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Committee on Industry, Research and Energy

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*****I**

DRAFT REPORT

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

Committee on Industry, Research and Energy

Rapporteur: Pilar del Castillo Vera

Symbols for procedures

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

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

Amendments to a legislative text

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

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0699),
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0428/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Budgets, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a regulation

Recital 3

Text proposed by the Commission

Amendment

(3) Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency (hereinafter “ENISA Regulation”) established the European Network and Information Security Agency (ENISA) in 2004 for a period of five years, with the goal of ensuring a high and effective level of network and ***deleted***

information security within the Community, in order to develop a culture of network and information security for the benefit of the citizens, consumers, enterprises and public sector organisations of the European Union, thus contributing to the smooth functioning of the internal market.

Or. en

Amendment 2

Proposal for a regulation Recital 10

Text proposed by the Commission

Amendment

(10) The Commission Communication to the European Parliament and Council of 1 June 2007 "On the evaluation of the European Network and Information Security Agency (ENISA)" presented an appraisal of an external expert report evaluating the performance of the Agency since its establishment and the recommendations of the ENISA Management Board regarding the ENISA Regulation and launched a public consultation. The key findings of that expert report confirmed the validity of the policy behind the creation of ENISA and its original goals, and in particular its contribution to achieving a truly internal market in electronic communications.

deleted

Or. en

Amendment 3

Proposal for a regulation Recital 11

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 4

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) This calls for the establishment of a new **Community** body, the **European Electronic Communications Market Authority** (hereinafter *the “Authority”*). **The Authority** would make an effective contribution to furthering the completion of the internal market through the assistance it provides to the Commission and the national regulatory authorities. It would operate as a point of reference and would establish confidence by virtue of its

Amendment

(12) This calls for the establishment of a new body, the **Body of European Regulators in Telecom** (hereinafter **“BERT”**). **BERT** would make an effective contribution to furthering the completion of the internal market through the assistance it provides to the Commission and the national regulatory authorities (**hereinafter “NRAs”**). It would operate as a point of reference and would establish confidence by virtue of its independence, the quality of

independence, the quality of the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it.

the advice it delivers and the information it disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it.

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

Or. en

Amendment 5

Proposal for a regulation Recital 17

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 6

Proposal for a regulation Recital 19

Text proposed by the Commission

(19) The Authority should assist the Commission concerning any extension of the Community obligations for number portability. Such extension could concern

Amendment

deleted

in particular the scope of the information to be ported or the types of network (i.e. fixed or mobile) between which numbers and information are to be ported.

Changes in this obligation should take into account prices to users and the switching costs for undertakings, as well as the experiences in Member States.

Or. en

Amendment 7

Proposal for a regulation

Recital 20

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 8

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) In the context of pursuing the aims of Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European

Amendment

(21) In the context of pursuing the aims of Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European

Community (Radio Spectrum Decision), the Commission may seek the independent expert advice of *the Authority* relating to the use of the radio frequencies in the Community. ***This advice could involve specific technical investigations, as well as economic or social impact assessment and analysis relating to frequencies policy measures. It could also include matters relating to the implementation of Article 4 of Decision No 676/2002/EC, where the Authority may be asked to provide advice to the Commission on the results obtained under Commission mandates to the European Conference of Postal and Telecommunications Administrations (CEPT).***

Community (Radio Spectrum Decision), the Commission may seek the independent expert advice of ***BERT, when appropriate,*** relating to the use of the radio frequencies in the Community.

Or. en

Amendment 9

Proposal for a regulation Recital 22

Text proposed by the Commission

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

Amendment

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

Directive 2002/21/EC (Framework Directive) to achieve such harmonised conditions.

Or. en

Amendment 10

Proposal for a regulation Recital 23

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 11

Proposal for a regulation Recital 24

Text proposed by the Commission

Amendment

(24) The Authority should act as a centre of expertise at European level on network and information security issues, providing guidance and advice to the European Parliament, the Commission or competent bodies appointed by the Member States. The security and resilience of communication networks and information systems remain a prime concern for

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society and a key element in the EU regulatory framework for electronic communications networks and service. The smooth functioning of the internal market risks being undermined by a heterogeneous application of the security-related provisions laid down in the Framework Directive and the Specific Directives. The opinion of the Authority providing technical advice at the request of the Commission and the Member States should facilitate the consistent application of those directives at national level.

Or. en

Amendment 12

Proposal for a regulation Recital 25

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 13

Proposal for a regulation Recital 27

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 14

Proposal for a regulation Recital 28

Text proposed by the Commission

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

Amendment

deleted

a significant impact on the operation of network or services provided by national regulatory authorities in accordance with Article 13a(3) of Directive 2002/21/EC (Framework Directive), as well as through questionnaires.

Or. en

Amendment 15

Proposal for a regulation Recital 29

Text proposed by the Commission

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

Amendment

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

Amendment 16

Proposal for a regulation

Recital 32

Text proposed by the Commission

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

Amendment

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

Amendment 17

Proposal for a regulation

Recital 33

Text proposed by the Commission

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

Amendment

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

Amendment 18

Proposal for a regulation Recital 34

Text proposed by the Commission

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

Amendment

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

(This amendment, in terms of replacing 'Director' by 'Managing Director', applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 19

Proposal for a regulation Recital 36

Text proposed by the Commission

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

Amendment

deleted

Amendment 20

Proposal for a regulation

Recital 37

Text proposed by the Commission

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

Amendment

deleted

Amendment 21

Proposal for a regulation

Recital 38

Text proposed by the Commission

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

Amendment

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

Amendment 22

Proposal for a regulation

Recital 39

Text proposed by the Commission

Amendment

(39) In order to ensure that the necessary degree of expertise and experience are brought to bear in the performance of the tasks of the Authority related to network and information security, a Chief Network Security Officer should be appointed. A Permanent Stakeholders' Group should be established in order to provide advice to the Chief Network Security Officer, encourage the sharing of experience and best practices in these matters and maintain regular dialogue with the private sector, consumer organisations and other stakeholders.

deleted

Amendment 23

Proposal for a regulation

Recital 40

Text proposed by the Commission

Amendment

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

(40) In order to guarantee the full autonomy and independence of **BERT**, it should receive an autonomous budget. **Whilst one third of its funding will be provided** by the general budget of the European Union, **two thirds of its revenues will be provided by the NRAs. Member States are obliged to ensure that NRAs have adequate and unconditional funding for this purpose.**

Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

Or. en

Amendment 24

**Proposal for a regulation
Recital 42**

Text proposed by the Commission

(42) The Commission should be able to impose **financial** penalties on undertakings that do not provide the information that is necessary for **the Authority** to achieve its tasks effectively. Also, Member States should ensure that they have an appropriate framework for imposing on undertakings effective, proportionate and dissuasive penalties for non-compliance with obligations arising from this Regulation.

Amendment

(42) The Commission should be able to impose penalties, **at BERT's request**, on undertakings that do not provide the information that is necessary for **BERT** to achieve its tasks effectively. Also, Member States should ensure that they have an appropriate framework for imposing on undertakings effective, proportionate and dissuasive penalties for non-compliance with obligations arising from this Regulation.

Or. en

Amendment 25

**Proposal for a regulation
Recital 43**

Text proposed by the Commission

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

Amendment

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

coherent and secure information exchange in the framework of this Regulation.

appropriate to ensure a coherent and secure information exchange in the framework of this Regulation.

Or. en

Amendment 26

Proposal for a regulation Recital 44

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 27

Proposal for a regulation Recital 45

Text proposed by the Commission

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

Amendment

deleted

Community.

Or. en

Amendment 28

Proposal for a regulation Recital 46

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 29

Proposal for a regulation Recital 47

Text proposed by the Commission

Amendment

(47) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

deleted

Or. en

Amendment 30

Proposal for a regulation Recital 48

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 31

Proposal for a regulation Recital 49

Text proposed by the Commission

Amendment

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

deleted

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 33

Proposal for a regulation

Article 1 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 34

Proposal for a regulation Article 1 – paragraph 5

Text proposed by the Commission

Amendment

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

Or. en

Amendment 35

Proposal for a regulation Article 3 – point e

Text proposed by the Commission

Amendment

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

Or. en

Amendment 36

Proposal for a regulation Article 3 – point f

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 37

Proposal for a regulation Article 3 – point g

Text proposed by the Commission

Amendment

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

(g) advise the Commission ***as appropriate*** in the selection of undertakings to be granted rights of use of radio frequencies and numbers;

Or. en

Amendment 38

Proposal for a regulation Article 3 – point h

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 39

Proposal for a regulation Article 3 – point i

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 40

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 41

Proposal for a regulation Article 4 – paragraph 2

Text proposed by the Commission

2. **The Authority shall in particular contribute to** the harmonised application of the provisions of the Framework Directive and the Specific Directives **by assisting** the Commission in the preparation of recommendations or decisions to be adopted by the Commission in accordance

Amendment

2. **In order to promote** the harmonised application of the provisions of the Framework Directive and the Specific Directives, the Commission **shall also request the assistance of BERT** in the preparation of recommendations or decisions to be adopted by the Commission

with Article 19 of Directive 2002/21/EC (Framework Directive).

in accordance with Article 19 of Directive 2002/21/EC (Framework Directive). ***The European Parliament may also request such assistance from BERT as it may reasonably require in relation to any enquiry or legislation within the scope of the BERT's functions.***

Or. en

Amendment 42

Proposal for a regulation

Article 4 – paragraph 3 – point b

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 43

Proposal for a regulation

Article 4 – paragraph 3 – point e

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 44

Proposal for a regulation

Article 4 – paragraph 3 – point o

Text proposed by the Commission

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

Amendment

(o) matters within the scope of BERT's responsibility, insofar as these matters affect or are affected by spectrum management;

Or. en

Amendment 45

Proposal for a regulation

Article 4 – paragraph 3 – point p

Text proposed by the Commission

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

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

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

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

Amendment

deleted

Or. en

Amendment 46

Proposal for a regulation Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 47

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

Text proposed by the Commission

Amendment

4a. The Commission and the NRAs shall take the utmost account of the opinions delivered by BERT. They shall make public the manner in which its opinions have been taken into account.

Or. en

Amendment 48

Proposal for a regulation Article 5 – title

Text proposed by the Commission

Consultation of *the Authority* on the definition and analysis of national markets, *and on remedies*

Amendment

Consultation of *BERT* on the definition and analysis of national markets

Or. en

Amendment 49

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 50

Proposal for a regulation Article 6

Text proposed by the Commission

Article 6

Reviews of national markets by the Authority

1. If the Authority receives a request from the Commission pursuant to Article 16(7) of Directive 2002/21/EC (Framework Directive) to analyse a specific relevant market within a Member State, it shall deliver an opinion and provide the Commission with the necessary information, including the results of the public consultation and the analysis of the market. If the Authority finds that

Amendment

deleted

competition on that market is not effective, its opinion shall, following a public consultation, include a draft measure specifying the undertaking(s) it considers should be designated as having significant market power on that market and the appropriate obligations to be imposed.

2. The Authority may, where appropriate, consult the relevant national competition authorities before issuing its opinion to the Commission.

3. The Authority shall provide the Commission upon request with all the information available to carry out the tasks referred in paragraph 1.

Or. en

Amendment 51

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 52

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 53

Proposal for a regulation Article 8 – paragraph 3

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 54

Proposal for a regulation Article 9 – paragraph 1

Text proposed by the Commission

Amendment

1. The Authority shall undertake an annual review of measures taken by

deleted

Member States to inform citizens about the existence and use of the single European emergency call number "112", based on the information received pursuant to Article 26(4) of Directive 2002/22/EC (Universal Service Directive). The results of this review shall be included in the annual report referred to in Article 21(2).

Or. en

Amendment 55

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 56

Proposal for a regulation Article 10 – paragraph 3

Text proposed by the Commission

3. **Upon request, the Authority shall** provide advice to the Commission regarding the drawing up of common

Amendment

3. **The Commission may request BERT to** provide advice **to the RSPG and/or the RSC, in relation to advice by the latter to**

policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.

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

Or. en

Amendment 57

Proposal for a regulation Article 10 – paragraph 4

Text proposed by the Commission

4. **The Authority shall publish** an annual report on prospective frequencies developments in the electronic communications sector and policies **in which it shall identify** the potential needs and challenges.

Amendment

4. **Commission may request BERT to contribute to** an annual report on prospective frequencies developments in the electronic communications sector and policies **in particular through the identification of** the potential needs and challenges.

Or. en

Amendment 58

Proposal for a regulation Article 11 – paragraph 1

Text proposed by the Commission

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

Amendment

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

adopted by the Commission pursuant to Article 6a of Directive 2002/20/EC (Authorisation Directive) and the identification of the services with cross-Community potential which would benefit from those measures.

adopted by the Commission pursuant to Article 6a of Directive 2002/20/EC (Authorisation Directive) and the identification of the services with cross-Community potential which would benefit from those measures.

Or. en

Amendment 59

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

(a) identify the electronic communications services whose provision on a cross-border basis within the Community would benefit from the use of frequencies or numbers the rights to which are granted by means of a single procedure and under a single set of conditions;

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

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

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

*Article 7 of Directive 2002/20/EC
(Authorisation Directive).*

Or. en

Amendment 60

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The Commission may request BERT to explain or supplement any opinion issued pursuant to paragraph 1 within the time period specified in that request.

Or. en

Amendment 61

Proposal for a regulation Article 12

Text proposed by the Commission

Article 12

Proposal for the selection of undertakings

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

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

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

Amendment

deleted

provisions;

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

Or. en

Amendment 62

Proposal for a regulation Article 13 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 63

Proposal for a regulation Article 14

Text proposed by the Commission

Article 14

Network and information security

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

Amendment

deleted

information security, in particular by:

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

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

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

Or. en

Amendment 64

Proposal for a regulation Article 15

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 65

Proposal for a regulation Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Collection of administrative charges for services provided by the Authority

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

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

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

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

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

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

All charges shall be expressed and be payable in Euro.

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

5. The Authority shall publish a yearly overview of its administrative costs and charges. In the light of any difference between the total sum of the charges and the total administrative costs, it shall deliver an opinion to the Commission indicating appropriate adjustments to be made to charges.

Or. en

Amendment 66

Proposal for a regulation

Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

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

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

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

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

procedure.

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

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

Or. en

Amendment 67

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 68

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 69

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 70

Proposal for a regulation Article 19 – paragraph 4

Text proposed by the Commission

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

Amendment

deleted

transmitted through them, and provide the results of the analysis to the Member States and the Commission.

Or. en

Amendment 71

Proposal for a regulation Article 19 – paragraph 5

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 72

Proposal for a regulation Article 20

Text proposed by the Commission

Amendment

Article 20

deleted

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

1. A registry in the form of a common access point for the provision of information on the use of spectrum in each Member State shall be made available to the public to ensure the harmonised availability of information on

the use of radio frequencies in the Community. The information on the use of radio frequencies shall be provided by Member States on a regular basis and in accordance with a request to this effect from the Authority. The Authority shall be responsible for the management and publication of the registry. The registry shall include the information specified in the Annex to this Regulation, as well as any other information the Authority may consider appropriate. The Commission may adopt implementing measures to adapt the Annex to technical or market developments. Those measures designed to amend non-essential elements of this Regulation shall be adopted in accordance with the procedure referred to in Article 54(3).

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

Or. en

Amendment 73

Proposal for a regulation Article 21 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 74

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

2. **The Authority** shall publish an annual report on developments in the electronic communications sector, including consumer issues, in which it shall identify remaining barriers to the completion of the single market for electronic communications. The report shall also include an overview and analysis of the information on national appeal procedures provided by the Member States pursuant to Article 4(3) of Directive 2002/21/EC (Framework Directive), and of the extent to which the out-of-court dispute settlement procedures referred to in Article 34 of Directive 2002/22/EC (Universal service Directive) are used in Member States.

Amendment

2. **BERT** shall publish an annual report on developments in the electronic communications sector, including consumer issues, in which it shall identify remaining barriers to the completion of the single market for electronic communications. The report shall also include an overview and analysis of the information on national appeal procedures provided by the Member States pursuant to Article 4(3) of Directive 2002/21/EC (Framework Directive), and of the extent to which the out-of-court dispute settlement procedures referred to in Article 34 of Directive 2002/22/EC (Universal service Directive) are used in Member States. ***This report shall be presented in the European Parliament, who may then decide to issue an opinion.***

Amendment 75

Proposal for a regulation Article 21 – paragraph 3

Text proposed by the Commission

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

Amendment

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

paragraph 1.

European Parliament.

Or. en

Amendment 76

Proposal for a regulation Article 21 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 77

Proposal for a regulation Article 22 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 78

Proposal for a regulation Article 22 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 79

Proposal for a regulation Article 23

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 80

Proposal for a regulation Article 24

Text proposed by the Commission

Bodies of *the Authority*

The Authority shall comprise:

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

Amendment

Bodies of **BERT**

BERT shall comprise:

- (a) *a Board of Regulators*

- (c) a **Managing** Director

(This amendment, in terms of replacing 'Administrative Board' by 'Board of Regulators', as well as replacing 'Director' by 'Managing Director' applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Or. en

Amendment 81

Proposal for a regulation Article 25 – paragraph 1

Text proposed by the Commission

1. The *Administrative Board* shall be composed of *twelve members. Six shall be appointed by the Commission and six by the Council. The members of the Administrative Board shall be appointed in such a way as to secure the highest standards of competence and independence, and a broad range of relevant expertise. The term of office shall be five years, renewable once.*

Amendment

1. The Board **of Regulators** shall be composed of **one member per Member State who shall be the Head or nominated high-level representative of the independent NRA with responsibility for day-to-day application of the regulatory framework in the Member State. The NRAs shall nominate one alternate per Member State. The Commission shall attend as an observer with the prior agreement of the Board of Regulators.**

Amendment 82**Proposal for a regulation
Article 25 – paragraph 2***Text proposed by the Commission*

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

Amendment

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

Amendment 83**Proposal for a regulation
Article 25 – paragraph 3***Text proposed by the Commission*

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

Amendment

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

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

may subject to the rules of procedure, be assisted by advisers or by experts.

Or. en

Amendment 84

Proposal for a regulation Article 25 – paragraph 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 85

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 86

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

Text proposed by the Commission

Amendment

5b. The Board of Regulators' secretarial services shall be provided by BERT.

Or. en

Amendment 87

Proposal for a regulation Article 26 – title and paragraph 1

Text proposed by the Commission

Amendment

Tasks of the *Administrative* Board

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

Tasks of the Board *of Regulators*

1. The Board *of Regulators* shall appoint the *Chairperson and Vice-Chairperson in accordance with Article 25(2), as well as the Managing* Director in accordance with *[Article 26(13b)]*. *The Board of Regulators shall take all decisions relating to the performance of the BERT's functions as listed in Article 3 of this Regulation.*

Or. en

Amendment 88

Proposal for a regulation Article 26 – paragraph 2

Text proposed by the Commission

Amendment

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

deleted

Amendment 89

Proposal for a regulation Article 26 – paragraph 3

Text proposed by the Commission

Amendment

3. The Administrative Board shall appoint the members of the Board of Regulators in accordance with Article 27(1). *deleted*

Or. en

Amendment 90

Proposal for a regulation Article 26 – paragraph 4

Text proposed by the Commission

Amendment

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

Or. en

Amendment 91

Proposal for a regulation Article 26 – paragraph 5

Text proposed by the Commission

Amendment

5. The Administrative Board shall adopt, before 30 September each year, after consulting the Commission and after the approval of the Board of Regulators in accordance with Article 28(3), the work programme of the Authority for the coming year and shall transmit it to the European Parliament, the Council and the

5. After consulting the Commission, the Board of Regulators shall adopt, before 30 September each year, BERT's work programme for the coming year and shall transmit it to the European Parliament, the Council and the Commission.

Commission. *The work programme shall be adopted without prejudice to the annual budgetary procedure.*

Or. en

Amendment 92

Proposal for a regulation Article 26 – paragraph 6

Text proposed by the Commission

Amendment

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

Or. en

Amendment 93

Proposal for a regulation Article 26 – paragraph 7

Text proposed by the Commission

Amendment

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

Or. en

Amendment 94

Proposal for a regulation Article 26 – paragraph 8

Text proposed by the Commission

Amendment

8. The Administrative Board shall *deleted*

exercise disciplinary authority over the Director and the Chief Network Security Officer.

Or. en

Amendment 95

Proposal for a regulation Article 26 – paragraph 9

Text proposed by the Commission

Amendment

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

deleted

Or. en

Amendment 96

Proposal for a regulation Article 26 – paragraph 10

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 97

Proposal for a regulation Article 26 – paragraph 11

Text proposed by the Commission

Amendment

11. The **Administrative** Board shall adopt the annual report on **the** activities **of the**

11. The Board **of Regulators** shall adopt the annual report on **BERT's** activities and

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

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

Or. en

Amendment 98

Proposal for a regulation Article 26 – paragraph 12

Text proposed by the Commission

12. The **Administrative** Board shall adopt **its** rules of procedure.

Amendment

12. The Board **of Regulators** shall adopt **BERT'S** rules of procedure.

Or. en

Amendment 99

Proposal for a regulation Article 26 – paragraph 13

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 100

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

Text proposed by the Commission

Amendment

13a. The Board of Regulators shall provide an opinion to the Managing Director before the adoption of the opinions, recommendations and decisions referred to in Articles 4 to 23 within its field of competence. In addition, the Board of Regulators shall provide guidance to the Managing Director in the execution of the Managing Director's tasks.

(Repositioning the text of Article 28(1). 'Director' is replaced by 'Managing Director'.)

Or. en

Amendment 101

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 102

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

Text proposed by the Commission

Amendment

13c. The Board of Regulators shall, in accordance with Article 26(5) and Article 30(4) and in line with the draft budget established according to Article 37 approve the work programme of BERT for the coming year concerning its activities.

*(Repositioning the text of Article 28(3).
'Authority' is replaced by 'BERT'.)*

Or. en

Amendment 103

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

Text proposed by the Commission

Amendment

13d. The Board of Regulators shall approve the independent section on regulatory activities of the annual report provided for in Article 26(11) and Article 30(9).

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

Or. en

Amendment 104

Proposal for a regulation
Article 27

Text proposed by the Commission

Amendment

Article 27

deleted

The Board of Regulators

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

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

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

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

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

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

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

Or. en

Amendment 105

Proposal for a regulation Article 28

Text proposed by the Commission

Amendment

Article 28

deleted

Tasks of the Board of Regulators

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

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

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

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

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

Or. en

Amendment 106

Proposal for a regulation Article 29 – title and paragraph 1

Text proposed by the Commission

The Director

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

Amendment

The **Managing** Director

1. **BERT** shall be managed by its **Managing** Director, who shall act independently in the performance of his/her functions. **The Managing** Director shall not seek or accept any instruction from any government or from any body.

Or. en

Amendment 107

Proposal for a regulation Article 29 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 108

Proposal for a regulation Article 29 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 109

Proposal for a regulation Article 29 – paragraph 5

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 110

Proposal for a regulation Article 30 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 111

Proposal for a regulation Article 30 – paragraph 5

Text proposed by the Commission

5. The Director shall be responsible for implementing the annual work programme of **the Authority**, under the guidance of the Board of Regulators **and of the Chief Network Security Officer as appropriate, and under the administrative control of the Administrative Board**.

Amendment

5. The **Managing** Director shall be responsible for implementing the annual work programme of **BERT**, under the guidance of the Board of Regulators.

Or. en

Amendment 112

Proposal for a regulation Article 30 – paragraph 8

Text proposed by the Commission

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

Amendment

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

matters.

Or. en

Amendment 113

Proposal for a regulation Article 31

Text proposed by the Commission

Amendment

Article 31

deleted

The Chief Network Security Officer

- 1. The Chief Network Security Officer shall be responsible for coordinating the Authority's tasks relating to network and information security. The Chief Network Security Officer shall work under the responsibility of, and report to, the Director. He/she will prepare the draft annual work programme for these activities.*
- 2. The Chief Network Security Officer shall be appointed for a period of five years by the Administrative Board, on the basis of merit, skills and experience relevant for dealing with network and information security issues, from a list of at least two candidates proposed by the Commission.*
- 3. The Chief Network Security Officer may be removed from office only upon a decision by the Administrative Board, after consulting the Director. The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members.*
- 4. After consulting the Director, the Administrative Board, acting on a proposal from the Commission, may extend the term of office of the Chief Network Security Officer once for not more than three years only in those cases where it can be justified by the duties and*

requirements of the Authority.

Or. en

Amendment 114

Proposal for a regulation Article 32

Text proposed by the Commission

Amendment

Article 32

deleted

Permanent Stakeholders' Group

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

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

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

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

issues related to the work programme.

Or. en

Amendment 115

Proposal for a regulation Article 33

Text proposed by the Commission

Amendment

Article 33

deleted

Board of Appeal

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

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

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

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

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

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

Or. en

Amendment 116

Proposal for a regulation Article 34

Text proposed by the Commission

Amendment

Article 34

deleted

Appeals

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

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

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

Or. en

Amendment 117

Proposal for a regulation Article 35

Text proposed by the Commission

Amendment

Article 35

deleted

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

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

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

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

Or. en

Amendment 118

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

1. The revenues of *the Authority* shall consist of:
- (a) *charges for services provided by the Authority;*
 - (b) *a proportion of usage fees paid by applicants in accordance with the provisions of Article 17;*
 - (c) *a subsidy from the Community, entered in the general budget of the European Communities (Commission Section);*
 - (d) *any legacies, donations or grants as mentioned in Article 26(7);*
 - (e) *any voluntary contribution from the Member States or from their regulatory authorities.*

Amendment

1. The revenues of **BERT** shall *be divided as follows*:
- (a) *one-third of its annual funding shall be paid directly in the form of a Community subsidy, under the appropriate heading of the EC budget as stipulated by the Budgetary authority, in accordance with point 47 of the Interinstitutional agreement of 6 May 2006;*
 - (b) *two-thirds of its annual income shall be a direct contribution from the NRAs. Member States have the obligation to ensure that the NRAs are equipped with the adequate financial and human resources to complete the tasks assigned to them by BERT, and enabling the proper funding of the latter. Member States should specify the budget line, which NRAs must from this point on use to provide resources for BERT from their annual budgets. The budgets shall be made public.*

Or. en

Amendment 119

Proposal for a regulation Article 41 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 120

Proposal for a regulation Article 42

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 121

Proposal for a regulation Article 43 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The Commission, **following a request from BERT**, may impose penalties on undertakings if they fail to provide information referred to in Article 41. Penalties shall be effective, proportionate and dissuasive.

Or. en

Amendment 122

Proposal for a regulation Article 43 – paragraph 3

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 123

Proposal for a regulation Article 44

Text proposed by the Commission

The Authority's staff, including the Director, the Chief Network Security Officer and officials seconded by Member States on a temporary basis, shall make a declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be

Amendment

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

considered prejudicial to their independence. Such declarations shall be made in writing.

be made in writing.

Or. en

Amendment 124

Proposal for a regulation Article 45 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 125

Proposal for a regulation Article 46 – paragraph 2

Text proposed by the Commission

2. Members of **the Authority's Boards**, the Director, external experts, and members of the staff of **the Authority including officials seconded by Member States on a temporary basis** are subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

Amendment

2. Members of **BERT's Board of Regulators**, the **Managing Director**, external experts, and members of the staff of **BERT** are subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

Or. en

Amendment 126

Proposal for a regulation Article 47 – paragraph 3

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 127

Proposal for a regulation Article 49 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 128

Proposal for a regulation Article 49 – paragraph 4

Text proposed by the Commission

4. The Administrative Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Authority.

Amendment

deleted

Or. en

Amendment 129

Proposal for a regulation Article 53

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 130

Proposal for a regulation Article 55

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 131

Proposal for a regulation Article 56

Text proposed by the Commission

Article 56

Transitional provisions

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

2. The ownership interest in any moveable property held by the European Network and Information Security Agency at the

Amendment

deleted

date referred to in paragraph 1 above shall be transferred to the Authority with effect from that date.

Or. en

Amendment 132

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

Text proposed by the Commission

Amendment

Within five years from the effective start of operations BERT shall cease to exist unless the European Parliament, the Council and the Commission find that market conditions have not evolved to the extent that a body of regulators is no longer necessary.

Or. en

EXPLANATORY STATEMENT

Background: The Framework Programmes

The first Commission Framework Proposal of 2001 came as a result of the European plan to embark on a journey to liberalise the European telecommunications market. Europe, by opening and restructuring the market, allowed market structures to emerge that better unleashed the potential to innovate and develop competitive markets within the communications industry. Eight years later, the task of the review is to reassess what has been achieved over this time period, critically analyse the success of the EU regulatory framework in supporting the transition to a competitive and integrated marketplace and propose new ideas and directions where appropriate.

Generally speaking, enhanced competition in this sector has proved to be a main driver of investment and innovation. The efforts have paid off and the effects of this liberalisation have been very positive, creating growth, jobs and new economic and social opportunities. Today, the telecom services sector is a fast growing high-technology sector, with high innovation, considerable investments and productivity, and profitability has often averaged significantly above the non-financial business economy. This makes it a crucial part of the non-financial business economy with Eurostat calculating an average of 3.5% of value added for the EU of 27 Member States in 2005.

In terms of competitiveness vis-à-vis its competitors, investment in this sector overtook that of the US and the Asia Pacific Region in 2005. This same year, Europe's market for electronic communications services amounted to some 273 billion Euros. The effects have been clearly felt by the consumer. Competition amongst telecoms operators has drastically cut the cost of making phone calls over the past 20 years. Between 2000 and 2006, the EU weighted average charge of a three minute call fell by 65% and the cost of a ten minute call fell by 74%.

Whilst liberalisation has been a success story thus far, we still have the responsibility to ensure that we as policy makers continue to provide the best conditions for our companies, especially in light of our aspirations to transform Europe into a knowledge economy and the importance of the telecoms sector in meeting this objective. To this end, we cannot sit on our laurels. There are still bottlenecks that remain in the way of our creation of an integrated market place. There still exist cross-boarder issues and disparities between Member States as regards to broadband access, digitalisation and services. These need to be resolved if we are to guarantee a truly common market.

The ECCMA Commission Proposal: Key Problems

In the current review of the framework for European telecommunications, the Commission has proposed the establishment of the European Electronic Communications Market Authority (EECMA) (COM(2007)0699; 2007/0249(COD)). The rapporteur is of the opinion that the EECMA proposal, however well intended, under the surface reveals several difficulties. The Commission proposal expresses the good intention of improving the

functioning of the Single Market. However, these forward looking proposals regarding the EECMA could, on the contrary, hinder European competitiveness, adding red tape by creating a large bureaucracy and thus impeding the European Commission's struggle to introduce better regulation that has been so publicly spearheaded by President Barroso. Moreover, in so doing, it also counters the principles of subsidiarity, taking power away from Member States and NRAs who are on the field. It would be unnecessarily remote from the very markets it is designed to regulate, operating in isolation from those with day-to-day knowledge of those markets. Its existence and operation contradicts the long-term goal to replace ex-ante regulation by competition law, making regulatory certainty less certain and European regulation less predictable. The proposed merger with ENISA is very difficult to understand. Indeed, the ENISA's merger with the EECMA would only degrade the latter's functioning. The Commission does not stand out much in terms of administration costs and would only undermine the central focus of the agency, by tagging on unrelated issues of ENISA.

Back to Basics: BERT

The rapporteur argues that we should not be too quick to discard the positive qualities found in the current European Regulators Group for electronic communications networks and services (ERG), although notes that some reform is needed for its future success. She notes that a few of the answers are found in the Commission's EECMA proposal, although stops short of creating a cumbersome European agency. Thus, the rapporteur proposes BERT, (the Body of European Regulators in Telecommunications), which would take on many of the functions of the EECMA without taking on the nature of a heavy agency and would be based upon the good practice of the (ERG) whilst streamlining its functioning and working methods, and strengthening the Commission's obligation to consult this new body and take the utmost account of its views. The establishment of BERT, based on Article 95 of the EC Treaty, would embed today's ERG into European law by formally constituting an advisory body whose functions and responsibilities are expressly attributed to it by a regulation. This would provide BERT with a greater degree of efficiency and legitimacy than the ERG has today, whilst safeguarding the effective participation of the National Regulatory Authorities (NRAs), and their invaluable on the ground experience.

What would BERT do?

BERT would be an independent expert advisor to the Commission and would remain independent both from the governments and from the industry. As EECMA, BERT would act as the main advisory body to the Commission, but also to the individual NRA's in order to promote a consistent regulatory approach across the European Union. BERT would express its views freely and not only upon the request of the Commission and would further develop today's ERG detailed common positions on priority markets, establish a compliance programme to track NRA action and identify any unjustified divergences.

The current balance of coordination, based on the subsidiary principle, has its particular *raison d'être* and the reality of the internal market is that it is still a collection of many different sub-markets, with their own particular characteristics and dynamics. Coherence in regulatory intervention therefore actually means ensuring that regulation is applied

proportionately, whilst addressing the specific competition issues that arise at a particular place and time, and the best placed to do so are the NRAs who are on the ground.

The tasks of the ENISA would of course **not** be included in BERT's remit, not only due to the lack of synergy between their respective responsibilities, but moreover as such a move might hamper its independence.

Spectrum policy, the composition and competences of the different NRAs vary from one Member State to another as not all NRAs have competence in this area. Consequently, the Radio Spectrum Policy Group and the Radio Spectrum Committee should continue to perform their tasks and although BERT would not take the lead on European spectrum policy, nevertheless a system of close cooperation with these existing bodies should be developed allowing BERT to advise the Commission, when appropriate, in the selection of undertakings to be granted rights of use of radio frequencies and numbers in any eventual pan-European licensing process.

Structure & Staff

BERT shall be fully accountable and transparent to the relevant European institutions. BERT will be composed of the representatives of each of the Member States' NRAs as is currently the set-up in the ERG. It will have a much lighter structure than EECMA, but will have its own staff in order to guarantee its independence from both the Commission and from Member States.

The Board of Regulators will be composed of the representatives of the 27 NRAs. In order to enhance the accountability, transparency and visibility of BERT, the post of a Managing Director would be created. The European Parliament could invite the director to participate in its debates and inform the Members about the work and progress made in BERT. He would also give updated information on the development of the European market in electronic communications.

Financing and Transparency

BERT shall be funded as follows. One-third of BERT's funding shall come from the Community budget and two-thirds from the National Regulatory Authorities. Provisions shall be made in each of the Member States to ensure that NRAs have sufficient funding to be able to contribute properly to BERT. The rationale behind such a division is that the one-third contribution from the Community will ensure that BERT is somewhat embedded into the Community system, whilst a minimum contribution from the Community prevents BERT from taking on the characteristics of a European agency, the perils of which I discussed above. Bringing BERT into the Community system gives assurances as to its accountability and transparency. BERT will have to meet certain European requirements in order to keep receiving funding from the European Communities and will have to explain its accounts to its financiers. Co-funding provides a greater assurance of BERT's independence and effectiveness than that currently enjoyed by the ERG and encourages NRAs to provide high quality assistance to BERT as they contribute to its functioning.

Accountability

As mentioned above, BERT will be accountable for its actions. BERT will produce a comprehensive annual report on its activities, which shall be made publicly available. BERT's accounts will be subject to the scrutiny of the budgetary control committee. In order to guarantee transparency, the Managing Director will give an annual account of his interests. Whilst the selection of a Managing Director shall be made by the Board of Regulators, the process will also be overseen by the European Commission and the European Parliament, who are charged with the task of issuing non binding opinions on the proposed candidate. Furthermore, the European Parliament shall be able to request that the Managing Director and/or any other Member of the Board of Regulators present it with informed briefings or attend hearings.

A Clear Mission: A Clear Timeframe

The temporality of a need for a body should not be forgotten. BERT would be a transitory body that would exist until competition law and markets evolve to the point where ex-ante regulation is no longer needed. Considering that this entity should thus have a short life-span, it makes more sense to travel this route with a flexible BERT rather than with a heavy piece of Commission apparatus in the form of EECMA. There should be no doubt as to its mission: it should be absolutely clear that it has no other purpose than to develop prime conditions for the telecom market so that the latter may as soon as possible operate solely under general competition law.