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Committee on Culture and Education

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DRAFT OPINION

of the Committee on Culture and Education

for the Committee on Industry, Research and Energy

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

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SHORT JUSTIFICATION

With the "AMVS Directive" the EU delivered a strong message intended to ensure the optimal conditions of competitiveness and legal certainty for Europe's ICT and its media industries and services, as well as respect for cultural and linguistic diversity. The current review of the "telecom package" needs to be read and amended with the same spirit and political intentions. The best possible balance needs to be found among the needs of all current and future users of electronic networks, their legitimate business interests and general interest public policy concerns, as well as the rights and interests of consumers.

Radio frequencies are a scarce public resource that has an important public and market value, but also that they are essential to the fulfilment of some general interest public policy objectives. Thus, spectrum needs to be managed not only efficiently and effectively, but also with due attention to the public interest from an economic, social or cultural perspective. In this context some restrictions to the principles of service neutrality, and its impact in the transfer of individual rights to use radio frequencies should be imposed. The role of Member States in this public policy decisions needs to be respected.

The importance to protect electronic communications services providers and in particular AVMS providers against harmful interference cannot be underestimated. This requires some small changes in the text, to properly put in context European spectrum regulation with other internationally binding decisions and instruments which cannot be ignored.

Finally, a proposal is made to underline the indispensable role of NRA in the protection and the promotion of lawful content over electronic communications networks and services.

AMENDMENTS

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

Amendment 1

Proposal for a directive – amending act Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Under Directive 2007/65/EC of 11 December 2007, the so called Audiovisual media services Directive, a revision was carried out with the intention of ensuring optimal conditions of competitiveness and legal certainty for information technologies and media industries and services in the EU, as well as respect for cultural and linguistic diversity, and, in

this context, a fair and balanced regulatory framework for electronic communications networks and services constitutes an essential pillar of the whole European audiovisual sector.

Or. en

Amendment 2

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

Text proposed by the Commission

Amendment

(3a) The views of national regulatory authorities, industry stakeholders and audiovisual media services providers should be taken into account by the Commission when making decisions under this Directive through the use of effective consultation to ensure transparency and proportionality. The Commission should issue detailed consultation documents, explaining the different courses of action being considered, and interested stakeholders should be given a reasonable time in which to respond. Having considered the responses, the Commission should give reasons for the resulting decision in a statement following the consultation, including a description of how the views of those responding have been taken into account.

Or. en

Justification

It is essential that the views of NRAs, industry stakeholders and audiovisual media services providers are taken into account in decisions at Community level, which decisions must be transparent and proportionate to the result to be achieved.

Amendment 3

Proposal for a directive – amending act Recital 16

Text proposed by the Commission

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

Amendment

(16) Radio frequencies should be considered a scarce public resource that has an important public and market value, ***and which is essential to the fulfilment of some general interest public policy objectives. Spectrum should therefore be managed*** efficiently and effectively ***with due attention to the public interest*** from an economic, social, cultural and environmental perspective, and obstacles to its efficient use ***should be*** gradually withdrawn.

Or. en

Justification

Spectrum is indeed a public resource, and cannot be considered the private property of no one. But its efficiency should not and cannot be reduced to simple market criteria.

Amendment 4

Proposal for a directive – amending act Recital 17

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

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

Amendment 5

Proposal for a directive – amending act Recital 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 be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with the previously acquired rights. ***On the other hand, spectrum use may also be explicitly assigned to*** the provision of a specific service ***or through a specific technology*** to 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 include the promotion of ***cultural and media policy objectives such as*** cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. 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 authorization 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 authorization to use radio frequencies.

Or. en

Justification

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

Amendment 6

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 media policy objectives such as*** cultural and linguistic diversity and media pluralism in accordance with their own national law.

Or. en

Justification

Recital 6 of the Framework Directive 2002/21/EC in fact recognizes that “audiovisual policy and content regulation are undertaken in pursuit of general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors”. The mere reference to “the promotion of cultural and linguistic diversity and media pluralism” is too narrow as it does not cover all general interest objectives pursued by audiovisual media policies.

Amendment 7

Proposal for a directive – amending act Recital 49

Text proposed by the Commission

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

Amendment

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

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

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

Or. en

Justification

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

Amendment 8

Proposal for a directive – amending act Recital 50

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

It must remain possible for Member States to maintain or introduce systems where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest

objectives. Such systems are commonplace with regard to terrestrial broadcasting frequencies where they serve media pluralism objectives.

Amendment 9

Proposal for a directive – amending act Recital 59

Text proposed by the Commission

(59) Measures necessary for the implementation of the Framework, Access and Authorisation Directives should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Amendment

(59) Measures necessary for the implementation of the Framework, Access and Authorisation Directives should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. ***Such implementing measures should not interfere with cultural and media policy objectives as defined by the Member States in accordance with those Directives.***

Or. en

Justification

The proposed safeguard is essential with regard to extended implementing powers conferred to the European Commission, in particular those in Articles 9c and 19 of the Framework Directive, article 6 of the Access Directive and Article 6a of the Authorisation Directive.

Amendment 10

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

Text proposed by the Commission

Amendment

(60a) Activities pursued under this Directive shall take account of 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. The Member States and the Commission shall recognise the content of international agreements entered into by the Member States pursuant to the ITU Radio Regulations in the implementation of this Directive.

Or. en

Justification

Europe is not an island. The importance of the ITU in establishing internationally binding regulations for the efficient use of spectrum and orbit usage based on efficient, rational and cost-effective utilisation cannot be ignored. The binding nature of the ITU rules (on EU and non-EU member states of the ITU) and the compatibility of the Directive with them must be expressly addressed.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 2 – point e

Directive 2002/21/EC

Article 2 – point s

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

In view of the seriousness of interference problems between broadcasting and two-way (receive and transmit) services, it is essential for digital broadcasting services to be afforded protection against harmful interference, in line with internationally-agreed frequency plans,

and particularly the ITU Geneva Plan (GE-O6). The definition of harmful interference should be amended accordingly.

Amendment 12

Proposal for a directive – amending act

Article 1 – point 8 – point e

Directive 2002/21/EC

Article 8 – paragraph 4 – point g

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

The mention to distribution is confusing as far as it may be interpreted as if the Directive provision creates a new right for the users to publicly communicate legal content, right which according to the law of intellectual property belongs exclusively to rights owner or a third party authorised by him.

Amendment 13

Proposal for a directive – amending act

Article 1 – point 8 – point e a (new)

Directive 2002/21/EC

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

Text proposed by the Commission

Amendment

ga) ensuring the cooperation of undertakings providing electronic communications networks and services in the protection and the promotion of lawful content over electronic communications networks and services.

Or. en

Justification

The promotion and protection of lawful content over electronic communication networks and

services needs to be incorporated as a task for National Regulatory authorities in the interest of the citizens of the European Union.

Amendment 14

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – point d

Text proposed by the Commission

(d) comply with a **restriction** in accordance with paragraph 4 below.

Amendment

(d) comply with **any of the service restrictions** in accordance with paragraph 4 below.

Or. en

Justification

The amendment in Article 9(3)(d) is necessary to clarify the meaning of the formulation, which is otherwise difficult to understand. In line with their competence for cultural and media policies, Member States must have the power to make available sufficient spectrum for broadcasting services, and to restrict the principles of service neutrality and technological neutrality for this purpose.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9– paragraph 4

Text proposed by the Commission

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

Amendment

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

provided in a specific band shall be justified in order to ensure 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.

provided in a specific band shall be justified in order to ensure 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 media policy objectives such as*** 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.

Or. en

Justification

The mere reference to “the promotion of cultural and linguistic diversity and media pluralism” is too narrow as it does not cover all general interest objectives pursued by audiovisual media policies.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall have the competence to define the scope, nature and duration of restrictions intended for the promotion of cultural and media policy objectives such as cultural and linguistic diversity and media pluralism in accordance with their own national law.

Or. en

Justification

The amendment in Article 9(5a) is based on the formulation in Recital 23 of the Amending

Directive, as proposed by the European Commission; however, in view of the importance of this clause, it is necessary to amend it and to give it full legal force by including it in the text of the Framework Directive itself. In line with their competence for cultural and media policies, Member States must have the power to make available sufficient spectrum for broadcasting services, and to restrict the principles of service neutrality and technological neutrality for this purpose.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9b – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. However, where such transfer or lease would involve frequencies which have been made available on the basis of a restriction to ensure the fulfilment of a general interest objective as provided for in Article 9(4), the prior consent of the national regulatory authority will be required. When applicable, Member States will have the right to require an authorisation or an opinion from the national authority in charge of audiovisual media services.

Or. en

Justification

In view of Member States' competence to introduce specific restrictions to service neutrality, it is a logical consequence to introduce some limitations to the transfer of those frequencies or "spectrum trading". That is particularly obvious in the case of restrictions based on cultural and media policies. If spectrum trading is nevertheless allowed in this area, Member States must keep the power to be put in place appropriate safeguards to ensure that their audiovisual policy objectives are not undermined.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c – point d

Text proposed by the Commission

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

Amendment

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

Or. en

Justification

The mere reference to “the promotion of cultural and linguistic diversity and media pluralism” is too narrow as it does not cover all general interest objectives pursued by audiovisual media policies.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c a (new)

Text proposed by the Commission

Amendment

Article 9ca

1. The Commission shall monitor developments regarding radio spectrum in third countries and in international organisations, including the ITU, which may have implications for the implementation of this Directive.

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

3. The Commission shall report regularly on the results of the application of

paragraphs 1 and 2 to the Parliament and the Council and may 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.

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

Or. en

Justification

Europe is not an island. The binding nature of the ITU rules (on EU and non-EU member states of the ITU) and the compatibility of the Directive with them must be expressly addressed. To ensure efficient spectrum use it is essential that operators comply with and can rely on the filing and coordination procedures under the internationally binding rules and procedures of the ITU in order to ensure that a network or system can be successfully coordinated and brought into use.

Amendment 20

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/21/EC

Article 5 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) avoid **risks** of harmful interference;

Or. en

Justification

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

Amendment 21

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 5

Text proposed by the Commission

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

Amendment

5. Any individual right to use radio frequencies that is granted for ten years or more and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive shall, every **10** years and for the first time **10** years after its issuance, be subject to a review in the light of the criteria in paragraph 1. If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice of not more than **10** years from the conclusion of the review, or shall be made freely transferable or leasable between undertakings. ***In taking such a decision, due account shall be taken of the need to allow for an appropriate amortisation period for investment***

Or. en

Justification

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

Amendment 22

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6b – paragraph 1

Text proposed by the Commission

Amendment

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

1. **Where the cross-border element of an electronic communications service is predominant, and without prejudice to Member States' competences for the promotion of cultural and media policy objectives such as cultural and linguistic diversity and media pluralism,** 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 [...].

Or. en

Justification

It is important to ensure that Member States' competences for cultural and media policies, and particularly regarding frequencies made available for broadcasting and other audiovisual media services, are not undermined by new centralized procedures at EU level.

Amendment 23

Proposal for a directive – amending act

Annex II

Directive 2002/20/EC

Paragraph 1 – point d

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

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