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OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services

(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

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SHORT JUSTIFICATION

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

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

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

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

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

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

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

national regulatory authorities are appropriate.

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

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

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

AMENDMENTS

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

Amendment 1

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

Text proposed by the Commission

Amendment

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

high-speed next generation networks able to satisfy future customer demands for more bandwidth and services should be a priority in the application of this Directive.

Amendment 2

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

Text proposed by the Commission

Amendment

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

Amendment 3

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 4

Proposal for a directive – amending act Recital 22

Text proposed by the Commission

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

Amendment

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

Justification

As recognized in Recital 5 of the Framework Directive, the separation between the regulation of transmission and the regulation of content should not prejudice taking into account the links existing between them, and particularly in order to guarantee media pluralism, cultural

diversity and consumer protection. It must therefore remain possible for Member States to link the granting of individual rights of use with commitments related to the provision of particular content services.

Amendment 5

Proposal for a directive – amending act Recital 23

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 6

Proposal for a directive – amending act Recital 31

Text proposed by the Commission

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the

Amendment

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the

sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings. ***The sharing of ducts should be extended to cover all public infrastructure (water, sewage, electricity, gas) through which electronic communications infrastructure can be deployed to create a level playing field and improve possibilities for the roll-out of alternative infrastructure.***

Justification

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

Amendment 7

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

Text proposed by the Commission

Amendment

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

tradition for the development and coordination of technical standards has benefited society in its respective sphere. The national regulatory authorities should recognise the importance of innovation and diversity in Internet protocols and services, and the importance of regulatory forbearance in achieving those objectives.

Justification

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

Amendment 8

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 9

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

Text proposed by the Commission

Amendment

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

Justification

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

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

Amendment 10

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

Text proposed by the Commission

Amendment

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

Justification

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

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

Amendment 11

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

Text proposed by the Commission

Amendment

(46a) A network of national regulatory authorities for Electronic Communications Markets (the Network) should be established and should be provided with staff and equipment in order to guarantee the smooth running of joint decision-taking procedures. Funding by the European Union is the only way of ensuring the independence of joint decision-taking. In this connection the secretariat should only supply work equipment to the joint body, and is not itself involved in decision-taking by the national regulatory authorities.

Justification

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

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

Amendment 12

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

Text proposed by the Commission

Amendment

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

Justification

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

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

Amendment 13

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 14

Proposal for a directive – amending act Article 1 – point 2 – point c Directive 2002/21/EC Article 2 – point e

Text proposed by the Commission

Amendment

(e) “associated facilities” means those facilities associated with an electronic

(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;

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, **including those of other public and private infrastructures such as water, sewage, gas and electricity**, masts, street cabinets, and buildings;

Justification

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

Amendment 15

Proposal for a directive – amending act

Article 1 – point 2 – point e

Directive 2002/21/EC

Article 2 – point s

Text proposed by the Commission

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

Amendment

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

Justification

Member States should be able to provide restrictions not only where such interference has been observed but also where it is likely that harmful interference occurs. In view of the seriousness of interference problems between one-way and two-way (receive and transmit) services, it is essential to provide protection against harmful interference, in line with

internationally-agreed frequency plans, and particularly the ITU Geneva Plan (GE-O6). National legal systems must have the room to secure the common usage of spectrum.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 3

Directive 2002/21/EC

Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 17

Proposal for a directive – amending act

Article 1 – point 3 a (new)

Directive 2002/21/EC

Article 3 a (new)

Text proposed by the Commission

Amendment

(3a) The following article shall be inserted:

"Article 3a

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

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

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

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

Justification

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

Amendment 18

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

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

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.

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

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

Justification

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

Amendment 19

Proposal for a directive – amending act

Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 20

Proposal for a directive – amending act

Article 1 – point 4 – point b

Directive 2002/21/EC

Article 4 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 21

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/21/EC

Article 5 – paragraph 1

Text proposed by the Commission

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

Amendment

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate

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.

to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information. ***Undertakings shall also provide advance indication of significant potential restrictions to wholesale services made available to competitors. Commercial confidentiality, as provided by Community or national law, shall be respected.***

Justification

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

Amendment 22

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Justification

A more balanced solution should be chosen: instead of giving the Commission an outright veto over remedies, a "regulatory dialogue" on the appropriateness and effectiveness of the

remedy should be setup, involving the national regulatory authority proposing the remedy and the Network of national regulatory authorities. The objective of this dialogue, during which the views of market participants should be duly taken into account by all participants, is to arrive at a joint view on what would represent the most appropriate and effective remedy.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

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

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

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

Justification

A more balanced solution should be chosen: instead of giving the Commission an outright veto over remedies, a "regulatory dialogue" on the appropriateness and effectiveness of the

remedy should be setup, involving the national regulatory authority proposing the remedy and the Network of national regulatory authorities. The objective of this dialogue, during which the views of market participants should be duly taken into account by all participants, is to arrive at a joint view on what would represent the most appropriate and effective remedy.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 25

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 8

Text proposed by the Commission

Amendment

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

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

Justification

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

Amendment 26

Proposal for a directive – amending act

Article 1 – point 7

Directive 2002/21/EC

Article 7a – paragraph 2

Text proposed by the Commission

Amendment

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

procedure referred to in Article 22(4).

Justification

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

Amendment 27

Proposal for a directive – amending act

Article 1 – point 8 – point e a (new)

Directive 2002/21/EC

Article 8 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

(ea) The following paragraph shall be added:

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

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

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

(c) enable competitive advantage to be derived from faster geographical roll out; thus encouraging network deployments;

(d) attract resources from financial markets for high upfront investments in new access networks; and

(e) allow flexible commercial agreements on investments and risk-sharing between new access networks operators."

Justification

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

Amendment 28

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 29

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof, ***which can contribute to realisation of economy scales and the***

Decision).

interoperability of services for the consumer benefit and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).

Amendment 30

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 31

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 32

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 33

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

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

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

Restrictions that require ***a*** service to be

Restrictions that require ***an electronic***

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.

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

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

Justification

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

Amendment 34

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 35

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9a

Text proposed by the Commission

Amendment

Article 9a deleted

Justification

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

Amendment 36

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9b – paragraph 1

Text proposed by the Commission

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 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.

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

Justification

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

provisions.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9b – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 38

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

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

Text proposed by the Commission

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

(b) harmonise the conditions attached to such rights and the conditions,

Amendment

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

procedures, limits, restrictions, withdrawals and transitional rules applicable to such transfers or leases;

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

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

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

Justification

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

Amendment 39

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

with Article 10 Regulation [.../EC].

Amendment 40

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 d (new)

Text proposed by the Commission

Amendment

Article 9d

Impact of international rules and provisions

- 1. To ensure the efficient use and effective management of spectrum across the Community, Member States and the Commission shall take into account the rules and regulations of the ITU, in particular the Radio Regulations, as amended from time to time, in the implementation of this Directive.***
- 2. The Commission shall monitor developments regarding radio spectrum in third countries and in international organisations, including the ITU, which may have implications for the implementation of this Directive.***
- 3. Member States shall inform the Commission of any difficulties created, de jure or de facto, by existing international agreements, third countries or international organisations, including the ITU, in relation to the implementation of this Directive.***
- 4. The Commission shall report regularly on the results of the application of paragraphs 1, 2 and 3 to the European Parliament and the Council and may propose measures with the aim of securing the implementation of the principles and objectives of this Directive, where appropriate. When necessary, common policy objectives shall be agreed to ensure Community coordination***

among Member States.

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

Justification

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

Amendment 41

Proposal for a directive – amending act

Article 1 – point 11 – point -a (new)

Directive 2002/21/EC

Article 10 – paragraph 1

Text proposed by the Commission

Amendment

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

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

Justification

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

common practice at national level) run contrary to the internal market goals.

Amendment 42

Proposal for a directive – amending act

Article 1 – point 11 – point a

Directive 2002/21/EC

Article 10 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 43

Proposal for a directive – amending act

Article 1 – point 11 – point b

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

4. Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take

appropriate technical implementing measures on this matter, ***which may include establishing tariff principles for specific numbers or number ranges. The implementing measures may grant the Authority specific responsibilities in the application of those measures.***

appropriate technical implementing measures on this matter.

Justification

The Commission's amendment would lead to an expansion of retail regulation via prescription of tariff principles. It constitutes a breach of the systematic of the regulatory framework, which foresees price regulation of retail services only in the case of an SMP-finding on a retail market under Art. 17 of the Universal Service Directive. To introduce a sweeping new competence for price-setting for regulators is in violation of the aim of better regulation and the overarching principle that regulation should in principle be confined to the wholesale level.

Amendment 44

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12 – paragraph 1

Text proposed by the Commission

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall be able to impose the sharing of such facilities or property, including entries to buildings, masts, antennae, ducts, manholes and street cabinets.

Amendment

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall be able to impose the sharing of such facilities or property, ***taking full account of the principle of proportionality***, including entries to buildings, masts, antennae, ducts, manholes and street cabinets.

Amendment 45

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall ***take into account the security interests of the undertaking and general security interests as well as the need to ensure a clear delineation of responsibilities of the undertakings involved to prevent harmful interferences between users. Measures shall also*** be objective, transparent, and proportionate.

When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may, where necessary, lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access to ensure normal operation of the network. Beneficiaries of access may be subjected to specific non-discriminatory conditions that ensure that scarce resources are used efficiently, especially in terms of network deployment. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with Article 17(1).

Justification

Stresses the need to take the justified security interests of the parties involved into account.

Amendment 46

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. To ensure that measures under paragraph 1 are proportionate, national regulatory authorities shall investigate the

availability of all ducts including those of telecommunications operators, energy providers, local communities and sewage pipes, capable of carrying telecommunications lines in the area where access is requested.

Justification

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

Amendment 47

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 3 – subparagraph 3

Text proposed by the Commission

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

Amendment

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

Justification

In order to avoid unnecessary bureaucracy and extra administrative load, national regulatory authorities should submit the reports only once a year.

Amendment 48

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. The Commission, taking the utmost account of the opinion of the **Authority issued in accordance with Article 4(3)(b) of Regulation [.../EC]**, may adopt appropriate technical implementing

Amendment

4. The Commission, taking the utmost account of the opinion of the **national regulatory authorities and the European Network and Information Security Agency**, may adopt appropriate technical

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.

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

Justification

The Authority should not have competence in security matters which should reside with ENISA.

In individual cases Member States should have the possibility to use higher standards than the harmonized base-line to meet the goals set out in paragraphs 1 and 2.

Amendment 49

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13b – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

Many NRAs do not have competence in security issues.

Amendment 50

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13b – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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:

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

Justification

Many NRAs do not have competence in security issues.

Amendment 51

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13b – paragraph 3

Text proposed by the Commission

Amendment

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

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

Justification

Many NRAs do not have competence in security issues.

Amendment 52

Proposal for a directive – amending act

Article 1 - point 18 – point a a (new)

Directive 2002/21/EC

Article 17 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

(aa) In Article 17(2), subparagraph 3 shall be replaced by the following:

"In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or

recommendations adopted by the International Telecommunication Union (ITU), the European Conference of Postal and Telecommunications Administrations (CEPT), the International Organisation for Standardisation (ISO) or the International Electrotechnical Commission (IEC)."

Justification

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

Amendment 53

Proposal for a directive – amending act

Article 2 – point 3 – point a

Directive 2002/19/EC

Article 5 – paragraph 2 – subparagraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

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

In the event that a geographic area is found to be competitive, national regulatory authorities shall remove unnecessary obligations, adapted to market needs. In that respect, national regulatory authorities shall take into account the need to safeguard infrastructure competition.

Justification

Ex-ante regulation as a rule must be limited to economic bottlenecks only. Thus, if in certain regions effective competition has developed, regulation must be removed accordingly.

Amendment 54

Proposal for a directive – amending act

Article 2 – point 7

Directive 2002/19/EC

Article 9 – paragraph 5

Text proposed by the Commission

5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the **Authority**.

Amendment

5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the **national regulatory authorities**.

Amendment 55

Proposal for a directive – amending act

Article 2 – point 8 - point a

Directive 2002/19/EC

Article 12 – paragraph 1 – point f

Text proposed by the Commission

(a) In paragraph 1, point (f) is replaced by the following:

‘(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;’

Amendment

deleted

Justification

Facility sharing is already being coped with under Art. 12 FD. Thus, Art. 12 para. 1 lit. (f) is redundant.

Amendment 56

Proposal for a directive – amending act

Article 2 – point 8 a (new)

Directive 2002/19/EC

Article 13 – paragraph 1 and 3

Text proposed by the Commission

Amendment

(8a) Article 13 is amended as follows:

(a) In paragraph 1, the following subparagraph shall be added:

"If a national regulatory authority regulates access in relation to new generation access networks, it may require that operators seeking access bear a reasonable share of the risk incurred by the investing operator. Risk-sharing contracts may include an upfront payment covering the risk premium for a certain amount of access in particular regions or may take the form of long-term access contracts with minimum quantities for given time periods."

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

"In order to promote incentives for investments in new high-speed networks, when access fees are stipulated, the operator providing the access shall be entitled to a rate of return that corresponds at least to the capital costs related to the investment and the risk specific to the investment."

Justification

Regulation of NGNs may take into account the risk associated with the investment decision. Risk sharing can be achieved by enabling access on the basis of an upfront payment or on the basis of long term access contracts with minimum purchase quantities. Short-term contracts without minimum quantities may include a price-premium which covers the investment risk of the investor under the assumption that the full investment risk is being born by the investor. Long-term access contracts may reflect the time period necessary to allow amortisation of investment costs in new markets.

The key issue for the coming years is to give appropriate incentives for investments in new

high speed networks that will support innovation in content-rich internet services. Such networks have enormous potential to deliver benefits to consumers across the European Union. It is therefore vital that there is no impediment to sustainable investment in the development of these new networks, while boosting competition and consumer choice.

Amendment 57

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1– point a

Text proposed by the Commission

Amendment

(a) avoid **a serious risk** of harmful interference; or

(a) avoid **any risk** of harmful interference **or competitive distortions**; or

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

It is imperative to ensure that spectrum allocation does not distort competition in the market.

Amendment 58

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) safeguard and ensure efficient use of spectrum.

Justification

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

Amendment 59

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

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 objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures shall also be open, except in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 60

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 5 a (new)

Text proposed by the Commission

Amendment

In taking a decision on rights of use, due

account shall be taken of the need to allow for an appropriate amortisation period for investment.

Justification

For many new platforms and services, investment will need to be amortized over a period exceeding ten or, at any rate, five years. It is not uncommon to have to sustain substantial losses during the first couple of years of operation. It would be disproportionate to introduce a rigid requirement for national regulatory authorities to conduct a formal review of all spectrum licenses every five years.

Amendment 61

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 62

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. Where it has been decided, after 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.

Amendment

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

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 63

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 5

Text proposed by the Commission

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

Amendment

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7. **Member States shall take into account legacy investments and the level of competition.**

Justification

Safeguard for making sure that legacy investments are taken into due account. Otherwise former investments might be devalued. This would severely distort the market and would negatively affect future investment decisions.

Amendment 64

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 6

Text proposed by the Commission

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

Amendment

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

Justification

Any risk of “harmful interference” is a “serious risk”.

The proposed mechanism to review existing rights is not realistic, as justified for the amendments to Article 9a of the Framework Directive.

Amendment 65

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. In order to achieve the objectives set out in Article 1, and without prejudice to Article 5(2) of this Directive, the Commission may adopt implementing measures:

Amendment

1. In order to achieve the objectives set out in Article 1, and without prejudice to Article 5(2) of this Directive ***and the Radio Spectrum Decision***, the Commission may adopt implementing measures:

Justification

The reference to the Radio Spectrum Decision is crucial to achieve an integrated policy approach and coherent treatment of harmonisation measures.

Amendment 66

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) to identify radio frequency bands ***providing pan-European networks or electronic communications services***, the use of which is to be made subject to general authorisations or individual rights of use for radio frequencies;

Justification

The scope of the article is far to open. Moreover, the wording is not in line with the principle of checks and balance. It is important to ensure that Member States' competences regarding frequencies are not undermined by new centralized procedures at EU level. Insofar it is appropriate to refer this article to pan-European services.

Amendment 67

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

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

Justification

The scope of the article is far to open. Moreover, the wording is not in line with the principle of checks and balance. It is important to ensure that Member States' competences regarding frequencies are not undermined by new centralized procedures at EU level. Insofar it is appropriate to refer this article to pan-European services.

Amendment 68

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

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

Justification

It should be left to subsidiarity how conditions relating to general authorisations or individual rights of use should be defined in each Member State.

Amendment 69

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – subparagraph 1 – point f

Text proposed by the Commission

Amendment

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

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

Justification

The scope of the article is far too open. Moreover, the wording is not in line with the principle of checks and balance.

Amendment 70

Proposal for a directive – amending act
Article 3 – point 5
Directive 2002/20/EC
Article 6 b

Text proposed by the Commission

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

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

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

Amendment

1. The technical implementing measure referred to in paragraph 6a(1)(f) may provide for the **Radio Spectrum Policy Group (RSPG)** to make proposals for the selection of undertaking(s) **providing pan-European networks or electronic communications services** to which individual rights of use for radio frequencies or numbers are to be granted, in accordance with Article 12 of Regulation [...].

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

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

Justification

The Authority should not have competence over spectrum policy and this should remain with the RSPG.

Article 6 b is not in line with the principle of subsidiarity. It is important to ensure that Member States' competences regarding frequencies are not undermined by new centralized procedures at EU level. Insofar it is appropriate to refer this article to pan-European services.

Amendment 71

Proposal for a directive – amending act

Article 3 – point 13

Directive 2002/20/EC

Article 17 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States **shall** bring authorisations already in existence on **31 December 2009** into conformity with Articles 5, 6, 7, and Annex I of this Directive **by [31 December 2010] at the latest.**

Amendment

1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States **may** bring **general** authorisations **and rights of use** already in existence on **the date of entry into force of this Directive** into conformity with Articles 5, 6, 7, and Annex I of this Directive **by ...** *.

*** Two years from the date of entry into force of this Directive.**

Justification

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

Amendment 72

Proposal for a directive – amending act

Annex II

Directive 2002/20/EC

Annex II

Text proposed by the Commission

Amendment

Annex deleted

Justification

Consequence of deletion of article 6a.1(d).

PROCEDURE

| | | | |
|---|--|----------|-----------|
| Title | Electronic communications networks and services | | |
| References | COM(2007)0697 – C6-0427/2007 – 2007/0247(COD) | | |
| Committee responsible | ITRE | | |
| Opinion by Date announced in plenary | ECON 10.12.2007 | | |
| Drafts(wo)man Date appointed | Karsten Friedrich Hoppenstedt 15.1.2008 | | |
| Discussed in committee | 1.4.2008 | 6.5.2008 | 19.5.2008 |
| Date adopted | 3.6.2008 | | |
| Result of final vote | +: 44 | –: 0 | 0: 0 |
| Members present for the final vote | Mariela Velichkova Baeva, Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, David Casa, Manuel António dos Santos, Jonathan Evans, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Donata Gottardi, Dariusz Maciej Grabowski, Benoît Hamon, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Florencio Luque Aguilar, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, Olle Schmidt, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser | | |
| Substitute(s) present for the final vote | Dragoş Florin David, Mia De Vits, Harald Ettl, Ján Hudacký, Janusz Lewandowski, Theodor Dumitru Stolojan | | |
| Substitute(s) under Rule 178(2) present for the final vote | Edit Bauer | | |