



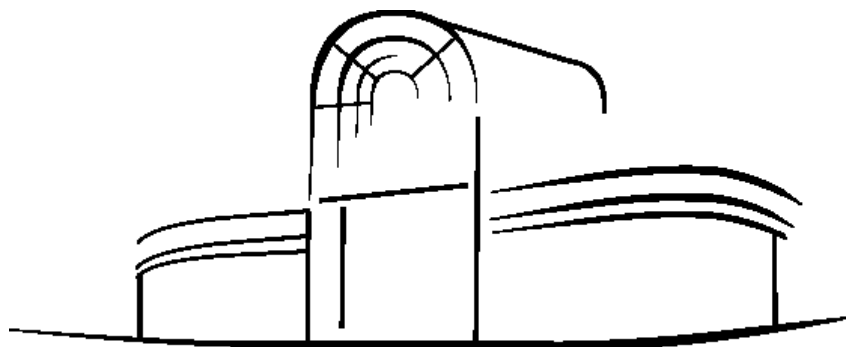
EUROPEAN PARLIAMENT

2008 - 2009

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Wednesday
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EN

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Electronic communications networks and services *I**

European Parliament legislative resolution of 24 September 2008 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 and Monetary 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 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) A primary objective of the EU regulatory framework for electronic communications networks and services is to create a sustainable ecosystem for electronic communications based on

supply and demand, the former through effective and competitive infrastructure and service markets and the latter through information society developments.

Amendment 4

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

Text proposed by the Commission

Amendment

(3b) A further objective of the EU regulatory framework for electronic communications networks and services is to progressively reduce ex-ante sector specific-rules as competition in markets in electronic communications develops and, ultimately, for electronic communications to be governed by competition law only. While electronic communications markets have shown strong competitive dynamics in recent years, it is essential that ex-ante regulatory obligations only be imposed where there is no effective and sustainable competition. The necessity of the continuation of ex-ante regulation should be reviewed no later than three years from 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 proportionate and suitable approach to varying competitive conditions, national regulatory authorities should be able to define markets on a sub-national basis and to lift regulatory obligations in markets or geographic areas where there is effective infrastructure competition. This should apply even where geographic areas 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) In order to achieve the goals of the Lisbon Agenda it is necessary to give appropriate incentives for investment in high-speed networks that support innovation in content-rich internet services and strengthen the international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and businesses across the European Union. It is therefore vital to promote sustainable investment in the development of such 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 of 20 March 2006 entitled “Bridging the Broadband Gap”, 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 on account of high costs resulting from low population densities and remoteness. Commercial incentives to invest in broadband deployment in these areas often turn out to be insufficient. However, technological innovation reduces deployment costs. In order to ensure investment in new technologies in underdeveloped regions, electronic

communications regulation should be consistent with other policies, such as state aid policy, structural funds or the aims of wider industrial policy.

Amendment 8

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

Text proposed by the Commission

Amendment

(3f) Investment in research and development is of vital importance for the development of next generation fibre optics networks and for achieving flexible and efficient radio access, which enhances competition and innovation in applications and services for the benefit of consumers. The challenge is to deliver the next generation of ubiquitous and converged network and service infrastructures for electronic communications, information technology and media.

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 electronic communications markets, addressing both the supply and demand sides so as to stimulate a virtuous circle where development of better content and services follows from infrastructure deployment, and vice versa. Public intervention should be proportionate, should neither distort competition nor inhibit private investment, should increase incentives to invest and should lower entry barriers. In this respect, public authorities may support the roll-out of future-proof high-capacity infrastructure. In so doing, public support should be given by means of open, transparent and

competitive procedures, should not favour any given technology a priori and should provide access to infrastructure on a non-discriminatory basis.

Amendment 10

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

Text proposed by the Commission

Amendment

(3h) The EU regulatory framework for electronic communications networks and services should also promote consumer protection in the electronic communications sector by providing for accurate and comprehensive information by all possible means, by providing for transparency in fees and charges and by providing for high standards in the delivery of services. It should also fully recognise the role of consumer associations in public consultations and ensure that the competent authorities are provided with the powers necessary to prevent bid-rigging and act with the necessary effectiveness to stamp out any instances of fraud.

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 pursuant to this Directive through the use of effective consultation ensuring transparency and proportionality. The Commission should issue detailed consultation documents which explain the different courses of action being considered, and stakeholders should be given a reasonable time in which to respond. Following the consultation, and

after having considered the responses, the Commission should give reasons for the decision it takes in a statement which should include a description of how the views of respondents were taken into account.

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 conformity¹, it is necessary to clarify the application of aspects of terminal equipment which concern access for disabled end-users so as to ensure interoperability between terminal equipment and electronic communications networks and services.

¹ OJ L 91, 7.4.1999, p. 10

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 in the context of the EU regulatory framework for electronic communications networks and services 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.

Amendment 14/rev

**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 necessary to build a competitive EU ecosystem in electronic communications markets and services while at the same time understanding national and regional differences and complying with the principle of subsidiarity.

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

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, ***taking account of the objectives of cultural diversity and media pluralism***, and that obstacles to its efficient use are gradually withdrawn.

Amendment 16

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

Text proposed by the Commission

Amendment

(16a) Although spectrum management remains 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.

Amendment 17

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

Text proposed by the Commission

Amendment

(16b) The provisions of this Directive relating to spectrum management 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 and harmonisation of the use of spectrum across the Community and globally.

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 and including the European Parliament, the Commission and all stakeholders. The summit should in particular contribute to ensuring greater consistency in EU spectrum policies, providing guidance regarding the switchover from analogue to digital terrestrial television, and freeing spectrum for new electronic communications services once the digital

switchover has taken place.

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, obstacles existing at national level for the efficient allocation or reallocation 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

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 to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

(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.

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 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 for electronic communications services as identified in national frequency allocation plans and the ITU Radio Regulations** (the ‘principles of technology and service neutrality’). The administrative determination of technologies and services should **apply whenever general interest objectives are at stake**.

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, to ensure the protection of public health by limiting public exposure to electromagnetic fields, 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**.

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

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. 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.

offer over the spectrum subject to transitional measures *designed to deal* with previously acquired rights *and the provisions of national frequency allocation plans and the ITU Radio Regulations*. *Exceptions* to the principle of service neutrality which require the provision of a specific service *in order to take account of national public policy considerations or* to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion or *the efficient use of radio frequencies and the effective management of spectrum should be permitted where necessary*. 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 these objectives are fulfilled*, 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 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.

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 Spectrum Decision").

Amendment

deleted

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** regarding 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**

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

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

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.

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 European Network and Information Security Agency ("ENISA")**¹ 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.

¹ **Established under Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 (OJ L 77, 13.3.2004, p. 1).**

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

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.

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. **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 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 in order to safeguard consumer choice.

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, 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-

(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 **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 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.

Amendment 32

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

Text proposed by the Commission

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.

Amendment

(44a) Continuing integration of the internal market in electronic communications networks and services requires better coordination in the application of the ex-ante regulation provided for by the EU regulatory framework for electronic communications

Amendment 33

Proposal for a directive – amending act Recital 46

Text proposed by the Commission

(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.

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, ***or in order to promote efficiency and sustainable competition and to ensure the 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.

Amendment 34

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

Text proposed by the Commission

Amendment

(47a) The Commission should submit a proposal to the European Parliament and to the Council for the adoption of those harmonisation measures for the implementation of Community electronic communications policy which go beyond technical implementing measures.

Amendment 35

Proposal for a directive – amending act Recital 49

Text proposed by the Commission

(49) The introduction of the requirements of service and technology neutrality in assignment and allocation decisions, together with the increased possibility to

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 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.

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 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

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 **for** spectrum **allocation** where this **appears** essential **in order** 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.

Amendment

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

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 Decision, 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.

Radio Spectrum Decision, 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 *or between the European Union and third countries, taking into account the decisions of the ITU and the CEPT*. The Commission, assisted by the Communications Committee and taking the utmost account of the opinion of *BERT*, 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,

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

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.

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 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.***

Amendment

(60) In particular, the Commission *should be empowered 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. **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.

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

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 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 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, 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.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 3 a (new)

Directive 2002/21/EC

Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

"3a. Member States shall ensure that the goals of BERT of promoting greater regulatory coordination and coherence are actively supported by the 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 shall have separate annual budgets and those budgets shall be made public."

Amendment 45

Proposal for a directive – amending act

Article 1 – point 3 b (new)

Directive 2002/21/EC

Article 3 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

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

"3b. Member States shall ensure that national regulatory authorities 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 *which* 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.***

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

Amendment 48

Proposal for a directive – amending act

Article 1 – point 4 – point a (new)

Directive 2002/21/EC

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph shall be added:

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

Amendment 49

Proposal for a directive – amending act

Article 1 - point 5

Directive 2002/21/EC

Article 5 – paragraph 1

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.

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 shall 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 – 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 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.

Amendment 51

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 52

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC

Article 7 – paragraphs 2 to 10

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 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

Amendment

2. National regulatory authorities shall 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

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)

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

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, **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.

Amendment 53/rev

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

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 *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

(6a) the following Article shall be 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 the opinion of BERT, 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.

Within the two-month period referred to in the first subparagraph, the Commission, BERT and the national regulatory authority concerned shall cooperate closely with the objective of determining whether the proposed draft measure complies with the provisions of Article 13a of Directive 2002/19/EC (Access Directive), and, in particular, whether it is the most appropriate and effective measure. To that end, due account shall be taken of the views of market participants and of the need to ensure the development of consistent regulatory practice. At the reasoned request of BERT or the Commission, this two-month period shall be extended by up to a further two months.

Within the maximum period set out in the second 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. 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 in accordance with the fourth subparagraph of paragraph 3 of a reasoned decision 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

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 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

Amendment

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.

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.

Amendment 57

Proposal for a directive – amending act

Article 1 – point 8 – point b

Directive 2002/21/EC

Article 8 – paragraph 2 – point a

Text proposed by the Commission

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;

(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 show that they incurred as a result of the imposition of such public service obligations;

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) shall be 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) shall be deleted.

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

(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.

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 **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 138

Proposal for a directive – amending act

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

Directive 2002/21/EC

Article 8 - paragraph 4 - point g a (new)

Text proposed by the Commission

Amendment

(ea) In paragraph 4, point (ga) is added:

"(ga) applying the principle that no restriction may be imposed on the fundamental rights and freedoms of end-users without a prior ruling of the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened, in which case the ruling may be subsequent.

Amendment 62

Proposal for a directive – amending act

Article 1 – point 8 – point e b (new)

Directive 2002/21/EC

Article 8 – paragraph 4 a (new)

(eb) the following paragraph shall be added:

"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 sharing of investment and by ensuring appropriate sharing of risk between investors and those undertakings enjoying access to the new facilities;

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

(f) imposing ex-ante regulatory obligations only where there is no effective and sustainable competition, and relaxing or lifting such obligations as soon as that condition is fulfilled."

Amendment 63/rev

Proposal for a directive – amending act

Article 1 – point 8 a (new)

Directive 2002/21/EC

Articles 8 a and 8 b (new)

Text proposed by the Commission

Amendment

(8a) the following Articles shall be inserted:

"Article 8a

Radio Spectrum Policy Committee

1. A Radio Spectrum Policy Committee ("RSPC") is hereby created in order to contribute to the fulfilment of the objectives set out in paragraphs 1, 3 and 5 of Article 8b.

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.

2. 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.

3. The RSPC shall submit an annual activity report to the European Parliament and to the Council.

Article 8b

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*¹; 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. 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.

5. Member States shall ensure the effective coordination of the interests of the European Union in international organisations competent in radio spectrum matters. Whenever necessary for ensuring such effective coordination, the Commission, taking due account of the opinion of the RSPC, may propose to the European Parliament and the Council common policy objectives, including, if necessary, a negotiation mandate.

** 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/rev

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9

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.

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

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 *communications* services in their territory in accordance with **Articles 8 and 8b**. 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 pursuit of benefits for the consumer such as economies of scale and interoperability of services. In so doing,***

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

they shall act in accordance with **Articles 8b and 9c of this Directive and** 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 technology **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 technology used **for electronic communications 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.

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**.

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 **from ...** *.

*** The date of transposition of this Directive.**

Amendment 65

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9a – paragraphs 1 and 2

Text proposed by the Commission

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

Amendment

1. For a period of five years starting on ... *, Member States **may** ensure that holders of rights to use radio frequencies which were granted before that date **and which will**

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.

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***.

**** The date of transposition of this Directive.***

Amendment 66

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9b

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.

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 67/rev

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

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 ***that it*** 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

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

(–a) apply the radio spectrum action programme established pursuant 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 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

Article 8b(4);

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

(b) harmonise the conditions attached to such rights;

(d) *identify the bands to which* the principle of *service* neutrality *applies*.

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).

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 used to give access to their services.

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.

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

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.

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).

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 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.

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, ***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 *are* 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, after an appropriate period of public consultation during which all interested parties are given the

opportunity to state their views, the holders of the rights referred to in paragraph 1 to share facilities or property, including by means of physical co-location, in order to encourage efficient investment in infrastructure and the promotion of innovation. 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 establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 based on information provided by the holders of the rights referred to in that paragraph, and that they make that inventory 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 to other appropriate public facilities or property. Those procedures 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 13a

Text proposed by the Commission

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

Amendment

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 **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. **The competent national authorities shall consult with electronic communications services 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.

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.

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 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 72

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

may inform the public.

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

4. The Commission, taking the utmost account of the opinion of **ENISA**, 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 *notifications*. **The adoption of such 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.**

Technical implementing measures relating to notifications shall comply with the provisions of 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 *.

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).

* *OJL 201, 31.7.2002, p. 37.*

Amendment

1. Member States shall ensure that **the**

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.

competent national authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement *the provisions of Article 13a. These binding instructions shall be proportionate and economically and technically sustainable and shall be implemented within a reasonable timeframe.*

Amendment 73/rev

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

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 **the competent** national authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

Amendment 74

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13b – 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 *the* information needed to assess the security **and integrity** of their services and networks, including documented security policies; and

Amendment 75

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 competent** national authorities have all the powers necessary to investigate cases of non-compliance **and their effects on the security and integrity of the networks**.

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

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

Amendment

deleted

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

(b) Paragraph (3) is deleted.

Amendment

(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). Where such remedies prove insufficient, remedies may be imposed pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive)."

Amendment 78

Proposal for a directive – amending act

Article 1 – point 16 – point b a (new)

Directive 2002/21/EC

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(ba) the following paragraph shall be inserted:

"2a. By...*, 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."

**** The date of the entry into force of Directive 2008/.../EC [of the European Parliament and of the Council of ... amending Directive 2002/21/EC].***

Amendment 79

Proposal for a directive – amending act

Article 1 – point 16 – point d

Directive 2002/21/EC

Article 15 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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).

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

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 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 the 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.

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 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

deleted

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

Amendment

(a) *in* paragraph 1, ***in the first sentence the term 'Article 22(2)' shall be replaced by***

procedure referred to in Article 22(2)' are replaced by 'may take appropriate implementing measures and'

the term 'Article 22(3)' and in the second sentence the words 'acting in accordance with the procedure referred to in Article 22(2)' shall be replaced by *the words* 'may take appropriate implementing measures and'

Amendment 83

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 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)."

Amendment 84

Proposal for a directive – amending act
Article 1 – point 18 – point c
Directive 2002/21/EC
Article 17 – paragraph 6a

Text proposed by the Commission

Amendment

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***

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).

procedure referred to in Article 22(4).

Amendment 85

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19

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.

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 of urgency, the Commission may use the urgency procedure referred to in Article**

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 **creates** a barrier to the internal market, *it* 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 *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).

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

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

(a) *the consistent* implementation of regulatory approaches, including *the* regulatory treatment of new services, ***sub-national markets and 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 covered by Directive 2002/22/EC (Universal Service Directive)***, including ***in particular*** *access* 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 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 undertakings by the national regulatory***

authorities as part of the resolution of a dispute shall comply with the provisions of this Directive and the Specific Directives.

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 **BERT** in accordance with Article 18 of Regulation [.../EC].

Amendment 88

Proposal for a directive – amending act

Article 1 - point 23

Directive 2002/21/EC

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

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-

implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

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 paragraph shall be inserted:

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

Amendment 90

Proposal for a directive – amending act

Article 1 – point 26

Directive 2002/21/EC

Annexes I and II

Text proposed by the Commission

Amendment

(26) Annexes I and II are deleted.

(26) Annex I shall be deleted and Annex II shall be 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 is not an exhaustive list, 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."

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,

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 **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 network services.

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 necessary subscriber information and to mechanisms for paying back sums invoiced to end-users to the providers of directory services;** access 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) Article 2(e) shall be 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

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 **or delivering broadcast content or information society 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 to 8.

Amendment 94

Proposal for a directive – amending act

Article 2 – point 2

Directive 2002/19/EC

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

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.’

obligations imposed by the national regulatory authority pursuant to Articles 5 to 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 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 and 7** of Directive 2002/21/EC (Framework Directive).

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).

Amendment 97

Proposal for a directive – amending act

Article 2 – point 6 – point a a (new)

Directive 2002/19/EC

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

(aa) paragraph 2 shall be 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 laid down in Article -7a of Directive 2002/21/EC (Framework Directive)*."

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) Article 9(1) shall be 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*."

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) Article 9(4) shall be replaced by the following:

"4. Notwithstanding paragraph 3, where an operator has been found, in accordance with Article 14 of Directive 2002/21/EC (Framework Directive), to have significant market power in a relevant market 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."

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

(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;

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

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 *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.

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) shall be 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 sharing of risk between investors 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 4 a (new)

(8b) in Article 13, the following paragraph shall be added:

"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 the risk premium included in access prices for short-term contracts. Risk premium shall be phased out as market penetration increases. Margin squeeze tests shall not be applied to short-term contracts when a risk premium is charged."

Amendment 103

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraphs 1 to 3

Text proposed by the Commission

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

Amendment

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**

appropriate obligations amongst those identified in *Articles 9-13* 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 *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;

(c) the governance arrangements to ensure the independence of the staff employed by

enforcement over a reasonable period, taking due account of regulatory best practice, of appropriate obligations amongst those identified in *Articles 9 to 13* 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 and market failures** identified in several of *the wholesale* product markets **analysed**;

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

(b) an analysis of the expected impact on the regulatory authority, the undertaking, **in particular its workforce** and its incentives to invest in its network, and other stakeholders, including in particular *analysis of* the expected impact on infrastructure competition and any potential *consequential* 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 proposed measure, 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.

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.

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

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.

Amendment

deleted

Amendment 105

Proposal for a directive – amending act
Article 2 – point 10 a (new)
Directive 2002/19/EC
Annex II

(10a) Annex II shall be 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 allowing 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 allowing the use of a specified part of the capacity of the network infrastructure such as part of the frequency or an 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 sub-loops;

(b) *shared* access at appropriate points in the network permitting equivalent functionality to unbundled access in circumstances where such access is not technically or economically feasible;

(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, availability of local loops and sub-loops, 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 sub-loops and ducts*, including the technical characteristics of the twisted pair, optical fibre or an equivalent, and of the 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 or equipment locations and planned updates thereto.

(Reminder of the Annex unchanged)

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(2), the following subparagraph shall be added:

"Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall be treated in the same way in all Member States and shall 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

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***

1. Member States shall ***facilitate the*** usage of radio frequencies ***by means of*** general authorisations. ***Member States may grant***

radio frequencies *in the* general **authorisation, unless it is justified to** grant individual rights in order to:

(a) avoid **a serious risk** 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

individual rights **of use** in order to:

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

(aa) ensure the technical quality of services;

(ab) ensure the efficient use of spectrum;

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

(ba) comply with a measure adopted pursuant to 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

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

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 **Articles 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 *pursuant to Article 9b of Directive 2002/21/EC (Framework Directive), the competent national authority shall ensure that the criteria to grant individual rights of use apply and are complied with for the duration of the license*. 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 of time**, 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

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.**

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 **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 *rights of usage of* radio frequencies.

Amendment 108/rev

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a

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. **Without** prejudice to **Article 5(1) and (2)** of this Directive **and Articles 8b and 9 of 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 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 reasoned request for a partial exemption and/or a temporary derogation from those measures.

The Commission shall assess the

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

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

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

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

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 [].

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 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).

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

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

Amendment

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.*

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, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive).

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 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.

Amendment

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

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

Amendment

6. *Notwithstanding* the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation or *of the* specific obligations referred to in

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.

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 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.

Amendment 114

Proposal for a directive – amending act

Article 3 – point 8 – point d a (new)

Directive 2002/20/EC

Article 10 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

(da) the following paragraph shall be inserted:

"6a. In accordance with their national law, Member States shall ensure that measures taken by the national authorities pursuant to paragraphs 5 and 6 are subject to judicial review."

Amendment 115

Proposal for a directive – amending act

Article 3 – point 9 a (new)

Directive 2002/20/EC

Article 11 – paragraph 1 – subparagraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(9a) in the first subparagraph of Article 11(1), the following point shall be added:

"(fa) encouraging the efficient use and ensuring the effective management of

radio frequencies."

Amendment 116

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 117/rev

Proposal for a directive – amending act

Article 3 – point 11 a (new)

Directive 2002/20/EC

Article 14a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

(11a) in Article 14a the following 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 Radio Spectrum Committee established under Article 3(1) of Decision 676/2002/EC."

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

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).

Amendment

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).

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

Amendment 121

Proposal for a directive – amending act
Annex I – point 3 – point g a (new)
Directive 2002/20/EC
Annex I – part A – point 19 a (new)

Text proposed by the Commission

Amendment

(ga) the following point shall be 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."

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’

deleted

are 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 right *of use* 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.***

Amendment 124

Proposal for a directive – amending act

Annex I – point 4 a (new)

Directive 2002/20/EC

Annex I – part C – point 1

Text proposed by the Commission

Amendment

(4a) in Part C, point 1 shall be 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)."

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

(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, ***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***;

European Electronic Communications Market Authority *I**

European Parliament legislative resolution of 24 September 2008 on the proposal for a regulation of the European Parliament and of the Council establishing the European Electronic Communications Market Authority (COM(2007)0699 – C6-0428/2007 – 2007/0249(COD))

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0699),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0428/2007),
 - 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 Budgets, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on the 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 (A6-0316/2008),
1. Approves the Commission proposal as amended;
 2. Notes that the Commission has communicated its intention to finance the new Body of European Regulators in Telecom (BERT) within subheading 1a of the current Multiannual Financial Framework 2007 - 2013 partly through redeployment and partly by an increase for the period 2009-2013; points out, however, that the budgetary authority has not yet received any information as to the details of this exercise so that it remains unclear, to date, which programmes or priorities are affected and what consequences arise from this throughout the financial period and whether a sufficient margin will remain in subheading 1a;
 3. Points out that the proposed BERT will also fulfil administrative tasks and assist the Commission; is consequently of the opinion that all possibilities of the Multiannual Financial Framework 2007 - 2013, including Heading 5 where sufficient margins still seem to be available, should be explored to finance the body;
 4. Underlines that the provisions of Point 47 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management¹ (IIA) will apply for the setting-up of BERT; stresses that, should the legislative authority decide in favour of the setting-up of such an agency, Parliament will enter into negotiations with the other arm of the budgetary authority with a view to coming to a timely agreement on the financing of this agency in line with the relevant provisions of the IIA;

¹ OJ C 139, 14.6.2006, p. 1.

5. 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;
6. Instructs its President to forward its position to the Council and Commission.

Amendment 4

Proposal for a regulation

Recital 1

Text proposed by the Commission

(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 (Framework Directive), 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 (Access Directive), 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 (Authorisation Directive), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) and 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 (Directive on privacy and electronic communications) (hereinafter together referred to as "the Framework Directive and the Specific Directives") aim to create an internal market for electronic communications within the Community while ensuring a high level of investment, innovation and consumer protection through enhanced competition.

Amendment

(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 (Framework Directive), 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 (Access Directive), 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 (Authorisation Directive), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) and 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 (Directive on privacy and electronic communications) (hereinafter together referred to as "the Framework Directive and the Specific Directives"), ***as well as the resolution of the European Parliament of 21 June 2007 on consumer confidence in the digital environment¹***, aim to create an internal market for electronic communications within the Community while ensuring a high level of investment, innovation and consumer protection through enhanced competition.

Amendment 5

Proposal for a regulation Recital 2

Text proposed by the Commission

(2) The 2002 regulatory framework for electronic communications establishes a system of regulation undertaken by national regulatory authorities and provides for those authorities to co-operate with each other and with the Commission in order to ensure the development of consistent regulatory practice and the consistent application across the Community of the regulatory framework.

Amendment

(2) The 2002 regulatory framework for electronic communications establishes a system of regulation undertaken by national regulatory authorities ("**NRAs**") and provides for those authorities to co-operate with each other and with the Commission in order to ensure the development of consistent regulatory practice and the consistent application across the Community of the regulatory framework **but leaving room for regulatory competition between the NRAs in light of specific national market conditions.**

Amendment 6

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency (hereinafter "ENISA Regulation") established the European Network and Information Security Agency (ENISA) in 2004 for a period of five years, with the goal of ensuring a high and effective level of network and information security within the Community, in order to develop a culture of network and information security for the benefit of the citizens, consumers, enterprises and public sector organisations of the European Union,

Amendment

deleted

thus contributing to the smooth functioning of the internal market.

Amendment 7

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The Body of European Regulators in Telecom (BERT) should be established to accomplish co-ordination between NRAs of Members States without harmonising existing regulatory approaches to a degree which undermines regulatory competition.

Amendment 8

Proposal for a regulation

Recital 7

Text proposed by the Commission

Amendment

(7) A more substantial institutional basis for the establishment of a body bringing together the expertise and experience of the ***national regulatory authorities***, together with a clearly defined set of competencies, is therefore called for, taking account of the need for this body to exercise ***real*** authority in the eyes of its members and the sector being regulated through the quality of its output.

(7) A more substantial institutional basis for the establishment of a body bringing together the expertise and experience of the ***NRAs***, together with a clearly defined set of competencies, is therefore called for, taking account of the need for this body to exercise authority in the eyes of its members and the sector being regulated through the quality of its output.

Amendment 9

Proposal for a regulation

Recital 10

Text proposed by the Commission

Amendment

(10) The Commission Communication to the European Parliament and Council of 1 June 2007 "On the evaluation of the European Network and Information

deleted

Security Agency (ENISA)" presented an appraisal of an external expert report evaluating the performance of the Agency since its establishment and the recommendations of the ENISA Management Board regarding the ENISA Regulation and launched a public consultation. The key findings of that expert report confirmed the validity of the policy behind the creation of ENISA and its original goals, and in particular its contribution to achieving a truly internal market in electronic communications.

Amendment 10

Proposal for a regulation

Recital 11

Text proposed by the Commission

Amendment

(11) At the same time, a number of problems were identified, including in particular issues relating to its organisational structure, the skills mix and the size of its operational staff, and logistical difficulties. The key functions of ENISA should evolve so as to form a core component of the , which on the basis of a clearer identification of objectives and tasks, should ensure that those objectives and tasks can be fulfilled in a more efficient, focused and cost effective manner, consistent with the principles of better regulation, by a single with competence over matters falling within the EU regulatory framework for electronic communications networks and services.

deleted

Amendment 11

Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The current approach to build greater consistency among NRAs by exchanging information and knowledge on practical experiences has proved to be successful in this short term following its deployment. However, more intense coordination between all regulatory authorities at national and European level will be required to understand and further develop the internal market in electronic communication services in order to enhance regulatory consistency.

Amendment 12

Proposal for a regulation
Recital 12

Text proposed by the Commission

Amendment

(12) This calls for the establishment of a new **Community** body, **the European Electronic Communications Market Authority (hereinafter the “Authority”)**. **The Authority** would make an effective contribution to furthering the completion of the internal market through the assistance it provides to the Commission and **the national regulatory authorities**. It would operate as a point of reference and would establish confidence by virtue of its independence, the quality of the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it.

(12) This calls for the establishment of a new body, **BERT**. **BERT** would make an effective contribution to furthering the completion of the internal market through the assistance it provides to the Commission and **NRAs**. It would operate as a point of reference and would establish confidence by virtue of its independence, the quality of the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it.

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

Amendment 13

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) **The Authority should** replace the ERG and **serve as the** exclusive forum for cooperation between **national regulatory authorities** in the exercise of the full range of their responsibilities under the regulatory framework.

Amendment

(14) **BERT is to** replace the ERG and **act as an** exclusive forum for cooperation between **NRAs and between those authorities and the Commission**, in the exercise of the full range of their responsibilities under the regulatory framework.

Amendment 14

Proposal for a regulation

Recital 15

Text proposed by the Commission

(15) **The Authority** should be established within the Community's existing institutional structure and balance of powers. It should be independent in relation to technical matters and have legal, administrative and financial autonomy. To that end, it is necessary **and appropriate** that it should be a Community body having legal personality and exercising the tasks conferred on it by this Regulation.

Amendment

(15) **BERT** should be established within the Community's existing institutional structure and balance of powers. It should be independent in relation to technical matters and have legal, administrative and financial autonomy. To that end, it is necessary that it should be a Community body having legal personality and exercising the tasks conferred on it by this Regulation.

Amendment 15

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) **The Authority** should build on national and Community efforts and therefore perform its tasks in full cooperation with **the national regulatory authorities** and the Commission, and be open to contacts with industry, consumer groups and other relevant stakeholders.

Amendment

(16) **BERT** should build on national and Community efforts and therefore perform its tasks in full cooperation with **NRAs** and the Commission, and be open to contacts with industry, consumer groups, **cultural interest groups** and other relevant stakeholders.

Amendment 16

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) ***This Regulation and the Authority which it establishes should form an integral part of the Community regulatory framework for electronic communications. In this regard, the Authority has, in particular, an important role to play in the mechanisms envisaged for consolidating the internal market for electronic communications and for carrying out market analyses in certain circumstances.***

Amendment

(17) ***BERT*** has an important role to play in the mechanisms envisaged for consolidating the internal market for electronic communications and for carrying out market analyses in certain circumstances.

Amendment 17

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) ***The Authority*** should accordingly advise the Commission and the ***national regulatory authorities*** in accordance with the Community regulatory framework for electronic communications and thereby assist in its effective implementation.

Amendment

(18) ***BERT*** should accordingly advise the Commission and the ***NRAs, as well as the European Parliament, at its request,*** in accordance with the Community regulatory framework for electronic communications and thereby assist in its effective implementation.

Amendment 18

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) ***The Authority should assist the Commission concerning any extension of the Community obligations for number portability. Such extension could concern in particular the scope of the information to be ported or the types of network (i.e.***

Amendment

deleted

fixed or mobile) between which numbers and information are to be ported. Changes in this obligation should take into account prices to users and the switching costs for undertakings, as well as the experiences in Member States.

Amendment 19

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) *The Authority should assist the Commission by undertaking an annual review of the measures taken the Member States informing the citizens about the existence and use of the single European emergency call number "112". The Authority's annual review would identify best practices and remaining bottlenecks and would contribute to improve the level of **protection and security** of citizens travelling in the European Union.*

Amendment

(20) **BERT's** annual review would identify best practices and remaining bottlenecks and would contribute to improve the level of **benefits to** citizens travelling in the European Union.

Amendment 20

Proposal for a regulation Recital 21

Text proposed by the Commission

(21) In the context of pursuing the aims of 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 Commission may seek the independent expert advice of *the Authority* relating to the use of the radio frequencies in the Community. This advice could involve specific technical investigations, as well as economic or social impact assessment and analysis relating to frequencies policy measures. It could also include matters relating to the implementation of Article 4

Amendment

(21) In the context of pursuing the aims of 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 Commission may seek the independent expert advice of **BERT, where appropriate**, relating to the use of the radio frequencies in the Community. This advice could involve specific technical investigations, as well as economic or social impact assessment and analysis relating to frequencies policy measures. It could also include matters relating to the

of Decision No 676/2002/EC, where **the Authority** may be asked to provide advice to the Commission on the results obtained under Commission mandates to the European Conference of Postal and Telecommunications Administrations (CEPT).

implementation of Article 4 of Decision No 676/2002/EC, where **BERT** may be asked to provide advice to the Commission on the results obtained under Commission mandates to the European Conference of Postal and Telecommunications Administrations (CEPT).

Amendment 21

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) While technological and market developments have increased the potential for the deployment of electronic communications services beyond the geographical boundaries of individual Member States, there is a risk that the existence of differing legal and regulatory conditions for the deployment of those services under national laws will increasingly hold back the provision of such cross-border services. ***The Authority should therefore play a key role in the establishment of harmonised conditions for the authorisation of those services, whether with regard to general authorisations, rights of use for radio frequencies or rights of use for numbers, and in advising the Commission on the details of the measures to be taken under Directive 2002/21/EC (Framework Directive) to achieve such harmonised conditions.***

Amendment

(22) While ***the electronic communications sector is a key sector in the move towards a more advanced European knowledge-based economy, and*** technological and market developments have increased the potential for the deployment of electronic communications services beyond the geographical boundaries of individual Member States, there is a risk that the existence of differing legal and regulatory conditions for the deployment of those services under national laws will increasingly hold back the provision of such cross-border services.

Amendment 22

Proposal for a regulation

Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) The Commission has recognised the global and trans-border nature of the global telecommunications market, noting

that this market is different from telecommunications services provided on a merely national basis and that a single market for all global telecommunications services (GTSs) is assumed which has to be distinguished from merely national telecommunications services. GTSs are a particular case where harmonising conditions of authorisation might be necessary. It is generally recognised that these services, consisting of managed business data and voice services for multinational companies with locations in different countries, and often different continents, are inherently cross-border and, within Europe, pan-European. BERT should develop a common regulatory approach so that the economic benefits of integrated, seamless services can accrue to all parts of Europe.

Amendment 23

Proposal for a regulation

Recital 23

Text proposed by the Commission

Amendment

(23) The Authority should in particular assess the need for a single selection procedure at Community level for rights of use subject to harmonised conditions, advise the Commission on the terms and criteria to be applied in such a selection procedure and receive and assess applications from undertakings for such rights of use. The Authority should also have the task of advising the Commission as to the withdrawal of such rights of use, where appropriate.

deleted

Amendment 24

Proposal for a regulation

Recital 24

Text proposed by the Commission

Amendment

(24) The Authority should act as a centre of expertise at European level on network and information security issues, providing guidance and advice to the European Parliament, the Commission or competent bodies appointed by the Member States. The security and resilience of communication networks and information systems remain a prime concern for society and a key element in the EU regulatory framework for electronic communications networks and service. The smooth functioning of the internal market risks being undermined by a heterogeneous application of the security-related provisions laid down in the Framework Directive and the Specific Directives. The opinion of the Authority providing technical advice at the request of the Commission and the Member States should facilitate the consistent application of those directives at national level.

deleted

Amendment 25

Proposal for a regulation

Recital 25

Text proposed by the Commission

Amendment

(25) Administrative charges may be imposed on providers of electronic communications for managing the authorisation system and for the granting of rights of use. In addition to administrative charges, usage fees may be levied for the use of frequencies and numbers. In the interest of reducing the administrative burden on undertakings, in case of a common selection procedure the Authority should collect and redistribute to the Member States the administrative

deleted

charges and usage fees.

Amendment 26

Proposal for a regulation

Recital 27

Text proposed by the Commission

(27) **The Authority** should contribute to the development of best regulatory practice and consistency in the application of regulation in the electronic communications sector by fostering the exchange of information between national authorities and making appropriate information available to the public in an easily accessible manner. **The Authority** should have the possibility to address economic and technical matters and to access the most updated information available in order to be able to respond to the economic and technical challenges posed by the developing information society, **for example in areas like network and information security and radio frequency identification devices.**

Amendment

(27) **Investment and innovation are strongly linked in the electronic communications sector. BERT** should contribute to the development of best regulatory practice and consistency in the application of regulation in the electronic communications sector by fostering the exchange of information between national authorities and making appropriate information available to the public in an easily accessible manner. **BERT** should have the possibility to address economic and technical matters and to access the most updated information available in order to be able to respond to the economic and technical challenges posed by the developing information society.

Amendment 27

Proposal for a regulation

Recital 28

Text proposed by the Commission

(28) **To be able to perform its tasks as set out in this Regulation and to understand better the challenges in the electronic communications field, including current and emerging risks in the network and information security field, the Authority needs to be able to analyse current and emerging developments. For that purpose the Authority may collect appropriate information, in particular concerning breaches of security and integrity that had a significant impact on the operation of network or services provided by national**

Amendment

deleted

regulatory authorities in accordance with Article 13a(3) of Directive 2002/21/EC (Framework Directive), as well as through questionnaires.

Amendment 28

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) As a focal point for the sharing and exchange of information on matters relating to the regulation of electronic communications services across the Community, and in the interests of promoting transparency and reducing administrative burdens for providers and users of those services, the Authority should maintain and make accessible a register containing information on the use of frequencies within the Community, on the basis of standardised information provided on a regular basis by each Member State. In order to improve the transparency of retail prices for making and receiving regulated roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, *the Authority* should ensure that up-to-date information on the application of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC is made available to interested parties and publish the results of such monitoring on an annual basis.

Amendment

(29) In order to improve the transparency of retail prices for making and receiving regulated roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, **BERT** should ensure that up-to-date information on the application of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC is made available to interested parties and publish the results of such monitoring on an annual basis.

Amendment 29

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) The Commission should be able to request the Authority to undertake any additional specific task within its general remit which may be considered to contribute to meeting the objectives of the Community regulatory framework for electronic communications.

Amendment

deleted

Amendment 30

Proposal for a regulation

Recital 32

Text proposed by the Commission

(32) The structure of **the Authority** should be suitable for the tasks it is to perform. **Experience with similar Community authorities provides some guidance in this respect, but the structure** should be adapted to meet the specific needs of the Community system for the regulation of electronic communications. In particular, the specific role of **the national regulatory authorities** and their independent nature **needs to be fully addressed.**

Amendment

(32) The structure of **BERT** should be **lean and** suitable for the tasks it is to perform. **It** should be adapted to meet the specific needs of the Community system for the regulation of electronic communications. In particular, the specific role of **NRAs** and their independent nature, **both at national and at European level, should be fully respected.**

Amendment 31

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) **The Authority** should have the necessary powers to perform **the regulatory** functions in an efficient and above all independent manner. Reflecting the situation on a national level, the Board of Regulators should therefore act independently from any market interest and shall not seek or take instructions from any government or other public or private entity.

Amendment

(33) **BERT** should have the necessary powers to perform **its** functions in an efficient and above all independent manner. Reflecting the situation on a national level, the Board of Regulators should therefore act independently from any market interest and shall not seek or take instructions from any government or other public or private entity.

Amendment 32

Proposal for a regulation

Recital 34

Text proposed by the Commission

(34) The smooth functioning of *the Authority* requires that its Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant to electronic communications networks, services and markets and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of *the Authority*. The Director should ensure the efficient execution of *the Authority's* tasks in an independent manner.

Amendment

(34) The smooth functioning of *BERT* requires that its *Managing* Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant to electronic communications networks, services and markets and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of *BERT*. The *Managing* Director should ensure the efficient execution of *BERT's* tasks in an independent manner.

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

Amendment 33

Proposal for a regulation

Recital 36

Text proposed by the Commission

(36) It is necessary to ensure that parties affected by decisions of the Authority have recourse to the necessary remedies. An appropriate appeal mechanism should be set up so that decisions of the Authority can be subject to appeal to a specialised Board of Appeal, whose decisions, in turn, should be open to action before the Court of Justice.

Amendment

deleted

Amendment 34

Proposal for a regulation

Recital 37

Text proposed by the Commission

(37) In addition to its operating principles based on independence and transparency, **the Authority** should be **an organisation** open to contacts with industry, consumers and other interested stakeholders. **The Authority should enhance cooperation between different actors operating in the field of network and information security, inter alia, by organising, on a regular basis, consultation with industry, research centres, as well as other stakeholders concerned and by establishing a network of contacts for Community bodies, public sector bodies appointed by the Member States, private sector and consumer bodies.**

Amendment

(37) In addition to its operating principles based on independence and transparency, **BERT** should be open to contacts with, **inter alia**, industry, consumers, **trade unions, public sector bodies, research centres** and other interested stakeholders. **Where appropriate, BERT should assist the Commission in the dissemination and exchange of best practice among undertakings.**

Amendment 35

Proposal for a regulation

Recital 38

Text proposed by the Commission

(38) **The Authority's** procedures should therefore ensure that **the Authority** has access to specialist expertise and experience in the electronic communications sector, particularly in areas of technical complexity and rapid change **such as network and information security.**

Amendment

(38) **BERT's** procedures should therefore ensure that **it** has access to specialist expertise and experience in the electronic communications sector, particularly in areas of technical complexity and rapid change.

Amendment 36

Proposal for a regulation

Recital 39

Text proposed by the Commission

(39) **In order to ensure that the necessary degree of expertise and experience are brought to bear in the performance of the**

Amendment

deleted

tasks of the Authority related to network and information security, a Chief Network Security Officer should be appointed. A Permanent Stakeholders' Group should be established in order to provide advice to the Chief Network Security Officer, encourage the sharing of experience and best practices in these matters and maintain regular dialogue with the private sector, consumer organisations and other stakeholders.

Amendment 37

Proposal for a regulation Recital 40

Text proposed by the Commission

(40) In order to guarantee the full autonomy and independence of *the Authority*, it should receive an autonomous budget. *The Community budgetary procedure remains applicable as for any subsidies chargeable to the general budget of the European Union are concerned. Moreover, the Court of Auditors should undertake the auditing of accounts in accordance with Article 91 of Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.*

Amendment

(40) In order to guarantee the full autonomy and independence of **BERT**, it should receive an autonomous budget. **Whilst one third of its funding should come from** the general budget of the European Union, **the other two thirds should be provided by NRAs. Member States should ensure that NRAs have adequate and unconditional funding for this purpose. This method of financing should be without prejudice to BERT's independence of both the Member States and the Commission.**

Amendment 38

Proposal for a regulation Recital 42

Text proposed by the Commission

(42) The Commission should be able to **impose financial penalties on** undertakings **that do not** provide the

Amendment

(42) The Commission should be able to **take the necessary measures in case** undertakings **fail to** provide the

information that is necessary for *the Authority* to achieve its tasks effectively. Also, Member States should ensure that they have an appropriate framework for imposing on undertakings effective, proportionate and dissuasive penalties for non-compliance with obligations arising from this Regulation.

information that is necessary for *BERT* to achieve its tasks effectively. Also, Member States should ensure that they have an appropriate framework for imposing on undertakings effective, proportionate and dissuasive penalties for non-compliance with obligations arising from this Regulation.

Amendment 39

Proposal for a regulation

Recital 43

Text proposed by the Commission

(43) Within its scope, in pursuing its objectives and in the performance of its tasks, *the Authority should comply* in particular with the provisions applicable to the Community institutions regarding the treatment of sensitive documents. Where relevant, it is appropriate to ensure a coherent and secure information exchange in the framework of this Regulation.

Amendment

(43) Within its scope, in pursuing its objectives and in the performance of its tasks, *NRAs should ensure that BERT complies* in particular with the provisions applicable to the Community institutions regarding the treatment of sensitive documents. Where relevant, it is appropriate to ensure a coherent and secure information exchange in the framework of this Regulation.

Amendment 40

Proposal for a regulation

Recital 44

Text proposed by the Commission

(44) *The Authority should apply* the relevant Community legislation concerning public access to documents as set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents and the protection of individuals with regard to the processing of personal data as set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of

Amendment

(44) *NRAs should ensure that BERT applies* the relevant Community legislation concerning public access to documents as set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents and the protection of individuals with regard to the processing of personal data as set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of

personal data by the Community institutions and bodies and on the free movement of such data.

personal data by the Community institutions and bodies and on the free movement of such data.

Amendment 41

Proposal for a regulation Recital 45

Text proposed by the Commission

Amendment

(45) Participation of third countries in the work of the Authority should be possible in accordance with appropriate agreements to be concluded by the Community.

deleted

Amendment 42

Proposal for a regulation Recital 46

Text proposed by the Commission

Amendment

(46) The smooth transition should be ensured for the ongoing activities of the ENISA falling within the remit of the Authority.

deleted

Amendment 43

Proposal for a regulation Recital 47

Text proposed by the Commission

Amendment

(47) The measures necessary for the implementation of this Regulation 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.

deleted

Amendment 44

Proposal for a regulation Recital 48

Text proposed by the Commission

Amendment

(48) In particular power should be conferred on the Commission to adapt the information specified in the Annex to this Regulation to technical or market developments. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

deleted

Amendment 45

Proposal for a regulation Recital 49

Text proposed by the Commission

Amendment

(49) Since the objectives of the proposed action, namely the better functioning of the internal market for electronic communications networks and services and the development of cross-Community electronic communications, cannot be sufficiently achieved by the Member States in view of the Europe-wide scope of this Regulation, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

deleted

Amendment 46

Proposal for a regulation
Recital 49 a (new)

Text proposed by the Commission

Amendment

(49a) By 1 January 2014, a review should take place to evaluate whether there is a need to extend the mandate of BERT. In case an extension is justified, budgetary and procedural regulations, as well as human resources, should be reviewed.

Amendment 47

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. ***A European Electronic Communications Market Authority*** is established with the responsibilities laid down in this Regulation.

1. ***The Body of European Regulators in Telecom ("BERT") shall be established with the responsibilities laid down in this Regulation. The Commission shall consult BERT in carrying out its functions under the Framework Directive and the Specific Directives, as set out in this Regulation.***

Amendment 48

Proposal for a regulation
Article 1 – paragraph 2

Text proposed by the Commission

Amendment

2. ***The Authority*** shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the ***national regulatory authorities***. It shall contribute to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-Community electronic communications ***and a high and effective level of network and information security***, through the tasks listed in Chapters II and III.

2. ***BERT*** shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the ***NRAs***. It shall contribute ***to improvement of national regulation in the electronic communications sector and*** to the better functioning of the internal market for electronic communications networks and services, including in particular ***the promotion of an effective and consistent application of the regulatory framework of electronic communications and*** the development of cross-Community electronic

communications, through the tasks listed in Chapters II and III.

Amendment 49

Proposal for a regulation

Article 1 – paragraph 3

Text proposed by the Commission

3. **The Authority** shall carry out its tasks in cooperation with **the national regulatory authorities** and the Commission **in a European system for the regulation of electronic communications**.

Amendment

3. **BERT** shall carry out its tasks in cooperation with **NRAs** and the Commission.

BERT shall serve as a means for the exchange of information and the adoption of consistent decisions by NRAs. It shall provide an organisational basis for the decision-making of NRAs. It shall adopt common positions and comments. Furthermore, it shall advise the Commission and assist the NRAs in all matters within the scope of the tasks assigned to the NRAs by the Framework Directive and the Specific Directives.

Amendment 50

Proposal for a regulation

Article 1 – paragraph 5

Text proposed by the Commission

5. **The objectives and the tasks of the Authority shall be without prejudice to the competencies of the Member States regarding network and information security which fall outside the scope of the EC Treaty, in particular, those covered by Titles V and VI of the Treaty on European Union. In any case, the objectives and the tasks of the Authority shall be without prejudice to activities concerning public security, defence, activities of the State in areas of criminal law and State security, including the economic well-being of the State when the**

Amendment

deleted

issues relate to State security matters.

Amendment 51

Proposal for a regulation

Article 1 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. The European Parliament and the Council shall adopt a decision establishing an office to ensure appropriate resources for BERT. This decision shall contain the following provisions:

(a) it shall provide that the office is part of the Community administration with regard to the terms and conditions of employment and budgetary responsibilities;

(b) as far as is required to ensure the autonomous fulfilment of the tasks of BERT, it shall provide specific staff regulations for the office; and

(c) it shall stipulate rules for the first assembly and the first chairmanship of BERT.

The office shall be established in Brussels.

Amendment 52

Proposal for a regulation

Article 3 – point a

Text proposed by the Commission

Amendment

(a) issue opinions at the request of the Commission or on its own initiative and assist the Commission by providing ***it*** with additional technical support in all matters regarding electronic communications;

(a) issue opinions at the request of ***the European Parliament***, the Commission, or on its own initiative and assist ***the European Parliament and*** the Commission by providing ***them*** with additional technical support in all matters regarding electronic communications;

Amendment 53

Proposal for a regulation Article 3 - point a a (new)

Text proposed by the Commission

Amendment

(aa) develop common positions, guidelines and best practices for the imposition of regulatory remedies at the national level and monitor their implementation across Member States;

Amendment 54

Proposal for a regulation Article 3 – point c

Text proposed by the Commission

Amendment

(c) provide advice for market players and ***national regulatory authorities*** on regulatory issues;

(c) provide advice for market players ***(including consumers and consumer organisations)*** and ***NRAs*** on regulatory issues;

Amendment 55

Proposal for a regulation Article 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) exchange experience and promote innovation in the field of electronic communications;

Amendment 56

Proposal for a regulation Article 3 – point e

Text proposed by the Commission

Amendment

(e) provide advice and assistance to the Commission or any competent body appointed by a Member State with regard to any network and information security issue falling within the Authority's remit;

deleted

Amendment 57

Proposal for a regulation

Article 3 – point f

Text proposed by the Commission

Amendment

(f) take individual decisions in relation to the issuance of rights-of-use for numbers from the European Telephone Numbering Space (ETNS);

deleted

Amendment 58

Proposal for a regulation

Article 3 - point g

Text proposed by the Commission

Amendment

(g) assist the Commission in the selection of undertakings to be granted rights of use of radio frequencies and numbers;

deleted

Amendment 59

Proposal for a regulation

Article 3 – point h

Text proposed by the Commission

Amendment

(h) collect and redistribute usage fees for rights-of-use of radio frequencies and numbers;

deleted

Amendment 60

Proposal for a regulation

Article 3 – point i

Text proposed by the Commission

Amendment

(i) issue recommendations to the national regulatory authorities on cross-border disputes and on e-Accessibility matters.

(i) advise NRAs on cross-border disputes and, where appropriate, on e-Accessibility matters.

Amendment 61

Proposal for a regulation Article 3 – point i a (new)

Text proposed by the Commission

Amendment

(ia) develop common positions on pan-European issues such as GTSs in order to increase regulatory consistency and promote a pan-European market and pan-European rules.

Amendment 62

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. At the request of the Commission, ***the Authority*** shall deliver opinions on all matters regarding electronic communications.

1. At the request of the Commission, ***BERT*** shall deliver opinions on all matters regarding electronic communications ***as set out in this Regulation. BERT may also provide opinions on these matters to the Commission or to NRAs on its own initiative.***

Amendment 63

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. ***The Authority shall in particular contribute to*** the harmonised application of the provisions of the Framework Directive and the Specific Directives ***by assisting*** the Commission in the preparation of recommendations or decisions to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive).

2. ***In order to promote*** the harmonised application of the provisions of the Framework Directive and the Specific Directives, the Commission ***shall also request the assistance of BERT*** in the preparation of recommendations or decisions to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive). ***The European Parliament may also request such assistance from BERT as it may reasonably require in relation to any enquiry or legislation within the scope of BERT's functions.***

Amendment 64

Proposal for a regulation

Article 4 – paragraph 3 – introductory wording

Text proposed by the Commission

3. Matters referred to in paragraph 1 shall **include**:

Amendment

3. Matters referred to in paragraph 1 shall **be**:

Amendment 65

Proposal for a regulation

Article 4 – paragraph 3 – point b

Text proposed by the Commission

(b) the security and integrity of public electronic communications networks and services, including issues linked to breaches of security and/or integrity, in accordance with Article 13a of Directive 2002/21/EC (Framework Directive) and Article 4 of Directive 2002/58/EC (Directive on privacy and electronic communications);

Amendment

deleted

Amendment 66

Proposal for a regulation

Article 4 – paragraph 3 – point e

Text proposed by the Commission

(e) analyses of specific national markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive);

Amendment

(e) analyses of specific national markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), ***and, where appropriate, of sub-national markets;***

Amendment 67

Proposal for a regulation

Article 4 – paragraph 3 – point i

Text proposed by the Commission

Amendment

(i) numbering issues, in accordance with Article 10 of Directive 2002/21/EC (Framework Directive) and access to numbers and services in the Community, in accordance with Article 28 of Directive 2002/22/EC (Universal Service Directive);

deleted

Amendment 68

Proposal for a regulation

Article 4 – paragraph 3 – point o

Text proposed by the Commission

Amendment

(o) measures on radio frequencies issues in accordance with Articles 4 and 6 of Decision 676/2002/EC (the Radio Spectrum Decision);

(o) matters that are the responsibility of BERT as identified in the Framework Directive and the Specific Directives, in so far as they affect management of the spectrum or are affected by its management;

Amendment 69

Proposal for a regulation

Article 4 – paragraph 3 – point p

Text proposed by the Commission

Amendment

(p) in accordance with Articles 6a and 6b of Directive 2002/20/EC (Authorisation Directive):

deleted

(i) harmonised conditions relating to rights of use of radio frequencies or numbers;

(ii) amendment or withdrawal of rights of use issued on a coordinated or harmonised basis;

(iii) the selection of undertakings to which individual rights of use for frequencies or numbers could be granted for services with cross-border potential.

Amendment 70

Proposal for a regulation

Article 4 – paragraph 3 – point p a (new)

Text proposed by the Commission

Amendment

(pa) measures to ensure the development of common pan-European rules and requirements for GTSs providers.

Amendment 71

Proposal for a regulation

Article 4 – paragraph 4

Text proposed by the Commission

Amendment

4. In addition, the *Authority shall* undertake the specific tasks set out in Articles 5 to 23.

4. In addition, the *Commission may request BERT to* undertake the specific tasks set out in Articles 5 to 23.

Amendment 72

Proposal for a regulation

Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission and NRAs shall take the utmost account of the opinion of BERT. Where BERT proposes alternative solutions in the light of different market conditions and path dependence of different regulatory approaches, NRAs shall consider which solution fits best into their regulatory approach. NRAs and the Commission shall make public the manner in which the opinion of BERT has been taken into account.

Amendment 73

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

2. **The Authority** shall deliver an opinion to the Commission on the draft measure concerned within 4 weeks of being so informed. The opinion shall include a detailed and objective analysis of whether the draft measure constitutes a barrier to the single market and its compatibility with Community law, in particular with the objectives referred to in Article 8 of Directive 2002/21/EC (Framework Directive). Where appropriate the **Authority** shall indicate what changes should be made to the draft measure so as to ensure that these objectives are most effectively met.

Amendment

2. **BERT** shall deliver an opinion to the Commission on the draft measure concerned within *four* weeks of being so informed. The opinion shall include a detailed and objective analysis of whether the draft measure constitutes a barrier to the single market and its compatibility with Community law, in particular with the objectives referred to in Article 8 of Directive 2002/21/EC (Framework Directive). Where appropriate the **Commission** shall *ask BERT to* indicate what changes should be made to the draft measure so as to ensure that these objectives are most effectively met.

Amendment 74

Proposal for a regulation

Article 7 - paragraph 2

Text proposed by the Commission

2. Where the Commission has identified a trans-national market in accordance with Article 15(4) of Directive 2002/21/EC (Framework Directive), **the Authority shall undertake the market analysis in cooperation with the national regulatory authorities** in accordance with Article 16(5) of that Directive **and deliver an opinion to the Commission thereon.**

Amendment

2. Where the Commission has identified a trans-national market in accordance with Article 15(4) of Directive 2002/21/EC (Framework Directive), **BERT may, upon request, assist the NRAs involved in the joint market analysis** in accordance with Article 16(5) of that Directive.

Amendment 75

Proposal for a regulation

Article 7 - paragraph 3

Text proposed by the Commission

3. **Where the Authority concludes that the relevant trans-national market is not**

Amendment

deleted

effectively competitive, the opinion to the Commission shall include a draft measure specifying the undertaking(s) it considers should be designated as having significant market power on that market and the appropriate obligations to be imposed.

Amendment 76

Proposal for a regulation Article 7 - paragraph 4

Text proposed by the Commission

Amendment

4. Prior to delivering its opinion under paragraphs 1 or 3, the Authority shall consult with national regulatory authorities and the national competition authorities and conduct a public consultation in accordance with Article 42 of this Regulation.

deleted

Amendment 77

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. The Authority shall be able to take decisions in relation to the issuance of rights of use for numbers from the European Telephone Numbering Space (ETNS) in accordance with Article 10 of Directive 2002/21/EC (Framework Directive). It shall also be responsible for the administration and development of the European Telephone Numbering Space (ETNS) on behalf of the Member States to which the prefix 3883 has been awarded.

deleted

Amendment 78

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. The Authority shall undertake tasks associated with the administration and management of harmonised numbering ranges in accordance with Article 10(4) of Directive 2002/21/EC (Framework Directive).

deleted

Amendment 79

Proposal for a regulation

Article 8 – paragraph 3

Text proposed by the Commission

Amendment

3. The Authority shall work with the national regulatory authorities on issues related to fraud or the misuse of numbering resources within the Community, in particular for cross-border services. It may issue an opinion on action that could be taken at Community or national level to address fraud and misuse and other consumer concerns about numbering.

3. At the Commission's request, BERT shall work with the NRAs on issues related to fraud or the misuse of numbering resources within the Community, in particular for cross-border services. It may issue an opinion on action that could be taken at Community or national level to address fraud and misuse and other consumer concerns about numbering.

Amendment 80

Proposal for a regulation

Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. The Authority shall undertake an annual review of measures taken by Member States to inform citizens about the existence and use of the single European emergency call number "112", based on the information received pursuant to Article 26(4) of Directive 2002/22/EC (Universal Service Directive). The results of this review shall be included in the annual report referred to

deleted

in Article 21(2).

Amendment 81

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

1. Upon request, **the Authority** shall provide advice to the Commission **and conduct studies and reviews, in particular on technical and economic aspects, regarding** the use of radio frequencies for electronic communications in the Community.

Amendment

1. Upon request, **BERT** shall provide advice to the Commission, **the Radio Spectrum Policy Group (“RSPG”) or the Radio Spectrum Committee (“RSC”), as appropriate, in relation to matters within the scope of its functions which affect or are affected by** the use of radio frequencies for electronic communications in the Community. **It shall work in close cooperation with the RSPG and the RSC as appropriate.**

Amendment 82

Proposal for a regulation Article 10 – paragraph 3

Text proposed by the Commission

3. **Upon request, the Authority shall** provide advice to the Commission regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.

Amendment

3. **The Commission may request BERT to** provide advice **to the RSPG or the RSC in relation to advice of the RSC** to the Commission regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.

Amendment 83

Proposal for a regulation Article 10 - paragraph 4

Text proposed by the Commission

4. **The Authority shall publish an annual report** on prospective frequencies

Amendment

4. **BERT shall contribute to reports published by the Commission, the RSPG,**

developments in the electronic communications sector and policies in which it shall identify the potential needs and challenges.

the RSC or any other relevant body, as appropriate, on prospective frequencies developments in the electronic communications sector and policies in which it shall identify the potential needs and challenges.

Amendment 84

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

1. *The Authority shall, at the request of the Commission, provide the Commission with* an opinion on the scope and content of any of the implementation measures provided for in Article 6a of Directive 2002/20/EC (Authorisation Directive). This may include in particular *the Authority's* assessment of the benefits that may accrue for the single market in electronic communications networks and services from the implementing measures adopted by the Commission pursuant to Article 6a of Directive 2002/20/EC (Authorisation Directive) and the identification of the services with cross-Community potential which would benefit from those measures.

Amendment

1. *The Commission may request BERT to deliver to the Commission, the RSPG or the RSC* an opinion on the scope and content of any of the implementation measures provided for in Article 6a of Directive 2002/20/EC (Authorisation Directive). This may include in particular *BERT's* assessment of the benefits that may accrue for the single market in electronic communications networks and services from the implementing measures adopted by the Commission pursuant to Article 6a of Directive 2002/20/EC (Authorisation Directive) and the identification of the services with cross-Community potential which would benefit from those measures.

Amendment 85

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

2. *Where an opinion of the Authority pursuant to paragraph 1 relates to the implementation of a common selection procedure for rights of use falling within the scope of Article 6b of Directive 2002/20/EC (Authorisation Directive), that opinion shall in particular:*
(a) identify the electronic communications services whose provision on a

Amendment

deleted

cross-border basis within the Community would benefit from the use of frequencies or numbers the rights to which are granted by means of a single procedure and under a single set of conditions;

(b) identify the numbers or numbering ranges that could be used for such services;

(c) assess the level of actual or potential demand within the Community for such services, and

(d) specify any limitation it considers appropriate on the number of rights of use to be offered under the common selection procedure and the procedures to be followed for the selection of the undertakings to whom those rights are to be granted, taking due account where applicable of the principles set out in Article 7 of Directive 2002/20/EC (Authorisation Directive).

Amendment 86

Proposal for a regulation Article 11 - paragraph 3

Text proposed by the Commission

3. If the Commission so requests, *the Authority* shall explain or supplement any opinion issued pursuant to paragraph 1 within the time period specified in that request

Amendment

3. If the Commission, *the RSPG, the RSC or any other relevant body* so requests, *BERT* shall explain or supplement any opinion issued pursuant to paragraph 1 within the time period specified in that request.

Amendment 87

Proposal for a regulation Article 12

Text proposed by the Commission

Article 12

Proposal for the selection of undertakings

The Authority shall, in accordance with Article 6 b of Directive 2002/20/EC

Amendment

deleted

(Authorisation Directive):

(a) receive and process applications from undertakings for rights-of-use of radio frequencies and numbers and collect the administrative charges and fees imposed on undertakings pursuant to a common selection procedure;

(b) carry out the common selection procedure and propose the undertaking(s) to which individual rights of use may be granted in accordance with those provisions;

(c) deliver a report to the Commission detailing the applications received, describing its assessment of those applications, proposing the undertaking(s) most eligible to be granted individual rights of use and justifying this selection by reference to the selection criteria set out in the relevant implementing measure.

Amendment 88

Proposal for a regulation Article 13 – subparagraph 1

Text proposed by the Commission

The Authority shall, at the request of the Commission, deliver an opinion to the Commission on the withdrawal of rights of use issued under the common procedures provided for Article 6b of Directive 2002/20/EC (Authorisation Directive).

Amendment

*The Commission may request BERT to deliver an opinion to the Commission, **the RSPG or the RSC** on the withdrawal of rights of use issued under the common procedures provided for Article 6b of Directive 2002/20/EC (Authorisation Directive).*

Amendment 89

Proposal for a regulation Article 14

Text proposed by the Commission

*Article 14
Network and information security*

Amendment

deleted

In addition to the tasks referred to in Article 4(3)(b) and Article 19(4) and (5), the Authority shall contribute to the development of a culture of network and information security, in particular by:

(a) facilitating cooperation between the Commission and the Member States in the development of common methodologies to prevent, address and respond to network and information security issues;

(b) advising the Commission on research in the area of network and information security as well as on the effective use of risk prevention technologies and promoting risk assessment activities, interoperable risk management solutions and studies on prevention management solutions within public and private sector organisations and

(c) contributing to Community efforts to cooperate with third countries and, where appropriate, with international organisations to promote a common global approach to network and information security issues.

Amendment 90

Proposal for a regulation

Article 15

Text proposed by the Commission

The Authority may, on its own initiative, deliver an opinion to the Commission on the matters referred to in *articles* 4(2), 7(1), 8 (3), 10(1), 12, 14, 21 and 22.

Amendment

BERT may, on its own initiative, deliver an opinion to ***the European Parliament and*** the Commission, ***in particular*** on the matters referred to in *Articles* 4(2), 7(1), 8(3), 10(1), 12, 14, 21 and 22 ***or on any other matter that it deems relevant.***

Amendment 91

Proposal for a regulation

Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Collection of administrative charges for services provided by the Authority

1. The Commission shall set the administrative charges imposed on undertakings for services provided by the Authority in accordance with the procedure referred in Article 54(2) and on the basis of an opinion of the Authority. The Authority shall collect these administrative charges.

2. The administrative charges shall be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

3. The administrative charges referred to in paragraph 1 may cover:

(a) the administrative costs incurred by the Authority in the management of the selection procedure in accordance with Article 12;

(b) the processing of appeals in accordance with Article 34;

(c) the administrative costs incurred by the Authority in the administration of the European Telephone Numbering Space in accordance with Article 8.

All charges shall be expressed and be payable in Euro.

4. The amount of the administrative charges shall be fixed at such a level as to ensure that the revenue from these charges is in principle sufficient to cover the full cost of the services delivered.

5. The Authority shall publish a yearly overview of its administrative costs and charges. In the light of any difference

between the total sum of the charges and the total administrative costs, it shall deliver an opinion to the Commission indicating appropriate adjustments to be made to charges.

Amendment 92

Proposal for a regulation Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

Collection and redistribution of usage fees for rights of use of radio frequencies and numbers and of administrative charges under a common selection procedure

1. Where usage fees for rights of use of radio frequencies or numbers issued under a common selection procedure are imposed on undertakings in accordance with Article 6b of Directive 2002/20/EC (Authorisation Directive), the Authority shall be responsible for collecting and redistributing such usage fees.

Usage fees shall be redistributed, upon their receipt by the Authority, among the relevant Member States and the Authority in accordance with the time-limit and the ratio to be set by the Commission pursuant to Article 6b of Directive 2002/20/EC (Authorisation Directive).

If the time-limit and the ratio are not set up by the Commission, usage fees shall be redistributed on the basis of the population of each Member State required to issue rights-of-use in the last completed year prior to the launch of the selection procedure.

2. The Authority shall be responsible for collecting and redistributing the administrative charges imposed following a common selection procedure for rights of use for frequencies or numbers on the selected undertakings to cover the administrative costs of national regulatory

authorities in monitoring compliance with the common conditions.

These administrative charges referred to in the first subparagraph shall be redistributed upon their receipt by the Authority to the relevant national regulatory authorities in accordance with the values provided by the national regulatory authorities.

Amendment 93

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

1. **The Authority** shall, taking account of the Community's electronic communications policy, promote the exchange of information both between the Member States, and between the Member States, **national regulatory authorities** and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services, **including network and information security**.

Amendment

1. **BERT** shall, taking account of the Community's electronic communications policy, promote the exchange of information both between the Member States, and between the Member States, **NRAs** and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services. ***In the light of different market conditions and path dependence of different national regulatory approaches, BERT may develop alternative solutions within the harmonised regulatory framework.***

Amendment 94

Proposal for a regulation Article 19 – paragraph 2 – point b

Text proposed by the Commission

(b) commissioning or conducting studies on electronic communications networks and services and the regulation **and protection** thereof, and

Amendment

(b) commissioning or conducting studies on electronic communications networks and services and the regulation thereof, and

Amendment 95

Proposal for a regulation
Article 19 – paragraph 2 – point c

Text proposed by the Commission

(c) organising or promoting training *on all matters regarding electronic communications.*

Amendment

(c) organising or promoting training *for NRAs in matters that are within the scope of the functions of BERT as laid down in the Framework Directive and the Specific Directives.*

Amendment 96

Proposal for a regulation
Article 19 – paragraph 3

Text proposed by the Commission

3. *The Authority* shall make such information available to the public in an easily accessible form.

Amendment

3. *BERT* shall make such information available to the public in an easily accessible form. *Confidentiality shall be duly respected.*

Amendment 97

Proposal for a regulation
Article 19 – paragraph 4

Text proposed by the Commission

4. *The Authority shall collect appropriate information, in particular in accordance with Article 13a of Directive 2002/21/EC (Framework Directive), to analyse current and emerging risks. It shall in particular, analyse at European level, those risks which could produce an impact on the resilience and the availability of electronic communications networks and on the authenticity, integrity and confidentiality of the information accessed and transmitted through them, and provide the results of the analysis to the Member States and the Commission.*

Amendment

deleted

Amendment 98

Proposal for a regulation

Article 19 – paragraph 5

Text proposed by the Commission

Amendment

5. The Authority shall contribute to awareness raising and the availability of timely, objective and comprehensive information, including on network and information security issues, for all users by, inter alia, promoting exchanges of current best practices, including on methods of alerting users, and seeking synergy between public and private sector initiatives.

deleted

Amendment 99

Proposal for a regulation

Article 20

Text proposed by the Commission

Amendment

Article 20

deleted

Management of the spectrum information register and of the mobile roaming database

1. A registry in the form of a common access point for the provision of information on the use of spectrum in each Member State shall be made available to the public to ensure the harmonised availability of information on the use of radio frequencies in the Community. The information on the use of radio frequencies shall be provided by Member States on a regular basis and in accordance with a request to this effect from the Authority. The Authority shall be responsible for the management and publication of the registry. The registry shall include the information specified in the Annex to this Regulation, as well as any other information the Authority may consider appropriate. The Commission may adopt implementing measures to

adapt the Annex to technical or market developments. Those measures designed to amend non-essential elements of this Regulation shall be adopted in accordance with the procedure referred to in Article 54(3).

2. The Authority shall be responsible for the management and publication of a database on pricing of voice and data services for mobile customers when roaming within the Community including where appropriate, the specific costs related to roaming calls made and received in the outermost regions of the Community. It shall monitor developments in such prices and publish an annual report.

Amendment 100

Proposal for a regulation Article 21 – paragraph 1

Text proposed by the Commission

1. *The Authority shall* monitor developments in the electronic communications market, and in particular the retail prices of products and services most commonly used by consumers.

Amendment

1. *The Commission may request BERT to* monitor developments in the electronic communications market, and in particular the retail prices of products and services most commonly used by consumers.

Amendment 101

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

2. *The Authority* shall publish an annual report on developments in the electronic communications sector, including consumer issues, in which it shall identify remaining barriers to the completion of the single market for electronic communications. The report shall also include an overview and analysis of the information on national appeal procedures

Amendment

2. *BERT* shall publish an annual report on developments in the electronic communications sector, including consumer issues, in which it shall identify remaining barriers to the completion of the single market for electronic communications. The report shall also include an overview and analysis of the information on national appeal procedures

provided by the Member States pursuant to Article 4(3) of Directive 2002/21/EC (Framework Directive), and of the extent to which the out-of-court dispute settlement procedures referred to in Article 34 of Directive 2002/22/EC (Universal service Directive) are used in Member States.

provided by the Member States pursuant to Article 4(3) of Directive 2002/21/EC (Framework Directive), and of the extent to which the out-of-court dispute settlement procedures referred to in Article 34 of Directive 2002/22/EC (Universal service Directive) are used in Member States. ***The report shall be presented to the European Parliament, which may issue an opinion thereon.***

Amendment 102

Proposal for a regulation Article 21 – paragraph 3

Text proposed by the Commission

3. ***The Authority may deliver to the Commission, in conjunction with the publication of the annual report, an opinion on the measures that could be taken to overcome the problems identified in assessing the issues referred to in paragraph 1.***

Amendment

3. ***The Commission may request BERT to deliver an opinion on the measures that could be taken to overcome the problems identified in assessing the issues referred to in paragraph 1, in conjunction with the publication of the annual report. This opinion shall be presented to the European Parliament.***

Amendment 103

Proposal for a regulation Article 21 – paragraph 4

Text proposed by the Commission

4. ***The Authority shall*** periodically publish a report on the interoperability of digital interactive television services as referred to in Article 18 of Directive 2002/21/EC (Framework Directive).

Amendment

4. ***The Commission may request BERT to*** periodically publish a report on the interoperability of digital interactive television services as referred to in Article 18 of Directive 2002/21/EC (Framework Directive).

Amendment 104

Proposal for a regulation
Article 22 – paragraph 1

Text proposed by the Commission

1. **The Authority** shall, at the request of the Commission, advise the Commission and **Member States** on improving the interoperability of, access to, and use of electronic communications services and terminal equipment, and in particular cross-border interoperability issues. **It shall establish a group consisting of representatives from Member States, associations of undertakings in the electronic communications industry, associations of end-users and associations representing disabled end-users. The group shall also look** at the particular needs of disabled end-users and the elderly.

Amendment

BERT shall, at the request of the Commission, advise the Commission and **the NRAs** on improving the interoperability of, access to, and use of electronic communications services and terminal equipment, and in particular cross-border interoperability issues, **looking** at the particular needs of disabled end-users and the elderly.

Amendment 105

Proposal for a regulation
Article 22 – paragraph 2

Text proposed by the Commission

2. **The Authority shall publish an annual report on the measures taken to improve accessibility to electronic communications services and equipment by disabled end-users, based on information provided by the Member States and information received by the Authority pursuant to Article 33(3) of Directive 2002/22/EC (Universal Service Directive). The report shall identify measures that could be taken at Community or at national level to improve accessibility. Where appropriate, the Authority may issue recommendations on measures that could be taken at national level.**

Amendment

deleted

Amendment 106

Proposal for a regulation Article 23

Text proposed by the Commission

The Authority may take on specific additional tasks at the request of the Commission.

Amendment

BERT may take on specific additional tasks at the request of the Commission, **subject to the consent of all its members.**

Amendment 107

Proposal for a regulation Article 24

Text proposed by the Commission

Article 24

Bodies of *the Authority*

The Authority shall comprise:

- (a) *an Administrative Board*
- (b) a Board of Regulators**
- (c) a Director
- (d) a Chief Network Security Officer**
- (e) a Permanent Stakeholders' Group**
- (f) a Board of Appeal.**

Amendment

Article 24

Bodies of **BERT**

BERT shall comprise:

- (a) *a Board of Regulators*
- (c) a **Managing** Director

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

Amendment 108

Proposal for a regulation Article 25 – paragraph 1

Text proposed by the Commission

1. The *Administrative Board* shall be composed of *twelve members. Six shall be appointed by the Commission and six by the Council. The members of the Administrative Board shall be appointed in such a way as to secure the highest*

Amendment

1. The Board **of Regulators** shall be composed of **one member per Member State who shall be the head or nominated high-level representative of the independent NRA with responsibility for day-to-day application of the regulatory**

standards of competence and independence, and a broad range of relevant expertise. The term of office shall be five years, renewable once.

framework in that Member State. NRAs shall nominate one alternate per Member State. The Commission shall attend as an observer with the prior agreement of the Board.

Amendment 109

Proposal for a regulation Article 25 – paragraph 2

Text proposed by the Commission

2. The *Administrative* Board shall appoint its Chairperson and its Vice-Chairperson from among its members. The Vice-Chairperson shall automatically replace the Chairperson if the latter is not in a position to perform his/her duties. The terms of office of the Chairperson and of the Vice-Chairperson shall be two and a half years *and shall be renewable. In any event, however, the term of office of the Chairperson and that of the Vice-Chairperson shall expire the moment they cease to be members of the Administrative Board.*

Amendment

2. The Board *of Regulators* shall appoint its Chairperson and its Vice-Chairperson from among its members. The Vice-Chairperson shall automatically replace the Chairperson if the latter is not in a position to perform his/her duties. The terms of office of the Chairperson and of the Vice-Chairperson shall be two and a half years, *pursuant to the election procedures set out in the rules of procedure.*

Amendment 110

Proposal for a regulation Article 25 – paragraph 3

Text proposed by the Commission

3. Meetings of the *Administrative* Board *shall be* convened by *its* Chairperson. *The Director of the Authority shall participate in the deliberations unless the Administrative Board decides otherwise. The Administrative Board shall meet at least twice* a year in ordinary session. It *shall* also meet at the initiative of its Chairperson, at the request of the Commission or at the request of at least a third of its members. The *Administrative* Board may invite any person with potentially relevant opinions to attend its

Amendment

3. Meetings of the Board *of Regulators*, convened by *the* Chairperson, *shall occur* at least *four times* a year in ordinary session. It *may* also meet *exceptionally* at the initiative of its Chairperson, at the request of the Commission or at the request of at least a third of its members. The Board *of Regulators* may invite any person with potentially relevant opinions to attend its meetings in the capacity of an observer. The members of the Board *of Regulators* may subject to the rules of procedure, be

meetings in the capacity of an observer. The members of the *Administrative* Board may, subject to the rules of procedure, be assisted by advisers or by experts. *The Administrative Board's secretarial services shall be provided by the Authority.*

assisted by advisers or by experts.

Amendment 111

Proposal for a regulation Article 25 – paragraph 4

Text proposed by the Commission

4. Decisions of the *Administrative* Board shall be adopted on the basis of a two-thirds majority of the members present.

Amendment

4. Decisions of the Board *of Regulators* shall be adopted on the basis of a two-thirds majority of the members present *unless otherwise provided for in this Regulation, the Framework Directive and the Specific Directives. These decisions shall be communicated to the Commission.*

The Board of Regulators shall approve the rules of procedure of BERT by a two-thirds majority. Those rules of procedure shall guarantee that the members of the Board of Regulators are always provided with full agendas and draft proposals in advance of each meeting in order to have the chance to propose amendments prior to the vote.

Amendment 112

Proposal for a regulation Article 25 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. When carrying out the tasks conferred upon it by this Regulation, the Board of Regulators shall act independently and shall not seek or take instructions from any Member State or any public or private interest group.

Amendment 113

Proposal for a regulation Article 25 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5b. Secretarial services shall be provided for the Board of Regulators by BERT.

Amendment 114

Proposal for a regulation Article 26 – title and paragraph 1

Text proposed by the Commission

Amendment

Tasks of the *Administrative* Board

1. The *Administrative* Board shall, *after having consulted the Board of Regulators*, appoint the Director in accordance with *Article 29(2)*.

Tasks of the Board *of Regulators*

1. The Board *of Regulators* shall appoint the *Managing* Director in accordance with *[Article 26(13b)]*. *The Board of Regulators shall take all decisions relating to the performance of BERT's functions as listed in Article 3.*

Amendment 115

Proposal for a regulation Article 26 – paragraph 2

Text proposed by the Commission

Amendment

2. The Administrative Board shall, after consulting the Director, appoint a Chief Network Security Officer in accordance with Article 31(2).

deleted

Amendment 116

Proposal for a regulation Article 26 – paragraph 3

Text proposed by the Commission

Amendment

3. The Administrative Board shall appoint the members of the Board of Regulators

deleted

in accordance with Article 27(1).

Amendment 117

Proposal for a regulation Article 26 – paragraph 4

Text proposed by the Commission

Amendment

4. The Administrative Board shall appoint the members of the Board of Appeal in accordance with Article 33(1).

deleted

Amendment 118

Proposal for a regulation Article 26 – paragraph 5

Text proposed by the Commission

Amendment

5. The Administrative Board shall adopt, before 30 September each year, *after consulting the Commission and after the approval of the Board of Regulators in accordance with Article 28(3), the work programme of the Authority* for the coming year and shall transmit it to the European Parliament, the Council and the Commission. *The work programme shall be adopted without prejudice to the annual budgetary procedure.*

5. *After consulting the Commission, the Board of Regulators shall, in accordance with Article 30(4) and in line with the draft budget established in accordance with Article 37, adopt, before 30 September each year, BERT's work programme for the following year, and shall transmit it to the European Parliament, the Council and the Commission.*

Amendment 119

Proposal for a regulation Article 26 – paragraph 6

Text proposed by the Commission

Amendment

6. The Administrative Board shall exercise its budgetary powers in accordance with Articles 36 to 38.

deleted

Amendment 120

Proposal for a regulation Article 26 – paragraph 7

Text proposed by the Commission

Amendment

7. The Administrative Board shall decide, after having obtained the agreement of the Commission, whether to accept any legacies, donations or grants from other Community sources.

deleted

Amendment 121

Proposal for a regulation Article 26 – paragraph 8

Text proposed by the Commission

Amendment

8. The Administrative Board shall exercise disciplinary authority over the Director and the Chief Network Security Officer.

8. The Board of Regulators shall exercise disciplinary authority over the Managing Director.

Amendment 122

Proposal for a regulation Article 26 – paragraph 9

Text proposed by the Commission

Amendment

9. The Administrative Board shall, where necessary, draw up the Authority's staff policy pursuant to Article 49(2).

deleted

Amendment 123

Proposal for a regulation Article 26 – paragraph 10

Text proposed by the Commission

Amendment

10. The Administrative Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 47.

10. The Board of Regulators shall adopt, on behalf of BERT, the special provisions on right of access to the documents of BERT, in accordance with Article 47.

Amendment 124

Proposal for a regulation Article 26 – paragraph 11

Text proposed by the Commission

11. The *Administrative* Board shall adopt the annual report on *the* activities *of the Authority* and shall transmit it to the European Parliament, the Council, the Commission, the European and Social Committee and the Court of Auditors by 15 June at the latest. *As provided for in Article 28(4), this report shall contain an independent section approved by the Board of Regulators concerning the regulatory activities of the Authority during the year considered.*

Amendment

11. The Board *of Regulators* shall adopt the annual report on *BERT's* activities and shall transmit it to the European Parliament, the Council, the Commission, the European *Economic* and Social Committee and the Court of Auditors by 15 June at the latest. *The European Parliament may request either the Chairperson of the Board of Regulators or the Managing Director to address it on relevant issues relating to BERT's* activities.

Amendment 125

Proposal for a regulation Article 26 – paragraph 13

Text proposed by the Commission

13. The Administrative Board shall deliver an opinion to the Commission on the administrative charges which the Authority may levy from undertakings in carrying out its tasks as referred to in Article 16.

Amendment

deleted

Amendment 126

Proposal for a regulation Article 26 – paragraph 13 a (new)

Text proposed by the Commission

Amendment

13a. The Board of Regulators shall provide guidance to the Managing Director in the execution of the Managing Director's tasks.

Amendment 127

Proposal for a regulation

Article 26 – paragraph 13 b (new)

Text proposed by the Commission

Amendment

13b. The Board of Regulators shall appoint the Managing Director. The Board of Regulators shall reach this decision on the basis of a majority of three quarters of its members. The Managing Director designate shall not participate in the preparation of, or vote on, such a decision.

Amendment 128

Proposal for a regulation

Article 26 – paragraph 13 c (new)

Text proposed by the Commission

Amendment

13c. The Board of Regulators shall approve the independent section of the annual report on consultative activities provided for in Article 26(11) and Article 30(8).

(Repositioning the text of Article 28(4).)

Amendment 129

Proposal for a regulation

Article 27

Text proposed by the Commission

Amendment

Article 27

deleted

The Board of Regulators

1. The Board of Regulators shall be composed of one member per Member State who shall be the Head of the independent national regulatory authority with responsibility for day-to-day application of the regulatory framework in the Member State, the Director and one non-voting representative of the

Commission. The national regulatory authorities shall nominate one alternate per Member State.

2. The Director shall be the Chairperson of the Board of Regulators.

3. The Board of Regulators shall elect a Vice-Chairperson from among its members. The Vice-Chairperson shall replace the Chairperson if the latter is not in a position to perform his or her duties. The term of office of the Vice-Chairperson shall be two and a half years and shall be renewable. In any event, however, the term of office of the Vice-chairperson shall expire the moment he/she ceases to be members of the Board of Regulators.

4. The Board of Regulators shall act by a simple majority of its members. Each member or alternate other than the Director and the representative of the Commission shall have one vote.

5. The Board of Regulators shall adopt its rules of procedure.

6. When carrying out the tasks conferred upon it by this Regulation, the Board of Regulators shall act independently and shall not seek or take instructions from any government of a Member State or from any public or private interest.

7. The Board of Regulators' secretarial services shall be provided by the Authority.

Amendment 130

Proposal for a regulation

Article 28

Text proposed by the Commission

Amendment

Article 28

deleted

Tasks of the Board of Regulators

1. The Board of Regulators shall provide an opinion to the Director before the

adoption of the opinions, recommendations and decisions referred to in Articles 4 to 23 within its field of competence. In addition, the Board of Regulators shall provide guidance to the Director in the execution of the Director's tasks.

2. The Board of Regulators shall deliver an opinion on the candidate to be appointed as Director in accordance with Article 26(1) and Article 29(2). The Board shall reach this decision on the basis of a majority of three quarters of its members. The Director shall not participate in the preparation of, or vote on, such opinions.

3. The Board of Regulators shall, in accordance with Article 26(5) and Article 30(4) and in line with the draft budget established according to Article 37 approve the work programme of the Authority for the coming year concerning its activities.

4. The Board of Regulators shall approve the independent section on regulatory activities of the annual report provided for in Article 26(11) and Article 30(9).

(Article 28(1), (3) and (4) are placed in Article 26(13a), (5) and (13c) respectively.)

Amendment 131

Proposal for a regulation Article 29 – paragraph 1

Text proposed by the Commission

1. *The Authority* shall be managed by its Director, who shall act *independently* in the performance of his/her functions. *Without prejudice to the respective powers of the Commission, the Administrative Board and the Board of Regulators, the Director shall not seek or accept any instruction from any government or from any body.*

Amendment

1. *BERT* shall be managed by its *Managing* Director, who shall *be accountable to and act on the instructions of the Board of Regulators* in the performance of his/her functions. *The Managing* Director shall not *otherwise* seek or accept any instruction from any government or any body.

Amendment 132

Proposal for a regulation

Article 29 – paragraph 2

Text proposed by the Commission

2. **After consulting the Board of Regulators, the** Director shall be appointed by the *Administrative* Board, on the basis of merit, skills and experience relevant for electronic communications networks and services, **from a list of at least two candidates proposed by the Commission.** Before appointment, the candidate selected by the *Administrative* Board may be invited to make a statement before the *competent* committee of the European Parliament and answer questions put by its members.

Amendment

2. **The Managing** Director shall be appointed by the Board **of Regulators** on the basis of merit *and the* skills and experience relevant for electronic communications networks and services. Before appointment, **the suitability of** the candidate selected by the Board **of Regulators** may be **subject to a non-binding opinion of the European Parliament and the Commission. To this end, the candidate shall be** invited to make a statement before the *responsible* committee of the European Parliament and answer questions put by its members.

Amendment 133

Proposal for a regulation

Article 29 – paragraph 3

Text proposed by the Commission

3. The Director's term of office shall be five years. **In the course of the nine months preceding the end of this period, the Commission shall undertake an evaluation. In the evaluation, the Commission shall assess in particular:**

(a) **the performance of the Director;**

(b) **the Authority's duties and requirements in the coming years.**

Amendment

3. The **Managing** Director's term of office shall be five years.

Amendment 134

Proposal for a regulation

Article 29 – paragraph 4 – first subparagraph

Text proposed by the Commission

4. **After consulting the** Board of

Amendment

4. **The** Board of Regulators may extend the

Regulators, *the Administrative Board, acting on a proposal from the Commission*, may extend the term of office of the Director once for not more than three years, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of *the Authority*.

term of office of the *Managing* Director once for not more than three years, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of *BERT*.

Amendment 135

Proposal for a regulation Article 29 – paragraph 5

Text proposed by the Commission

5. The Director may be removed from office only upon a decision by the *Administrative* Board, *after consulting the Board of Regulators*. The *Administrative* Board shall reach this decision on the basis of a majority of three quarters of its members.

Amendment

5. The *Managing* Director may be removed from office only upon decision by the Board *of Regulators, taking into account the opinion of the European Parliament*. The Board *of Regulators* shall reach this decision on the basis of a majority of three quarters of its members.

Amendment 136

Proposal for a regulation Article 29 – paragraph 6

Text proposed by the Commission

6. The European Parliament and the Council may *call upon* the Director to submit a report on the performance of his duties.

Amendment

6. The European Parliament and the Council may *request* the *Managing* Director to submit a report on the performance of his duties. *Should this be necessary, the responsible committee of the European Parliament may invite the Managing Director to answer questions put by its members.*

Amendment 137

Proposal for a regulation
Article 30 – paragraph 2

Text proposed by the Commission

2. The Director shall prepare the **work** of the **Administrative** Board. He/she shall participate, without having the right to vote, in the work of the **Administrative** Board.

Amendment

2. The **Managing** Director shall prepare the **agenda** of the Board **of Regulators**. He/she shall participate, without having the right to vote, in the work of the Board **of Regulators**.

Amendment 138

Proposal for a regulation
Article 30 – paragraph 3

Text proposed by the Commission

3. The Director shall adopt the opinions, recommendations and decisions referred to in Articles 4 to 23, subject to the assent of the Board of Regulators.

Amendment

deleted

Amendment 139

Proposal for a regulation
Article 30 - paragraph 4

Text proposed by the Commission

4. Each year the Director shall prepare a draft work programme of **the Authority** for the following year, and submit it to the Board of Regulators **and to the Commission** before 30 June of that year.

Amendment

4. Each year the **Managing** Director shall prepare **the** draft work programme of **BERT** for the following year, and submit it to the Board of Regulators before 30 June of that year. **The Board of Regulators shall adopt the work programme in accordance with Article 26(5).**

He/she shall present the work programme before 1 September for adoption by the Administrative Board.

Amendment 140

Proposal for a regulation
Article 30 – paragraph 5

Text proposed by the Commission

5. The Director shall be responsible for

Amendment

5. The **Managing** Director shall be

implementing the annual work programme of *the Authority*, under the guidance of the Board of Regulators *and of the Chief Network Security Officer as appropriate, and under the administrative control of the Administrative Board.*

responsible for *supervising the implementation of* the annual work programme of *BERT*, under the guidance of the Board of Regulators.

Amendment 141

Proposal for a regulation Article 30 – paragraph 8

Text proposed by the Commission

Amendment

8. Each year the Director shall prepare the draft annual report on the activities of *the Authority* with a section on *the regulatory activities of the Authority* and a section on financial and administrative matters.

8. Each year the *Managing* Director shall prepare the draft annual report on the activities of *BERT* with a section on *its consultative* activities and a section on financial and administrative matters.

Amendment 142

Proposal for a regulation Article 30 – paragraph 9

Text proposed by the Commission

Amendment

9. With regard to the staff of *the Authority*, the Director *shall* exercise the powers provided for in Article 49(3).

9. With regard to the staff of *BERT, the Board of Regulators may delegate to the Managing* Director *the* exercise *of* the powers provided for in Article 49(3).

Amendment 143

Proposal for a regulation Article 31

Text proposed by the Commission

Amendment

Article 31

deleted

The Chief Network Security Officer

1. The Chief Network Security Officer shall be responsible for coordinating the Authority's tasks relating to network and information security. The Chief Network Security Officer shall work under the responsibility of, and report to, the

Director. He/she will prepare the draft annual work programme for these activities.

2. The Chief Network Security Officer shall be appointed for a period of five years by the Administrative Board, on the basis of merit, skills and experience relevant for dealing with network and information security issues, from a list of at least two candidates proposed by the Commission.

3. The Chief Network Security Officer may be removed from office only upon a decision by the Administrative Board, after consulting the Director. The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members.

4. After consulting the Director, the Administrative Board, acting on a proposal from the Commission, may extend the term of office of the Chief Network Security Officer once for not more than three years only in those cases where it can be justified by the duties and requirements of the Authority.

Amendment 144

Proposal for a regulation Article 32

Text proposed by the Commission

Amendment

Article 32

deleted

Permanent Stakeholders' Group

1. The Chief Network Security Officer shall establish a Permanent Stakeholders' Group composed of experts representing the relevant stakeholders, in particular from the information and communications technologies industry, consumer groups and academic experts in network and information security. He shall, in consultation with the Director, determine the procedures regarding in particular the number, the composition,

the appointment of the members, and the operation of the Group.

2. The Group shall be chaired by the Chief Network Security Officer. The term of office of its members shall be two-and-a-half years. Members of the Group may not be members of the Administrative Board or the Board of Regulators.

3. Representatives of the Commission shall be entitled to be present in the meetings and participate in the work of the Group.

4. The Group may advise the Chief Network Security Officer in the performance of his/her duties under this Regulation, in drawing up a proposal for the relevant parts of the Authority's work programme, as well as in ensuring communication with stakeholders on all issues related to the work programme.

Amendment 145

Proposal for a regulation Article 33

Text proposed by the Commission

Amendment

Article 33

deleted

Board of Appeal

1. The Board of Appeal shall be composed of six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the electronic communications sector. The Board of Appeal designates its Chairperson.

2. The members of the Board of Appeal shall be appointed by the Administrative Board, on a proposal from the Commission, following a call for expression of interest, after consultation of the Board of Regulators.

3. The term of office of the members of the Board of Appeal shall be five years. This term shall be renewable. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They may not perform any other duties in the Authority, in its Administrative Board or in its Board of Regulators. A member of the Board of Appeal may not be removed during his/her term of office, unless he/she has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to this effect.

4. Members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.

If, for one of the reasons mentioned in the first subparagraph or for any other reason, a member of a Board of Appeal considers that a fellow member should not take part in any appeal proceedings, the member shall inform the Board of Appeal accordingly. A member of the Board of Appeal may be objected to by any party to the appeal proceedings on any of the grounds mentioned in the first subparagraph, or if suspected of partiality. An objection cannot be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step.

5. The Board of Appeal shall decide as to the action to be taken in the cases specified in paragraph 4 without the participation of the member concerned. For the purposes of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate, unless the alternate finds himself in a similar situation. Should this be the case,

the Chairperson shall designate a replacement from among the available alternates.

Amendment 146

Proposal for a regulation Article 34

Text proposed by the Commission

Amendment

Article 34

deleted

Appeals

- 1. The Board of Appeal shall be responsible for deciding on appeals against decisions or measures taken by the Authority in areas covered by Article 8(1).*
- 2. The decisions of the Board of Appeal shall be adopted on the basis of a qualified majority of at least four out of its six members. The Board of Appeal shall be convened when necessary.*
- 3. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.*
- 4. The appeal, together with the statement of grounds thereof, shall be filed in writing at the Authority within two months of the notification of the decision or measure to the undertaking concerned, or, in the absence thereof, of the day on which the Authority has made public its measure or decision. The Board of Appeal shall decide upon the appeal within two months after the appeal has been lodged.*
- 5. If the appeal is admissible, the Board of Appeal shall examine whether it is well founded. It shall invite the parties as often as necessary to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings,*

within specified time limits. Parties to the appeal proceedings shall be entitled to make an oral presentation.

6. The Board of Appeal may, within the terms of this Article, exercise any power which lies within the competence of the Authority or it may remit the case to the competent body of the Authority. The latter shall be bound by the decision of the Board of Appeal.

7. The Board of Appeal shall adopt its rules of procedure.

Amendment 147

Proposal for a regulation Article 35

Text proposed by the Commission

Amendment

Article 35

deleted

Actions before the Court of First Instance and the Court of Justice

1. An action may be brought before the Court of First Instance or the Court of Justice in accordance with Article 230 of the Treaty, contesting a decision taken by the Board of Appeal or, in cases where no right of appeal lies before the Board, by the Authority.

2. Should the Authority fail to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with Article 232 of the Treaty.

3. The Authority shall be required to take the necessary measures to comply with the judgment of the Court of First Instance or the Court of Justice.

Amendment 168

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

1. The revenues of *the Authority* shall consist of:

(a) charges for services provided by the Authority;

(b) a proportion of usage fees paid by applicants in accordance with the provisions of Article 17;

(c) a subsidy from the Community, entered in the general budget of the European Communities (Commission Section);

(d) any legacies, donations or grants as mentioned in Article 26(7);

(e) any voluntary contribution from the Member States or from their regulatory authorities.

Amendment

1. The revenues *and resources* of *BERT* shall consist *notably* of:

(a) a subsidy from the Community, entered under the appropriate headings of the general budget of the European Union (Commission Section), as decided by the budgetary authority and in accordance with point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management;

(b) a financial contribution from each NRA. Each Member State shall ensure that NRAs have the adequate financial resources required to participate in the work of BERT;

(c) half of the professional staff shall be made up of seconded national experts (SNEs) coming from the national authorities;

(d) the Board or Regulators shall agree, at the latest, six months after the entry into force of this Regulation, the level of the financial contribution to be made by each Member State under point (b);

(e) the appropriateness of the budgetary structure and Member States' compliance shall be reviewed by 1 January 2014.

Amendment 149

**Proposal for a regulation
Article 36 – paragraph 4**

Text proposed by the Commission

4. All *Authority* revenue and expenditure shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

Amendment

4. All revenue and expenditure shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

Amendment 150

Proposal for a regulation
Article 36 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The organisational and financial structure of BERT shall be reviewed by 1 January 2014.

Amendment 151

Proposal for a regulation
Article 37 – paragraph 1

Text proposed by the Commission

Amendment

1. By 15 February of each year at the latest, the Director shall draw up a preliminary draft budget covering the operational expenditure and the work programme anticipated for the following financial year, and shall forward it to the *Administrative* Board together with a list of provisional posts. Each year the *Administrative* Board shall, on the basis of the draft prepared by the Director, make an estimate of revenue and expenditure of *the Authority* for the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the *Administrative* Board to the Commission by 31 March at the latest. ***Prior to the adoption of the estimate, the draft prepared by the Director shall be transmitted to the Regulatory Board, which may deliver an opinion on the draft.***

1. By 15 February of each year at the latest, the ***Managing*** Director shall draw up a preliminary draft budget covering the operational expenditure and the work programme anticipated for the following financial year, and shall forward it to the Board ***of Regulators*** together with a list of provisional posts. Each year the Board ***of Regulators*** shall, on the basis of the draft prepared by the ***Managing*** Director, make an estimate of revenue and expenditure of ***BERT for*** the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the Board ***of Regulators*** to the Commission by 31 March at the latest.

Amendment 152

Proposal for a regulation
Article 38 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The *Managing Director* shall draw up an annual activity report for BERT, together with a statement of assurance. Those documents shall be made public.

Amendment 153

Proposal for a regulation Article 38 a (new)

Text proposed by the Commission

Amendment

Article 38a

Internal control systems

The Internal Auditor of the Commission shall be responsible for auditing BERT's internal control systems.

Amendment 154

Proposal for a regulation Article 41 – paragraph 1

Text proposed by the Commission

Amendment

1. Undertakings providing electronic communications networks and services shall provide all the information, including financial information, requested by *the Authority* in order to perform its tasks as set out in this Regulation. The undertakings shall provide that information promptly on request and to the timescales and level of detail required by *the Authority*. *The Authority shall* give the reasons justifying its request for information.

1. Undertakings providing electronic communications networks and services shall provide all the information, including financial information, requested by *BERT* in order to perform its tasks as set out in this Regulation. The undertakings shall provide that information promptly on request and to the timescales and level of detail required by *BERT*. *The Commission may require BERT to* give the reasons justifying its request for information.

Amendment 155

Proposal for a regulation Article 41 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where necessary, the confidentiality of information provided pursuant to this Article shall be guaranteed. Article 46 shall apply.

Amendment 156

Proposal for a regulation Article 42

Text proposed by the Commission

*Except in cases falling within Article 20 or Article 21, the Authority shall, when it intends to **take measures** in accordance with the provisions described in this Regulation, consult where appropriate interested parties and give them the opportunity to comment on the draft **measure** within a reasonable period. **The results of the consultation procedure shall be made publicly available by the Authority**, except in the case of confidential information.*

Amendment

BERT shall, when it intends to **issue an opinion** in accordance with the provisions described in this Regulation, consult where appropriate interested parties and give them the opportunity to comment on the draft **opinion** within a reasonable period. **BERT shall make the results of the consultation procedure publicly available**, except in the case of confidential information.

Amendment 157

Proposal for a regulation Article 43 – paragraph 1

Text proposed by the Commission

1. The Commission may impose financial penalties on undertakings if they fail to provide information referred to in Article 41. Penalties shall be effective, proportionate and dissuasive.

Amendment

deleted

Amendment 158

Proposal for a regulation Article 43 – paragraph 3

Text proposed by the Commission

*3. When penalties are imposed under this Article, the Authority shall publish the names of **the** undertakings **involved and the amounts of and reasons for the financial penalties imposed.***

Amendment

3. The Commission shall draw the attention of undertakings to the fact that they fail to comply with the request for information referred to in Article 41. If appropriate, and upon the request by BERT, the Commission may publish the names of those undertakings.

Amendment 159

Proposal for a regulation Article 44

Text proposed by the Commission

The Authority's staff, including the Director, the Chief Network Security Officer and officials seconded by Member States on a temporary basis, shall make a declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing.

Amendment

BERT's staff, the members of the Board of Regulators and the Managing Director of BERT shall make an annual declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing.

Amendment 160

Proposal for a regulation Article 45 – paragraph 2

Text proposed by the Commission

2. *The Authority* shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interests made by the Director *and by officials seconded by Member States on a temporary basis, as well as the declarations of interest made by experts.*

Amendment

2. *BERT* shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interests made by the *members of the Board of Regulators and the Managing Director.*

Amendment 161

Proposal for a regulation Article 46 – paragraph 2

Text proposed by the Commission

2. Members of *the Authority's Boards*, the Director, external experts, and members of

Amendment

2. Members of *BERT's Board of Regulators*, the *Managing Director*,

the staff of *the Authority including officials seconded by Member States on a temporary basis* are subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

external experts, and members of the staff of *BERT* shall be subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

Amendment 162

Proposal for a regulation Article 47 – paragraph 3

Text proposed by the Commission

3. Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice in accordance with the conditions laid down in Articles 195 and 230 of the Treaty respectively.

Amendment

deleted

Amendment 163

Proposal for a regulation Article 49 – paragraph 1

Text proposed by the Commission

1. The Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these staff regulations and conditions of employment shall apply to the staff of *the Authority, including the Director and the Chief Network Security Officer*.

Amendment

1. The Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these staff regulations and conditions of employment shall apply to the staff of *BERT*.

Amendment 164

Proposal for a regulation Article 53

Text proposed by the Commission

The Authority shall be open to the participation by European countries which have concluded agreements with the Community, whereby the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation. In accordance with the relevant provisions of these agreements, arrangements shall be made which shall specify the detailed rules for participation by these countries in the work of **the Authority**, in particular the nature and extent of such participation. **These arrangements shall include, in particular provisions on financial contributions and staff.** They may provide for representation, without vote, **on** the Board of Regulators.

Amendment

BERT shall be open to the participation by European countries which have concluded agreements with the Community, whereby the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation. In accordance with the relevant provisions of these agreements, arrangements shall be made which shall specify the detailed rules for participation by these countries in the work of **BERT**, in particular the nature and extent of such participation. **Pursuant to a decision of the Board of Regulators, these arrangements may provide for representation, without vote, at meetings of the Board of Regulators.**

Amendment 165

Proposal for a regulation Article 55

Text proposed by the Commission

Within **five years** from the effective start of operations **and every five years thereafter**, the Commission shall publish **a general report on the experience acquired as a result of the operation of the Authority and of the procedures laid down in this Regulation.** The evaluation shall cover the results achieved by **the Authority** and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation shall take into account the views of stakeholders, at both Community and national level. **The report and any accompanying proposals** shall be forwarded to the European Parliament and to the Council.

Amendment

Within **three years** of the effective start of operations, the Commission shall publish **an evaluation** report on the experience acquired as a result of the operation of **BERT**. The evaluation **report** shall cover the results achieved by **BERT** and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation **report** shall take into account the views of stakeholders, at both Community and national level **and** shall be forwarded to the European Parliament and to the Council. **The European Parliament shall issue an opinion on the evaluation report.**

Amendment 166

Proposal for a regulation Article 56

Text proposed by the Commission

Amendment

Article 56

deleted

Transitional provisions

1. The Authority shall, on 14 March 2011, assume responsibility for all activities undertaken by the European Network and Information Security Agency prior to that date and which fall within the scope of this Regulation.

2. The ownership interest in any moveable property held by the European Network and Information Security Agency at the date referred to in paragraph 1 above shall be transferred to the Authority with effect from that date.

Amendment 167

Proposal for a regulation Article 57 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

By 1 January 2014 a review shall take place to evaluate whether it is necessary to extend the mandate of BERT. In case an extension is justified, budgetary and procedural regulations, as well as human resources, shall be reviewed.

Common approach to the use of the spectrum released by the digital switchover

European Parliament resolution of 24 September 2008 on reaping the full benefits of the digital dividend in Europe: a common approach to the use of the spectrum released by the digital switchover (2008/2099(INI))

The European Parliament,

- having regard to the Commission Communication of 13 November 2007 entitled Reaping the full benefits of the digital dividend in Europe: A common approach to the use of the spectrum released by the digital switchover (COM(2007)0700) (Commission Communication on a common approach to the use of spectrum),
 - having regard to its resolution of 14 February 2007 entitled Towards a European policy on the radio spectrum¹,
 - having regard to the Commission Communication of 29 September 2005 entitled EU spectrum policy priorities for the digital switchover in the context of the upcoming ITU Regional Radiocommunication Conference 2006 (RRC-06) (COM(2005)0461),
 - having regard to the opinion of the Radio Spectrum Policy Group of 14 February 2007 entitled EU Spectrum Policy Implications of the Digital Dividend,
 - having regard to its resolution of 16 November 2005 on accelerating the transition from analogue to digital broadcasting²,
 - having regard to Rule 45 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 Culture and Education, the Committee on Economic and Monetary Affairs and the Committee on the Internal Market and Consumer Protection (A6-0305/2008),
- A. whereas the switchover from analogue to digital terrestrial television by the end of 2012 will, as a result of the superior transmission efficiency of digital technology, free up a significant amount of spectrum in the European Union, thus offering the possibility of reallocating spectrum and presenting new opportunities for market growth and for the expansion of quality consumer services and choice,
- B. whereas the benefits of the use of radio spectrum will be maximised through coordinated action at EU level in order to ensure optimal use in terms of efficiency,
- C. whereas radio spectrum is key to the provision of a wide range of services and to the development of technology-driven markets whose value is estimated at 2,2 % of the EU's

¹ OJ C 287 E, 29.11.2007, p. 364.

² OJ C 280 E, 18.11.2006, p. 115.

GDP, and is therefore a key factor for the growth, productivity and development of EU industry in accordance with the Lisbon Strategy,

- D. whereas radio spectrum is both a scarce natural resource and a public good, and its efficient use is critical in ensuring access to spectrum by the various interested parties that want to offer connected services,
- E. whereas a large part of the spectrum is currently used for military purposes under analogue technology and therefore the large increase in the total amount of spectrum in public will also include this part after the digital switchover,
- F. whereas the Member States do not have a common timetable for the digital switchover; whereas in many Member States plans for the digital switchover are at an advanced stage, while in a few others the switchover has already taken place,
- G. whereas the Commission Communication on a common approach to the use of the spectrum is an integral part of the package on electronic communications adopted by the Commission in November 2007 concerning the reform of the regulatory framework for electronic communications,
- H. whereas the (re-)allocation of broadcast frequencies to digital broadcasters is currently under way in many Member States, with the consequence that those frequencies are being allocated and thereby locked away for many years,
- I. whereas technological neutrality is key to the promotion of interoperability and essential to a more flexible and transparent digital switchover policy which takes into account the public interest,
- J. whereas the Council has called on the Member States to complete, as far as possible, the digital switchover before 2012,
- K. whereas all the Member States have published their proposals concerning the digital switchover,
 - 1. Recognises the importance of the i2010 initiative as part of the renewed Lisbon Strategy, and emphasises the importance of efficient access to and use of spectrum in achieving the Lisbon goals; stresses, in this context, the need for access to broadband services in order to overcome the digital divide;
 - 2. Emphasises the need for digital switchover which, together with the development of new information and communication technologies and the digital dividend, will help to bridge the digital divide and contribute to the achievement of the Lisbon goals;
 - 3. Notes the divergence in national regimes relating to spectrum allocation and exploitation; notes that these differences may represent obstacles to the achievement of an effectively functioning internal market;
 - 4. Stresses that the size of the digital dividend will vary from one Member State to another, owing to national circumstances and reflecting national media and audiovisual policies;
 - 5. Recognises that the increased spectrum efficiency of digital terrestrial television should allow for around 100 MHz of digital dividend to be re-allocated to mobile broadband and

other services (such as public safety services, radio-frequency identification and road safety applications) whilst ensuring that broadcasting services can continue to flourish;

6. Notes that most Member States today are lagging behind other developed countries regarding investment in new generation communication infrastructures, and stresses that achieving leadership in broadband and internet development is crucial to the competitiveness and cohesion of the European Union in the international arena, especially as regards the development of interactive digital platforms and the provision of new services such as e-trade, e-health, e-learning and e-government services; emphasises that greater investment should be made at national and EU level to encourage the take-up of innovative products and services; stresses that efforts to secure access to broadband services should not be focused on the digital dividend alone;
7. Is convinced that new multi-play packages, containing innovative technologies and services, may soon be offered due to increased technological convergence, and at the same time observes that the emergence of those offers depends crucially on the availability of valuable spectrum as well as of new interactive technologies enabling seamless interoperability, connectivity and coverage, such as mobile multimedia technologies and broadband wireless access technologies;
8. Notes that technological convergence is a reality, offering traditional services new means and opportunities; emphasises that access to the parts of the spectrum that have previously been reserved for broadcasting can enable the emergence of new services provided that the spectrum is managed as efficiently and effectively as possible in order to avoid interference with the delivery of high-quality digital broadcasting programmes;
9. Calls for close cooperation among Member States to achieve an efficient, open and competitive electronic communications internal market which will allow the deployment of new network technologies;
10. Stresses the strategic importance of an environment in the European Union where room for innovation, new technologies, new services and new entrants is guaranteed in order to enhance European competitiveness and cohesion; emphasises that it is crucial to give end-users freedom of choice as regards products and services in order to achieve the dynamic development of markets and technologies in the European Union;
11. Emphasises that the digital dividend provides the European Union with unique opportunities to develop new services such as mobile television and wireless Internet access and to remain a world leader in mobile multimedia technologies whilst bridging the digital divide, providing new opportunities for citizens, services, media and cultural diversity throughout the European Union;
12. Calls on the Members States, whilst fully respecting their sovereignty in this regard, to analyse the impact of the digital switchover on the spectrum used in the past for military purposes, and, if appropriate, to reallocate part of that specific digital dividend to new civilian applications;
13. Acknowledges that coordination at EU level would encourage development, boost the digital economy and allow all citizens affordable and equal access to the information society;

14. Urges the Member States to release their digital dividends as quickly as possible, allowing citizens of the Union to benefit from the deployment of new, innovative and competitive services; emphasises that, for this purpose, the active cooperation between Member States to overcome obstacles existing at national level for the efficient (re)allocation of the digital dividend is required;
15. Stresses that broadcasters are essential actors in the defence of pluralistic and democratic principles and strongly believes that that the opportunities offered by the digital dividend will enable public and private broadcasters to provide a much larger number of programmes serving general interest objectives – set out in national legislation – such as the promotion of cultural and linguistic diversity;
16. Believes that the digital dividend should provide an opportunity for broadcasters to develop and expand their services and at the same time to take into account other potential social, cultural and economic applications, such as new and open broadband technologies and access services designed to overcome the digital divide, while not allowing interoperability barriers;
17. Underlines the potential benefits of a coordinated approach to the usage of spectrum in the European Union in terms of economies of scale, the development of interoperable wireless services, and avoiding fragmentation which leads to a suboptimal use of this scarce resource; considers that, while closer coordination and greater flexibility are necessary for efficient exploitation of spectrum, the Commission and the Member States need to strike an appropriate balance between flexibility and the degree of harmonisation, with a view to deriving maximum benefit from the digital dividend;
18. Observes that efficient allocation of the digital dividend may be achieved without hampering any of the players that currently hold spectrum licences in the ultra-high frequency (UHF) band, and that the continuation and expansion of current broadcasting services can be effectively achieved, at the same time ensuring that new mobile multimedia and broadband wireless access technologies are allocated substantial spectrum resources in the UHF band to bring new interactive services to citizens of the Union;
19. Considers that where auctions are used to allocate frequencies, Member States should adopt a common approach as regards the conditions and methods of auction and the allocation of the generated resources; calls on the Commission to present guidelines along these lines;
20. Stresses that the main guiding principle in the allocation of the digital dividend should be to serve the general interest by ensuring the best social, cultural and economic value in terms of an enhanced and geographically wider offer of services and digital content to citizens, and not only to maximise public revenues, while also protecting the rights of current users of audiovisual media services and reflecting cultural and linguistic diversity;
21. Emphasises that the digital dividend provides a unique opportunity for the European Union to develop its role as a world leader in mobile multimedia technologies and at the same time to bridge the digital divide with an increased flow of information, knowledge and services connecting all citizens of the Union with each other and providing new opportunities for media, culture and diversity in all areas of the territory of the European Union;
22. Emphasises that a way in which the digital dividend could help to achieve the Lisbon goals is by increasing the availability of broadband access services to citizens and economic

players throughout the European Union, addressing the digital divide by providing benefits in underprivileged, remote or rural areas and ensuring universal coverage in the Member States;

23. Deplores the uneven access of citizens of the Union to digital services, particularly in broadcasting; notes that rural and peripheral regions are especially disadvantaged (in terms of promptness, choice and quality) with regard to the roll-out of digital services; urges Member States and regional authorities to do everything in their power to ensure that the digital switchover is conducted quickly and fairly for all their citizens;
24. Stresses that the digital divide is not just a rural issue; highlights the difficulty in fitting some older high-rise buildings with the infrastructure for new networks; emphasises the benefit that spectrum can play in overcoming the digital divide in both urban and rural areas;
25. Emphasises the contribution that the digital dividend can make to the provision of enhanced interoperable social services, such as e-government, e-health, e-vocational training and e-education to citizens, in particular those living in less favoured or isolated areas, such as rural and less developed areas and islands;
26. Urges the Member States to step up measures to enable disabled and elderly users and those with special social needs to make the most of the benefits provided by the digital dividend;
27. Confirms the societal value of public safety services and the need to include support for their operational requirements in the spectrum arrangements arising from the reorganisation of the UHF band resulting from the switch-off of analogue services;
28. Emphasises that the main priority of the policy on reaping the full benefits of the digital dividend in Europe is to ensure that consumers enjoy a very broad range of high quality services, while their rights are fully respected, taking account of the need to make effective use of the spectrum released by the digital switchover;
29. Stresses that the digital dividend provides new opportunities for audiovisual and media policy objectives; is therefore convinced that decisions on digital dividend management should promote and protect general interest objectives linked to audiovisual and media policies such as freedom of expression, media pluralism, cultural and linguistic diversity and the rights of minors;
30. Encourages Member States to recognise the social, cultural and economic value of allowing unlicensed users access to the dividend, in particular small and medium-sized enterprises and the not-for-profit sector, and thus increasing the efficiency of spectrum use by concentrating such unlicensed uses in the currently unused frequencies (white spaces);
31. Calls for a step-by-step approach in this field; is of the opinion that effects for smaller networks - especially local wireless networks - for which no licence requirements currently apply must be taken into account and that universal access to broadband, especially in rural areas, should be promoted;
32. Calls on Member States to support enhanced cooperation measures between spectrum management authorities to consider areas where unlicensed white space spectrum allocation would allow new technologies and services to emerge so as to foster innovation;

33. Encourages Member States to consider, in the context of allocating white space, the need for unlicensed open access to spectrum for non-commercial and educational service providers and local communities with a public service mission;
34. Stresses that one of the key elements when seeking to provide access to the digital dividend to unlicensed users is the need to take account of the needs of social groups threatened with exclusion, particularly disabled and elderly users and users with special social needs;
35. Recognises the benefit of new technologies, such as WiFi and Bluetooth, that have emerged in the unlicensed 2,4 GHz band; recognises that particular frequencies are best suited to particular services; believes that allocating a small amount of unlicensed spectrum in other lower frequencies could encourage yet more innovation in new services;
36. Emphasises, therefore, that frequencies should be assigned in a transparent manner, taking into account all the potential uses for the new spectrum and their benefits to society;
37. Encourages the Member States to assess in detail the social and economic value of any spectrum freed up in the years to come by the switchover from analogue to digital broadcast;
38. Recognises the importance of the ITU Geneva-06 Agreement (Regional Radio Communication Conference 2006) and of the national frequency allocation plans as well as of the decisions of the World Radio Communication Conference 2007 (WRC-07) to the reorganisation of the UHF band;
39. Calls on the Member States to develop, following a common methodology, national digital dividend strategies by the end of 2009; urges the Commission to assist Member States in the development of their national digital dividend strategies and to promote best practice at EU level;
40. Emphasises that the immediacy of switchover in some Member States and the differences in national switchover plans require a response at Community level that cannot await the entry into force of the amending directives;
41. Acknowledges the right of Member States to determine their use of the digital dividend, but also affirms that a coordinated approach at Community level greatly enhances the value of the dividend and is the most efficient way to avoid harmful interference between Member States and between Member States and third countries;
42. Reiterates that, in the interest of citizens of the Union, the digital dividend should be managed as efficiently and effectively as possible in order to avoid interference with the delivery of high quality digital TV programmes to an increasing number of citizens and to respect consumers' rights and interests and their investment in equipment;
43. Emphasises that Member States may consider technology-neutral auctions for the purpose of allocating frequencies that are liberated because of the digital dividend and making those frequencies tradable; considers, however, that this procedure should be in full compliance with ITU radio regulations, national frequency planning and national policy objectives in order to avoid harmful interference between services provided; warns of spectrum fragmentation which leads to the suboptimal use of scarce resources; calls on the Commission to ensure that a future coordinated spectrum plan will not create new barriers

to future innovation;

44. Supports a common, balanced approach to the use of digital dividend, allowing both broadcasters to continue offering and expanding their services and electronic communications operators to use this resource to deploy new services addressing other important social and economic uses, but stresses that in any event the digital dividend should be allocated on a technology-neutral basis;
45. Stresses that spectrum policy must be dynamic and must enable broadcasters and communications operators to employ new technologies and develop new services, allowing them to continue to play a key role in achieving the objectives of cultural and media policy, while also providing new high-quality communications services;
46. Stresses the potential benefits in terms of economies of scale, innovation, interoperability and the provision of potential pan-European services of more coherent and integrated spectrum planning at Community level; encourages Member States to work together and with the Commission to identify common spectrum sub-bands of the digital dividend for different application clusters that could be harmonised on a technology-neutral basis;
47. Believes that clustering within the UHF band should be based on a 'bottom-up' approach according to the specifics of the national markets while ensuring that harmonisation at Community level takes place wherever this creates a clear added value;
48. In order to achieve a more efficient use of spectrum and to facilitate the emergence of innovative and successful national, cross-border and pan-European services, supports a coordinated approach at Community level, based on different clusters of the UHF spectrum for uni-directional and bi-directional services, taking into account the potential for harmful interference arising from the co-existence of different types of networks in the same band, the outcomes of the ITU Geneva RRC 06 and WRC 07 and the existing authorisations;
49. Considers that the part of the harmonised spectrum at Community level dedicated to emergency services should be capable of providing access to future broadband technologies for the retrieval and transmission of information needed for the protection of human life through a more efficient response on the part of the emergency services;
50. Urges the Commission to undertake, in cooperation with the Member States, the appropriate technical, socio-economic and cost-benefit studies to determine the size and characteristics of the sub-bands that could be coordinated or harmonised at Community level; recalls that such studies should take into account that the dividend is not static, but that technological development is ongoing and implementation of new technologies should allow the usage of the UHF band for new types of innovative social, cultural and economic services beyond broadcasting and wireless broadband; calls on the Commission to ensure that Member States contribute to such studies in order to identify common bands to be harmonised at European level for clearly defined and interoperable pan-European services, as well as for the allocation of these bands;
51. Urges the Commission to seek to cooperate with the countries neighbouring the Member States so that they adopt similar frequency maps or coordinate the allocation of their frequencies with the European Union, in order to avoid disruptions to the operation of telecommunications applications;

52. Calls on the Commission to conduct a study on conflicts between users of open source software and certification authorities concerning software defined radios;
53. Calls on the Commission to propose steps to reduce legal liabilities in the context of wireless mesh network provision;
54. Calls on the Commission to submit, as soon as the above-mentioned studies have been completed, and having consulted both the Radio Spectrum Policy Group and the European Conference of Postal and Telecommunications Administrations, and taking due account of national specificities, a proposal to the European Parliament and the Council for better coordination measures at Community level on the use of the digital dividend, in accordance with internationally agreed frequency plans;
55. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

Electronic communications networks and services, protection of privacy and consumer protection *I**

European Parliament legislative resolution of 24 September 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation (COM(2007)0698 – C6-0420/2007 – 2007/0248(COD))
(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0698),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0420/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0318/2008),
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 3 a (new)

Text proposed by the Commission

Amendment

(3a) The universal service is a protective network for people whose financial resources, geographical location or special social needs do not permit them to

access the basic services available to the majority of citizens. The basic universal service obligation laid down in Directive 2002/22/EC is to provide users who so request with a connection to the public telephone network from a fixed location and at an affordable price. As a result, it addresses neither mobile services nor broadband access to the Internet. This basic obligation is now confronted by technological and market developments in which mobile communications may be the primary form of access in many areas and networks are increasingly adopting the technology associated with mobile and broadband communications. These developments raise a need to assess whether the technical, social and economic conditions justifying the inclusion of mobile communications and broadband access in the universal service obligation are fulfilled, as well as related financing aspects. To this end, the Commission will present, no later than autumn 2008, a review of the scope of the universal service obligation and proposals for reform of Directive 2002/22/EC to meet the appropriate public interest objectives. That review will take account of economic competitiveness and include an analysis of social, commercial and technological conditions and of the risk of social exclusion. It will also address the technical and economic viability, estimated cost, cost allocation and funding models for any redefined universal service obligation. As questions relating to the scope of the universal service obligation will therefore be fully dealt with in that separate procedure, this Directive only deals with other aspects of Directive 2002/22/EC.

Amendment 2

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

Text proposed by the Commission

Amendment

(4a) Without prejudice to 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 conformity¹, and in particular the disability requirements laid down in Article 3(3)(f) thereof, certain aspects of terminal equipment, including equipment intended for disabled users, should be brought within the scope of Directive 2002/22/EC in order to facilitate access to networks and the use of services. Such equipment currently includes receive-only radio and television terminal equipment as well as special terminal devices for hearing-impaired users.

¹ OJ L 91, 7.4.1999, p. 10.

Amendment 3

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

Text proposed by the Commission

Amendment

(4b) Member States should introduce measures to promote the creation of a market for widely available products and services incorporating facilities for disabled users. This can be achieved inter alia by referring to European standards, by introducing electronic accessibility (eAccessibility) requirements for public procurement procedures and the provision of services relating to calls for tender, and by implementing legislation upholding the rights of the disabled.

Amendment 4

Proposal for a directive – amending act Recital 5

Text proposed by the Commission

(5) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. **a** service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls through a number or numbers in a national or international telephone numbering plan. A service which does not fulfil all these conditions is not a publicly available telephone service.

Amendment

(5) Definitions need to be adjusted so as to conform to the principle of technology neutrality and to keep pace with technological development. In particular, conditions for the provision of a service should be separated from the actual definitional elements of a publicly available telephone service, i.e. **an *electronic communications*** service available to the public for originating and receiving, directly or indirectly via carrier selection or pre-selection or resale, national and/or international calls ***and means of communication specifically intended for disabled users using text relay or total conversation services*** through a number or numbers in a national or international telephone numbering plan, ***whether such a service is based on circuit switching or packet switching technology. It is the nature of such a service that it is bidirectional, enabling both parties to communicate.*** A service which does not fulfil all these conditions, ***such as for example a "click-through" application on a customer service website,*** is not a publicly available telephone service.

Amendment 5

Proposal for a directive – amending act Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) The provisions on contracts should apply not only to consumers but also to other end-users, primarily micro enterprises and small and medium-sized enterprises (SMEs), which may prefer a contract adapted to consumer needs. To avoid unnecessary administrative burdens

on providers and complexity related to the definition of SMEs, the provisions on contracts should not apply automatically to those other end-users, but only where they so request. Member States should take appropriate measures to promote awareness amongst SMEs of this possibility.

Amendment 6

Proposal for a directive – amending act Recital 12

Text proposed by the Commission

(12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services is provided, and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. Customers should also be kept well informed of possible **actions** that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.

Amendment

(12) Providers of electronic communications services should ensure that their customers are adequately informed as to whether or not access to emergency services **and caller location information** is provided and are given clear and transparent information in the initial customer contract and at regular intervals thereafter, for example in customer billing information. ***This information should include any limitations as to territorial coverage, on the basis of the planned technical operating parameters of the service and the available infrastructure. Where the service is not provided over a switched telephony network, the information should also include the level of reliability of the access and of caller location information compared to a service that is provided over a switched telephony network, taking into account current technology and quality standards, as well as any quality of service parameters specified under Directive 2002/22/EC. Voice calls remain the most robust and reliable form of access to emergency services. Other means of contact, such as text messaging, may be less reliable and may suffer from lack of immediacy. Member States should however, if they deem it appropriate, be free to promote the development and implementation of***

other means of access to emergency services which are capable of ensuring access equivalent to voice calls. Customers should also be kept well informed of possible *types of action* that the provider of electronic communications service may take to address security threats or in response to a security or integrity incident, since such actions could have a direct or indirect impact on the customer's data, privacy or other aspects of the service provided.

Amendment 7

Proposal for a directive – amending act Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) With respect to terminal equipment, the customer contract should specify any restrictions imposed by the provider on the customer's use of such equipment, such as by way of "SIM-locking" mobile devices, and any charges due on termination of the contract, whether before or on the agreed expiry date, including any cost imposed in order to retain the equipment.

Amendment 8

Proposal for a directive – amending act Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) Without imposing any obligation on the provider to take action over and above what is required under Community law, the customer contract should also specify the type of action, if any, the provider might take in case of security or integrity incidents, threats or vulnerabilities, as well as any arrangements implemented by the provider to provide compensation if

such events occur.

Amendment 191
Proposal for a directive – amending act
Recital 12 c (new)

Text proposed by the Commission

Amendment

(12c) In order to address public interest issues with respect to the use of communications services, and to encourage protection of the rights and freedoms of others, the relevant national authorities should be able to produce and have disseminated, with the aid of providers, public interest information related to the use of communications services. This information should include public interest warnings regarding copyright infringement, other unlawful uses and dissemination of harmful content, and advice and means of protection against risks to personal security, which may for example arise from disclosure of personal information in certain circumstances, privacy and personal data. The information could be coordinated by way of the cooperation procedure established in Article 33(2a) of Directive 2002/22/EC. Such public interest information should be updated whenever necessary and it should be presented in easily comprehensible printed and electronic formats, as determined by each Member State, and on national public authority websites. National regulatory authorities should be able to oblige providers to disseminate this standardised information to all their customers in a manner deemed appropriate by the national regulatory authorities. Significant additional costs incurred by service providers for dissemination of such information should be agreed between the providers and the relevant authorities and met by those authorities. The information should also be included in contracts.

Amendment 10

Proposal for a directive – amending act Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Community rules on consumer protection and national rules in conformity with Community law should apply to Directive 2002/22/EC without exception.

Amendment 11

Proposal for a directive – amending act Recital 14

Text proposed by the Commission

Amendment

(14) A competitive market should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. ***Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them in Directive 2002/19/EC to ensure that users' access to particular types of content or applications is not unreasonably restricted.***

(14) ***End-users should decide what lawful content they want to be able to send and receive, and which services, applications, hardware and software they want to use for such purposes, without prejudice to the need to preserve the integrity and security of networks and services. A competitive market with transparent offerings as provided for in Directive 2002/22/EC should ensure that end-users are able to access and distribute any lawful content and to use any lawful applications and/or services of their choice, as stated in Article 8 of Directive 2002/21/EC. Given the increasing importance of electronic communications for consumers and businesses, users should in any case be fully informed of any restrictions and/or limitations imposed on the use of electronic communications services by the service and/or network provider. Such information should, at the option of the provider, specify the type of content, application or service concerned, individual applications or services, or both. Depending on the technology used and the type of restriction and/or***

limitation, such restrictions and/or limitations may require user consent under Directive 2002/58/EC (Privacy Directive).

Amendment 12

Proposal for a directive – amending act Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) A competitive market should also ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, usage restrictions and/or limitations and the slowing of traffic. Where there is a lack of effective competition, national regulatory authorities should use the remedies available to them under the Directives establishing the regulatory framework for electronic communications networks and services to ensure that users' access to particular types of content or applications is not unreasonably restricted. It should also be possible for national regulatory authorities to issue guidelines setting minimum quality of service requirements under Directive 2002/22/EC and to take other measures where such other remedies have, in their judgement, not been effective with regard to the interests of users and all other relevant circumstances. Such guidelines or measures could include the provision of a basic tier of unrestricted services.

Amendment 194

Proposal for a directive – amending act Recital 14 b (new)

Text proposed by the Commission

Amendment

(14b) In the absence of relevant rules of Community law, content, applications and

services are deemed lawful or harmful in accordance with national substantive and procedural law. It is a task for the relevant authorities of the Member States, not for providers of electronic communications networks or services, to decide, in accordance with due process, whether content, applications or services are lawful or harmful or not. Directive 2002/22/EC is without prejudice to Directive 2000/31/EC (Directive on electronic commerce), which inter alia contains a "mere conduit" rule for intermediary service providers. Directive 2002/22/EC does not require providers to monitor information transmitted over their networks or to take punitive action or legal prosecution against their customers due to such information, nor does it make providers liable for the information. Responsibility for any such punitive action or legal prosecution remains with the relevant law enforcement authorities.

Amendment 190
Proposal for a directive – amending act
Recital 14 c (new)

Text proposed by the Commission

Amendment

(14c) Directive 2002/22/EC is without prejudice to reasonable and non-discriminatory network management by providers.

Amendment 14
Proposal for a directive – amending act
Recital 14 d (new)

Text proposed by the Commission

Amendment

(14d) Since inconsistent remedies will significantly impair the achievement of the internal market, the Commission should assess any guidelines or other measures adopted by national regulatory

authorities for possible regulatory intervention across the Community and, if necessary, adopt technical implementing measures in order to achieve consistent application throughout the Community.

Amendment 15

Proposal for a directive – amending act Recital 15

Text proposed by the Commission

(15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services. They should also make price guides available where the market has not provided them. Operators should not be entitled to any remuneration for such use of tariffs *which had* already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. ***The Commission should be able to adopt technical implementing measures to ensure that end-users benefit from a consistent approach to tariff transparency in the Community.***

Amendment

(15) The availability of transparent, up-to-date and comparable tariffs is a key element for consumers in competitive markets with several providers offering services. Consumers of electronic communications services should be able to easily compare prices of various services offered on the market based on tariff information published in an easily accessible form. In order to allow them to make price comparisons easily, national regulatory authorities should have powers to require from operators better tariff transparency and to ensure that third parties have the right to use without charge publicly available tariffs published by undertakings providing electronic communications services. They should also, ***themselves or through third parties,*** make price guides available where the market has not provided them ***free of charge or at a reasonable price.*** Operators should not be entitled to any remuneration for such use of tariffs ***where they have*** already been published and thus belong to the public domain. In addition, users should be adequately informed of the price involved or the type of service offered before they purchase a service, in particular if a freephone number is subject to any additional charges. ***National regulatory authorities should be able to require that such information is provided generally, and, for certain categories of services determined by them, prior to connecting the call. When determining the categories***

of call requiring pricing information prior to connection, national regulatory authorities should take due account of the nature of the service, the pricing conditions which apply to it and whether it is offered by a provider who is not a provider of electronic communications services.

Amendment 16

Proposal for a directive – amending act Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Customers should be informed of their rights with respect to the use of their personal information in directories of subscribers, and in particular of the purpose or purposes of such directories, as well as their right, free of charge, not to be included in a public subscriber directory, as provided for in Directive 2002/58/EC. Where systems exist allowing information to be included in the directory database but not disclosed to users of directory services customers should also be informed of that possibility.

Amendment 17

Proposal for a directive – amending act Recital 15 b (new)

Text proposed by the Commission

Amendment

(15b) The Member States should introduce single information points for all user queries. These information points, which could be administered by the national regulatory authorities together with consumer associations, should also be able to provide legal assistance in case of disputes with operators. Access to these information points should be free of charge and users should be informed of their existence by regular information

campaigns.

Amendment 18

Proposal for a directive – amending act Recital 16

Text proposed by the Commission

(16) A competitive market should ensure that users are able to have the quality of service they require, but in particular cases it may be necessary to ensure that public communications networks attain minimum quality levels so as to prevent degradation of service, the blocking of access and the slowing of traffic over the networks. In particular, the Commission should be able to adopt implementing measures with a view to identifying the quality standards to be used by the national regulatory authorities.

Amendment

deleted

Amendment 19

Proposal for a directive – amending act Recital 18 a (new)

Text proposed by the Commission

(18a) Directory enquiry services should be, and frequently are, provided in competition, pursuant to Article 5 of Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services¹. Wholesale measures ensuring the inclusion of end-user data (both fixed and mobile) in databases, the cost-oriented supply of that data to service providers and the provision of network access in cost-oriented, reasonable and transparent conditions should be in place in order to ensure that end users benefit fully from competition with the ultimate aim of enabling the removal of retail regulation from these

Amendment

services.

¹ OJ L 249, 17.9.2002, p. 21.

Amendment 20

Proposal for a directive – amending act Recital 19

Text proposed by the Commission

(19) End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number “112” at least as expeditiously and effectively as calls to other national emergency numbers. It is important to increase awareness of “112” in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware that “112” can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, operators should provide caller location information to emergency services in a “push” mode. In order to respond to technological developments, including those leading to increasingly precise accuracy of location information, the Commission should be able to adopt technical implementing measures in order to ensure the effective implementation of “112” in the Community for the benefit of citizens of

Amendment

(19) End-users should be able to call and access the emergency services provided using any telephone service capable of originating voice calls through a number or numbers in the national or international telephone numbering plans. Emergency authorities should be able to handle and answer calls to the number “112” at least as expeditiously and effectively as calls to other national emergency numbers. It is important to increase awareness of “112” in order to improve the level of protection and security of citizens travelling in the European Union. To this end, citizens should be made fully aware that “112” can be used as a single emergency number when travelling in any Member States, in particular through information provided in international bus terminals, train stations, ports or airports and in telephone directories, payphone kiosks, subscriber and billing material. ***This is primarily the responsibility of the Member States, but the Commission should continue both to support and to supplement initiatives undertaken by the Member States to further awareness of "112" and periodically to assess knowledge of "112" by the public.*** The obligation to provide caller location information should be strengthened so as to increase the protection of citizens of the European Union. In particular, operators should provide caller location information to emergency services in a “push” mode. In order to respond to technological developments, including those leading to

the European Union.

increasingly precise accuracy of location information, the Commission should be able to adopt technical implementing measures in order to ensure the effective implementation of “112” in the Community for the benefit of citizens of the European Union.

Amendment 21

Proposal for a directive – amending act Recital 21

Text proposed by the Commission

(21) *The countries to which the International Telecommunications Union assigned the international code “3883” have delegated administrative responsibility for the European Telephony Numbering Space (ETNS) to the electronic communications committee (ECC) of the European Conference of Postal and Telecommunications Administrations (CEPT). Technological and market developments show that ETNS represents an opportunity for pan-European services to develop, but that it is currently prevented from realising its potential by overly bureaucratic procedural requirements and a lack of coordination between national administrations. In order to foster the development of ETNS, its administration (which includes assignment, monitoring and development) should be transferred to the European Electronic Communications Market Authority established by Regulation (EC) No.../... of the European Parliament and of the Council of [...], hereinafter referred to as “the Authority”. The Authority should ensure coordination with those countries that share “3883” but are not Member States on behalf of the Member States to which “3883” has been assigned.*

Amendment

(21) *Development of the international code “3883” (the European Telephony Numbering Space (ETNS)) is currently hindered by lack of demand, overly bureaucratic procedural requirements and insufficient awareness. In order to foster the development of ETNS, the Commission should delegate responsibility for its management, number assignment and promotion either to [xxx] or, following the example of the implementation of the “.eu” top level domain, to a separate organisation, designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure, and with operating rules which form part of Community law.*

Amendment 189
Proposal for a directive – amending act
Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) Pursuant to its Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value,¹ the Commission has reserved numbers in the '116' numbering range for certain services of social value. The numbers identified in that Decision cannot be used for purposes other than those set out therein, but there is no obligation for Member States to ensure that services associated with the reserved numbers are actually provided. The appropriate provisions of Decision 2007/116/EC should be reflected in Directive 2002/22/EC in order to integrate them more firmly into the regulatory framework for electronic communications networks and services and to ensure accessibility by disabled end-users as well. Considering the particular aspects related to reporting missing children and the currently limited availability of that service, Member States should not only reserve a number, but also ensure that a service for reporting missing children is actually available in their territories under the number 116000.

¹ *OJ L 49, 17.2.2007, p. 30.*

Amendment 22

Proposal for a directive – amending act
Recital 22

Text proposed by the Commission

Amendment

(22) A single market implies that end-users are able to access all numbers included in the national numbering plans of other

(22) A single market implies that end-users are able to access all numbers included in the national numbering plans of other

Member States, and to access services, including Information Society services, using non-geographic numbers within the Community, including among others freephone and premium rate numbers. End-users should also be able to access numbers from the European Telephone Numbering Space (ETNS) and universal international freephone numbers (UIFN). Cross-border access to numbering resources and to the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, or when the number is defined as having a national scope only (e.g. national short code). Users should be fully informed in advance in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes. In order to ensure that end-users have effective access to numbers and services in the Community, the Commission should be able to adopt implementing measures.

Member States, and to access services, including Information Society services, using non-geographic numbers within the Community, including among others freephone and premium rate numbers. End-users should also be able to access numbers from the European Telephone Numbering Space (ETNS) and universal international freephone numbers (UIFN). Cross-border access to numbering resources and to the associated service should not be prevented except in objectively justified cases, such as when this is necessary to combat fraud, and abuse e.g. in connection with certain premium-rate services, or when the number is defined as having a national scope only (e.g. national short code). Users should be fully informed in advance in a clear manner of any charges applicable to freephone numbers, such as international call charges for numbers accessible through standard international dialling codes. In order to ensure that end-users have effective access to numbers and services in the Community, the Commission should be able to adopt implementing measures. ***End-users should also be able to connect to other end-users (especially via Internet Protocol (IP) numbers) in order to exchange data, regardless of the operator they choose.***

Amendment 23

Proposal for a directive – amending act Recital 23

Text proposed by the Commission

(23) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. This does not preclude imposing reasonable minimum contractual periods in

Amendment

(23) In order to take full advantage of the competitive environment, consumers should be able to make informed choices and to change providers when it is in their interest. It is essential to ensure that they can do so without being hindered by legal, technical or practical obstacles, including contractual conditions, procedures, charges etc. This does not preclude imposing reasonable minimum contractual periods in

consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications, and should be implemented with the minimum of delay. In order to be able to adapt number portability to market and technological evolution, including the possible porting of subscriber's personal directories and profile information stored within the network, the Commission should be able to take technical implementing measures in this area. Assessment of whether technology and market conditions are such as to allow for porting of numbers between networks providing services at a fixed location and mobile networks should in particular take into account prices for users and switching costs for undertakings providing services at fixed locations and mobile networks.

consumer contracts. Number portability is a key facilitator of consumer choice and effective competition in competitive markets for electronic communications, and should be implemented with the minimum of delay, *ordinarily within no more than one day of the request of the consumer. However, experience in certain Member States has shown that there is a risk of consumers being switched without consent. While that is a matter that should primarily be addressed by law-enforcement authorities, Member States should be able to impose such minimum proportionate measures regarding the switching process as are necessary to minimise such risks, without making the process less attractive for consumers.* In order to be able to adapt number portability to market and technological evolution, including the possible porting of subscriber's personal directories and profile information stored within the network, the Commission should be able to take technical implementing measures in this area. Assessment of whether technology and market conditions are such as to allow for porting of numbers between networks providing services at a fixed location and mobile networks should in particular take into account prices for users and switching costs for undertakings providing services at fixed locations and mobile networks.

Amendment 24

Proposal for a directive – amending act Recital 24

Text proposed by the Commission

(24) A television broadcast is a linear audiovisual media service as defined in the Audiovisual Media Services Directive of the European Parliament and of the Council of [...] 2007, which is provided by a media service provider for simultaneous viewing of programmes on

Amendment

(24) Legal “must-carry” obligations may be applied to specified radio and audiovisual media services and complementary services supplied by a specified media service provider. Audiovisual media services are defined in Directive 2007/65/EC of the European

the basis of a programme schedule; a media service provider may provide a number of audio or audio visual programme schedules (channels). Legal “must-carry” obligations may be applied, **but only** to specified **broadcast channels** supplied by a specified media service provider. Member States should provide a clear justification for the “must carry” obligations **in their national law** so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. **Given the rapid change in technology and market conditions such a full review would need to be carried out at least every three years and would require a public consultation of all stakeholders. One or more broadcast channels may be complemented by** services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities¹.

Member States should provide a clear justification for the “must carry” obligations so as to ensure that such obligations are transparent, proportionate and properly defined. In that regard, “must carry” rules should be designed in a way which provides sufficient incentives for efficient investment in infrastructure. “Must carry” rules should be periodically reviewed in order to keep them up-to-date with technological and market evolution in order to ensure that they continue to be proportionate to the objectives to be achieved. **Complementary services include, but are not limited to,** services to improve accessibility for users with disabilities, such as a videotext service, subtitling service, an audio description or sign language.

¹ *OJ L 332, 18.12.2007, p. 27.*

Amendment 192
Proposal for a directive – amending act
Recital 25

Text proposed by the Commission

(25) In order to overcome existing shortcomings in terms of consumer consultation and appropriately address the interests of citizens, Member States should put in place **an** appropriate consultation mechanism. Such **a mechanism** could take the form of a body which would, independently from the national regulatory

Amendment

(25) In order to overcome existing shortcomings in terms of consumer consultation and appropriately address the interests of citizens, Member States should put in place appropriate consultation **mechanisms**. Such **mechanisms** could take the form of a body which would, independently from the national regulatory

authority as well as from service providers, carry out research on consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholders' consultation. Where there is a need to address the facilitation of the access to and use of electronic communications services and terminal equipment for disabled users, and without prejudice to 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 and in particular the disability requirements pursuant to its Article 3(3)(f), the Commission should be able to adopt implementing measures.

authority as well as from service providers, carry out research on consumer-related issues, such as consumer behaviour and mechanisms for changing suppliers, and which would operate in a transparent manner and contribute to the existing mechanisms for stakeholders' consultation. ***Furthermore, a mechanism should be established for the purpose of enabling appropriate cooperation on issues relating to the promotion of lawful content. Any cooperation procedures agreed pursuant to such a mechanism should however not allow for systematic surveillance of internet usage.*** Where there is a need to address the facilitation of the access to and use of electronic communications services and terminal equipment for disabled users, and without prejudice to 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 and in particular the disability requirements pursuant to its Article 3(3)(f), the Commission should be able to adopt implementing measures.

Amendment 25

Proposal for a directive – amending act Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) The procedure for out-of-court dispute resolution should be strengthened by ensuring that independent dispute resolution bodies are used, and that the procedure conforms at least to the minimum principles established by Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes¹. Member States may either use existing dispute resolution bodies for that purpose, provided those bodies meet the

applicable requirements, or establish new bodies.

¹ *OJ L 115, 17.4.1998, p. 31.*

Amendment 26

Proposal for a directive – amending act Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) Directive 2002/58/EC provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communications sector, and to ensure the free movement of such data and of electronic communications equipment and services in the Community.

Amendment 180

Proposal for a directive - amending act Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) The processing of traffic data for network and information security purposes, ensuring the availability, authenticity, integrity and confidentiality of stored or transmitted data will enable the processing of such data for the legitimate interest of the data controller for the purpose of preventing unauthorized access and malicious code distribution, stopping the denial of service attacks, and damages to computer and electronic communication systems. The European Network and Information Security Agency (ENISA) should publish regular studies with the purpose of

illustrating the types of processing allowed under Article 6 of this Directive.

Amendment 27

Proposal for a directive – amending act Recital 26 c (new)

Text proposed by the Commission

Amendment

(26c) When defining the implementing measures on the security of processing, in accordance with the regulatory procedure with scrutiny, the Commission should consult all relevant European authorities and organisations (ENISA, the European Data Protection Supervisor and the Article 29 Working Party) as well as all other relevant stakeholders, particularly in order to be informed of the best available technical and economic methods for improving the implementation of Directive 2002/58/EC.

Amendment 28

Proposal for a directive – amending act Recital 26 d (new)

Text proposed by the Commission

Amendment

(26d) The provisions of Directive 2002/58/EC particularise and complement 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 data¹ and provide for the legitimate interests of subscribers who are natural or legal persons.

¹ OJ L 281, 23.11.1995, p. 31.

Amendment 29

Proposal for a directive – amending act Recital 27

Text proposed by the Commission

(27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and resulted in a rich diversity of end-user services accessible via public electronic communications networks. ***There is a need to ensure that consumers and users are afforded the same level of protection of privacy and personal data, regardless of the technology used to deliver a particular service.***

Amendment

(27) Liberalisation of electronic communications networks and services markets and rapid technological development have combined to boost competition and economic growth and *have* resulted in a rich diversity of end-user services accessible via public ***and private*** electronic communications networks ***and publicly accessible private networks.***

Amendment 185

Proposal for a directive – amending act Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) IP addresses are essential to the working of the internet. They identify network participating devices, such as computers or mobile smart devices by a number. Considering the different scenarios in which IP addresses are used, and the related technologies which are rapidly evolving, questions have arisen about their use as personal data in certain circumstances. The Commission should therefore conduct a study regarding IP addresses and their use and present such proposals as may be appropriate.

Amendment 182

Proposal for a directive – amending act Recital 28

Text proposed by the Commission

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that *the* fundamental rights of individuals, *in particular* the right to privacy and data protection, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

Amendment

(28) Technological progress allows the development of new applications based on devices for data collection and identification, which may be contactless devices using radio frequencies. For example, Radio Frequency Identification Devices (RFID) use radio frequencies to capture data from uniquely identified tags, which can then be transferred over existing communications networks. The wide use of such technologies can bring considerable economic and social benefits and thus make a powerful contribution to the internal market if their use is acceptable to citizens. To achieve that, it is necessary to ensure that *all* the fundamental rights of individuals, *including* the right to privacy and data protection, are safeguarded. When such devices are connected to publicly available electronic communications networks or make use of electronic communications services as a basic infrastructure, the relevant provisions of Directive 2002/58/EC, including those on security, traffic and location data and on confidentiality, should apply.

Amendment 31

**Proposal for a directive – amending act
Recital 28 a (new)**

Text proposed by the Commission

Amendment

(28a) The provider of a publicly available electronic communications service should take appropriate technical and organisational measures to ensure the security of its services. Without prejudice to Directive 95/46/EC and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic

communications services or of public communications networks¹, such measures should ensure that personal data can be accessed only by authorised personnel for legally authorised purposes and that the personal data stored or transmitted as well as the network and services are protected. Moreover, a security policy with respect to the processing of personal data should be established in order to identify vulnerabilities in the system and regular monitoring and preventive, corrective and mitigating action should be carried out.

¹ OJ L 105, 13.4.2006, p. 54.

Amendment 32

Proposal for a directive – amending act Recital 28 b (new)

Text proposed by the Commission

Amendment

(28b) National regulatory authorities should monitor measures taken and disseminate best practices among providers of publicly available electronic communications services.

Amendment 183

Proposal for a directive – amending act Recital 29

Text proposed by the Commission

Amendment

(29) A breach of security resulting in the loss or compromising personal data of ***an individual*** subscriber may, if not addressed in an adequate and timely manner, result in substantial ***economic loss and social*** harm, ***including identity fraud***. Therefore, ***subscribers concerned by such security incidents*** should be notified without delay ***and informed in order to be able to take the necessary precautions***. The notification should include information

(29) A breach of security resulting in the loss or compromising personal data of ***a*** subscriber ***or individual*** may, if not addressed in an adequate and timely manner, result in substantial harm ***to users***. Therefore, ***the national regulatory authority or other competent national authority*** should be notified ***by the relevant service provider of every security breach*** without delay. ***The competent authority should determine the***

about measures taken by the provider to address the breach, as well as recommendations for the users affected.

seriousness of the breach and should require the relevant service providers to give an appropriate notification without undue delay to the persons affected by the breach, as appropriate. Furthermore, and in cases where there is an imminent and direct danger for consumers' rights and interests (such as in cases of unauthorized access to the content of e-mails, access to credit card records, etc.), the relevant service providers should, in addition to the competent national authorities, immediately notify affected users directly. Finally, providers should annually notify affected users of all breaches of security under this Directive that occurred during the relevant time period. The notification to the national authorities and to users should include information about measures taken by the provider to address the breach, as well as recommendations for *the protection of* the users affected.

Amendment 35

Proposal for a directive – amending act Recital 30 a (new)

Text proposed by the Commission

Amendment

(30a) When implementing measures transposing Directive 2002/58/EC, the authorities and courts of the Member States should not only interpret their national law in a manner consistent with that Directive, but should also ensure that they do not rely on an interpretation of that Directive which would be in conflict with other fundamental rights or general principles of Community law, such as the principle of proportionality.

Amendment 36

Proposal for a directive – amending act Recital 33

Text proposed by the Commission

(33) The Authority can contribute to the enhanced level of protection for personal data and privacy in the Community by, among other things, providing expertise and advice, promoting the exchange of best practices in risk management, and establishing common methodologies for risk assessment. In particular, it should contribute to harmonisation of appropriate technical and organisational security measures.

Amendment

deleted

Amendment 37

Proposal for a directive – amending act Recital 34

Text proposed by the Commission

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user's terminal equipment for the benefit of a third party (so-called "spyware") poses a serious threat to users' privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs, USB keys.

Amendment

(34) Software that surreptitiously monitors actions of the user and/or subverts operation of the user's terminal equipment for the benefit of a third party (so-called "spyware") poses a serious threat to users' privacy. A high and equal level of protection of the private sphere of users needs to be ensured, regardless of whether unwanted spying programmes are inadvertently downloaded via electronic communications networks or are delivered and installed hidden in software distributed on other external data storage media, such as CDs, CD-ROMs and USB keys.
Member States should encourage end-users to take the necessary steps to protect their terminal equipment against viruses and spyware.

Amendment 38

**Proposal for a directive – amending act
Recital 35**

Text proposed by the Commission

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers and thus defend the interests of their customers, as well as their own legitimate business interests.

Amendment

(35) Electronic communications service providers have to make substantial investments in order to combat unsolicited commercial communications (“spam”). They are also in a better position than end-users in possessing the knowledge and resources necessary to detect and identify spammers. Email service providers and other service providers should therefore have the possibility to initiate legal action against spammers **for such infringements** and thus defend the interests of their customers, as well as their own legitimate business interests.

Amendment 39

**Proposal for a directive – amending act
Recital 35 a (new)**

Text proposed by the Commission

Amendment

(35a) Where location data other than traffic data can be processed, such data should be processed only when they are made anonymous or with the prior consent of the users or subscribers concerned, who should be given clear and comprehensive information concerning the possibility of withdrawing their consent at any time.

Amendment 40

**Proposal for a directive – amending act
Recital 38 a (new)**

Text proposed by the Commission

Amendment

(38a) The Commission should, provided that the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community¹ enters into force, present to the Council

and to the European Parliament a new legislative proposal on privacy and data security in electronic communications, with a new legal basis.

¹ *OJ C 306, 17.12.2007, p. 1.*

Amendment 41

Proposal for a directive – amending act Recital 39

Text proposed by the Commission

(39) In particular *power should be conferred on the Commission to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of a general scope and are designed to supplement this Directive by adding 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 the regulatory procedure with scrutiny cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of the Decision.*

Amendment

(39) In particular the Commission *should be empowered to adopt implementing measures on tariff transparency, minimum quality of service requirements, effective implementation of “112” services, effective access to numbers and services, improvement of accessibility by disabled end-users as well as amendments to adapt the Annexes to technical progress or changes in market demand. This power should also be conferred to adopt implementing measures concerning information and notification requirements as well as cross-border cooperation. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2002/22/EC by supplementing it with 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.*

Amendment 42

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

Text proposed by the Commission

Amendment

(39a) The purpose of Directive 2002/22/EC (Universal Service Directive) is to ensure a high level of protection of the rights of consumers and individual users in the provision of telecommunications services. Such protection is not required in the case of global telecommunications services. These are corporate data and voice services provided as a package to large undertakings, located in different countries within or outside the EU, on the basis of individual contracts negotiated by parties of equal strength.

Amendment 43

Proposal for a directive – amending act

Article 1 – point 1

Directive 2002/22/EC

Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end-users are not satisfactorily met by the market. This Directive also includes provisions concerning consumer premises terminal equipment.

1. Within the framework of Directive 2002/21/EC (Framework Directive), this Directive concerns the provision of electronic communications networks and services to end-users. The aim is to ensure the availability throughout the Community of good quality publicly available services through effective competition and choice and to deal with circumstances in which the needs of end users are not satisfactorily met by the market. This Directive also includes provisions concerning consumer premises terminal equipment, ***with particular attention being given to terminal equipment for users with special needs, including the disabled and the elderly.***

Amendment 44

Proposal for a directive – amending act

Article 1 – point 1

Directive 2002/22/EC

Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The provisions of this Directive shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and to national rules in conformity with Community law.

Amendment 45

Proposal for a directive – amending act

Article 1 – point 2 – point b

Directive 2002/22/EC

Article 2 – point c

Text proposed by the Commission

Amendment

(c) “publicly available telephone service” means a service available to the public for originating ***and*** receiving, directly or indirectly ***via carrier selection or pre-selection or resale***, national and/or international calls through a number or numbers in a national or international telephone numbering plan;

(c) “publicly available telephone service” means a service available to the public for originating ***and/or*** receiving, directly or indirectly, national and/or international calls ***and other means of communication specifically intended for disabled users using text relay or total conversation services*** through a number or numbers in a national or international telephone numbering plan;

Amendment 46

Proposal for a directive – amending act

Article 1 – point 2 – point b a (new)

Directive 2002/22/EC

Article 2 – point d

Text proposed by the Commission

Amendment

(ba) point (d) shall be replaced by the following:

“(d) ‘geographic number’ means a number from the national telephone

numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point (NTP);”

Amendment 47

Proposal for a directive – amending act

Article 1 – point 2 – point b b (new)

Directive 2002/22/EC

Article 2 – point e

Text proposed by the Commission

Amendment

(bb) point (e) shall be deleted.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 3

Directive 2002/22/EC

Article 4 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that all reasonable requests for provision of a telephone service over the network connection referred to in paragraph 1, allowing originating and receiving of national and international calls and calls to emergency services via the number “112”, are met by at least one undertaking.

3. Member States shall ensure that all reasonable requests for provision of a ***publicly available*** telephone service over the network connection referred to in paragraph 1, allowing originating and receiving of national and international calls and calls to emergency services via the number "112" ***as well as via any other national emergency number***, are met by at least one undertaking.

Amendment 49

Proposal for a directive – amending act

Article 1 – point 4 a (new)

Directive 2002/22/EC

Article 6 – title

Text proposed by the Commission

Amendment

(4a) in Article 6, the title shall be replaced by the following:

"Public pay telephones and other telecommunication access points"

Amendment 50

Proposal for a directive – amending act

Article 1 – point 4 b (new)

Directive 2002/22/EC

Article 6 – paragraph 1

Text proposed by the Commission

Amendment

(4b) Article 6(1) shall be replaced by the following:

"1. Member States shall ensure that national regulatory authorities can impose obligations on undertakings in order to ensure that public pay telephones or other telecommunication access points are provided to meet the reasonable needs of end-users in terms of the geographical coverage, the number of telephones or other telecommunications access points, [...] accessibility [...] to disabled users and the quality of services."

Amendment 51

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – title

Text proposed by the Commission

Amendment

Special measures for disabled users

Measures for disabled users

Amendment 52

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of **publicly available telephone service**, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

Amendment

1. Member States shall take specific measures for disabled end-users in order to ensure access to and affordability of **electronic communications services**, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.

Amendment 53

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 2

Text proposed by the Commission

2. Member States **shall** take specific measures, in the light of national conditions, to ensure that disabled end-users can **also** take advantage of the choice of undertakings and service providers available to the majority of end-users.

Amendment

2. Member States **may** take specific measures, **shown through an assessment by the national regulatory authorities to be needed** in the light of national conditions **and specific disability requirements**, to ensure that disabled end-users can take advantage of the choice of undertakings and service providers available to the majority of end-users, **and to promote the availability of appropriate terminal equipment. They shall ensure that in any event the needs of specific groups of disabled users are met by at least one undertaking.**

Amendment 54

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In taking the measures referred to above, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Articles 17, 18 and 19 of Directive 2002/21/EC (Framework Directive).

Amendment 55

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/22/EC

Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. In order to be able to adopt and implement specific arrangements for disabled users, Member States shall encourage the production and availability of terminal equipment offering the necessary services and functions.

Amendment 56

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/22/EC

Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States ***may***, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

3. Member States ***shall***, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes, disability or special social needs.

Amendment 57

Proposal for a directive – amending act

Article 1 – point 7 a (new)

Directive 2002/22/EC

Article 10 – paragraph 2

Text proposed by the Commission

Amendment

(7a) Article 10(2) shall be replaced by the following:

"2. Member States shall ensure that [...] undertakings offering telecommunication services as defined in Article 2 of Directive 2002/21/EC (Framework Directive) provide the specific facilities and services set out in Annex I, Part A of this Directive, in order that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service."

Amendment 58

Proposal for a directive – amending act

Article 1 – point 7 b (new)

Directive 2002/22/EC

Article 11 – paragraph 1

Text proposed by the Commission

Amendment

(7b) Article 11(1) shall be replaced by the following:

"1. National regulatory authorities shall ensure that all designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) publish adequate and up-to-date information concerning their performance in the provision of universal service, based on the quality of service parameters, definitions and measurement methods set out in Annex III. The published information shall [...] be supplied to the national regulatory authority on request."

Amendment 59

Proposal for a directive – amending act

Article 1 – point 10 – point a a (new)

Directive 2002/22/EC

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph shall be inserted:

"2a. Without prejudice to obligations that may be imposed on operators identified as having significant market power on a given retail market pursuant to paragraph 1, national regulatory authorities may apply the obligations referred to in paragraph 2 for a transitional period to operators identified as having significant market power on a given wholesale market in circumstances where wholesale obligations have been imposed but are not yet effective in ensuring competition in the retail market."

Amendment 60

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 1

Text proposed by the Commission

Amendment

1. This Article shall apply without prejudice to Community rules on consumer protection, in particular Directives 93/13/EC and 97/7/EC, and national rules in conformity with Community law.

deleted

Amendment 61

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – introductory wording

Text proposed by the Commission

2. Member States shall ensure that, where subscribing to services providing connection to a public communications network and/or **publicly available telephone** services, consumers have a right to a contract with an undertaking or undertakings providing such services and/or connection. The contract shall specify at least:

Amendment

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

Amendment 62

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

(b) services provided, the service quality levels offered, as well as the time for the initial connection;

Amendment

(b) services provided, **including in particular:**

- **where access to emergency services and caller location information is to be provided under Article 26, the level of reliability of such access, where relevant, and whether access is provided in the whole of the national territory,**

- **information on any restrictions imposed by the provider regarding a subscriber's ability to access, use or distribute lawful content or run lawful applications and services,**

- **the service quality levels, with reference to any parameters specified under Article 22(2) as appropriate,**

- **types of maintenance and customer support services offered, as well as how to contact customer support,**

- **the time for the initial connection, and**

- **any restrictions on the use of terminal**

equipment imposed by the provider;

Amendment 63

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) *the types of maintenance service offered;*

(c) *the subscriber's decision as to whether or not to include his or her personal data in a directory, and the data concerned;*

Amendment 64

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) particulars of prices and tariffs and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

(d) particulars of prices and tariffs, the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained, *payment methods offered and any differences in costs due to payment method;*

Amendment 65

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) the duration of the contract, the conditions for renewal and termination of services and of the contract, including *direct costs for* portability of numbers and other identifiers;

(e) the duration of the contract *and* the conditions for renewal and termination of services and of the contract, including

- any charges related to portability of

numbers and other identifiers; *and*
- any charges due on termination of the contract, including any cost recovery with respect to terminal equipment;

Amendment 66

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 1 – point h

Text proposed by the Commission

(h) the action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities.

Amendment

(h) the ***type of*** action that might be taken by the undertaking providing connection and/or services in reaction to security or integrity incidents or threats and vulnerabilities, ***as well as any compensation arrangements which apply if security or integrity incidents occur.***

Amendment 67

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Member States may extend these obligations to cover other end-users.

Amendment

The contract shall also include any information provided by the relevant public authorities on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data referred to in Article 21(4a) and relevant to the service provided.

Amendment 68

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 3

Text proposed by the Commission

Amendment

3. The information listed in paragraph 2 shall also be included in contracts between consumers and electronic communications services providers other than those providing connection to a public communications network and/or publicly available telephone services. Member States may extend this obligation to cover other end-users. *deleted*

Amendment 69

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 4

Text proposed by the Commission

Amendment

4. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services that allow voice communication, subscribers are clearly informed whether or not access to emergency services is provided. Providers of electronic communications services shall ensure that customers are clearly informed of the lack of access to emergency services in advance of the conclusion of a contract and regularly thereafter. *deleted*

Amendment 70

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of a contract and regularly thereafter of any limitations imposed by the provider on their ability to access or distribute lawful content or run any lawful applications and services of their choice.

deleted

Amendment 71

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 20 – paragraph 6

Text proposed by the Commission

Amendment

6. Member States shall ensure that where contracts are concluded between subscribers and undertakings providing electronic communications services and/or networks, subscribers are clearly informed in advance of the conclusion of the contract and regularly thereafter of their obligations to respect copyright and related rights. Without prejudice to Directive 2000/31/EC on electronic commerce, this includes the obligation to inform subscribers of the most common acts of infringements and their legal consequences.

deleted

Amendment 72

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, and on standard terms and conditions, in respect of access to and use of the services identified in Articles 4, 5, 6 and 7 is available to end-users and consumers, in accordance with the provisions of Annex II.

deleted

Amendment 73

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that undertakings providing public electronic communications **networks** and/or services publish comparable, adequate and up-to-date information on applicable prices and tariffs in respect of access and use of their services provided to consumers. Such information shall be published in **an** easily accessible form.

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

Amendment 165

Proposal for a directive – amending act

Article 1 - point 12

Directive 2002/22/EC

Article 21 - paragraph 3

3. National regulatory authorities shall encourage the provision of information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available, ***when these are not available on the market***. Third parties shall have a right to use *without* charge the ***tariffs*** published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.

3. National regulatory authorities shall encourage the provision of ***comparable*** information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, by means of interactive guides or similar techniques. Member States shall ensure that national regulatory authorities make such guides or techniques available ***themselves or through third parties, free of charge or at a reasonable price***. Third parties shall have a right to use *free of* charge the ***information*** published by undertakings providing electronic communications networks and/or services, for the purposes of selling or making available such interactive guides or similar techniques.

Amendment 75

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 4

4. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services to provide applicable tariff information to ***customers at the time and point of purchase to ensure that customers are fully informed of*** pricing conditions.

4. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing ***connection to a public electronic communications network and/or*** electronic communications services to ***inter alia:***

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

call;

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

(c) inform subscribers of any change to any restrictions imposed by the undertaking on their ability to access, use or distribute lawful content or run lawful applications and services of their choice;

(d) inform subscribers of their right to include their personal data in a directory, and of the types of data concerned; and

(e) regularly inform disabled subscribers of details of current products and services aimed at them.

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

Amendment 76

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall ensure that national regulatory authorities oblige the undertakings referred to in paragraph 4 to distribute public interest information to existing and new subscribers where appropriate. Such information shall be produced by the relevant public authorities in a standardised format and shall inter alia cover the following topics:

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

infringements of copyright and related right, and their consequences; and

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

Significant additional costs incurred by an undertaking in complying with these obligations shall be reimbursed by the relevant public authorities.

Amendment 77

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing electronic communications services and/or networks to provide information required in accordance with Article 20(5) to customers in a clear, comprehensive and easily accessible form.

deleted

Amendment 78

Proposal for a directive – amending act

Article 1 – point 12

Directive 2002/22/EC

Article 21 – paragraph 6

Text proposed by the Commission

Amendment

6. In order to ensure that end-users can benefit from a consistent approach to tariff transparency, as well as to the provision of information in accordance with Article 20(5) in the Community, the Commission may, having consulted the European Electronic Communications

deleted

Market Authority (hereinafter referred to as "the Authority"), take the appropriate technical implementing measures in this area, such as specify the methodology or procedures. 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 37(2). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).

Amendment 79

Proposal for a directive – amending act

Article 1 – point 13 – point a

Directive 2002/22/EC

Article 22 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that national regulatory authorities are, after taking account of the views of interested parties, *able* to require undertakings that provide publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-date information for end-users on the quality of their services, **including** equivalent access for disabled end-users. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

Amendment

1. Member States shall ensure that national regulatory authorities are *able*, after taking account of the views of interested parties, to require undertakings that provide publicly available electronic communications networks and/or services to publish comparable, adequate and up-to-date information for end-users on the quality of their services **and on measures taken to ensure** equivalent access for disabled end-users. The information shall, on request, also be supplied to the national regulatory authority in advance of its publication.

Amendment 80

Proposal for a directive – amending act

Article 1 – point 13 – point a a (new)

Directive 2002/22/EC

Article 22 – paragraph 2

(aa) paragraph 2 shall be replaced by the following:

"2. National regulatory authorities may specify, inter alia, the quality of service parameters to be measured, and the content, form and manner of information to be published, including possible quality certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information. Where appropriate, the parameters, definitions and measurement methods given in Annex III could be used."

Amendment 193

Proposal for a directive – amending act

Article 1 – point 13 – point b

Directive 2002/22/EC

Article 22 – paragraph 3

Text proposed by the Commission

Amendment

3. In order to prevent degradation of service and slowing of traffic over networks, ***the Commission may, having consulted the Authority, adopt technical implementing measures concerning minimum quality of service requirements to be set by the national regulatory authority on undertakings providing public communications networks. 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 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

3. ***A national regulatory authority may issue guidelines setting minimum quality of service requirements, and, if appropriate, take other measures,*** in order to prevent degradation of service and slowing of traffic over networks, ***and to ensure that the ability of users to access or distribute content or to run applications and services of their choice is not unreasonably restricted. Those guidelines or measures shall take due account of any standards issued under Article 17 of Directive 2002/21/EC (Framework Directive).***

The Commission may, having examined such guidelines or measures and consulted [xxx], adopt technical implementing measures in that regard if it

considers that the guidelines or measures may create a barrier to the internal market. 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 37(2).

Amendment 82

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/22/EC

Article 23

Text proposed by the Commission

Member States shall take all necessary *steps* to ensure the availability of publicly available telephone services *provided over public communications networks* in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all *reasonable steps* to ensure uninterrupted access to emergency services.

Amendment

Member States shall take all necessary *measures* to ensure the *fullest possible* availability of publicly available telephone services in the event of catastrophic network breakdown or in cases of force majeure. Member States shall ensure that undertakings providing publicly available telephone services take all *necessary measures* to ensure uninterrupted access to emergency services *from any place within the territory of the EU*.

Amendment 83

Proposal for a directive – amending act

Article 1 – point 15 – point a

Directive 2002/22/EC

Article 25 – title

Text proposed by the Commission

Telephone directory enquiry services

Amendment

Directory enquiry services

Amendment 84

Proposal for a directive – amending act
Article 1 – point 15 – point a a (new)
Directive 2002/22/EC
Article 25 – paragraph 1

Text proposed by the Commission

Amendment

(aa) paragraph 1 shall be replaced by the following:

"1. Member States shall ensure that all end-users of electronic communications networks and services have the right to have their information made available to providers of directory enquiry services and directories in accordance with the provisions of paragraph 2."

Amendment 85

Proposal for a directive – amending act
Article 1 – point 15 – point b
Directive 2002/22/EC
Article 25 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that all end-users ***provided with a publicly available telephone*** service can access directory enquiry services ***in accordance with Article 5(1)(b)***.

3. Member States shall ensure that all end-users ***of an electronic communications*** service can access directory enquiry services ***and that operators controlling access to such services provide it on terms which are fair, cost-oriented, objective, non-discriminatory and transparent.***

Amendment 86

Proposal for a directive – amending act
Article 1 – point 15 – point b a (new)
Directive 2002/22/EC
Article 25 – paragraph 4

Text proposed by the Commission

Amendment

(ba) paragraph 4 shall be replaced by the following:

"4. Member States shall not maintain any regulatory restrictions which

prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access pursuant to Article 28."

Amendment 87

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that undertakings providing *a* service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide access to emergency services.

Amendment

2. Member States, *in cooperation with national regulatory authorities, emergency services and providers*, shall ensure that undertakings providing *an electronic communications* service for originating national and/or international calls through a number or numbers in a national or international telephone numbering plan provide *reliable* access to emergency services.

Amendment 88

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that calls to the single European emergency call number "112" *are appropriately answered and handled* in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue in use.

Amendment

3. Member States shall ensure that *the emergency services are able to appropriately respond to and handle all* calls to the single European emergency call number "112" in a manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to national emergency number or numbers, where these continue

in use.

Amendment 89

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 4

Text proposed by the Commission

4. Member States shall ensure that disabled end-users **are able to** access emergency services. *In order* to ensure that disabled end-users are able to access emergency services while travelling in other Member States, *the measures taken may* include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

Amendment

4. Member States shall ensure that disabled end-users **have** access **to** emergency services **equivalent to that enjoyed by other end-users**. *The measures taken* to ensure that disabled end-users are able to access emergency services while travelling in other Member States **shall** include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

Amendment 90

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 5

Text proposed by the Commission

5. Member States shall ensure that caller location information is made available free of charge **to authorities** handling **emergencies for** all calls to the single European emergency call number “112”.

Amendment

5. Member States shall ensure that caller location information is made available free of charge **and as soon as the emergency call reaches the authority** handling **the emergency**. **This shall also apply to** all calls to the single European emergency call number “112”.

Member States shall require that caller location information is automatically provided as soon as the emergency call reaches the authority dealing with the emergency.

Amendment 91

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that citizens are adequately informed *about* the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States. ***Member States shall submit a yearly report to the Commission and the Authority on the measures taken in that respect.***

Amendment

6. Member States shall ensure that, ***in addition to information about their national numbers, all citizens of the Union*** are adequately informed *of* the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States.

Amendment 92

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 26 – paragraph 7

Text proposed by the Commission

7. In order to ensure the effective implementation of "112" services in the Member States, ***including access for disabled end-users when travelling in other Member States***, the Commission, having consulted ***the Authority***, may adopt technical implementing measures.

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 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

Amendment

7. In order to ensure the effective implementation of "112" services in the Member States, the Commission, having consulted ***[xxx]***, may adopt technical implementing measures.

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 37(2).

Amendment 93

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 27 – paragraph 2

Text proposed by the Commission

2. Those Member States to which the ITU assigned the international code "3883" shall entrust **the Authority** with sole responsibility for management of the European Telephony Numbering Space.

Amendment

2. Those Member States to which the ITU assigned the international code "3883" shall entrust **an organisation established by Community law and designated by the Commission on the basis of an open, transparent and non-discriminatory selection procedure, or [xxx]**, with sole responsibility for management, **including number assignment, and promotion** of the European Telephony Numbering Space.

Amendment 188

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 27 a (new)

Text proposed by the Commission

Amendment

Article 27a

Harmonised numbers for harmonised services of social value, including the missing children hotline number

1. Member States shall promote the specific numbers in the numbering range beginning with '116' identified by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering range beginning with '116' for harmonised numbers for harmonised services of social value.¹ They shall encourage the provision within their territory of the services for which such numbers are reserved.

2. Member States shall ensure that disabled end-users are able to access services provided under the '116'

numbering range. In order to ensure that disabled end-users are able to access such services while travelling in other Member States, measures taken shall include ensuring compliance with relevant standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive).

3. Member States shall ensure that citizens are adequately informed about the existence and use of services provided under the '116' numbering range, in particular through initiatives specifically targeting persons travelling between Member States.

4. Member States shall, in addition to measures of general applicability to all numbers in the '116' numbering range taken pursuant to paragraphs 1, 2 and 3, ensure citizens' access to a service operating a hotline to report cases of missing children. The hotline shall be available on the number 116000.

5. In order to ensure the effective implementation of the '116' numbering range, in particular the missing children hotline number 116000, in the Member States, including access for disabled end-users when travelling in other Member States, the Commission, having consulted [xxx], may adopt technical implementing measures.

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 37(2).

¹ OJ L 49, 17.2.2007, p. 30.

Amendment 95

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – introductory wording

Text proposed by the Commission

Amendment

1. Member States shall ensure that national regulatory authorities take all necessary steps to ensure that:

1. Member States shall ensure that, ***where technically and economically feasible, and except where a called subscriber has chosen for commercial reasons to limit access by calling parties located in specific geographical areas,*** national regulatory authorities take all necessary steps to ensure that:

Amendment 96

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) end-users are able to access and use services, including information society services, provided within the Community; and

deleted

Amendment 97

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) end-users are able to access all numbers provided in the Community, including those in the national numbering plans of

(b) end-users are able to access all numbers provided in the Community ***regardless of the technology and devices used by the***

Member States, those from the European Telephone Numbering Space and Universal International Freephone Numbers.

operator, including those in the national numbering plans of Member States, those from the European Telephone Numbering Space and Universal International Freephone Numbers; *and*

Amendment 98

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) connection services are provided for text telephones, video telephones and products which help to enable elderly people or people with disabilities to communicate, at least as regards emergency calls.

Amendment 99

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse.

National regulatory authorities shall be able to block on a case-by-case basis access to numbers or services where this is justified by reasons of fraud or misuse, *and to ensure that in such cases, including where an investigation is pending, providers of electronic communications services withhold relevant interconnection or other service revenues.*

Amendment 100

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 2– subparagraph 1

Text proposed by the Commission

2. In order to ensure that end users have effective access to numbers and services in the Community, the Commission may, ***having consulted the Authority***, adopt technical implementing measures. ***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 37(2). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).***

Amendment 101

Proposal for a directive – amending act

Article 1 – point 16

Directive 2002/22/EC

Article 28 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2. In order to ensure that end users have effective access to numbers and services in the Community, the Commission may adopt technical implementing measures. ***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 37(2).

Amendment

2a. Member States shall ensure that national regulatory authorities are able to require undertakings providing public communications networks to provide information regarding the management of their networks in connection with any limitations or restrictions on end-user access to or use of services, content or applications. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases in which undertakings have imposed limitations on end-user access to services, content or applications.

Amendment 102

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that all subscribers with numbers from the national numbering plan who so request can retain their *number(s)* independently of the undertaking providing the service in accordance with the provisions of Annex I, part C.

Amendment

1. Member States shall ensure that all subscribers with numbers from the national **telephone** numbering plan who so request can retain their *number or numbers* independently of the undertaking providing the service in accordance with the provisions of Annex I, part C.

Amendment 103

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 4

Text proposed by the Commission

4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, no later than one working day from the initial request by the subscriber.

Amendment

4. Porting of numbers and their subsequent activation shall be executed within the shortest possible delay, no later than one working day from the initial request by the subscriber. ***National regulatory authorities may extend the one day period and prescribe appropriate measures where necessary to ensure that subscribers are not switched against their will. National regulatory authorities may impose appropriate sanctions on providers, including an obligation to compensate customers, in case of delay in porting or abuse of porting by them or on their behalf.***

Amendment 104

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 5

Text proposed by the Commission

5. The Commission may, having consulted the Authority and taking into account

Amendment

deleted

technology and market conditions, amend Annex I in accordance with the procedure referred to in Article 37(2).

Such amendment may, in particular provide for:

(a) the portability of numbers between fixed and mobile networks;

(b) the portability of subscriber identifiers and related information, in which case the provisions of paragraphs 2, 3 and 4 shall also apply to these identifiers.

Amendment 105

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall ensure that the duration of contracts concluded between users and undertakings providing electronic communications services does not exceed 24 months. They shall also ensure that undertakings offer users the possibility to subscribe to a contract with a maximum duration of 12 months for all types of service and terminal equipment.

Amendment 106

Proposal for a directive – amending act

Article 1 – point 18

Directive 2002/22/EC

Article 30 – paragraph 6

Text proposed by the Commission

Amendment

6. Without prejudice to any minimum contractual period, national regulatory authorities shall ensure that conditions and procedures for termination of contract do not act as a disincentive for changing

6. Member States shall ensure that procedures for termination of contracts do not act as a disincentive against changing suppliers of services.

suppliers of services.

Amendment 107

Proposal for a directive – amending act

Article 1 – point 19

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States may impose reasonable “must carry” obligations, for the transmission of specified radio and **television broadcast channels** and accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **television broadcasts** to the public where a significant number of end-users of such networks use them as their principal means *to receive* radio and **television broadcasts**. Such obligations shall only be imposed where they are necessary to meet general interest objectives *as* clearly and specifically defined by each Member State **in its national law** and shall be proportionate and transparent.

Amendment

1. Member States may impose reasonable “must carry” obligations for the transmission of specified radio and **audiovisual media services and complementary services, particularly** accessibility services, on undertakings under their jurisdiction providing electronic communications networks used for the distribution of radio or **audiovisual media services** to the public where a significant number of end-users of such networks use them as their principal means *of receiving* radio and **audiovisual media services**. Such obligations shall only be imposed where they are necessary to meet general interest objectives clearly and specifically defined by each Member State and shall be proportionate and transparent.

Amendment 108

Proposal for a directive – amending act

Article 1 – point 19

Directive 2002/22/EC

Article 31 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Member States shall review “must carry” obligations **at least every three years**.

Amendment

Member States shall review “must carry” obligations **on a regular basis**.

Amendment 109

Proposal for a directive – amending act
Article 1 – point 19 a (new)
Directive 2002/22/EC
Article 31 a (new)

Text proposed by the Commission

Amendment

(19a) the following Article shall be inserted:

"Article 31a

Ensuring equivalent access and choice for disabled users

Member States shall ensure that national regulatory authorities are able to impose appropriate requirements on undertakings providing publicly available electronic communications services so as to ensure that disabled end-users:

(a) have access to electronic communication services equivalent to that enjoyed by the majority of end-users; and

(b) can take advantage of the choice of undertakings and services available to the majority of end-users."

Amendment 166

Proposal for a directive – amending act
Article 1 - point 19 b (new)
Directive 2002/22/EC
Article 32 a (new)

Text proposed by the Commission

Amendment

19b) The following Article 32a shall be added:

"Article 32a

Access to content, services and applications

Member States shall ensure that any restrictions to users' rights to access content, services and applications, if they are necessary, shall be implemented by appropriate measures, in accordance with the principles of proportionality,

effectiveness and dissuasiveness. These measures shall not have the effect of hindering the development of the information society, in compliance with Directive 2000/31/EC, and shall not conflict with citizens' fundamental rights, including the right to privacy and the right to due process."

Amendment 110

Proposal for a directive – amending act
Article 1 – point 20 – point -a (new)
Directive 2002/22/EC
Article 33 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

(-a) in paragraph 1, the first subparagraph shall be replaced by the following:

"1. Member States shall ensure as far as appropriate that national regulatory authorities take account of the views of end-users, [...] consumers [...], manufacturers *and* undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights concerning publicly available electronic communications services, in particular where they have a significant impact on the market."

Amendment 111

Proposal for a directive – amending act
Article 1 – point 20 – point a
Directive 2002/22/EC
Article 33 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

In particular, Member States shall ensure that national regulatory authorities establish *a* consultation ***mechanism***

In particular, Member States shall ensure that national regulatory authorities establish consultation ***mechanisms***

ensuring that *in their decision-making process* due consideration is given to *consumer interests in electronic communications*.

ensuring that due consideration is given to, ***and account taken of, issues relating to end-users, including, in particular, disabled end-users, in their decision-making process.***

Amendment 112

Proposal for a directive – amending act

Article 1 – point 20 – point a a (new)

Directive 2002/22/EC

Article 33 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph shall be inserted:

"2a. Without prejudice to national rules in conformity with Community law promoting cultural and media policy objectives, such as cultural and linguistic diversity and media pluralism, national regulatory authorities and other relevant authorities shall as far as appropriate promote cooperation between undertakings providing electronic communications networks and/or services and the sectors interested in the promotion of lawful content in electronic communication networks and services. That co-operation may also include coordination of the public interest information to be made available under Article 21(4a) and Article 20(2)."

Amendment 113

Proposal for a directive – amending act

Article 1 – point 20 – point b

Directive 2002/22/EC

Article 33 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall submit a yearly report to the Commission and the

deleted

Authority on the measures taken and the progress towards improving interoperability and use of, and access to, electronic communications services and terminal equipment by disabled end-users.

Amendment 114

Proposal for a directive – amending act

Article 1 – point 20 – point b

Directive 2002/22/EC

Article 33 – paragraph 4

Text proposed by the Commission

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may, **having consulted the Authority**, take the appropriate technical implementing measures **to address the issues raised in the report referred to in paragraph 3**, following a public consultation. **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 37(2). **On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 37(3).**

Amendment

4. Without prejudice to the application of Directive 1999/5/EC and in particular of disability requirements pursuant to its Article 3(3)(f), and in order to improve accessibility to electronic communications services and equipment by disabled end-users, the Commission may take the appropriate technical implementing measures, following a public consultation **and after having consulted [xxx]**. 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 37(2).

Amendment 115

Proposal for a directive – amending act

Article 1 – point 21

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that transparent, simple and inexpensive out-of-

Amendment

1. Member States shall ensure that **independent bodies provide** transparent,

court procedures **are available** for dealing with **unresolved** disputes between consumers and undertakings providing electronic communications networks and/or services, relating to the contractual conditions and/or performance of contracts concerning supply of such networks or services. **Member States shall adopt measures to ensure that such** procedures enable disputes to be settled fairly and promptly and may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

simple and inexpensive out-of-court procedures for dealing with disputes between consumers and undertakings providing electronic communications networks and/or services relating to the contractual conditions and/or performance of contracts concerning *the* supply of such networks or services. **Such** procedures **shall** enable disputes to be settled fairly and promptly and **shall take account of the requirements of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes**¹. Member States may, where warranted, adopt a system of reimbursement and/or compensation. Member States may extend these obligations to cover disputes involving other end-users.

¹OJ L 115, 17.4.1998, p. 31.

Amendment 116

Proposal for a directive – amending act

Article 1 – point 21

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States shall ensure that bodies in charge of dealing with such disputes provide relevant information for statistical purposes to the Commission and the **Authority**.

Amendment

Member States shall ensure that *the* bodies in charge of dealing with such disputes, **which can be single points of contact**, provide relevant information for statistical purposes to the Commission and the **authorities**.

Amendment 117

Proposal for a directive – amending act

Article 1 – point 21

Directive 2002/22/EC

Article 34 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

With specific regard to the interaction of audiovisual and electronic communications, Member States shall encourage reliable out-of-court procedures.

Amendment 118

Proposal for a directive – amending act

Article 1 – point 24

Directive 2002/22/EC

Article 37 – paragraph 3

Text proposed by the Commission

Amendment

3. 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 152

Proposal for a directive – amending act

Article 1 – point 25 a (new)

Directive 2002/22/EC

Annex VI – point 1

Text proposed by the Commission

Amendment

(25a) in Annex VI, point 1 shall be replaced by the following:

"1. Common scrambling algorithm and free-to-air reception

All consumer equipment intended for the reception of conventional digital television signals (i.e. broadcasting via terrestrial, cable or satellite transmission which is primarily intended for fixed reception, such as DVB-T, DVB-C or DVB-S), for sale or rent or otherwise made available in the Community, capable of descrambling digital television signals, is to possess the

capability to:

- allow the descrambling of such signals according to *a* common European scrambling algorithm as administered by a recognised European standards organisation, currently ETSI;
- display signals that have been transmitted in *the* clear provided that, in the event that such equipment is rented, the rentee is in compliance with the relevant rental agreement."

Amendment 119

Proposal for a directive – amending act

Article 2 – point -1 (new)

Directive 2002/58/EC

Article 1 – paragraph 1

Text proposed by the Commission

Amendment

(-1) Article 1(1) shall be replaced by the following:

"1. This Directive provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy and the right to confidentiality and security of information technology systems, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communications equipment and services in the Community."

Amendment 120

Proposal for a directive – amending act

Article 2 – point -1 a (new)

Directive 2002/58/EC

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

(-1a) Article 1(2) shall be replaced by the following:

"2. The provisions of this Directive particularise and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of the legitimate interests of subscribers who are *natural or legal persons*."

Amendment 121

Proposal for a directive – amending act

Article 2 – point 2

Directive 2002/58/EC

Article 3

Text proposed by the Commission

Amendment

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public communications networks in the Community, including public communications networks supporting data collection and identification devices.

This Directive shall apply to the processing of personal data in connection with the provision of publicly available electronic communications services in public **and private** communications networks **and publicly accessible private networks** in the Community, including public **and private** communications networks **and publicly accessible private networks** supporting data collection and identification devices.

Amendment 122

Proposal for a directive – amending act

Article 2 – point 3 – point a a (new)

Directive 2002/58/EC

Article 4 – paragraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

(aa) the following paragraphs shall be inserted:

"1a. Without prejudice to the provisions of Directive 95/46/EC and Directive

2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks¹, these measures shall include:

– appropriate technical and organisational measures to ensure that personal data can be accessed only by authorised personnel for legally authorised purposes and to protect personal data stored or transmitted against accidental or unlawful destruction, accidental loss or alteration and unauthorised or unlawful storage, processing, access or disclosure;

– appropriate technical and organisational measures to protect the network and services against accidental, unlawful or unauthorised usage or interference with or hindering of their functioning or availability;

- a security policy with respect to the processing of personal data;

– a process for identifying and assessing reasonably foreseeable vulnerabilities in the systems maintained by the provider of electronic communications services, which shall include regular monitoring for security breaches; and

– a process for taking preventive, corrective and mitigating action against any vulnerabilities discovered in the process described under the fourth indent and a process for taking preventive, corrective and mitigating action against security incidents that can lead to a security breach.

1b. National regulatory authorities shall be able to audit the measures taken by providers of publicly available electronic communication services and information society services and to issue recommendations about best practices and performance indicators concerning

the level of security which these measures should achieve.

¹ *OJ L 105, 13.4.2006, p. 54."*

Amendments 187/rev and 184

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3

Text proposed by the Commission

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services shall, without undue delay, notify the **subscriber concerned and** the national regulatory authority of such a breach. The notification to the **subscriber** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **national regulatory** authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

Amendment

3. In case of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed in connection with the provision of publicly available communications services in the Community, the provider of publicly available electronic communications services, **as well as any undertaking operating on the internet and providing services to consumers, which is the data controller and the provider of information society services** shall, without undue delay, notify the national regulatory authority **or the competent authority according to the individual law of the Member State** of such a breach. The notification to the **competent authority** shall at least describe the nature of the breach and recommend measures to mitigate its possible negative effects. The notification to the **competent** authority shall, in addition, describe the consequences of and the measures taken by the provider to address the breach.

The provider of publicly available electronic communications services, as well as any undertaking operating on the Internet and providing services to consumers, which is the data controller and the provider of information society services, shall notify their users

beforehand to avoid imminent and direct danger to the rights and interests of consumers.

Notification of a security breach to a subscriber or individual shall not be required if the provider has demonstrated to the competent authority that it has implemented appropriate technological protection measures, and those measures were applied to the data concerned by the security breach. Such technological protection measures shall render the data unintelligible to any person who is not authorized to access the data.

Amendment 124

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The competent authority shall consider and determine the seriousness of the breach. If the breach is deemed to be serious, the competent authority shall require the provider of publicly available electronic communications services and the provider of information society services to give an appropriate notification without undue delay to the persons affected by the breach. The notification shall contain the elements described in paragraph 3.

The notification of a serious breach may be postponed in cases where the notification may hinder the progress of a criminal investigation related to the serious breach.

Providers shall annually notify affected users of all breaches of security that have led to the accidental or unlawful destruction, loss or alteration or the unauthorised disclosure of or access to personal data transmitted, stored or

otherwise processed in connection with the provision of publicly available communications services in the Community.

National regulatory authorities shall also monitor whether companies have complied with their notification obligations under this Article and impose appropriate sanctions, including publication, as appropriate, in the event of a failure to do so.

Amendment 125

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3b. The seriousness of a breach requiring notification to subscribers shall be determined according to the circumstances of the breach, such as the risk to the personal data affected by the breach, the type of data affected by the breach, the number of subscribers involved, and the immediate or potential impact of the breach on the provision of services.

Amendment 127

Proposal for a directive – amending act

Article 2 – point 3 – point b

Directive 2002/58/EC

Article 4 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

4. In order to ensure consistency in implementation of the measures referred to in *paragraphs 1, 2 and 3*, the Commission *may*, following consultation with *the European Electronic Communications*

4. In order to ensure consistency in implementation of the measures referred to in *paragraphs 1 to 3b*, the Commission *shall*, following consultation with the European Data Protection Supervisor,

*Market Authority (hereinafter referred to as “the Authority”), and the European Data Protection Supervisor, adopt technical implementing measures concerning inter alia the circumstances, format and procedures applicable to information and notification requirements referred to in **this Article**.*

*relevant stakeholders and ENISA, recommend technical implementing measures concerning inter alia the **measures set out in paragraph 1a and the circumstances, format and procedures applicable to information and notification requirements referred to in paragraphs 3a and 3b.***

The Commission shall involve all relevant stakeholders, particularly in order to be informed of the best available technical and economic methods for improving the implementation of this Directive.

Amendment 128

Proposal for a directive – amending act

Article 2 – point 4

Directive 2002/58/EC

Article 5 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user **is only allowed on condition that** the subscriber or user concerned is provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing and is offered the right to refuse such processing by the data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out **or facilitating** the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Amendment

3. Member States shall ensure that the storing of information, or gaining access to information already stored, in the terminal equipment of a subscriber or user, **either directly or indirectly by means of any kind of storage medium, is prohibited unless the subscriber or user concerned has given his/her prior consent, taking into account that browser settings constitute prior consent, and** is provided with clear and comprehensive information in accordance with Directive 95/46/EC, inter alia about the purposes of the processing, and is offered the right to refuse such processing and is offered the right to refuse such processing by data controller. This shall not prevent any technical storage or access for the sole purpose of carrying out the transmission of a communication over an electronic communication network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

Amendment 129

Proposal for a directive – amending act

Article 2 – point 4 a (new)

Directive 2002/58/EC

Article 6 – paragraph 3

Text proposed by the Commission

Amendment

(4a) Article 6(3) shall be replaced by the following:

“3. For the purpose of marketing electronic communications services or for the provision of value added services, the provider of a publicly available electronic communications service may process the data referred to in paragraph 1 to the extent and for the duration necessary for such services or marketing, if the subscriber or user to whom the data relate has given his/her *prior* consent. Users or subscribers shall be given the possibility to withdraw their consent for the processing of traffic data at any time.”

Amendment 181

Proposal for a directive - amending act

Article 2 - point 4 b (new)

Directive 2002/58/EC

Article 6 - paragraph 6 a (new)

Text proposed by the Commission

Amendment

(4b) in Article 6, the following paragraph shall be added:

"6a. Without prejudice to compliance with the provisions other than Article 7 of Directive 95/46/EC and Article 5 of this Directive, traffic data may be processed for the legitimate interest of the data controller for the purpose of implementing technical measures to ensure the network and information security, as defined by Article 4 (c) of Regulation (EC) 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the

European Network and Information Security Agency¹, of a public electronic communication service, a public or private electronic communications network, an information society service or related terminal and electronic communication equipment, except where such interests are overridden by the interests for the fundamental rights and freedoms of the data subject. Such processing must be restricted to that which is strictly necessary for the purposes of such security activity.

¹ *OJ L 77, 13.3.2004, p. 1."*

Amendment 131

Proposal for a directive – amending act

Article 2 – point 4 c (new)

Directive 2002/58/EC

Article 13 – paragraph 1

Text proposed by the Commission

Amendment

(4c) Article 13(1) shall be replaced by the following:

"1. The use of automated calling and communication systems without human intervention (automatic calling machines), facsimile machines (fax) or electronic mail (including short message services (SMS) and multimedia messaging services (MMS)) for the purposes of direct marketing may [...] be allowed only in respect of subscribers who have given their prior consent."

Amendment 132

Proposal for a directive – amending act

Article 2 – point 4 d (new)

Directive 2002/58/EC

Article 13 – paragraph 4

(4d) Article 13(4) shall be replaced by the following:

“4. In any event, the practice of sending electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or in contravention of Article 6 of Directive 2000/31/EC, or that contain links to sites that have a malicious or fraudulent intent, or without a valid address to which the recipient may send a request that such communications cease, shall be prohibited.”

Amendment 133

Proposal for a directive – amending act

Article 2 – point 5

Directive 2002/58/EC

Article 13 – paragraph 6

Text proposed by the Commission

Amendment

6. Without prejudice to any administrative remedy for which provision may be made, inter alia under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this *Article*, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

5a. Without prejudice to any administrative remedy for which provision may be made, inter alia under Article 15 (a)(2), Member States shall ensure that any individual or legal person having a legitimate interest in combating infringements of national provisions adopted pursuant to this *Directive*, including an electronic communications service provider protecting its legitimate business interests or the interests of their customers, may take legal action against such infringements before the courts.

Amendment 135

Proposal for a directive – amending act

Article 2 – point 5 b (new)

Directive 2002/58/EC

Article 14 – paragraph 3

Text proposed by the Commission

Amendment

(5b) Article 14(3) shall be replaced by the following:

"3. Where required, measures may be adopted to ensure that terminal equipment is constructed in a way that is compatible with the right of users to protect and control the use of their personal data, in accordance with Directive 1999/5/EC and Council Decision 87/95/EEC of 22 December 1986 on standardisation in the field of information technology and communications. Such measures shall respect the principle of technology neutrality."

Amendment 136

Proposal for a directive – amending act

Article 2 – point 6 a (new)

Directive 2002/58/EC

Article 15 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

(6a) in Article 15, the following paragraph shall be inserted:

"1b. Providers of publicly available communications services and providers of information society services shall notify the independent data protection authorities, without undue delay, of all requests for access to users' personal data received pursuant to paragraph 1, including the legal justification given and the legal procedure followed for each request; the independent data protection authority concerned shall notify the appropriate judicial authorities of those cases in which it deems that the relevant provisions of national law have not been

complied with."

Amendment 137

Proposal for a directive – amending act

Article 2 – point 7

Directive 2002/58/EC

Article 15a – paragraph 1

Text proposed by the Commission

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive 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

1. Member States shall lay down the rules on penalties, ***including penal sanctions where appropriate***, applicable to infringements of the national provisions adopted pursuant to this Directive 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 138

Proposal for a directive – amending act

Article 2 – point 7

Directive 2002/58/EC

Article 15a – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with ***the Authority*** and the relevant regulatory authorities.

Amendment

4. In order to ensure effective cross-border co-operation in the enforcement of the national laws adopted pursuant to this Directive and to create harmonised conditions for the provision of services involving cross-border data flows, the Commission may adopt technical implementing measures, following consultation with ***ENISA, the Article 29 Working Party*** and the relevant regulatory authorities.

Amendments 139 and 186/rev

Proposal for a directive – amending act

Article 2 – point 7 a (new)

Directive 2002/58/EC

Article 18

Text proposed by the Commission

Amendment

(7a) Article 18 shall be replaced by the following:

"Article 18

Review

By ...⁺, the Commission shall submit to the European Parliament and the Council, having consulted the Article 29 Working Party and the European Data Protection Supervisor, a report on the application of this Directive and its impact on economic operators and consumers, in particular as regards the provisions on unsolicited communications, breach notifications and the use of personal data by public or private third parties for purposes not covered by this Directive, taking into account the international environment. For this purpose, the Commission may request information from the Member States, which shall be supplied without undue delay. Where appropriate, the Commission shall submit proposals to amend this Directive, taking account of the results of that report, any changes in the sector, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community¹, in particular the new competences in matters of data protection as laid down in Article 16, and any other proposal it may deem necessary in order to improve the effectiveness of this Directive.

No later than two years from the date of entry into force of Directive 2008/.../EC [amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications

networks, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on consumer protection cooperation], the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report, based on an in-depth study, with recommendations on standard uses of IP addresses and the application of the ePrivacy and Data Protection Directives as regards their collection and further processing, following the consultation of the EDPS, the Article 29 Working Party, and other stakeholders to include industry representatives.

⁺ *Two years from the date of entry into force of this Directive.*

¹ *OJ C 306, 17.12.2007, p. 1."*

Amendment 140

Proposal for a directive – amending act Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

(1) Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment

1. Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to ***the European Parliament and*** the Commission the text of those provisions and a correlation table between those provisions and this Directive.

Amendment 141

Proposal for a directive – amending act

Annex I – title

Directive 2002/22/EC

Annex I – title

Text proposed by the Commission

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE) **AND** ARTICLE 29 (ADDITIONAL FACILITIES)

Amendment

DESCRIPTION OF FACILITIES AND SERVICES REFERRED TO IN ARTICLE 10 (CONTROL OF EXPENDITURE), ARTICLE 29 (ADDITIONAL FACILITIES) **AND ARTICLE 30 (FACILITATING CHANGE OF SUPPLIER)**

Amendment 142

Proposal for a directive – amending act

Annex I – Part A – point a

Directive 2002/22/EC

Annex I – Part A – point a – subparagraph 1 – introductory wording

Text proposed by the Commission

Member States are to ensure that national regulatory authorities, subject to the requirements of relevant legislation on the protection of personal data and privacy, may lay down the basic level of itemised bills which are to be provided by designated undertakings (as established in Article 8) to **consumers** free of charge in order that they can:

Amendment

Member States are to ensure that national regulatory authorities, subject to the requirements of relevant legislation on the protection of personal data and privacy, may lay down the basic level of itemised bills which are to be provided by designated undertakings (as established in Article 8) to **end-users** free of charge in order that they can:

Amendment 143

Proposal for a directive – amending act

Annex I – Part A – point b

Directive 2002/22/EC

Annex I – Part A – point b

Text proposed by the Commission

i.e. the facility whereby the subscriber can, on request to a designated undertaking that

Amendment

i.e. the facility whereby the subscriber can, on request to a designated undertaking that

provides telephone services, bar outgoing calls of defined types or to defined types of numbers free of charge.

provides telephone services, bar outgoing calls *or other kinds of communication* of defined types or to defined types of numbers free of charge.

Amendment 144

Proposal for a directive – amending act

Annex I – Part A – point e

Directive 2002/22/EC

Annex I – part A – point e

Text proposed by the Commission

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. *Any service interruption shall normally be confined to the service concerned. Exceptionally*, in cases of fraud, persistent late payment or non-payment, *Member States* shall ensure that *national regulatory authorities are able to authorise disconnection from the network as a result of non-payment of bills for services provided over the network*. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted.

Amendment

Member States are to authorise specified measures, which are to be proportionate, non-discriminatory and published, to cover non-payment of telephone bills of operators designated in accordance with Article 8. These measures are to ensure that due warning of any consequent service interruption or disconnection is given to the subscriber beforehand. *Except* in cases of fraud, persistent late payment or non-payment, *these measures* shall ensure, *as far as is technically feasible*, that *any service interruption is confined to the service concerned*. Disconnection for non-payment of bills should take place only after due warning is given to the subscriber. Member States may allow a period of limited service prior to complete disconnection, during which only calls that do not incur a charge to the subscriber (e.g. "112" calls) are permitted. *Access to emergency services through 112 may be blocked in case of repeated misuse by the user.*

Amendment 145

Proposal for a directive – amending act

Annex I – Part A – point e a (new)

Directive 2002/22/EC

Annex I – Part A – point e a (new)

Text proposed by the Commission

Amendment

(ea) Cost control

Member States shall ensure that national regulatory authorities require all undertakings providing electronic communication services to offer means for subscribers to control the costs of telecommunication services, including free of charge alerts to consumers in case of abnormal consumption patterns.

Amendment 146

Proposal for a directive – amending act

Annex I – Part A – point e b (new)

Directive 2002/22/EC

Annex I – Part A – point e b (new)

Text proposed by the Commission

Amendment

(eb) Best advice

Member States shall ensure that national regulatory authorities require all undertakings providing electronic communication services to recommend their best available tariff package to consumers once a year on the basis of the consumer's consumption pattern for the previous year.

Amendment 147

Proposal for a directive – amending act

Annex I – Part B – point b a (new)

Directive 2002/22/EC

Annex I – Part B – point b a (new)

Text proposed by the Commission

Amendment

(ba) Services in the event of theft

Member States shall ensure that a freephone number common to all mobile telephony service providers is set up for reporting the theft of a terminal and immediately suspending the services

associated with the subscription. It must also be possible for disabled users to access this service. Users must be regularly informed of the existence of this number, which must be easy to remember.

Amendments 157, 163 and 174
Proposal for a directive – amending act
Annex I – Part B – point b b (new)
Directive 2002/22/EC
Annex I - Part B - point b b (new)

Text proposed by the Commission

Amendment

(bb) Protection software

Member States shall ensure that national regulatory authorities are able to require operators to make available free of charge to their subscribers reliable, easy-to-use, and freely and fully configurable protection and/or filtering software to prevent access by children or vulnerable people to content unsuitable to them.

Traffic monitoring data that this software may collect is for the sole use of the subscriber only.

Amendment 149

Proposal for a directive – amending act
Annex II – introductory wording
Directive 2002/22/EC
Annex II – introductory wording

Text proposed by the Commission

Amendment

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public communications networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, so as to ensure that consumers are able to make informed choices. ***Where information is***

The national regulatory authority has a responsibility to ensure that the information in this Annex is published, in accordance with Article 21. It is for the national regulatory authority to decide which information is to be published by the undertakings providing public communications networks and/or publicly available telephone services and which information is to be published by the national regulatory authority itself, so as to ensure that consumers are able to make