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Committee on Legal Affairs

2013/0309(COD)

11.12.2013

DRAFT OPINION

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012 (COM(2013)0627 – C7-0267/2013 – 2013/0309(COD))

Rapporteur: Marielle Gallo

PA_Legam

SHORT JUSTIFICATION

The rapporteur regrets the timing of the proposed Regulation for a Connected Continent that comes up very late in the European Parliament's term. The telecommunications sector and services provided through electronic communication networks are fundamental for the competitiveness of the European Union in the long term. The timetable set for the examination of a piece of legislation that might have such a fundamental impact on the mobile economy, and therefore on our economy as a whole, is unrealistic.

The European Parliament should have been able to request a thorough impact assessment of the proposed Regulation from its own services and dispose of sufficient time to proceed to a broad public consultation. The Rapporteur notes also the critical stance of BEREC towards the EU Commission's proposal.

As a last preliminary remark, the Rapporteur wishes to highlight that economic operators need a supportive environment and legal certainty. For this reason, the Rapporteur is surprised from the new proposal of the European Commission on international roaming, only one year after the adoption of the Roaming III Regulation.

When it comes to the Legal Affairs committee opinion, the Rapporteur focused on three areas:

First of all, on the EU single authorization: It creates an additional layer of regulation, without being sufficiently demonstrated that there is a need for such scheme. The rapporteur believes that the elimination of unreasonable obstacles to the provision of cross-border services, can be achieved through better coordination among NRAs and within the BEREC by putting in place, for instance, a harmonized notification template. Therefore, the Rapporteur proposes the deletion of Chapter 2 of the proposed Regulation and the introduction of amendments to Directive 2002/20 (authorization).

Secondly, on net neutrality: The Rapporteur proposes to acknowledge the possibility for operators to offer, and for end-users to benefit from specialized services as long as they don't impair the general quality of internet access services. Reasonable traffic management measures should also be allowed taking into account the different legal systems of Member States subject to the condition that consumers benefit from an open Internet.

Thirdly, on the rights of end-users: The Rapporteur proposes the deletion of articles 25-30 as full harmonization wouldn't be in favor of consumers. The course of action proposed is to amend Directive 2002/22 (Universal Service) and update some of the rights enshrined in it.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) Irrespective of how the provider chooses to operate electronic communications networks or provide electronic communications services across borders, the regulatory regime applicable to a European electronic communications provider should be neutral vis-à-vis the commercial choices which underlie the organisation of functions and activities across Member States. Therefore, regardless of the corporate structure of the undertaking, the home Member State of a European electronic communications provider should be considered to be the Member State where the strategic decisions concerning the provision of electronic communications networks or services are taken. ***deleted***

Or. en

Amendment 2

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) The single EU authorisation should be based on the general authorisation in the home Member State. It should not be made subject to conditions which are already applicable by virtue of other existing national law which is not specific to the electronic communications sector. In addition, the provisions of this Regulation and Regulation (EU) No. 531/2012 should also apply to European electronic communications providers. ***deleted***

Amendment 3

Proposal for a regulation

Recital 13

Text proposed by the Commission

Amendment

(13) Most sector-specific conditions, for example concerning access to or security and integrity of networks or access to emergency services, are strongly linked to the place where such network is located or the service is provided. Consequently a European electronic communications provider may be subject to conditions applicable in the Member States where it operates, to the extent that this Regulation does not provide otherwise.

deleted

Or. en

Amendment 4

Proposal for a regulation

Recital 14

Text proposed by the Commission

Amendment

(14) Where Member States require contribution from the sector in order to finance universal service obligations and to the administrative costs of the national regulatory authorities, the criteria and procedures for apportioning contributions should be proportionate and non-discriminatory with regard to European electronic communications providers, so as not to hinder cross-border market entry, in particular of new entrants and smaller operators; individual undertakings' contributions should therefore take into account the contributor's market share in terms of

deleted

turnover realised in the relevant Member State and should be subject to the application of a de minimis threshold.

Or. en

Amendment 5

Proposal for a regulation Recital 15

Text proposed by the Commission

Amendment

(15) It is necessary to ensure that in similar circumstances there is no discrimination in the treatment of any European electronic communications provider by different Member States and that consistent regulatory practices are applied in the single market, in particular as regards measures falling within the scope of Articles 15 or 16 of Directive 2002/21/EC, or Articles 5 or 8 of Directive 2002/19/EC. European electronic communications providers should therefore have a right to equal treatment by the different Member States in objectively equivalent situations in order to enable more integrated multi-territorial operations. Furthermore, there should be specific procedures at Union level for the review of draft decisions on remedies within the meaning of Article 7a of Directive 2002/21/EC in such cases, in order to avoid unjustified divergences in obligations applicable to European electronic communications providers in different Member States.

deleted

Or. en

Amendment 6

Proposal for a regulation Recital 16

Text proposed by the Commission

Amendment

(16) An allocation of regulatory and supervisory competences should be established between the home and any host Member State of European electronic communications providers with a view to reducing the barriers to entry while ensuring that the applicable conditions for the provision of electronic communications services and networks by these providers are properly enforced. Therefore, while each national regulatory authority should supervise compliance with the conditions applicable in its territory in accordance with Union legislation, including by means of sanctions and interim measures, only the national regulatory authority in the home Member State should be entitled to suspend or withdraw the rights of a European electronic communications provider to provide electronic communications networks and services in the whole Union or part thereof.

deleted

Or. en

Amendment 7

Proposal for a regulation Recital 17

Text proposed by the Commission

Amendment

(17) Radio spectrum is a public good and an essential resource for the internal market for mobile, wireless broadband and satellite communications in the Union. Development of wireless broadband communications contributes to

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the implementation of the Digital Agenda for Europe and in particular to the aim of securing access to broadband at a speed of no less than 30 Mbps by 2020 for all Union citizens and of providing the Union with the highest possible broadband speed and capacity. However, the Union has fallen behind other major global regions - North America, Africa and parts of Asia - in terms of the roll-out and penetration of the latest generation of wireless broadband technologies that are necessary to achieve those policy goals. The piecemeal process of authorising and making available the 800 MHz band for wireless broadband communications, with over half of the Member States seeking a derogation or otherwise failing to do so by the deadline laid down in the Radio Spectrum Policy Programme (RSPP) Decision 243/2012 of the European Parliament and the Council,²³ testifies to the urgency of action even within the term of the current RSPP. Union measures to harmonise the conditions of availability and efficient use of radio spectrum for wireless broadband communications pursuant to Decision 676/2002/EC of the European Parliament and the Council²⁴ have not been sufficient to address this problem.

²³ *Decision 243/2012/EU of the European Parliament and the Council of 14 March 2012, establishing a multiannual radio spectrum policy programme, OJ L 81 of 21.3.2012*

²⁴ *Decision 676/2002/EC of the European Parliament and the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002, p. 1).*

Or. en

Amendment 8

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(ba) providers of electronic communication services and networks are able to invest and innovate in new and enhanced high-capacity infrastructures, contributing to the global competitiveness of the Union.

Or. en

Amendment 9

Proposal for a regulation

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

b) to promote sustainable competition within the single market and the global competitiveness of the Union, and to reduce sector-specific market regulation accordingly as and when these objectives are achieved;

deleted

Or. en

Amendment 10

Proposal for a regulation

Article 1 – paragraph 2 – point c

Text proposed by the Commission

Amendment

c) to favour investment and innovation in new and enhanced high-capacity infrastructures which reach throughout the Union and which can cater for

deleted

evolving end-user demand;

Or. en

Amendment 11

Proposal for a regulation

Article 1 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) a single EU authorisation for European electronic communications providers;

deleted

Or. en

Amendment 12

Proposal for a regulation

Article 1 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) further convergence of regulatory conditions as regards the necessity and proportionality of remedies imposed by national regulatory authorities on European electronic communications providers;

deleted

Or. en

Amendment 13

Proposal for a regulation

Article 1 – paragraph 3 – point e

Text proposed by the Commission

Amendment

(e) the harmonisation of rules related to rights of end-users and the promotion of

(e) *additional* rights *to those included in Directive 2002/22/EC for* end-users and

effective competition in retail markets, thereby creating a European consumer space for electronic communications;

the promotion of effective competition in retail markets, thereby creating a European consumer space for electronic communications;

Or. en

Amendment 14

Proposal for a regulation Article 2 – point 4

Text proposed by the Commission

Amendment

(4) "single EU authorisation" means the legal framework applicable to a European electronic communications provider in the whole Union based on the general authorisation in the home Member State and in accordance with this Regulation;

deleted

Or. en

Amendment 15

Proposal for a regulation Article 2 – point 5

Text proposed by the Commission

Amendment

(5) "home Member State" means the Member State where the European electronic communications provider has its main establishment;

deleted

Or. en

Amendment 16

Proposal for a regulation Article 2 – point 6

Text proposed by the Commission

Amendment

(6) "main establishment" means the place of establishment in the Member State where the main decisions are taken as to the investments in and conduct of the provision of electronic communications services or networks in the Union; *deleted*

Or. en

Amendment 17

Proposal for a regulation Article 2 – point 7

Text proposed by the Commission

Amendment

(7) "host Member State" means any Member State different from the home Member State where a European electronic communications provider provides electronic communications networks or services; *deleted*

Or. en

Amendment 18

Proposal for a regulation Article 2 – point 15

Text proposed by the Commission

Amendment

(15) "specialised service" means an electronic communications service or any other service that provides the capability to access specific content, applications or services, or a combination thereof, and whose technical characteristics are

(15) "specialised service" means an electronic communications service or any other service that ***are provided using the Internet Protocol and operated within closed electronic communications networks relying on admission control***

controlled from end-to-end or provides the capability to send or receive data to or from a determined number of parties or endpoints; and that is not marketed or widely used as a substitute for internet access service;

that provide the capability to access specific content, applications or services, or a combination thereof, ***based on extensive use of traffic management in order to ensure adequate service characteristics***; and that is not marketed or widely used as a substitute for internet access service;

Or. en

Justification

The definition draws on the BEREC Guidelines for Quality of Service in the scope of Net Neutrality.

Amendment 19

Proposal for a regulation Article 3

Text proposed by the Commission

Amendment

Article 3 – Freedom to provide electronic communications across the Union

deleted

1. A European electronic communications provider has the right to provide electronic communications networks and services in the whole Union and to exercise the rights linked to the provision of such networks and services in each Member State where it operates pursuant to a single EU authorisation which is subject only to the notification requirements provided in Article 4.

2. The European electronic communications provider is subject to the rules and conditions applied in each Member State concerned in compliance with Union law unless otherwise provided in this Regulation and without prejudice to Regulation (EU) No 531/2012.

3. By way of derogation from Article 12 of Directive 2002/20/EC, a European electronic communications provider may be subject to administrative charges

applicable in the host Member State only if it has an annual turnover for electronic communications services in that Member State above 0,5% of the total national electronic communications turnover. In levying these charges only the turnover for electronic communications services in the Member State concerned shall be taken into account.

4. By way of derogation from Article 13(1)(b) of Directive 2002/22/EC a European electronic communications provider may be subject to the contributions imposed to share the net cost of universal service obligations in the host Member State only if it has an annual turnover for electronic communications services in that Member State above 3% of the total national electronic communications turnover. In levying any such contribution only the turnover in the Member State concerned shall be taken into account.

5. A European electronic communications provider shall be entitled to equal treatment by the national regulatory authorities of different Member States in objectively equivalent situations.

6. In the event of a dispute between undertakings involving a European electronic communications provider regarding obligations applicable in accordance with Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC, this Regulation or Regulation (EU) No 531/2012 in a host Member State, the European electronic communications provider may consult the national regulatory authority in the home Member State, which may deliver an opinion with a view to ensuring the development of consistent regulatory practices. The national regulatory authority in the host Member State shall take utmost account of the opinion issued by the national regulatory authority of the home Member

State when deciding the dispute.

7. European electronic communications providers who, at the date of entry into force of this Regulation, have the right to provide electronic communications networks and services in more than one Member State shall submit the notification provided for in Article 4 at the latest by 1 July 2016.

Or. en

Amendment 20

Proposal for a regulation Article 4

Text proposed by the Commission

Amendment

Article 4 - Notification procedure for European electronic communications providers

deleted

1. A European electronic communications provider shall submit a single notification in accordance with this Regulation to the national regulatory authority of the home Member State, before beginning activity in at least one Member State.

2. The notification shall contain a declaration of the provision or the intention to commence the provision of electronic communications networks and services and shall be accompanied by the following information only:

(a) the name of the provider, his legal status and form, registration number, where the provider is registered in trade or other similar public register, the geographical address of the main establishment, a contact person, a short description of the networks or services provided or intended to be provided, including identification of the home Member State;

(b) the host Member State(s) where the services and the networks are provided or intended to be provided directly or by subsidiaries and, in the latter case, the name, his legal status and form, geographical address, registration number, where the provider is registered in trade or other similar public register in the host Member State, and contact point of any subsidiary concerned and the respective operating areas. Where a subsidiary is controlled jointly by two or more electronic communications providers with their main establishments in different Member States the subsidiary shall indicate the relevant home Member State among those of the parent companies for the purpose of this Regulation and shall be notified by the parent company of that home Member State accordingly.

The notification shall be submitted in the language or languages applicable in the home Member State and in any host Member State.

3. Any change to the information submitted in accordance with paragraph 2 shall be made available to the national regulatory authority of the home Member State within one month following the change. In the event that the change to be notified concerns the intention to provide electronic communications networks or services in a host Member State that is not covered by a previous notification, the European electronic communications provider may begin activity in that host Member State upon notification.

4. Non-compliance with the notification requirement laid down in this Article shall constitute a breach of the common conditions applicable to the European electronic communications provider in the home Member State.

5. The national regulatory authority of the home Member State shall forward the

information received in accordance with paragraph 2 and any change to that information in accordance with paragraph 3 to the national regulatory authorities of the concerned host Member States and to the BEREC Office within one week following reception of such information or any change.

The BEREC Office shall maintain a publicly accessible registry of notifications made in accordance with this Regulation.

6. At the request of a European electronic communications provider, the national regulatory authority of the home Member State shall issue a declaration in accordance with Article 9 of Directive 2002/20/EC, specifying that the undertaking in question is subject to the single EU authorisation.

7. In the event that one or more national regulatory authorities in different Member States consider that the identification of the home Member State in a notification made in accordance with paragraph 2 or any change to the provided information made available in accordance with paragraph 3 does not correspond or no longer corresponds to the main establishment of the undertaking pursuant to this Regulation, it shall refer the issue to the Commission, substantiating the grounds on which it bases its assessment. A copy of the referral shall be communicated to the BEREC Office for information. The Commission, having given the relevant European electronic communications provider and the national regulatory authority of the disputed home Member State the opportunity to express their views, shall issue a decision determining the home Member State of the undertaking in question pursuant to this Regulation within three months following the referral of the issue.

Amendment 21

Proposal for a regulation

Article 5

Text proposed by the Commission

Amendment

Article 5 – Compliance with the single EU authorisation ***deleted***

1. The national regulatory authority of each concerned Member State shall monitor and ensure, in accordance with its national legislation implementing the procedures provided for in Article 10 of Directive 2002/20/EC, that European electronic communications providers comply with the rules and conditions applicable in its territory in accordance with Article 3.

2. The national regulatory authority of a host Member State shall transmit to the national regulatory authority of the home Member State any relevant information concerning individual measures adopted in relation to a European electronic communications provider with a view to ensuring compliance with the rules and conditions applicable in its territory in accordance with Article 3.

Amendment 22

Proposal for a regulation

Article 6

Text proposed by the Commission

Amendment

Article 6 – Suspension and withdrawal of the rights to provide electronic communications of European electronic ***deleted***

communications providers

1. Without prejudice to measures concerning suspension or withdrawal of rights of use for spectrum or numbers granted by any concerned Member State and interim measures adopted in accordance with paragraph 3, only the national regulatory authority of the home Member State may suspend or withdraw the rights of a European electronic communications provider to provide electronic communications networks and services in the whole Union or part thereof in accordance with national legislation implementing Article 10(5) of Directive 2002/20/EC.

2. In cases of serious or repeated breaches of the rules and conditions applicable in a host Member State in accordance with Article 3, where measures aimed at ensuring compliance taken by the national regulatory authority in the host Member State in accordance with Article 5 have failed, it shall inform the national regulatory authority in the home Member State and request that it adopts the measures provided for in paragraph 1.

3. Until a final decision on a request submitted in accordance with paragraph 2 is adopted by the national regulatory authority of the home Member State, the national regulatory authority of the host Member State may take urgent interim measures in accordance with national legislation implementing Article 10(6) of Directive 2002/20/EC where it has evidence of a breach of the rules and conditions applicable in its territory in accordance with Article 3. By way of derogation from the three months time-limit provided for in Article 10(6) of Directive 2002/20/EC, such interim measures may be valid until the national regulatory authority of the home Member State adopts a final decision.

The Commission, BEREC and the

national regulatory authorities of the home Member State and other host Member States shall be informed of the interim measure adopted in due time.

4. Where the national regulatory authority of the home Member State considers taking a decision to suspend or withdraw rights of a European electronic communications provider in accordance with paragraph 1 either on its own initiative or at the request of the national regulatory authority of a host Member State, it shall notify its intention to the national regulatory authorities of any host Member State affected by such a decision. The national regulatory authority of a host Member State may deliver an opinion within one month.

5. Taking utmost account of any opinion of the national regulatory authority of the host Member States concerned, the national regulatory authority of the home Member State shall adopt a final decision and shall communicate it to the Commission, BEREC and the national regulatory authorities of the host Member States affected by such a decision within one week after its adoption.

6. Where the national regulatory authority of the home Member State has decided to suspend or withdraw rights of a European electronic communications provider in accordance with paragraph 1, the national regulatory authority of any host Member State concerned shall take appropriate measures to prevent the European electronic communications provider from further providing services or networks concerned by this decision within its territory.

Or. en

Amendment 23

Proposal for a regulation Article 7

Text proposed by the Commission

Amendment

Article 7 – Coordination of enforcement measures **deleted**

1. When applying Article 6, the national regulatory authority of the home Member State shall take supervisory or enforcement measures related to an electronic communications service or network provided in another Member State or which has caused damage in another Member State with the same diligence as if the electronic communications service or network concerned was provided in the home Member State.

2. The Member States shall ensure that within their territories it is possible to serve the legal documents relating to measures taken in accordance with Articles 5 and 6.

Or. en

Amendment 24

Proposal for a regulation Article 21 – paragraph 3

Text proposed by the Commission

Amendment

3. Providers of electronic communications to the public shall not apply tariffs for intra-Union communications terminating in another Member State which are higher, unless objectively justified: **deleted**

a) as regards fixed communications, than tariffs for domestic long-distance communications;

b) as regards mobile communications, than the euro-tariffs for regulated voice and SMS roaming communications, respectively, established in Regulation (EC) No 531/2012.

Or. en

Justification

These are competitive and deregulated markets.

Amendment 25

Proposal for a regulation

Article 23 – paragraph 1 – subparagraph 2

Text proposed by the Commission

End-users shall be free to enter into agreements on data volumes **and** speeds with providers of internet access services and, in accordance with any such agreements relative to data volumes, to avail of any offers by providers of internet content, applications and services.

Amendment

End-users shall be free to enter into agreements on data volumes, speeds **and services** with providers of internet access services and, in accordance with any such agreements relative to data volumes, to avail of any offers by providers of internet content, applications and services.

Or. en

Amendment 26

Proposal for a regulation

Article 23 – paragraph 5 – point d

Text proposed by the Commission

d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.

Amendment

d) **prevent or** minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.

Or. en

Amendment 27

Proposal for a regulation

Article 23 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph.

Amendment

Reasonable traffic management shall be set in a transparent way, ***be limited to the time period necessary and entail processing of data that is necessary*** and proportionate to achieve the purposes set out in this paragraph.

Or. en

Amendment 28

Proposal for a regulation

Article 24 – paragraph 1

Text proposed by the Commission

1. National regulatory authorities shall closely monitor and ensure the effective ability of end-users to benefit from the freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.

Amendment

1. National regulatory authorities shall closely monitor and ensure the effective ability of end- users to benefit from the freedoms provided for in Article 23 (1) ***and (2) and from an open Internet***, compliance with ***reasonable traffic management measures as referred to in*** Article 23 (5), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.

Or. en

Amendment 29

Proposal for a regulation Article 24 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission may adopt implementing acts defining uniform conditions for the implementation of the obligations of national competent authorities under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33 (2). *deleted*

Or. en

Amendment 30

Proposal for a regulation Article 25

Text proposed by the Commission

Amendment

Article 25 - Transparency and publication of information *deleted*

1. Providers of electronic communications to the public shall, save for offers which are individually negotiated, publish transparent, comparable, adequate and up-to-date information on:

a) their name, address and contact information;

b) for each tariff plan the services offered and the relevant quality of service parameters, the applicable prices (for consumers including taxes) and any applicable charges (access, usage, maintenance and any additional charges), as well as costs with respect to terminal equipment;

c) applicable tariffs regarding any number or service subject to particular

pricing conditions;

d) the quality of their services, in accordance with implementing acts provided for in paragraph 2;

e) internet access services, where offered, specifying the following:

(i) actually available data speed for download and upload in the end-user's Member State of residence, including at peak-hours;

(ii) the level of applicable data volume limitations, if any; the prices for increasing the available data volume on an ad hoc or lasting basis; the data speed, and its cost, available after full consumption of the applicable data volume, if limited; and the means for end-users to monitor at any moment the current level of their consumption;

(iii) a clear and comprehensible explanation as to how any data volume limitation, the actually available speed and other quality parameters, and the simultaneous use of specialised services with an enhanced quality of service, may practically impact the use of content, applications and services;

(iv) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and on how those procedures could affect service quality and the protection of personal data;

f) measures taken to ensure equivalence in access for disabled end-users, including regularly updated information on details of products and services designed for them;

g) their standard contract terms and conditions, including any minimum contractual period, the conditions for and any charges due on early termination of a contract, the procedures and direct charges related to switching and

portability of numbers and other identifiers, and compensation arrangements for delay or abuse of switching;

h) access to emergency services and caller location information for all services offered, any limitations on the provision of emergency services under Article 26 of Directive 2002/22/EC, and any changes thereto;

i) rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I to Directive 2002/22/EC.

The information shall be published in a clear, comprehensive and easily accessible form in the official language(s) of the Member State where the service is offered, and be updated regularly. The information shall, on request, be supplied to the relevant national regulatory authorities in advance of its publication. Any differentiation in the conditions applied to consumers and other end-users shall be made explicit.

2. The Commission may adopt implementing acts specifying the methods for measuring the speed of internet access services, the quality of service parameters and the methods for measuring them, and the content, form and manner of the information to be published, including possible quality certification mechanisms. The Commission may take into account the parameters, definitions and measurement methods set out in Annex III of the Directive 2002/22/EC. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

3. End-users shall have access to independent evaluation tools allowing them to compare the performance of electronic communications network access and services and the cost of alternative usage patterns. To this end

Member States shall establish a voluntary certification scheme for interactive websites, guides or similar tools. Certification shall be granted on the basis of objective, transparent and proportionate requirements, in particular independence from any provider of electronic communications to the public, the use of plain language, the provision of complete and up-to-date information, and the operation of an effective complaints handling procedure. Where certified comparison facilities are not available on the market free of charge or at a reasonable price, national regulatory authorities or other competent national authorities shall make such facilities available themselves or through third parties in compliance with the certification requirements. The information published by providers of electronic communications to the public shall be accessible, free of charge, for the purposes of making available comparison facilities.

4. Upon request of the relevant public authorities, providers of electronic communications to the public shall distribute public interest information free of charge to end-users, where appropriate, by the same means as those ordinarily used by them in their communications with end-users. In such a case, that information shall be provided by the relevant public authorities to the providers of electronic communications to the public in a standardised format and may, inter alia, cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of data protection rights, copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security and unlawful access to personal data when using electronic communications services.

Or. en

Amendment 31

Proposal for a regulation Article 26

Text proposed by the Commission

Amendment

Article 26 - Information requirements for contracts **deleted**

1. Before a contract on the provision of connection to a public electronic communications network or publicly available electronic communications services becomes binding providers of electronic communications to the public shall provide consumers, and other end-users unless they have explicitly agreed otherwise, at least the following information:

(a) the identity, address and contact information of the provider and, if different, the address and contact information for any complaints;

(b) the main characteristics of the services provided, including in particular:

(i) for each tariff plan the types of services offered, the included volumes of communications and all relevant quality of service parameters, including the time for the initial connection;

(ii) whether and in which Member States access to emergency services and caller location information is being provided and any limitations on the provision of emergency services in accordance with Article 26 of Directive 2002/22/EC;

(iii) the types of after-sales services, maintenance services and customer support services provided, the conditions and charges for these services, and the means of contacting these services;

(iv) any restrictions imposed by the provider on the use of terminal equipment supplied, including information on unlocking the terminal equipment and any charges involved if the contract is terminated before the end of the minimum contract period;

(c) details of prices and tariffs (for consumers including taxes and possibly due additional charges) and the means by which up-to-date information on all applicable tariffs and charges are made available;

(d) payment methods offered and any cost differences due to the payment method, and available facilities to safeguard bill transparency and monitor the level of consumption ;

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

(i) any minimum usage or duration required to benefit from promotional terms;

(ii) any charges related to switching and portability of numbers and other identifiers, including compensation arrangements for delay or abuse of switching;

(iii) any charges due on early termination of the contract, including any cost recovery with respect to terminal equipment (on the basis of customary depreciation methods) and other promotional advantages (on a pro rata temporis basis);

(f) any compensation and refund arrangements, including an explicit reference to statutory rights of the end-

user, which apply if contracted service quality levels are not met;

(g) where an obligation exists in accordance with Article 25 of Directive 2002/22/EC, the end-users' options as to whether or not to include their personal data in a directory, and the data concerned;

(h) for disabled end-users, details of products and services designed for them;

(i) the means of initiating procedures for the settlement of disputes, including cross-border disputes, in accordance with Article 34 of Directive 2002/22/EC and Article 22 of this Regulation;

(j) the type of action that might be taken by the provider in reaction to security or integrity incidents or threats and vulnerabilities.

2. In addition to paragraph 1, providers of electronic communications to the public shall provide end-users, unless otherwise agreed by an end-user who is not a consumer, at least the following information with respect to their internet access services:

(a) the level of applicable data volume limitations, if any; the prices for increasing the available data volume on an ad hoc or lasting basis; the data speed, and its cost, available after full consumption of the applicable data volume, if limited; and how end-users can at any moment monitor the current level of their consumption;

(b) the actually available data speed for download and upload at the main location of the end-user, including actual speed ranges, speed averages and peak-hour speed, including the potential impact of allowing access to third parties through a radio local area network ;

(c) other quality of service parameters;

(d) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and information on how those procedures could impact on service quality and protection of personal data;

(e) a clear and comprehensible explanation as to how any volume limitation, the actually available speed and other quality of service parameters, and the simultaneous use of specialised services with an enhanced quality of service, may practically impact the use of content, applications and services.

3. The information referred to in paragraphs 1 and 2 shall be provided in a clear, comprehensive and easily accessible manner and in an official language of the end-user's Member State of residence, and shall be updated regularly. It shall form an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise. The end-user shall receive a copy of the contract in writing.

4. The Commission may adopt implementing acts specifying the details of the information requirements listed in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

5. The contract shall also include, upon request by the relevant public authorities, any information provided by these authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security and unlawful processing of personal data, referred to in Article 25(4) and relevant to the service provided.

Or. en

Amendment 32

Proposal for a regulation Article 27

Text proposed by the Commission

Amendment

Article 27 – Control of consumption

deleted

1. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge, for a facility which provides information on the accumulated consumption of different electronic communications services expressed in the currency in which the end-user is billed. Such a facility shall guarantee that, without the end-user's consent, the accumulated expenditure over a specified period of use does not exceed a specified financial limit set by the end-user.

2. Providers of electronic communications to the public shall ensure that an appropriate notification is sent to the end-user when the consumption of services has reached 80% of the financial limit set in accordance with paragraph 1. The notification shall indicate the procedure to be followed to continue the provision of those services, including their cost. The provider shall cease to provide the specified services and to charge the end-user for it if the financial limit would otherwise be exceeded, unless and until the end-user requests the continued or renewed provision of those services. After having reached the financial limit end-users shall continue to be able to receive calls and SMS messages and access free-phone numbers and emergency services by dialling the European emergency number 112 free of charge until the end of the agreed billing period.

3. Providers of electronic communications to the public shall, immediately prior to

connecting the call, enable end-users to access easily and without incurring any costs information on applicable tariffs regarding any number or service subject to particular pricing conditions unless the national regulatory authority has granted a prior derogation for reasons of proportionality. Any such information shall be provided in a comparable fashion for all such numbers or services.

4. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge for receiving itemised bills.

Or. en

Amendment 33

Proposal for a regulation Article 28

Text proposed by the Commission

Amendment

Article 28 - Contract termination

deleted

1. Contracts concluded between consumers and providers of electronic communications to the public shall not provide for a minimum duration that exceeds 24 months. Providers of electronic communications to the public shall offer end-users the possibility to conclude a contract with a maximum duration of 12 months.

2. Consumers, and other end-users unless they have otherwise agreed, shall have the right to terminate a contract with a one-month notice period, where six months or more have elapsed since conclusion of the contract. No compensation shall be due other than for the residual value of subsidised equipment bundled with the contract at the moment of the contract conclusion and a pro rata temporis reimbursement for any other promotional

advantages marked as such at the moment of the contract conclusion. Any restriction on the usage of terminal equipment on other networks shall be lifted, free of charge, by the provider at the latest upon payment of such compensation.

3. Where the contracts or national law provide for contract periods to be extended tacitly, the provider of electronic communications to the public shall inform the end-user in due time so that the end-user has at least one month to oppose a tacit extension. If the end-user does not oppose, the contract shall be deemed to be a permanent contract which can be terminated by the end-user at any time with a one-month notice period and without incurring any costs.

4. End-users shall have the right to terminate their contract without incurring any costs upon notice of changes in the contractual conditions proposed by the provider of electronic communications to the public unless the proposed changes are exclusively to the benefit of the end-user. Providers shall give end-users adequate notice, not shorter than one month, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new conditions. Paragraph 2 shall apply mutatis mutandis.

5. Any significant and non-temporary discrepancy between the actual performance regarding speed or other quality parameters and the performance indicated by the provider of electronic communications to the public in accordance with Article 26 shall be considered as non-conformity of performance for the purpose of determining the end-user's remedies in accordance with national law.

6. A subscription to additional services provided by the same provider of

electronic communications to the public shall not re-start the initial contract period unless the price of the additional service(s) significantly exceeds that of the initial services or the additional services are offered at a special promotional price linked to the renewal of the existing contract.

7. Providers of electronic communications to the public shall apply conditions and procedures for contract termination which do not raise obstacles to or disincentives against changing service provider.

Or. en

Amendment 34

Proposal for a regulation Article 29

Text proposed by the Commission

Amendment

Article 29 - Bundled offers

deleted

If a bundle of services offered to consumers comprises at least a connection to an electronic communications network or one electronic communications service, Articles 28 and 30 of this Regulation shall apply to all elements of the bundle.

Or. en

Amendment 35

Proposal for a regulation Article 30

Text proposed by the Commission

Amendment

Article 30 - Switching and portability of

deleted

numbers

1. All end-users with numbers from a national telephone numbering plan who so request shall have the right to retain their number(s) independently of the provider of electronic communications to the public providing the service in accordance with Part C of Annex I to Directive 2002/22/EC, provided the provider is an electronic communications provider in the Member State to which the national numbering plan relates or is a European electronic communications provider which has notified to the competent regulatory authority of the home Member State the fact that it provides or intends to provide such services in the Member State to which the national numbering plan relates.

2. Pricing between providers of electronic communications to the public related to the provision of number portability shall be cost-oriented, and direct charges to end-users, if any, shall not act as a disincentive for end-users against changing provider.

3. Porting of numbers and their activation shall be carried out within the shortest possible time. For end-users who have concluded an agreement to port a number to a new provider that number shall be activated within one working day from the conclusion of such agreement. Loss of service during the process of porting, if any, shall not exceed one working day.

4. The receiving provider of electronic communications to the public shall lead the switching and porting process. End-users shall receive adequate information on switching before and during the switching process, and also immediately after it is concluded. End-users shall not be switched to another provider against their will.

5. The end-users' contracts with transferring providers of electronic

communications to the public shall be terminated automatically after conclusion of the switch. Transferring providers of electronic communications to the public shall refund any remaining credit to the consumers using pre-paid services.

6. Providers of electronic communications to the public which delay or abuse switching, including by not making available information necessary for porting in a timely manner, shall be obliged to compensate end-users who are exposed to such delay or abuse.

7. In the event that an end-user switching to a new provider of internet access services has an email address provided by the transferring provider, the latter shall, upon request by the end-user, forward to any email address indicated by the end-user, free of charge, all email communications addressed to the end-user's previous email address for a period of 12 months. This email forwarding service shall include an automatic response message to all email senders alerting them about the end-user's new email address. The end-user shall have the option of requesting that the new email address should not be disclosed in the automatic response message.

Following the initial 12-month period, the transferring provider of electronic communications to the public shall give the end-user an option to extend the period for email forwarding, at a charge if required. The transferring provider of electronic communications to the public shall not allocate the end-users' initial email address to another end-user before a period of two years following contract termination, and in any case during the period for which the email forwarding has been extended.

8. The competent national authorities may establish the global processes of switching and porting, including provision of

appropriate sanctions on providers and compensations for end-users. They shall take into account necessary end-user protection throughout the switching process and the need to ensure efficiency of such process.

Or. en

Amendment 36

Proposal for a regulation

Article 34 – point 1 a (new)

Directive 2002/20/EC

Article 12 – paragraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(1a) In Article 12(1), the following point is inserted:

(aa) Administrative charges shall not be applied in case of an electronic communication provider offering services in another Member State that has an annual turnover for electronic communication services below 0,5% of the total national electronic communications turnover.

Or. en

Amendment 37

Proposal for a regulation

Article 36 – paragraph 1 – point 1 a (new)

Directive 2002/22/EC

Article 13 – paragraph 1 – point b b (new)

Text proposed by the Commission

Amendment

(1a) In Article 13(1), the following point is added:

(bb) Contributions to share the net costs

of universal services obligations shall be imposed to electronic communications providers offering services to another Member State that have an annual turnover for electronic communication services below 2% of the total national electronic communications turnover.

Or. en

Justification

The single EU authorization is burdensome, hasn't been thoroughly assessed and is criticized both by national regulators and electronic communication providers. The same objectives may be reached through a streamlined cooperation scheme among NRAs and amendments to directives 2002/20 and 2002/22.

Amendment 38

Proposal for a regulation

Article 36 – paragraph 1 – point 1 b (new)

Directive 2002/22/EC

Article 20 – paragraph 2 – point b

Text proposed by the Commission

(b) the services provided, including in particular,
- whether or not access to emergency services and caller location information is being provided, and any limitations on the provision of emergency services under Article 26,
- information on any other conditions limiting access to and/or use of services and applications, where such conditions are permitted under national law in accordance with Community law,
- the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities,

Amendment

(1b) In Article 20(2), point b is replaced by the following:

b) the services provided, including in particular,
- for each tariff plan the services offered and the relevant quality of service parameters;
- for internet access services, where offered, specifying the following:
(i) actually available data speed for download and upload in the end-user's Member State of residence, including at peak-hours;

- information on any procedures put in place by the undertaking to measure and shape traffic so as to avoid filling or overflowing a network link, and information on how those procedures could impact on service quality,

- the types of maintenance service offered and customer support services provided, as well as the means of contacting these services,

(ii) the level of applicable data volume limitations, if any; the prices for increasing the available data volume on an ad hoc or lasting basis; the data speed, and its cost, available after full consumption of the applicable data volume, if limited; and the means for end-users to monitor at any moment the current level of their consumption;

(iii) a clear and comprehensible explanation as to how any data volume limitation, the actually available speed and other quality parameters, and the simultaneous use of specialised services with an enhanced quality of service, may practically impact the use of content, applications and services;

(iv) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and on how those procedures could affect service quality and the protection of personal data;

Or. en

Amendment 39

Proposal for a regulation

Article 36 – paragraph 1 – point 1 c (new)

Directive 2002/22/EC

Article 21 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that national regulatory authorities **are able to** oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to publish transparent, comparable, adequate and up-to-date information on applicable prices and

Amendment

(1c) Article 21(1) is replaced by the following:

"1. Member States shall ensure that national regulatory authorities oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to publish transparent, comparable, adequate and up-to-date information on applicable prices and

tariffs, on any charges due on termination of a contract and on standard terms and conditions in respect of access to, and use of, services provided by them to end-users and consumers in accordance with Annex II. Such information shall be published in a clear, comprehensive and easily accessible form. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published.

tariffs, on any charges due on termination of a contract and on standard terms and conditions in respect of access to, and use of, services provided by them to end-users and consumers in accordance with Annex II. Such information shall be published in a clear, comprehensive and easily accessible form. National regulatory authorities may specify additional requirements regarding the form in which such information is to be published."

Or. en

Amendment 40

Proposal for a regulation

Article 36 – paragraph 1 – point 1 d (new)

Directive 2002/22/EC

Article 21 – paragraph 2

Text proposed by the Commission

2. National regulatory authorities shall **encourage** the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques. Where such facilities are not available on the market free of charge or at a reasonable price, Member States shall ensure that national regulatory authorities are able to make such guides or techniques available themselves or through third party procurement. Third parties shall have a right to use, free of charge, the information published by undertakings providing electronic communications networks and/or publicly available electronic communications services for the purposes of selling or making available such

Amendment

(1d) Article 21(2) is replaced by the following:

2. National regulatory authorities shall **ensure** the provision of comparable information to enable end-users and consumers to make an independent evaluation of the cost of alternative usage patterns, for instance by means of interactive guides or similar techniques.

interactive guides or similar techniques.

Or. en

Amendment 41

Proposal for a regulation

Article 36 – paragraph 1 – point 1 e (new)

Directive 2002/22/EC

Article 21 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States shall ensure that national regulatory authorities **are able to** oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to inter alia:

Amendment

(1e) In Article 21(3), the introductory part is amended as follows:

3. Member States shall ensure that national regulatory authorities oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to inter alia:

Or. en

Amendment 42

Proposal for a regulation

Article 36 – paragraph 1 – point 1 f (new)

Directive 2002/22/EC

Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21 a (new)

Control of consumption

1. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge, for a facility which provides information on the accumulated consumption of different electronic communications services. Such a facility shall guarantee that, without the end-user's consent, the accumulated

expenditure over a specified period of use does not exceed a specified financial limit set by the end-user.

2. Providers of electronic communications to the public shall ensure that an appropriate notification is sent to the end-user when the consumption of services has reached 80% of the financial limit set in accordance with paragraph 1. After having reached the financial limit end-users shall continue to be able to receive calls and SMS messages and access free-phone numbers and emergency services by dialling the European emergency number 112 free of charge until the end of the agreed billing period.

3. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge for receiving itemised bills.

Or. en

Amendment 43

Proposal for a regulation

Article 36 – paragraph 1 – point 1 f (new)

Directive 2002/22/EC

Article 21 b (new)

Text proposed by the Commission

Amendment

Article 21 b (new)

Contract termination

1. Contracts concluded between consumers and providers of electronic communications to the public shall not provide for a minimum duration that exceeds 24 months. Providers of electronic communications to the public shall offer end-users the possibility to conclude a contract with a maximum duration of 12 months.

2. Consumers, and other end-users unless they have otherwise agreed, shall have the right to terminate a contract with a one-month notice period, where six months or more have elapsed since conclusion of the contract. No compensation shall be due other than for the residual value of subsidised equipment bundled with the contract at the moment of the contract conclusion and a pro rata temporis reimbursement for any other promotional advantages marked as such at the moment of the contract conclusion. Any restriction on the usage of terminal equipment on other networks shall be lifted, free of charge, by the provider at the latest upon payment of such compensation.

3. End-users shall have the right to terminate their contract without incurring any costs upon notice of changes in the contractual conditions proposed by the provider of electronic communications to the public unless the proposed changes are exclusively to the benefit of the end-user.

4. Any significant and non-temporary discrepancy between the average performance regarding speed or other quality parameters and the performance indicated by the provider of electronic communications to the public shall be considered as non-conformity of performance for the purpose of determining the end-user's remedies in accordance with national law.

Or. en

Amendment 44

Proposal for a regulation
Article 36 – paragraph 1 – point 2
Directive 2002/22/EC
Articles 22 and 30

Text proposed by the Commission

(2) Articles **20**, **21**, 22 and 30 are deleted.

Amendment

(2) Articles 22 and 30 are deleted.

Or. en