignment and allocation decisions,

together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications and audiovisual media services to the public, thereby also facilitating the achievement of general interest objectives. **Therefore**, certain general interest obligations imposed on broadcasters for the delivery of audiovisual media services **could be increasingly met without the need to grant individual rights to use spectrum. The use of specific criteria to assign spectrum to broadcasters would be justified only where this is essential to meet a particular** general interest objective set out in national law. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.

together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications and audiovisual media services to the public, thereby also facilitating the achievement of general interest objectives. **However**, certain general interest obligations imposed on broadcasters for the delivery of audiovisual media services **may require the use of specific criteria in the assignment of spectrum, when it appears to be essential to meet a specific** general interest objective set out in national law. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.

Justification

Recital 49 is not consistent with Recital 23 or with Article 5(2) of the Authorisation Directive. It is important to recognize the need to take into account cultural and media policy objectives, as set out by national law. The original formulation is also more restrictive than Article 5(2) of the Authorisation Directive as regards the granting of individual rights of use for broadcasting services.

Amendment 12

Proposal for a directive – amending act Recital 50

Text proposed by the Commission

(50) In order to ensure equal treatment, no spectrum users should be exempted from the obligation to pay the normal fees or charges set for the use of the spectrum.

Amendment

(50) Any total or partial exemption from the obligation to pay the fees or charges set for the use of the spectrum must be objective and transparent and based on the existence of other general interest obligations set out in national law.

Justification

It must remain possible for Member States to maintain or introduce systems where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest

objectives. Such systems are commonplace with regard to terrestrial broadcasting frequencies where they serve media pluralism objectives.

Amendment 13

Proposal for a directive – amending act

Recital 59

Text proposed by the Commission

(59) Measures necessary for the implementation of the Framework, Access and Authorisation Directives should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Amendment

(59) Measures necessary for the implementation of the Framework, Access and Authorisation Directives should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. ***Such implementing measures should not interfere with cultural and media policy objectives as defined by the Member States in accordance with those Directives.***

Justification

The proposed safeguard is essential with regard to extended implementing powers conferred to the European Commission, in particular those in Articles 9c and 19 of the Framework Directive, article 6 of the Access Directive and Article 6a of the Authorisation Directive.

Amendment 14

Proposal for a directive – amending act

Recital 60

Text proposed by the Commission

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the ***fields of spectrum and*** numbering as well as in matters related to security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the

Amendment

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the ***field*** of numbering as well as in matters related to security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework.

regulatory framework. ***Power should also be conferred to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments and for adopting implementing measures to harmonise the authorisation rules, procedures and conditions for the authorisation of electronic communications networks and services.*** Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***When, on imperative grounds of urgency, the normal time limits for this procedure cannot be complied with,*** the Commission should ***be able to use the urgency procedure provided for in Article 5a(6) of the above Decision.***

Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***Taking into account that the application of the regulatory procedure with scrutiny within the usual deadlines could, in certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of those measures.***

Justification

Necessary to ensure legal consistency with amendments proposed for a new article 8a of the Framework Directive and amendments proposed under Article 6a of the Authorisation Directive.) Harmonisation measures which add new essential proposals to the regulatory framework must be dealt with under a legislative proposal. Only non-essential elements may be subject to the Comitology Procedure. On imperative and justified grounds of urgency the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of Comitology.

Amendment 15

Proposal for a directive – amending act Recital 60 a (new)

Text proposed by the Commission

Amendment

(60a) Activities pursued under this Directive should take account of the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunication Union (ITU) and the

European Conference of Postal and Telecommunications Administrations (CEPT), to ensure the efficient management and harmonisation of use of spectrum across the Community. The Member States and the Commission should recognise the content of international agreements entered into by the Member States pursuant to the ITU Radio Regulations in the implementation of this Directive.

Justification

Europe is not an island. The importance of the ITU in establishing internationally binding regulations for the efficient use of spectrum and orbit usage based on efficient, rational and cost-effective utilisation cannot be ignored. The binding nature of the ITU rules (on EU and non-EU member states of the ITU) and the compatibility of the Directive with them must be expressly addressed.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 2 – point e

Directive 2002/21/EC

Article 2 – point s

Text proposed by the Commission

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable Community or national regulations.

Amendment

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable Community or national regulations ***and in accordance with internationally agreed frequency plans.***

Justification

In view of the seriousness of interference problems between broadcasting and two-way (receive and transmit) services, it is essential for digital broadcasting services to be afforded protection against harmful interference, in line with internationally-agreed frequency plans, and particularly the ITU Geneva Plan (GE-O6). The definition of harmful interference should be amended accordingly.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 6 – paragraph 1

Text proposed by the Commission

Except in cases falling within Articles 7 (10), 20 or 21 and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives which have a significant impact on the relevant market, ***or where they intend to provide for restrictions in accordance with Article 9 (3) and 9 (4)***, they give interested parties the opportunity to comment on the draft measure within a reasonable period.

Amendment

Except in cases falling within Articles 7 (10), 20 or 21 and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives which have a significant impact on the relevant market, they give interested parties the opportunity to comment on the draft measure within a reasonable period.

Justification

It is proposed that both the economic and the public value of the spectrum is considered in a balanced way to manage it efficiently. The assignment of a part of the spectrum to fulfil general interest objectives does therefore not constitute a restriction or exception from the proposed principle of service neutrality but complements it. It is therefore not justified to impose additional consultation procedures.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 4 –point c

Text proposed by the Commission

(c) imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with ***Articles 5*** and 9 to 13 of Directive 2002/19/EC

Amendment

(c) imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with ***paragraphs 1(a), 2, 3 and 4 of Article 5*** and ***Articles 9***

(Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive),

to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive),

Justification

The measures under paragraph 5 (1) b of the Directive 2002/19 (Access Directive) aim at maintaining media pluralism and cultural diversity in the field of digital television and thus clearly fall within the competence of Member States.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 8 – point e

Directive 2002/21/EC

Article 8 – paragraph 4 – point g

Text proposed by the Commission

Amendment

(g) applying the principle that end-users should be able to access ***and distribute*** any lawful applications and/or services of their choice.

(g) applying the principle that end-users should be able to access any lawful applications and/or services of their choice.

Justification

The mention to distribution is confusing as far as it may be interpreted as if the Directive provision creates a new right for the users to publicly communicate legal content, right which according to the law of intellectual property belongs exclusively to rights owner or a third party authorised by him.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 8 - point e

Directive 2002/21/EC

Article 8 – paragraph 4 - point g a (new)

Text proposed by the Commission

Amendment

(ga) ensuring the cooperation of undertakings providing electronic communications networks and services with the sectors concerned for the purposes of the protection and the promotion of lawful content over electronic communications networks and

services.

Amendment 21

Proposal for a directive – amending act

Article 1 – point 8 a (new)

Directive 2002/21/EC

Article 8 a (new)

Text proposed by the Commission

Amendment

(8a) The following Article is inserted:

"Article 8a

Coordination of radio spectrum policies in the Community

1. Member States shall cooperate with each other and the Commission in the strategic planning and harmonisation of the use of radio frequencies in the Community. They shall ensure coherence of spectrum policy approaches with other national or EU policies, such as media policy.

2. Member States shall ensure the coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of spectrum necessary for the establishment and functioning of the internal market and in accordance with economic, political, cultural, health and social considerations linked to the use of radio spectrum.

3. Member States shall ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio frequencies in the Community.

4. Member States shall ensure the effective coordination of Community interests in international organisations where radio spectrum use affects Community policies.

5. A Radio Spectrum Policy Committee (the "RSPC") is hereby created in order to contribute to the fulfilment of the objectives set out in paragraphs 1 to 4. The RSPC shall provide advice to the European Parliament, the Council and the Commission on radio spectrum policy issues. The RSPC shall be composed of one high-level representative from each national regulatory authority responsible for radio spectrum policy and/or for media regulation in each Member State. The Commission shall be a non-voting member.

6. At the request of the European Parliament, the Council or the Commission or on its own initiative, the RSPC, acting by a qualified majority, shall adopt opinions. Each Member State shall have one vote and the Commission shall not vote.

7. The Commission, taking the utmost account of the opinion of the RSPC, shall formulate every three years common policy objectives and issue non-binding guidelines for the development of Community spectrum policy.

8. The Commission may, taking the utmost account of the opinion of the RSPC, propose legislative measures to fulfil common policy objectives as referred to in paragraph 7.

9. Whenever necessary for ensuring the effective coordination of Community interests in international organisations, the Commission may, with the agreement of the RSPC, propose to the European Parliament and the Council a negotiating mandate.

10. The RSPC shall submit an annual activity report to the European Parliament and to the Council."

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

Amendment

1. ***Given that radio frequencies are a public good that has an important social, cultural and economic value,*** Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

Justification

There is no doubt that radio spectrum is a scarce resource. Both its economic and public value should be considered accordingly and in a balanced way to manage it efficiently.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – point d

Text proposed by the Commission

(d) ***comply with a restriction*** in accordance with paragraph 4 *below*.

Amendment

(d) ***fulfil a general interest objective*** in accordance with paragraph 4.

Justification

Necessary to ensure coherence in vocabulary with suggested amendments in Article 9.4 Framework Directive.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency band *open* to electronic *communications*. The Member States may, however, provide for proportionate and non-discriminatory *restrictions to* the types of electronic communications services to be provided.

Amendment

4. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency band *available* to electronic *communication services as identified in their national frequency allocation tables and in the International Telecommunication Union (ITU) Regulations*. The Member States may, however, provide for proportionate and non-discriminatory *measures for* the types of electronic communications services to be provided.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Restrictions that require *a* service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, or, as defined in national legislation in conformity with Community law, the promotion of cultural and linguistic diversity and media pluralism.

Amendment

Measures that require *an electronic communications* service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective *defined in national legislation* in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, or, as defined in national legislation in conformity with Community law, the promotion of *education and cultural and media policy objectives such as* cultural and linguistic diversity and media pluralism.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 3

Text proposed by the Commission

A **restriction** which prohibits the provision of any other service in a specific band may only be provided for where justified by the need to protect safety of life services.

Amendment

A **measure** which prohibits the provision of any other **electronic communications** service in a specific band may only be provided for where justified by the need to protect safety of life services **or to avoid harmful interference**.

Amendment 27

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5

Text proposed by the Commission

5. Member States shall regularly review the necessity of the **restrictions** referred to in paragraphs 3 and 4.

Amendment

5. Member States shall regularly review the necessity of the **general interest objectives** referred to in paragraphs 3 and 4.

Amendment 28

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. It shall lie within the competence of the Member States to define the scope, nature and duration of measures intended for the promotion of cultural and media policy objectives such as cultural and linguistic diversity and media pluralism in accordance with their national law.

Justification

Guardans amendment 16: the word ” restrictions ” is changed to “measures” to ensure coherence in vocabulary with suggested amendments in Article 9.4 Framework Directive.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 a – paragraph 2

Text proposed by the Commission

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, ***an application for reassessment can only be made in respect of*** the part of the radio frequencies which is necessary for the fulfilment of such objective. The part of the radio frequencies which ***becomes*** unnecessary for the fulfilment of that objective ***as a result of application of Article 9(3) and (4)*** shall be subject to a new assignment procedure in conformity with Article 7(2) of the Authorisation Directive.

Amendment

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, ***including the provision of radio or broadcasting services, the right to use*** the part of the radio frequencies which is necessary for the fulfilment of such objective ***shall remain unchanged until its expiry***. The part of the radio frequencies which ***might become*** unnecessary for the fulfilment of that objective shall be subject to a new assignment procedure in conformity with ***Article 9(3) and (4) of this Directive and Article 7(2) of Directive 2002/20/EC*** (the Authorisation Directive).

Amendment 30

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 b – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c ***without the prior consent of the national regulatory authority***.

Amendment

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c ***provided that such transfer or lease is in accordance with national procedures and does not result in a change in the service***

provided over that radio frequency band.

Amendment 31

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 - introductory wording

Text proposed by the Commission

In order to contribute to the development of the internal market, for the achievement of the principles of this Article, the Commission may adopt appropriate implementing measures to:

Amendment

In order to contribute to the development of the internal market ***and without prejudice to Article 8a***, for the achievement of the principles of this Article, the Commission may adopt appropriate ***technical*** implementing measures to:

Amendment 32

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) harmonise the rules relating to the availability and efficient use of radio frequencies in accordance with Article 9;

Justification

Legal consistency should be ensured with Article 8a (new) and the definition of service and technology neutrality in Article 9 of this Directive. Also, legal consistency needs to be ensured with the Radio Spectrum Decision (676/2002/Commission), in particular with regards to the scope of the article which concerns technical implementation measures and general interest objectives (new (d) which corresponds to Article 1 para.4 of the Spectrum decision).

Amendment 33

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point -aa (new)

Text proposed by the Commission

Amendment

(-aa) ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio frequencies;

Justification

It is important for achieving consistency and coherence that all harmonisation measures in the field of spectrum management are grouped together and not distributed along two different legal frameworks (Framework Directive and Radio Spectrum Decision).

Amendment 34

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) ***harmonise the identification of*** the bands for which usage rights may be transferred or leased between undertakings;

(a) ***identify*** the bands for which usage rights may be directly transferred or leased between undertakings, ***without prejudice to Article 9b(1), excluding radio frequencies intended by Member States to be used for broadcasting services;***

Amendment 35

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) create an exception to the principle of services or technology neutrality, as well as to harmonise the scope and nature of

deleted

any exceptions to these principles in accordance with Article 9(3) and (4) other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism.

Justification

Legal consistency should be ensured with Article 8a (new) and the definition of service and technology neutrality in Article 9 of this Directive. Also, legal consistency needs to be ensured with the Radio Spectrum Decision (676/2002/Commission), in particular with regards to the scope of the article which concerns technical implementation measures and general interest objectives (new (d) which corresponds to Article 1 para.4 of the Spectrum decision).

Amendment 36

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1a (new)

Text proposed by the Commission

Amendment

These implementing measures shall be without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular general interest objectives relating to content regulation and audio-visual policy.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 2

Text proposed by the Commission

Amendment

Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in

accordance with the regulatory procedure with scrutiny referred to in Article 22(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).*** In the implementation of the provisions of this paragraph, the Commission ***shall*** be assisted by the ***Authority in accordance with Article 10 Regulation [../EC].***

accordance with the regulatory procedure with scrutiny referred to in Article 22(3). In the implementation of the provisions of ***points (a) to (c)*** of this paragraph, the Commission ***may*** be assisted by the ***RSPC.***

Justification

Legal consistency should be ensured with Article 8a (new) and the definition of service and technology neutrality in Article 9 of this Directive. Also, legal consistency needs to be ensured with the Radio Spectrum Decision (676/2002/Commission), in particular with regards to the scope of the article which concerns technical implementation measures and general interest objectives (new (d) which corresponds to Article 1 para.4 of the Spectrum decision).

Amendment 38

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c a (new)

Text proposed by the Commission

Amendment

Article 9c a

The relationship between this Directive and international agreements and organisations

1. The Commission shall monitor developments regarding radio spectrum in third countries and in international organisations, including the ITU, which may have implications for the implementation of this Directive.

2. Member States shall inform the Commission of any difficulties created, de jure or de facto, by existing international agreements, or agreements with third countries or international organisations, including the ITU, in relation to the implementation of this Directive.

3. The Commission shall report regularly on the results of the application of paragraphs 1 and 2 to the Parliament and the Council and may, where appropriate, propose measures with the aim of ensuring the implementation of the principles and objectives of this Directive. When necessary, common policy objectives shall be agreed to ensure coordination among Member States.

4. Measures taken pursuant to this Article shall be without prejudice to the rights and obligations of the Community and the Member States under relevant international agreements.

Justification

Europe is not an island. The binding nature of the ITU rules (on EU and non-EU member states of the ITU) and the compatibility of the Directive with them must be expressly addressed. To ensure efficient spectrum use it is essential that operators comply with and can rely on the filing and coordination procedures under the internationally binding rules and procedures of the ITU in order to ensure that a network or system can be successfully coordinated and brought into use.

Amendment 39

Proposal for a directive – amending act

Article 1 – point 11 - point b

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 2

Text proposed by the Commission

The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

Amendment

The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Justification

The urgency procedure is not justified for the adoption of this type of measures.

Amendment 40

Proposal for a directive – amending act

Article 2 – point 3 - point a

Directive 2002/19/EC

Article 5 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Those procedures shall not apply to paragraph 1(b) of this Article.

Justification

The measures under paragraph 5 (1) b of the Directive 2002/19 (Access Directive) aim at maintaining media pluralism and cultural diversity in the field of digital television and thus clearly fall within the competence of Member States.

Amendment 41

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 - introductory wording

Text proposed by the Commission

Amendment

1. Member States shall ***not make the use of radio frequencies subject to the granting of individual rights of use but shall include the conditions for*** usage of such radio frequencies ***in the*** general authorisation, ***unless it is justified to*** grant individual rights in order to:

1. Member States shall ***facilitate the*** usage of radio frequencies ***under*** general authorisation. ***Member States may*** grant individual rights in order to:

Justification

Although general authorisations might be a viable solution in the long term when technology to prevent interference problems develops, granting individual licences should continue to be the normal procedure for assigning spectrum.

Amendment 42

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/21/EC

Article 5 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) avoid **a serious** risk of harmful interference; or

(a) avoid **the** risk of harmful interference;
or

Justification

Any risk of “harmful interference” is a “serious risk”.

Amendment 43

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Without prejudice to specific criteria defined **in advance** by Member States to grant rights of use of radio frequencies to providers of radio or television **broadcast** content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). **The procedures shall also be open, except in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services can be shown to be essential for fulfilling a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in**

Without prejudice to specific criteria **and procedures** defined by Member States to grant rights of use of radio frequencies to providers of **broadcast** radio or television content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive).

conformity with Community law.

Justification

The proposal corresponds to the directive which is currently into force and which has proved to be functional and efficient.

Amendment 44

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 5

Text proposed by the Commission

Any individual right to use radio frequencies that is granted for ten years or more and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive shall, every **five** years and for the first time **five** years after its issuance, be subject to a review in the light of the criteria in paragraph 1. If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice of not more than **five** years from the conclusion of the review, or shall be made freely transferable or leasable between undertakings.

Amendment

Any individual right to use radio frequencies that is granted for ten years or more and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive shall, every **ten** years and for the first time **ten** years after its issuance, be subject to a review in the light of the criteria in paragraph 1. If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice of not more than **ten** years from the conclusion of the review, or shall be made freely transferable or leasable between undertakings. ***In taking such a decision, due account shall be taken of the need to allow for an appropriate period for amortization of investment.***

Justification

For many new platforms and services, investment will need to be amortized over a period exceeding ten or, at any rate, five years. It is not uncommon to have to sustain substantial losses during the first couple of years of operation. It would be disproportionate to introduce a rigid requirement for national regulatory authorities to conduct a formal review of all broadcast spectrum licenses every five years.

Amendment 45

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 - introductory wording

Text proposed by the Commission

1. In order to achieve the objectives set out in Article 1, and without prejudice to **Article 5(2)** of this Directive, the Commission may adopt implementing measures:

Amendment

1. In order to achieve the objectives set out in Article 1, and without prejudice to **Article 5(1) and (2)** of this Directive **and Articles 8a and 9 of Directive 2002/21/EC (Framework Directive)**, the Commission may adopt implementing measures:

Amendment 46

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point a

Text proposed by the Commission

(a) to identify radio frequency bands the use of which is to be made subject to general authorisations **or individual rights of use for radio frequencies**;

Amendment

(a) to identify radio frequency bands the use of which is to be made subject to general authorisations;

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 47

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point c

Text proposed by the Commission

(c) to harmonise procedures for the granting of general authorisations or

Amendment

deleted

individual rights of use for radio frequencies or numbers;

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 48

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) to harmonise the conditions specified in Annex II relating to general authorisations or individual rights of use for radio frequencies or numbers; ***deleted***

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 49

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) to provide for the amendment or withdrawal of authorisations or rights of use and the procedures relating to point (d); ***deleted***

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 50

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) to lay down procedures for the selection of undertakings to which individual rights of use for radio frequencies or numbers shall be granted by the national regulatory authorities, where appropriate in accordance with the provisions of Article 6b.

deleted

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 51

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The measures listed in ***points (a) to (d) and (f)***, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a(4).***

The measures listed in ***the first subparagraph***, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(3).

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 52

Proposal for a directive – amending act
Article 3 – point 5
Directive 2002/20/EC
Article 6b - paragraph 1

Text proposed by the Commission

Amendment

1. The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the Authority to make proposals for the selection of undertaking(s) to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [...]. **deleted**

In such cases, the measure shall specify the period within which the Authority shall complete the selection, the procedure, rules and conditions applicable to the selection, and details of any charges and fees to be imposed on the holders of rights for use of radio frequencies and/or numbers, in order to ensure the optimal use of spectrum or numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.

Justification

EU-wide selection procedures for the issuing of rights should be subject to specific legislative proposals not Comitology.

Amendment 53

Proposal for a directive – amending act
Article 3 – point 5
Directive 2002/20/EC
Article 6b – paragraph 2

Text proposed by the Commission

Amendment

2. Taking the utmost account of the opinion of the Authority, the Commission shall adopt a measure selecting the **deleted**

undertaking(s) to which individual rights of use for radio frequencies or numbers shall be issued. The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).

Justification

EU-wide selection procedures for the issuing of rights should be subject to specific legislative proposals not Comitology.

Amendment 54

Proposal for a directive – amending act

Article 3 – point 11

Directive 2002/20/EC

Article 14a – paragraph 4

Text proposed by the Commission

Amendment

4. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. *deleted*

Amendment 55

Proposal for a directive – amending act

Article 3 - point 15

Directive 2002/20/EC

Annex II

Text proposed by the Commission

Amendment

(15) A new Annex II, the text of which is set out in the Annex to this Directive, is added. *deleted*

Amendment 56

Proposal for a directive – amending act

Annex II

Directive 2002/20/EC

Annex II – point 1 – point d

Text proposed by the Commission

(d) the method of determining usage fees for the right of use of the radio frequencies;

Amendment

(d) the method of determining usage fees for the right of use of the radio frequencies, ***without prejudice to systems defined by Member States where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives;***

Justification

It must remain possible for Member States to maintain or introduce systems where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives. Such systems are commonplace with regard to terrestrial broadcasting frequencies where they serve of media pluralism objectives.

PROCEDURE

Title	Electronic communications networks and services
References	COM(2007)0697 – C6-0427/2007 – 2007/0247(COD)
Committee responsible	ITRE
Opinion by Date announced in plenary	CULT 10.12.2007
Drafts(wo)man Date appointed	Ignasi Guardans Cambó 8.1.2008
Discussed in committee	6.5.2008
Date adopted	3.6.2008
Result of final vote	+: 32 –: 1 0: 1
Members present for the final vote	Maria Badia i Cutchet, Katerina Batzeli, Ivo Belet, Guy Bono, Nicodim Bulzesc, Marielle De Sarnez, Věra Flasarová, Milan Gaľa, Claire Gibault, Vasco Graça Moura, Lissy Gröner, Christopher Heaton-Harris, Luis Herrero-Tejedor, Ruth Hieronymi, Mikel Irujo Amezaga, Ramona Nicole Mănescu, Manolis Mavrommatis, Marianne Mikko, Ljudmila Novak, Doris Pack, Zdzisław Zbigniew Podkański, Christa Prets, Pál Schmitt, Helga Trüpel, Thomas Wise
Substitute(s) present for the final vote	Rolf Berend, Victor Boştinaru, Ignasi Guardans Cambó, Gyula Hegyi, Elisabeth Morin, Nina Škottová, Ewa Tomaszewska, Cornelis Visser
Substitute(s) under Rule 178(2) present for the final vote	Carlo Fatuzzo, Bilyana Ilieva Raeva

20.6.2008

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Rapporteur: Manuel Medina Ortega

SHORT JUSTIFICATION

The Commission proposal seeks to amend the current regulatory framework for electronic communications, consisting of the framework, authorisation and access directives, with a view to securing a genuine internal market in telecommunications. The main objectives of the proposal are to improve the effectiveness of electronic communications, ensure simpler and more efficient regulation for both operators and national regulatory authorities (NRA), and harmonise Community rules, with a view to increasing investment, innovation and consumer benefits. The main changes to the framework, authorisation and access directives concern the reform of spectrum management, the introduction of and strengthening the powers of the Commission vis-à-vis the Member States.

The rapporteur suggests the following amendments to the proposal:

A. Framework directive

- In the last paragraph of Article 6, which deals with the publication of the results of the consultation procedure by NRAs, greater confidentiality needs to be ensured for the information forwarded by undertakings.
- In Article 19(1), with regard to the harmonisation measures to be adopted by the Commission when there are divergences in the implementation by NRAs of the regulatory tasks specified in the framework directive and in the specific directives, the Commission is given the discretion to choose between a 'decision' and a 'recommendation', with the

regulatory procedure with scrutiny applicable only to the former; there are therefore grounds for wondering whether this provision is appropriate since, ultimately, the extent of Parliament's participation would depend on the choice made by the Commission.

- In Article 21(2) and (3), with regard to cross-border disputes between parties in different Member States, it should be specified that the coordination of the efforts by the national regulatory authorities to resolve the dispute could go as far as the adoption of a joint decision.

B. Authorisation directive

- In Article 10, with regard to compliance with the conditions of the general authorisation or of rights of use and the specific obligations, a new paragraph 6a should be introduced, stipulating that the Member States should always allow the penalties laid down in paragraphs 5 and 6 to be subject to judicial review, in accordance with national law.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) In the absence of other more specific legal bases, reference should be made to Article 95 of the EC Treaty, which provides for general measures to be adopted by codecision between Parliament and the Council to approximate the laws of the Member States which have as their object the establishment and functioning of the internal market. The article in question is also the legal basis for the legislative acts amended by this proposal which, furthermore, has an essentially horizontal scope, justifying the choice. However, the setting up of a regulatory authority at European level might require the application of Article 308 of the EC Treaty as a general clause, although under this provision the European

Parliament does not enjoy power of codecision.

Amendment 2

Proposal for a directive – amending act Recital 32

Text proposed by the Commission

(32) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory authorities should therefore ensure the integrity and security of public communications networks are maintained. The Authority should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both the Authority and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in accordance with the assessed

Amendment

(32) The availability of electronic communications services is essential in cases of emergency. National regulatory authorities should therefore ensure that a minimum standard of network availability is maintained to support essential communications in emergency situations. The national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should take measures to ensure essential network availability in accordance with the assessed risks.

risks, *taking into account the state of the art of such measures.*

Justification

Regulatory intervention is justified to ensure the availability of communications networks for essential communications in case of emergency, but customer demand and market competition rather than regulatory fiat should determine the level of security provided to protect ordinary communications under normal conditions.

Amendment 3

**Proposal for a directive – amending act
Recital 33**

Text proposed by the Commission

(33) Where there is a need to agree on a common set of security requirements, power should be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic communications networks and services in the internal market. The Authority should contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

Amendment

(33) A competitive market is usually the best means of ensuring that an appropriate balance is struck between the level of security and the costs of achieving it, and between the constraints imposed by security requirements and the freedom to develop innovative services. It sometimes remains necessary to agree on a common set of security requirements to protect against widespread catastrophic failure, to protect against incidents on one network having cascade effects on other network and to ensure the availability of essential services in case of emergency. In accordance with the principles of necessity and proportionality, the national regulatory authorities are strictly limited to the powers necessary to achieve these objectives. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

Justification

Determining appropriate security measures standards often involves a trade-off between

legitimate and valuable competing objectives. The appropriate balance between these objectives will vary according to the different circumstances of different classes of network user. Customer demand and market competition is usually the best means of ensuring each user of communications networks can obtain services that hold to a balance appropriate to their own situation. Regulatory intervention remains justified to ensure a minimum level of protection against catastrophe, to ensure that communications networks can provide support in cases of emergency, and to protect against 'externality' effects in cases where one provider's choices would adversely impact upon another. **Amendment** 4

Proposal for a directive – amending act
Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) The management of telephony networks and services has historically been characterised by a high level of international cooperation designed to ensure harmonisation of technical standards and to promote interoperability. The Internet has achieved interoperability through open global standards for inter-network routing, while the development of services using the Internet has depended upon the freedom to create new technical standards and protocols without regulatory intervention; this freedom has enabled unprecedented innovation in the creation of information society services and other, non-commercial services, yielding enormous economic and social gains for the people of Europe. Each tradition for the development and coordination of technical standards has benefited society in its respective sphere. The national regulatory authorities should recognise the importance of innovation and diversity in Internet protocols and services, and the importance of regulatory forbearance in achieving those objectives.

Justification

NRA's should not use powers to promote harmonisation in electronic communications networks in ways that would constrain the development of innovation on the Internet.

Amendment 5

Proposal for a directive – amending act Recital 33 b (new)

Text proposed by the Commission

Amendment

(33b) Protection of the security of electronic communications on the Internet is a shared responsibility, with obligations appropriate to their respective roles for hardware and software providers, providers of electronic communications networks and of electronic communications services, and for providers of information society services and providers of other services that use the Internet. These obligations are imposed by customer expectations and market demand, by national measures, by this Directive, by the Directive on privacy and electronic communication, by Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)¹, by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data², and by other measures. This Directive does not confer powers on regulatory authorities to regulate either information society services or similar services that are not provided for remuneration. In accordance with the principle of proportionality, national regulatory authorities should not use powers conferred under this Directive to impose obligations on providers of electronic communications networks for aspects of security outside their respective roles.

¹ OJ L 178, 17.7.2000, p. 1.

² OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

Justification

The Commission's proposals fail to provide any clear evidence that regulatory intervention is necessary. It is particularly important in the area of security that any regulatory intervention is backed up with a clear impact assessment, which is clearly lacking in this case. Instead, NRAs, which only have the competence and capacity to regulate network operators are now expected to regulate a market consisting, for the most part, of industries over which the exercise no control (software providers, hardware providers, online service providers, etc).

Amendment 6

Proposal for a directive – amending act Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) The need to encourage both investment and competition should be recognised, so that consumer choice is protected and not undermined.

Justification

The Directives should make clear that competition is not to be sacrificed in the name of investment – for example through regulatory holidays.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 2

Directive 2002/21/EC

Article 2 – point s

Text proposed by the Commission

Amendment

(s) ‘harmful interference’ means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously ***degrades, obstructs*** or repeatedly ***interrupts*** a radio communications service operating in accordance with the applicable

(s) ‘harmful interference’ means interference which endangers the functioning of a radionavigation service or of other safety services, ***which technically obstructs the joint use of frequencies*** or which ***may*** otherwise seriously ***degrade, obstruct*** or repeatedly ***interrupt*** a radio

Community or national regulations.

communications service operating in accordance with the applicable **international**, Community or national regulations.

Justification

Member States should be able to provide restrictions not only where such interference has been observed but also where it is likely that harmful interference occurs. In view of the seriousness of interference problems between one-way and two-way (receive and transmit) services, it is essential to provide protection against harmful interference, in line with internationally-agreed frequency plans, and particularly the ITU Geneva Plan (GE-O6). National legal systems must have the room to secure the common usage of spectrum.

Amendment 8

Proposal for a directive – amending act

Article 1 – point 3

Directive 2002/21/EC

Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Member States shall ensure that national regulatory authorities exercise their powers independently, impartially **and** transparently. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Amendment

3. Member States shall ensure that national regulatory authorities exercise their powers independently, impartially, transparently **and in a timely manner**. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Justification

Failure of NRAs to act in a timely manner, for example in relation to market reviews, can hold back competition and innovation in the market.

Amendment 9

Proposal for a directive – amending act

Article 1 – point 4

Directive 2002/21/EC

Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

Pending the outcome of any the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures may be granted if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.

Amendment

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

Member States shall set limits to the time allowed for consideration of such appeals.

Pending the outcome of any appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures may ***only*** be granted if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.

Justification

Currently appeal processes can be held up for as much as several years, by which time it is too late to address the original problem.

The proposed text implies that interim measures may be granted for other reasons. This is not desirable.

Amendment 10

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/21/EC

Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. ***Those undertakings shall also be required to submit information concerning future network or service developments that could have an impact on the wholesale services made available to competitors.*** These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

Amendment

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information. ***Undertakings shall also provide advance indication of any significant potential restriction of wholesale services that are made available to competitors. Commercial confidentiality, as provided for by national or Community law, must be respected.***

Justification

The proposed addition concerning information on future network and service development would be problematic because that kind of information would contain most likely inside information. The threshold of such requirement should be very high. In this case it is not clear what would be the purpose and the added value of requiring the operators to submit such information to authorities.

However, some advance notice of potential impact at the wholesale level is desirable. It needs to be clear that commercial confidentiality should be respected.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 6 – paragraph 4

Text proposed by the Commission

The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality.

Amendment

The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality. ***In the event of unwarranted dissemination of confidential information, the national regulatory authorities shall ensure that they adopt appropriate measures as soon as possible, at the request of the undertakings concerned.***

Amendment 12

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 9

Text proposed by the Commission

9. The national regulatory authority shall communicate to the Commission all final measures which fall under ***conditions a) and b) in*** Article 7(3).

Amendment

9. The national regulatory authority shall communicate to the Commission all final measures which fall under Article 7(3).

Amendment 13

Proposal for a directive – amending act

Article 1 – point 8

Directive 2002/21/EC

Article 8 – paragraph 4 – point g

Text proposed by the Commission

(g) applying the principle that end-users should be able to access and distribute any

Amendment

(g) applying the principle that end-users should be able to access and distribute any

lawful content and use any lawful applications and/or services of their choice.

lawful content and use any lawful applications and/or services of their choice *as contractually agreed between the provider and the subscriber. Nothing in that principle, nor the presence in or absence from any contract of any mention of that principle, shall have the effect of setting aside the provisions of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society*¹.

¹ OJ L 167, 22.6.2001, p. 10.

Amendment 14

Proposal for a directive – amending act

Article 1 – point 8 – subpoint e a (new)

Directive 2002/21/EC

Article 8 – paragraph 4 – point g a (new)

Text proposed by the Commission

Amendment

(8a) In paragraph 4, the following point is added:

‘(ga) ensuring cooperation between undertakings providing electronic communications networks and services and the sectors concerned with the protection and the promotion of lawful content over electronic communications networks and services.’

Justification

The cooperation of electronic communications services operators is essential to combat the attacks on copyright which are increasing exponentially on networks. The authority responsible at European level should be given the task of coordinating these efforts.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) ensure maximisation of radio frequencies sharing where *the use of frequencies is subject to a general authorisation*; or

(c) ensure *efficient use of radio frequencies, including the* maximisation of radio frequency sharing where *possible*; or

Justification

Spectrum sharing should be utilised where it is technically viable and efficient, taking the conflicting requirements into account.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 9 a (new)

Directive 2002/21/EC

Article 9 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

***(9a) The following point shall be inserted:
'(da) take account of international and regional spectrum organisations and respect internationally agreed frequency plans, or'***

Justification

Europe must respect international frequency plans (e.g. the ITU Geneva Plan (GE-06)) to avoid unnecessary interference and inefficient waste of spectrum on its borders.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 9 b (new)

Directive 2002/21/EC

Article 9 – paragraph 3 – point d b (new)

Text proposed by the Commission

Amendment

***(9b) The following point shall be inserted:
'(db) safeguard efficient use of spectrum.'***

Justification

Europe must respect international frequency plans (e.g. the ITU Geneva Plan (GE-06)) to avoid unnecessary interference and inefficient waste of spectrum on its borders.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

4. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands open to electronic communications. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.

4. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands available to electronic communications ***as identified in their national frequency allocation tables and in the ITU Radio Regulations***. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.

Justification

Service neutrality should respect the ITU Radio Regulations that determine which services can coexist in the different bands.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – subparagraph 2

Text proposed by the Commission

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4). In the implementation of the provisions of this paragraph, the Commission may be assisted by the **Authority in accordance with Article 10 Regulation [../EC]**.

Amendment

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4). In the implementation of the provisions of this paragraph, the Commission may be assisted by the **national regulatory authorities**.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 11

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter, **which may include establishing tariff principles for specific numbers or number ranges**. The implementing measures may grant the **Authority** specific responsibilities in the application of those measures.

Amendment

Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter. The implementing measures may grant the **European Radio Communications Office (ERO)** specific responsibilities in the application of those measures.

Justification

Tariffs in numbering should remain a competence of Member States. The Authority should not have competence in numbering and this should reside with the European Radio Communications Office (ERO).

Amendment 21

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 a – paragraph 3 – subparagraph 3

Text proposed by the Commission

Every **three months**, the national regulatory authority shall submit a summary report to the Commission on the notifications received and the action taken in accordance with this paragraph.

Amendment

Every **year** the national regulatory authority shall submit a summary report to the Commission on the notifications received and the action taken in accordance with this paragraph.

Justification

Reinforcing network and information security is one of the areas where more action at Community level is needed and where proposed amendments certainly could bring added value. The only problematic issue in this context concerns the reporting obligation which is proposed for NRAs. Reporting every three months would be too burdensome and bureaucratic. Therefore, it is proposed that reporting would take place every year instead of every 3 months.

Amendment 22

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 a – paragraph 4

Text proposed by the Commission

4. The Commission, taking the utmost account of the opinion of **the Authority issued in accordance with Article 4(3)(b) of Regulation [.../EC]**, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure

Amendment

4. The Commission, taking the utmost account of the opinion of the **national regulatory authorities**, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure

referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

referred to in Article 22(3) **and where industry-led self-regulatory initiatives have not achieved an adequate level of security in the internal market in one or more Member States**. On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

Justification

Technical implementing measures should only be introduced where industry self-regulatory initiatives have not achieved an adequate level of security in the internal market.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 b

Text proposed by the Commission

1. Member States shall ensure that national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement Article 13a.

2. Member States shall ensure that national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

(a) provide information needed to assess the security of their services and networks, including documented security policies;
and

Amendment

1. Member States shall ensure that **the relevant** national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement Article 13a.

2. Member States shall ensure, **where appropriate**, that **the relevant** national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to provide information needed to assess the security of their services and networks, including documented security policies.

(b) instruct a qualified independent body to carry out a security audit and make the results thereof available to the national regulatory authority.

3. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases of non-compliance.

4. These provisions shall be without prejudice to Article 3 of this Directive.

3. Member States shall ensure that ***the relevant*** national regulatory authorities have all the powers necessary to investigate cases of non-compliance.

4. These provisions shall be without prejudice to Article 3 of this Directive.

Justification

Many NRAs do not have competence in security issues. On the other hand, the proposed enforcement of powers of the national regulators may become an excessive compliance burden, which could decelerate the development of new technologies. The national regulators should excess their power over public communications networks and publicly available electronic communications services only when necessary.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – point 1

Text proposed by the Commission

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of the Authority, if any, issue ***a recommendation or*** a decision on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

Amendment

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of the Authority, if any, issue a decision on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. Where the Commission issues a recommendation pursuant to paragraph 1, it shall act in accordance with the procedure referred to in Article 22(2).

deleted

Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasoning for its position.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 5

Text proposed by the Commission

Amendment

5. The Authority may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

deleted

Amendment 27

Proposal for a directive – amending act

Article 1 – point 22

Directive 2002/21/EC

Article 21 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

2. Any party may refer the dispute to the

2. Any party may refer the dispute to the

national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8.

national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, ***as far as possible through the adoption of a joint decision***, in accordance with the objectives set out in Article 8.

Amendment 28

Proposal for a directive – amending act
Article 1 – point 22
Directive 2002/21/EC
Article 21 – paragraph 3 – subparagraph 2

Text proposed by the Commission

They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party ***seeking redress*** and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8 and taking the utmost account of any recommendation issued by the Authority in accordance with Article 18 of Regulation [.../EC].

Amendment

They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party ***whose rights have been violated*** and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, ***as far as possible through the adoption of a joint decision***, in accordance with the provisions set out in Article 8 and taking the utmost account of any recommendation issued by the Authority in accordance with Article 18 of Regulation [.../EC].

Amendment 29

Proposal for a directive – amending act
Article 2 – point 7
Directive 2002/19/EC
Article 9 – paragraph 5

Text proposed by the Commission

5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to

Amendment

5. 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). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the *Authority*.

amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the *national regulatory authorities*.

Amendment 30

Proposal for a directive – amending act

Article 3 – point 1

Directive 2002/20/EC

Article 2 – paragraph 2

Text proposed by the Commission

2. The following *definition* shall also apply:

‘general authorisation’ means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.

Amendment

2. The following *definitions* shall also apply:

‘general authorisation’ means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.

‘global telecommunications services’ means managed business data and voice services for multinational companies with locations in different countries and, often, different continents. They are inherently cross-border and, within Europe, pan-European services.

Amendment 31

Proposal for a directive – amending act

Article 3 – point 2 a (new)

Directive 2002/20/EC

Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(2a) In Article 3, the following paragraph is added:

‘3a. New global telecommunications services shall be subject to no more than a simplified notification process with specific registration of electronic communications service activity as “global telecommunications services”.’

Amendment 32

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – point (a)

Text proposed by the Commission

Amendment

(a) avoid **a** serious risk of harmful interference or;

(a) avoid serious risk of harmful interference, **competitive distortions** or;

Amendment 33

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Without prejudice to specific criteria defined in advance by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The

Without prejudice to specific criteria defined in advance by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The

procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective **and in any case** in conformity with Community law.

Amendment 34

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 6

Text proposed by the Commission

6. **National regulatory** authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Article 9(2) of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. For such purposes, Member States may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.

Amendment

6. **The national spectrum** authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Article 9(2) of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. For such purposes, Member States may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.

Justification

Many NRAs do not have competence in spectrum policy.

Amendment 35

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6 b

Article 6b

deleted

Common selection procedure for issuing rights

1. The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the Authority to make proposals for the selection of undertaking(s) to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [...].

In such cases, the measure shall specify the period within which the Authority shall complete the selection, the procedure, rules and conditions applicable to the selection, and details of any charges and fees to be imposed on the holders of rights for use of radio frequencies and/or numbers, in order to ensure the optimal use of spectrum or numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.

2. Taking the utmost account of the opinion of the Authority, the Commission shall adopt a measure selecting the undertaking(s) to which individual rights of use for radio frequencies or numbers shall be issued. The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).

Justification

EU-wide selection procedures for the issuing of rights should be subject to specific legislative proposals not Comitology.

Amendment 36

Proposal for a directive – amending act

Article 3 – point 8 – letter d a (new)

Directive 2002/20/EC

Article 10 – point 6 a (new)

Text proposed by the Commission

Amendment

(da) The following paragraph is added:

‘6a. In accordance with their national laws, the Member States must ensure that the penalties laid down in paragraphs 5 and 6 are subject to judicial review.’

PROCEDURE

Title	Electronic communications networks and services			
References	COM(2007)0697 – C6-0427/2007 – 2007/0247(COD)			
Committee responsible	ITRE			
Opinion by Date announced in plenary	JURI 10.12.2007			
Rapporteur for the opinion Date appointed	Manuel Medina Ortega 19.12.2007			
Discussed in committee	26.2.2008	27.3.2008	8.4.2008	28.5.2008
Date adopted	29.5.2008			
Result of final vote	+ : 20 - : 0 0 : 0			
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Piiia-Noora Kauppi, Katalin Lévai, Antonio Masip Hidalgo, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka			
Substitutes present for the final vote	Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Jacques Toubon			

2.6.2008

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Draftsman: Syed Kamall

SHORT JUSTIFICATION

To enhance investment, innovation, and consumer benefits in electronic communications, the EU needs a coherent regulatory framework which respects both the need for greater cooperation across the EU and the diversity of telecommunications markets within Member States.

National regulatory authorities (NRAs) would benefit from enhanced cooperation with one another as well as from the preservation of a significant degree of autonomy - from both the Commission and national governments - to assess and remedy national market issues. As complex issues within and between Member States require careful consideration and open dialogue, a mechanism of consultation and coordination will prove more effective than one of mandate and veto. The Commission should be able to recommend to a NRA to adopt or withdraw specific draft measures and the NRA may amend or withdraw draft measures within a period of three months.

NRAs should be provided with the tools they may require to enhance market competition. While specific national markets will require different solutions, functional separation should be available to NRAs as a potential option to address regulatory bottlenecks.

In line with respecting the specific needs and market conditions of Member States, spectrum management and harmonisation will be most effectively and appropriately addressed by NRAs in consultation with the Commission. Optimal decisions on assignment and allocation

will respect technology neutrality while taking account of decisions taken by international organisations related to radio spectrum management.

Improving security and integrity are also vital to Europe's expanding electronic communications networks. While electronic networks and services draw Europe closer through communications, risks presented by breaches of security carry greater potential for harm. Safeguard measures should be proportional to assessed risks while also remaining circumstantially appropriate, so the Commission should have the power to adopt technical implementing measures in agreement with NRAs. Undertakings should notify NRAs of serious breaches of security, the definition of which should be determined by the specific NRA.

The Commission has proposed that once markets become more competitive, regulation should be left to competition policy. This should be taken a step further by means of sunset clauses to offer deadlines to work towards.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive – amending act Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The sector-specific ex-ante market regulation as part of this framework makes provision for the transition from former monopolies to competitive markets for electronic communications networks and services. As soon as markets are competitive, ex-ante regulation should be discontinued and Community and national competition law should apply exclusively. With growing competitive dynamics in European electronic communications markets, the potential benefits of sector-specific ex-ante price and access regulation decrease

significantly over time. The markets for electronic communications have shown strong competitive dynamics in recent years and competition is most likely to increase even further in the coming years. To ensure a timely transition to the exclusive application of Community and national competition law, the provisions of this Directive on sector-specific ex-ante regulation should lapse on a defined date unless the Commission demonstrates that continued ex-ante regulation will still be warranted after that date.

Amendment 2

Proposal for a directive – amending act Recital 2

Text proposed by the Commission

(2) In that regard, the Commission presented its initial findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services. On the basis of these initial findings, a public consultation was held, which *identified the continued lack of an internal market for electronic communications as the most important aspect needing to be addressed. In particular, regulatory fragmentation and inconsistencies between the activities of the national regulatory authorities were found to jeopardise not only the competitiveness of the sector, but also the substantial consumer benefits from cross-border competition.*

Amendment

(2) In that regard, the Commission presented its initial findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services. On the basis of these initial findings, a public consultation was held, which *showed support for a continuation of the current model for the framework. The current framework introduces technical adjustments of a transitional nature to ensure that a full transition to competition law becomes a reality, as the nature of the framework remains temporary and should be reviewed by 31 December 2013, by which point if a fully competitive telecommunications market has developed, the provisions of this Directive shall lapse.*

Amendment 3

Proposal for a directive – amending act Recital 3

Text proposed by the Commission

(3) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. ***This is complemented through the establishment by Regulation [.../.../EC] of [date] of the European Parliament and of the Council²⁴ of a European Electronic Communications Market Authority (hereinafter referred to as "the Authority")***. The reform also includes the definition of an efficient spectrum management strategy in order to achieve a Single European Information Space and the reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.

Amendment

(3) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. The reform also includes the definition of an efficient ***and coordinated*** spectrum management strategy in order to achieve a Single European Information Space and the reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.

Amendment 4

Proposal for a directive – amending act Recital 6

Text proposed by the Commission

(6) The independence of the national regulatory authorities should be strengthened in order to ensure a more effective application of the regulatory framework and increase their authority and the predictability of their decisions. To this end, express provision should be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority is protected against external intervention or

Amendment

(6) The independence of the national regulatory authorities should be strengthened in order to ensure a more effective application of the regulatory framework and increase their authority and the predictability of their decisions. To this end, express provision should be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority is protected against external intervention or

political pressure liable to jeopardise its independent assessment of matters coming before it. Such outside influence makes a national legislative body unsuited to act as a national regulatory authority under the regulatory framework. For that purpose rules should be laid down in advance regarding the grounds for the dismissal of the head of the national regulatory authority in order to remove any reasonable doubt as to the neutrality of that body and its imperviousness to external factors. It is important that national regulatory authorities should have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this should be published annually.

political pressure liable to jeopardise its independent assessment of matters coming before it. Such outside influence makes a national legislative body unsuited to act as a national regulatory authority under the regulatory framework. For that purpose rules should be laid down in advance regarding the grounds for the dismissal of the head of the national regulatory authority in order to remove any reasonable doubt as to the neutrality of that body and its imperviousness to external factors. ***The reasons for any such dismissal, except those that might affect the image of the institution, must be publicly announced.*** It is important that national regulatory authorities should have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this should be published annually.

Amendment 5

Proposal for a directive – amending act Recital 11

Text proposed by the Commission

(11) The Community mechanism allowing the Commission to require national regulatory authorities to withdraw planned measures concerning market definition and the designation of operators having significant market power has contributed significantly to a consistent approach in identifying the circumstances in which ex-ante regulation may be applied and the operators are subject to such regulation. However, there is no equivalent mechanism for the remedies to be applied. Monitoring of the market by the Commission and, in particular, the experience with the procedure under Article 7 of the Framework Directive, has

Amendment

(11) The Community mechanism allowing the Commission to require national regulatory authorities to withdraw planned measures concerning market definition and the designation of operators having significant market power has contributed significantly to a consistent approach in identifying the circumstances in which ex-ante regulation may be applied and the operators are subject to such regulation. However, there is no equivalent mechanism for the remedies to be applied. Monitoring of the market by the Commission and, in particular, the experience with the procedure under Article 7 of the Framework Directive, has

shown that inconsistencies in the national regulatory authorities' application of remedies, even under similar market conditions, undermine the internal market in electronic communications, do not ensure a level playing field between operators established in different Member States, and prevent the realisation of consumer benefits from cross-border competition and services. The Commission **should** be given powers to **require** national regulatory authorities **to withdraw** draft measures on the remedies chosen by national regulatory authorities. In order to ensure the consistent application of the regulatory framework in the Community, the Commission should consult the Authority prior to **its decision**.

shown that inconsistencies in the national regulatory authorities' application of remedies, even under similar market conditions, undermine the internal market in electronic communications, do not ensure a level playing field between operators established in different Member States, and prevent the realisation of consumer benefits from cross-border competition and services. The Commission **may** be given powers to **negotiate with** national regulatory authorities **on the withdrawal of** draft measures on the remedies chosen by national regulatory authorities. In order to ensure the consistent application of the regulatory framework in the Community, the Commission should consult the Authority prior to **beginning negotiations**.

Amendment 6

Proposal for a directive – amending act Recital 13

Text proposed by the Commission

(13) Likewise, in view of the need to avoid a regulatory vacuum in a sector characterised by its fast-moving nature, if adoption of the re-notified draft measure would still create a barrier to the single market or be incompatible with Community law, the Commission, after having consulted the Authority, should be able to **require** the national regulatory authority concerned to impose a specific remedy within a specified time.

Amendment

(13) Likewise, in view of the need to avoid a regulatory vacuum in a sector characterised by its fast-moving nature, if adoption of the re-notified draft measure would still create a barrier to the single market or be incompatible with Community law, the Commission, after having consulted the Authority, should be able to **recommend to** the national regulatory authority concerned to impose a specific remedy within a specified time. ***If the national regulatory authority (NRA) concerned does not accept the recommendation, it should publish its reasoning in a clear and transparent manner.***

Amendment 7

Proposal for a directive – amending act Recital 14

Text proposed by the Commission

(14) Having regard to the short time limits in the Community consultation mechanism, ***powers should be conferred on the Commission to*** adopt implementing measures to simplify the procedures for exchanging information between the Commission and national regulatory authorities - for example in cases concerning stable markets, or involving only minor changes to previously notified measures - or to allow for the introduction of a notification exemption in order to streamline procedures in certain cases.

Amendment

(14) Having regard to the short time limits in the Community consultation mechanism, ***the Commission may, in consultation with NRAs,*** adopt implementing measures to simplify the procedures for exchanging information between the Commission and national regulatory authorities - for example in cases concerning stable markets, or involving only minor changes to previously notified measures - or to allow for the introduction of a notification exemption in order to streamline procedures in certain cases.

Amendment 8

Proposal for a directive – amending act Recital 15

Text proposed by the Commission

(15) In line with the objectives of the European Charter on fundamental rights and the United Nations Convention on the Rights of the Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to ***affordable high quality*** services. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Community shall take account of the needs of persons with a disability in drawing up measures under Article 95 of the Treaty.

Amendment

(15) In line with the objectives of the European Charter on fundamental rights and the United Nations Convention on the Rights of the Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to ***electronic communications*** services. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Community shall take account of the needs of persons with a disability in drawing up measures under Article 95 of the Treaty.

Amendment 9

Proposal for a directive – amending act Recital 19

Text proposed by the Commission

(19) National borders are increasingly irrelevant in determining optimal radio spectrum use. Fragmentation of the management of access to spectrum rights limits investment and innovation and **does** not allow operators and equipment manufacturers to realise economies of scale, thereby hindering the development of an internal market for electronic communications networks and services using radio spectrum.

Amendment

(19) National borders are increasingly irrelevant in determining optimal radio spectrum use. Fragmentation of the management of access to spectrum rights limits investment and innovation and **may** not allow operators and equipment manufacturers to realise economies of scale, thereby hindering the development of an internal market for electronic communications networks and services using radio spectrum.

Amendment 10

Proposal for a directive – amending act Recital 23

Text proposed by the Commission

(23) It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism in accordance with their own national law.

Amendment

(23) It lies within the competence of the Member States to define the scope and nature of any exception regarding the promotion of cultural and linguistic diversity and media pluralism in accordance with their own national law, **as long as this does not undermine the country of origin principle.**

Amendment 11

Proposal for a directive – amending act Recital 26

Text proposed by the Commission

(26) Given the effect of the exceptions on

Amendment

(26) Given the effect of the exceptions on

the development of the internal market for electronic communications services, the Commission **should be able** to harmonise the scope and nature of any exceptions to the principles of technology and service neutrality other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism, having regard to harmonised technical conditions for the availability and efficient use of radio frequencies under Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (“Radio Spectrum Decision”).

the development of the internal market for electronic communications services, the Commission **may, in agreement with NRAs, be able** to harmonise the scope and nature of any exceptions to the principles of technology and service neutrality other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism, having regard to harmonised technical conditions for the availability and efficient use of radio frequencies under Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (“Radio Spectrum Decision”).

Amendment 12

Proposal for a directive – amending act Recital 29

Text proposed by the Commission

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission **should** be given the power to grant the Authority specific responsibilities in the area of numbering. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism.

Amendment

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission **may, in agreement with NRAs, be given** the power to grant the Authority specific responsibilities in the area of numbering. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism.

Amendment 13

**Proposal for a directive – amending act
Recital 31**

Text proposed by the Commission

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

Amendment

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works, ***where there is a lack of infrastructure competition***. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

Amendment 14

**Proposal for a directive – amending act
Recital 31**

Text proposed by the Commission

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving

Amendment

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works, ***where there is***

facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

a regulatory bottleneck in infrastructure competition. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

Amendment 15

Proposal for a directive – amending act Recital 32

Text proposed by the Commission

(32) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory authorities should therefore ensure the integrity and security of public communications networks are maintained. The Authority should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both the Authority and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a

Amendment

(32) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory authorities should therefore ensure the integrity and security of public communications networks are maintained. The Authority should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both the Authority and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a

continuous process of implementation, review and updating, the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in **accordance with** the assessed risks, taking into account the state of the art of such measures.

continuous process of implementation, review and updating the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in **proportion to** the assessed risks, taking into account the state of the art of such measures

Amendment 16

Proposal for a directive – amending act Recital 33

Text proposed by the Commission

(33) Where there is a need to agree on a common set of security requirements, power **should** be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic communications networks and services in the internal market. The **Authority** should contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

Amendment

(33) Where there is a need to agree on a common set of security requirements, power **may, in agreement with the national regulatory authorities,** be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic communications networks and services in the internal market **where industry-led self-regulatory initiatives have not achieved an adequate level of security in the internal market in one or more Member States. Where technical implementing measures are deemed necessary, a cost reimbursement scheme at national level should be required.** The **European Network and Information Security Agency (Enisa)** should contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

Amendment 17

Proposal for a directive – amending act Recital 36

Text proposed by the Commission

(36) In order to provide market players with certainty as to regulatory conditions, a time limit for market reviews is necessary. It is important to conduct a market analysis on a regular basis and within a reasonable and appropriate timeframe. The timeframe should take account of whether the particular market has previously been subject to market analysis and duly notified. Failure of a national regulatory authority to analyse a market within the time limit may jeopardise the internal market, and normal infringement proceedings may not produce their desired effect in time. The Commission **should** therefore be able to ask the Authority to assist in the tasks of the national regulatory authority concerned, in particular to issue an opinion including a draft measure, the analysis of the relevant market and the appropriate obligations that the Commission could then impose.

Amendment

(36) In order to provide market players with certainty as to regulatory conditions, a time limit for market reviews is necessary. It is important to conduct a market analysis on a regular basis and within a reasonable and appropriate timeframe. The timeframe should take account of whether the particular market has previously been subject to market analysis and duly notified. Failure of a national regulatory authority to analyse a market within the time limit may jeopardise the internal market, and normal infringement proceedings may not produce their desired effect in time. The Commission **may, in agreement with the NRAs**, therefore be able to ask the Authority to assist in the tasks of the national regulatory authority concerned, in particular to issue an opinion including a draft measure, the analysis of the relevant market and the appropriate obligations that the Commission could then impose.

Amendment 18

Proposal for a directive – amending act Recital 53

Text proposed by the Commission

(53) Removing legal and administrative barriers to a general authorisation or rights of use for spectrum or numbers with European implications should favour technology and service development and contribute to improving competition. While the coordination of technical conditions for

Amendment

(53) Removing legal and administrative barriers to a general authorisation or rights of use for spectrum or numbers with European implications should favour technology and service development and contribute to improving competition. While the coordination of technical conditions for

the availability and efficient use of radio frequencies is organised pursuant to the Radio Spectrum Decision²⁸, it may also be necessary, in order to achieve internal market objectives, to coordinate or harmonise the selection procedures and conditions applicable to rights and authorisations in certain bands, to rights of use for numbers and to general authorisations. This applies in particular to electronic communications services that by their nature have an internal market dimension or cross-border potential, such as satellite services, the development of which would be hampered by discrepancies in spectrum assignment between Member States. The Commission, assisted by the Communications Committee and taking the utmost account of the opinion of the Authority, should therefore be able to adopt technical implementing measures to achieve such objectives. Implementing measures adopted by the Commission may require Member States to make available rights of use for spectrum and/or numbers throughout their territory and where necessary withdraw any other existing national rights of use. In such cases, Member States should not grant any new right of use for the relevant spectrum band or number range under national procedures.

the availability and efficient use of radio frequencies is organised pursuant to the Radio Spectrum Decision²⁸, it may also be necessary, in order to achieve internal market objectives, to coordinate or harmonise the selection procedures and conditions applicable to rights and authorisations in certain bands, to rights of use for numbers and to general authorisations. This applies in particular to electronic communications services that by their nature have an internal market dimension or cross-border potential, such as satellite services, the development of which would be hampered by discrepancies in spectrum assignment between Member States *and between the EU and third countries, taking into account the decisions of international organisations dealing with radiofrequency spectrum management, e.g. the International Telecommunication Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT)*. The Commission, assisted by the Communications Committee and taking the utmost account of the opinion of the Authority, should therefore be able to adopt technical implementing measures to achieve such objectives. Implementing measures adopted by the Commission may require Member States to make available rights of use for spectrum and/or numbers throughout their territory and where necessary withdraw any other existing national rights of use. In such cases, Member States should not grant any new right of use for the relevant spectrum band or number range under national procedures.

Amendment 19

Proposal for a directive – amending act

Article 1 - point 1

Directive 2002/21/EC (Framework Directive)

Article 1 - paragraph 1

Text proposed by the Commission

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, **and certain aspects of terminal equipment**. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.

Amendment

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.

Amendment 20

Proposal for a directive – amending act

Article 1 - point 2 - point e

Directive 2002/21/EC (Framework Directive)

Article 2 - point s

Text proposed by the Commission

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations.

Amendment

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable **international**, Community or national regulations.

Amendment 21

Proposal for a directive – amending act

Article 1 - point 2 - point e

Directive 2002/21/EC (Framework Directive)

Article 2 - point s

Text proposed by the Commission

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise

Amendment

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise

seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations.’

seriously degrades, obstructs or repeatedly interrupts a radiocommunications service operating in accordance with the applicable Community or national regulations **and with international radiofrequency plans.**’

Justification

Given the seriousness of problems of interference between broadcasting and two-way services (reception and transmission), it is essential that digital broadcasting services be protected against harmful interference in accordance with international frequency plans, in particular the ITU Geneva Plan (GE-06). The definition of harmful interference must therefore be amended accordingly.

Amendment 22

Proposal for a directive – amending act

Article 1 - point 5

Directive 2002/21/EC (Framework Directive)

Article 5 - paragraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. ***Those undertakings shall also be required to submit information concerning future network or service developments that could have an impact on the wholesale services made available to competitors.*** These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

Amendment

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information ***and comply with Community and national law on business confidentiality.***

Amendment 23

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC (Framework Directive)

Article 7 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall not impose conditions on the provision of electronic communications services from another Member State

Amendment 24

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC (Framework Directive)

Article 7 - paragraph 5

Text proposed by the Commission

Amendment

5. Within the two month period referred to in paragraph 4, the Commission may ***take a decision requiring*** the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of the Authority submitted in accordance with Article 5 of Regulation [...../EC] before issuing a decision. The ***decision*** shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

5. Within the two month period referred to in paragraph 4, the Commission may ***recommend that*** the national regulatory authority concerned withdraws the draft measure. The Commission shall take the utmost account of the opinion of the Authority submitted in accordance with Article 5 of Regulation [...../EC] before issuing a decision. The ***recommendation*** shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

Amendment 25

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC (Framework Directive)

Article 7 - paragraph 6

Text proposed by the Commission

6. Within three months of the Commission issuing a **decision** in accordance with paragraph 5 **requiring** the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

Amendment

6. Within three months of the Commission issuing **a recommendation** in accordance with paragraph 5 **to** the national regulatory authority to withdraw a draft measure, the national regulatory authority may amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

Amendment 26

Proposal for a directive – amending act

Article 1 -point 6

Directive 2002/21/EC (Framework Directive)

Article 7 - paragraph 8

Text proposed by the Commission

8. Where a draft measure has been amended in accordance with paragraph 6, the Commission may take a decision, requiring the national regulatory authority to impose a specific obligation under Articles 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) within a given time-limit.

In so doing, the Commission shall pursue the same policy objectives as set out for national regulatory authorities in Article 8. The Commission shall take the utmost account of the opinion of the Authority submitted in accordance with Article 6 of Regulation [.../EC], in particular in elaborating the details of the obligation(s) to be imposed.

Amendment

deleted

Amendment 27

Proposal for a directive – amending act

Article 1 - point 7

Directive 2002/21/EC (Framework Directive)

Article 7a - paragraph 2

Text proposed by the Commission

Amendment

2. The measures referred to in paragraph 1, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4). *deleted*

Amendment 28

Proposal for a directive – amending act

Article 1 - point 8 - point e

Directive 2002/21/EC (Framework Directive)

Article 8 - paragraph 4 - point g a (new)

Text proposed by the Commission

Amendment

(ga) ensuring cooperation between undertakings providing electronic communications networks and services and the relevant sectors, for the protection and promotion of lawful content in connection with those networks and services.

Justification

It seems appropriate to give a coordinating remit to the European Electronic Communications Market Authority, or to the coordinating body superseding it, so as to guarantee cooperation between electronic communications service operators as regards combating copyright breaches, which are increasing enormously.

Amendment 29

Proposal for a directive – amending act

Article 1 - point 9

Directive 2002/21/EC (Framework Directive)

Article 9 - paragraph 1

Text proposed by the Commission

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

Amendment

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria ***and that the allocation and assignment of radiofrequency spectrum by national regulatory authorities ensures effective competition, taking into consideration their respective national radiofrequency plans and the prior decisions of international organisations dealing with radiofrequency spectrum management.***

Amendment 30

Proposal for a directive – amending act

Article 1 -point 9

Directive 2002/21/EC (Framework Directive)

Article 9 - paragraph 2

Text proposed by the Commission

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).

Amendment

2. Member States shall promote the harmonisation of use of radio frequencies, ***where practicable***, across the Community, consistent with the need to ensure effective and efficient use thereof and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision), ***taking into consideration their respective national radiofrequency plans and the prior decisions of international organisations dealing with radiofrequency spectrum***

management.

Amendment 31

Proposal for a directive – amending act

Article 1 - point 9

Directive 2002/21/EC (Framework Directive)

Article 9 - paragraph 3 - point b a (new)

Text proposed by the Commission

Amendment

(ba) avoid distortions of competition

Amendment 32

Proposal for a directive – amending act

Article 1 - point 9

Directive 2002/21/EC (Framework Directive)

Article 9 - paragraph 3 - subparagraph 2 - point d

Text proposed by the Commission

Amendment

(d) comply with a restriction in accordance with paragraph 4 below.

(d) comply with a restriction in accordance with paragraph 4 below, ***including restrictions to ensure the promotion of cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism.***

Amendment 33

Proposal for a directive – amending act

Article 1 - point 9

Directive 2002/21/EC (Framework Directive)

Article 9 - paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The Member States shall have competence to define the scope, nature and duration of restrictions to promote cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, in accordance with their national law.

Amendment 34

Proposal for a directive – amending act

Article 1 - point 10

Directive 2002/21/EC (Framework Directive)

Article 9b - paragraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c **without** the prior consent of the national regulatory authority.

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings.

Amendment

1. Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c **with** the prior consent of the national regulatory authority.

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings, **with the prior consent of the national regulatory authorities.**

Amendment 35

Proposal for a directive – amending act

Article 1 - point 10

Directive 2002/21/EC (Framework Directive)

Article 9c, subparagraph 1

Text proposed by the Commission

In order to contribute to the development of the internal market, for the achievement of the principles of this Article, the Commission may **adopt** appropriate implementing measures to:

- (a) harmonise the identification of the bands for which usage rights may be transferred or leased between undertakings;
- (b) harmonise the conditions attached to such rights and the conditions, procedures, limits, restrictions, withdrawals and

Amendment

In order to contribute to the development of the internal market, for the achievement of the principles of this Article, the Commission may, **in agreement with the NRAs, recommend** appropriate implementing measures to:

- (a) harmonise the identification of the bands for which usage rights may be transferred or leased between undertakings;
- (b) harmonise the conditions attached to such rights and the conditions, procedures, limits, restrictions, withdrawals and

transitional rules applicable to such transfers or leases;
(c) harmonise the specific measures to ensure fair competition where individual rights are transferred;
(d) create an exception to the principle of services or technology neutrality, as well as to harmonise the scope and nature of any exceptions to these principles in accordance with Article 9(3) and (4) **other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism.**

transitional rules applicable to such transfers or leases;
(c) harmonise the specific measures to ensure fair competition where individual rights are transferred;
(d) create an exception to the principle of services or technology neutrality, as well as to harmonise the scope and nature of any exceptions to these principles. **All exceptions shall be** in accordance with Article 9(3) and (4).

Amendment 36

Proposal for a directive – amending act

Article 1 - point 11 - point (a)

Directive 2002/21/EC (Framework Directive)

Article 10 - paragraph 2

Text proposed by the Commission

2. Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may **take appropriate technical implementing measures on this matter, which may include establishing tariff principles for specific numbers or number ranges. The implementing measures may grant the Authority specific responsibilities in the application of those measures. The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).**

Amendment

2. Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may, **in agreement with the NRAs, recommend appropriate technical implementing measures in this respect.**

Amendment 37

Proposal for a directive – amending act

Article 1 - point 13

Directive 2002/21/EC (Framework Directive)

Article 12 - paragraph 1

Text proposed by the Commission

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall be able to impose the sharing of such facilities or property, including entries to buildings, masts, antennae, ducts, manholes and street cabinets.

Amendment

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall be able to impose the sharing of such facilities or property, including entries to buildings, masts, antennae, ducts, manholes and street cabinets, ***subject to appropriate and proportionate compensation at a fair market price for the holders of those rights.***

Amendment 38

Proposal for a directive – amending act

Article 1 - point 13

Directive 2002/21/EC (Framework Directive)

Article 12 - paragraph 3

Text proposed by the Commission

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, and proportionate.

Amendment

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, ***non-discriminatory*** and proportionate and ***undertaken in accordance with the procedure laid out in Article 7a(4).***

Amendment 39

Proposal for a directive – amending act

Article 1 - point 14

Directive 2002/21/EC (Framework Directive)

Article 13a - paragraph 2

Text proposed by the Commission

2. Member States shall ensure that undertakings providing public communications networks take **all necessary** steps to ensure the integrity of their networks so as to ensure the continuity of supply of services provided over those networks.

Amendment

2. Member States shall ensure that undertakings providing public communications networks take **appropriate** steps to ensure the integrity of their networks so as to ensure the continuity of supply of services provided over those networks. ***The Member States shall ensure that the national regulatory authorities regularly consult with undertakings in order to ensure that appropriate steps have been taken to ensure security or integrity.***

Amendment 40

Proposal for a directive – amending act

Article 1 - point 14

Directive 2002/21/EC (Framework Directive)

Article 13a - paragraph 4

Text proposed by the Commission

4. The Commission, taking the utmost account of the opinion of the Authority issued in accordance with Article 4(3)(b) of Regulation [.../EC], may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements. These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

Amendment

deleted

Amendment 41

Proposal for a directive – amending act

Article 1 - point 14

Directive 2002/21/EC (Framework Directive)

Article 13b - paragraph 2 - introductory wording

Text proposed by the Commission

2. Member States shall ensure that national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

Amendment

2. Member States shall ensure that national regulatory authorities, ***where appropriate***, have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

Justification

The proposed enforcement powers in the form of NRA binding instructions, security audits and the ability to require information provision on network operators is an additional compliance burden and should be minimised, so that over the longer term they do not harm development of new technologies to market.

Amendment 42

Proposal for a directive – amending act

Article 1 - point 14

Directive 2002/21/EC (Framework Directive)

Article 13b - paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Member States shall ensure that a cost reimbursement scheme is made available to undertakings providing public communications networks or publicly available electronic communications services where the Commission adopts technical implementing measures under Article 13a(4).

Justification

The proposed enforcement powers in the form of NRA binding instructions, security audits and the ability to require information provision on network operators is an additional compliance burden and should be minimised, so that over the longer term they do not harm development of new technologies to market.

Amendment 43

Proposal for a directive – amending act

Article 1 - point 16 - point d

Directive 2002/21/EC (Framework Directive)

Article 15 - paragraph 4

Text proposed by the Commission

4. The Commission may, **taking the utmost account of the opinion of the Authority submitted in accordance with Article 7 of Regulation [.../EC]**, adopt a Decision identifying transnational markets.

This Decision, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

Amendment

4. The Commission may, **after consulting the national regulatory authorities**, adopt a Decision identifying transnational markets.

This Decision, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Amendment 44

Proposal for a directive – amending act

Article 1 - point 17 - point c

Directive 2002/21/EC (Framework Directive)

Article 16 - paragraph 7 - subparagraph 2

Text proposed by the Commission

The Commission, taking the utmost account of the opinion of the Authority issued in accordance with Article 6 of Regulation [.../EC], may **adopt a decision requiring** the national regulatory authority to designate certain undertakings as having significant market power and to impose specific obligations under Articles 8, 9 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive) on those undertakings so designated. In so doing, the Commission shall pursue the same policy objectives as set out for national regulatory authorities in Article 8.

Amendment

The Commission, taking the utmost account of the opinion of the Authority issued in accordance with Article 6 of Regulation [.../EC], may **recommend that** the national regulatory authority designate certain undertakings as having significant market power and suggest specific obligations under Articles 8, 9 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive) on those undertakings so designated. In so doing, the Commission shall pursue the same policy objectives as set out for national

regulatory authorities in Article 8.

Amendment 45

Proposal for a directive – amending act

Article 1 - point 20

Directive 2002/21/EC (Framework Directive)

Article 19 - paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of the Authority, if any, issue a recommendation **or a decision** on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

Amendment

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of the Authority, if any, issue a recommendation on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

Amendment 46

Proposal for a directive – amending act

Article 1 - point 20

Directive 2002/21/EC (Framework Directive)

Article 19 - paragraph 3

Text proposed by the Commission

3. The decision mentioned in paragraph 1 designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in

Amendment

deleted

Article 22(4).

Amendment 47

Proposal for a directive – amending act

Article 1 - point 20

Directive 2002/21/EC (Framework Directive)

Article 19 - paragraph 4

Text proposed by the Commission

Amendment

4. Measures adopted pursuant to paragraph 1 may include the identification of a harmonised or coordinated approach for dealing with the following issues:

deleted

- (a) Consistent implementation of regulatory approaches, including regulatory treatment of new services;***
- (b) Numbering, naming and addressing issues, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services;***
- (c) Consumer issues, including accessibility to electronic communications services and equipment by disabled end-users;***
- (d) Regulatory accounting.***

Amendment 48

Proposal for a directive – amending act

Article 1 - point 23

Directive 2002/21/EC (Framework Directive)

Article 21a

Text proposed by the Commission

Amendment

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties

provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [*time-limit for implementation of the amending act*] at the latest and shall notify it without delay of any subsequent amendment affecting them.

provided for must be *appropriate*, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [*time-limit for implementation of the amending act*] at the latest and shall notify it without delay of any subsequent amendment affecting them.

Amendment 49

Proposal for a directive – amending act

Article 2 - point 2

Directive 2002/19/EC (Access Directive)

Article 4 - paragraph 1

Text proposed by the Commission

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.’

Amendment

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8. ***However the terms and conditions for interconnection shall not introduce unjustified barriers to interoperability.***

Amendment 50

Proposal for a directive – amending act

Article 2 - point 4

Directive 2002/19/EC (Access Directive)

Article 6 - paragraph 2

Text proposed by the Commission

2. 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). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4).***

In preparing the provisions referred to in this paragraph, the Commission may be assisted by the European Electronic Communications Market Authority (hereinafter referred to as 'the Authority').

Amendment 51

Proposal for a directive – amending act

Article 2 - point 8, point - a (new)

Directive 2002/19/EC (Access Directive)

Article 12 - paragraph 1 - point b a (new) -

Text proposed by the Commission

Amendment

2. In the light of market and technological developments, the Commission may, ***in consultation with the NRAs, recommend*** implementing measures to amend Annex I.

Amendment

(-a) In paragraph 1, the following point is inserted:

"(ba) to conclude radio access network sharing agreements to cover remote and or non-profitable areas in order to offer and give access to multiple choices of services throughout the territory of each Member State for the benefit of the consumers and the environment."

Amendment 52

Proposal for a directive – amending act

Article 2 - point 9

Directive 2002/19/EC (Access Directive)

Article 13 a - paragraph 2 - introductory part

Text proposed by the Commission

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall **submit a request to** the Commission that **includes**.

Amendment

2. When a national regulatory authority intends to impose an obligation for functional separation, it shall **notify** the Commission **and include**:

Amendment 53

Proposal for a directive – amending act

Article 3 - point 1

Directive 2002/20/EC (Authorisation Directive)

Article 2 - paragraph 2

Text proposed by the Commission

2. The following **definition** shall also apply:
"general authorisation" means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.

Amendment

2. The following **definitions** shall also apply:
"general authorisation" means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.
"global telecommunications services" means managed business data and voice services for multinational companies with locations in different countries and often different continents; they are inherently cross-border and, within Europe, pan-European services.

Amendment 54

Proposal for a directive – amending act

Article 3 - point 2 a (new)

Directive 2002/20/EC (Authorisation Directive)

Article 3 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

(2a) In Article 3, the following paragraph is added:

"3a. New global telecommunications services shall be subject to no more than a simplified notification process with specific registration of electronic communications service activity as "global telecommunications services"."

Amendment 55

Proposal for a directive – amending act

Article 3 - point 3

Directive 2002/20/EC (Authorisation Directive)

Article 5 - paragraph 1 - point (a)

Text proposed by the Commission

Amendment

(a) avoid a serious risk of harmful interference; or

(a) avoid a serious risk of harmful interference, ***avoid distortions of competition***; or

Amendment 56

Proposal for a directive – amending act

Article 3 - point 3

Directive 2002/20/EC (Authorisation Directive)

Article 5 - paragraph 2 - subparagraph 2

Text proposed by the Commission

Amendment

Without prejudice to specific criteria defined in advance by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing

Without prejudice to specific criteria defined in advance by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing

general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

general interest objectives in conformity with Community law, such rights of use shall be granted through objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law. ***The Member States shall publish their justification for granting individual rights for the use of radiofrequencies.***

Amendment 57

Proposal for a directive – amending act

Article 3 - point 3

Directive 2002/20/EC (Authorisation Directive)

Article 5 - paragraph 5

Text proposed by the Commission

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

Amendment

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7. ***Legacy investments, including where an incumbent has inherited its legacy network from the former public telecommunications operator, and the level of competition should be duly taken into account.***

Amendment 58

Proposal for a directive – amending act

Article 3 - point 5

Directive 2002/20/EC (Authorisation Directive)

Article 6 a - paragraph 1 - introductory part

Text proposed by the Commission

1. In order to achieve the objectives set out in Article 1, and without prejudice to Article 5(2) of this Directive, the Commission may **adopt** implementing measures:

Amendment

1. In order to achieve the objectives set out in Article 1, and without prejudice to Article 5(2) of this Directive, the Commission may, **in consultation with the NRAs, recommend** implementing measures:

Amendment 59

Proposal for a directive – amending act

Article 3 - point 5

Directive 2002/20/EC (Authorisation Directive)

Article 6 b - paragraph 2

Text proposed by the Commission

2. Taking the utmost account of the opinion of the Authority, the Commission **shall adopt** a measure selecting the undertaking(s) to which individual rights of use for radio frequencies or numbers shall be issued. ***The measure shall specify the time within which such rights of use shall be issued by the national regulatory authorities. In so doing, the Commission shall act in accordance with the procedure referred to in Article 14a(2).***

Amendment

2. Taking the utmost account of the opinion of the Authority, the Commission may, **in consultation with the NRAs, recommend** a measure selecting the undertaking(s) to which individual rights of use for radio frequencies or numbers shall be issued.

Amendment 60

Proposal for a directive – amending act

ANNEX I - point 3 - point g

Directive 2002/20/EC (Authorisation Directive)

Annex - Part A- point 19

Text proposed by the Commission

Amendment

**(g) The following point 19 is added:
'19. Compliance with national measures
implementing Directive 2001/29/EC of the
European Parliament and of the Council
and Directive 2004/48/EC of the
European Parliament and of the Council'**

deleted

PROCEDURE

Title	Electronic communications networks and services		
References	COM(2007)0697 – C6-0427/2007 – 2007/0247(COD)		
Committee responsible	ITRE		
Opinion by Date announced in plenary	LIBE 10.12.2007		
Drafts(wo)man Date appointed	Syed Kamall 31.1.2008		
Discussed in committee	27.3.2008	5.5.2008	29.5.2008
Date adopted	29.5.2008		
Result of final vote	+: 41	–: 0	0: 2
Members present for the final vote	Alexander Alvaro, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Urszula Gacek, Patrick Gaubert, Roland Gewalt, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klamt, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Viktória Mohácsi, Claude Moraes, Martine Roure, Csaba Sógor, Manfred Weber, Tatjana Ždanoka		
Substitute(s) present for the final vote	Edit Bauer, Frieda Brepoels, Simon Busuttil, Evelyne Gebhardt, Genowefa Grabowska, Sophia in 't Veld, Syed Kamall, Sylvia-Yvonne Kaufmann, Marian-Jean Marinescu, Marianne Mikko, Bill Newton Dunn, Nicolae Vlad Popa		
Substitute(s) under Rule 178(2) present for the final vote	Manolis Mavrommatis		

PROCEDURE

Title	Electronic communications networks and services			
References	COM(2007)0697 – C6-0427/2007 – 2007/0247(COD)			
Date submitted to Parliament	13.11.2007			
Committee responsible Date announced in plenary	ITRE 10.12.2007			
Committee(s) asked for opinion(s) Date announced in plenary	ECON	IMCO	CULT	JURI
	10.12.2007	10.12.2007	10.12.2007	10.12.2007
	LIBE 10.12.2007			
Rapporteur(s) Date appointed	Catherine Trautmann 18.12.2007			
Discussed in committee	29.1.2008	27.2.2008	6.3.2008	6.5.2008
	26.6.2008			
Date adopted	7.7.2008			
Result of final vote	+: -: 0:	45 0 1		
Members present for the final vote	Jan Březina, Jerzy Buzek, Jorgo Chatzimarkakis, Dragoş Florin David, Pilar del Castillo Vera, Den Dover, Lena Ek, Nicole Fontaine, András Gyürk, Fiona Hall, David Hammerstein, Rebecca Harms, Erna Hennicot-Schoepges, Mary Honeyball, Romana Jordan Cizelj, Anne Laperrouze, Angelika Niebler, Reino Paasilinna, Atanas Papanizov, Aldo Patriciello, Francisca Pleguezuelos Aguilar, Anni Podimata, Miloslav Ransdorf, Herbert Reul, Teresa Riera Madurell, Paul Rübig, Andres Tarand, Patrizia Toia, Catherine Trautmann, Nikolaos Vakalis			
Substitute(s) present for the final vote	Alexander Alvaro, Ivo Belet, Juan Fraile Cantón, Robert Goebbels, Gunnar Hökmark, Erika Mann, Pierre Pribetich, Esko Seppänen, Hannes Swoboda, Silvia-Adriana Ţicău, Vladimir Urutchev, Lambert van Nistelrooij			
Substitute(s) under Rule 178(2) present for the final vote	Milan Gaľa, Ruth Hieronymi, Eva Lichtenberger, Kathy Sinnott			