

# EUROPEAN PARLIAMENT

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*Committee on Industry, Research and Energy*

**2007/0247(COD)**

23.4.2008

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and Directive 2002/20/EC on the authorisation of electronic communications networks and services  
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Committee on Industry, Research and Energy

Rapporteur: Catherine Trautmann

### ***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 directive of the European Parliament and of the Council amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and Directive 2002/20/EC on the authorisation of electronic communications networks and services (COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0697),
  - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0427/2007),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic Affairs, the Committee on Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),
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 directive – amending act**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) The objective of the EU regulatory framework for electronic communications is to create a sustainable "ecosystem" for electronic communications, based on supply and demand: the former through effectively competitive product or service markets, the latter thanks to increasing***

*information society developments.*

Or. en

*Justification*

*A sustainable environment for competition and investment in the telecommunications sector relies both on supply and demand. While the economic regulation relies usually more on supply, it is necessary not to forget the demand side.*

**Amendment 2**

**Proposal for a directive – amending act  
Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10 a) The aim is to reduce ex ante sector specific rules progressively as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. It may well be the case that competition develops at different rates in different markets and in different areas within Member States. In order to ensure that regulation is proportional and adapted to varying competitive conditions, national regulatory authorities should be able to lift regulatory obligations in markets and/or geographic areas where there is effective infrastructure competition, even if they are not defined as separate markets. National regulatory authorities should also be able to require network components and associated facilities to be shared in order to facilitate the establishment of networks, notably the deployment of fibre optic access networks.***

Or. en

*Justification*

*This is a reminder of the fact that while the ex-ante regulation is transitory, the way to lift it is*

*gradual and can also happen on a sub-national/regional basis.*

### **Amendment 3**

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

*Text proposed by the Commission*

*Amendment*

***(3c) Next generation networks have enormous potential to deliver benefits to consumers across the European Union. It is therefore vital that there is no impediment to sustainable investment in the development of these new networks, while boosting competition and consumer choice.***

Or. en

*Justification*

*The challenge of NGNs is to foster investment, in order to create facility-based competition as much as possible as a means to increase benefits for the consumer.*

### **Amendment 4**

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

*Text proposed by the Commission*

*Amendment*

***(16a) The spectrum management provisions of this Directive should be consistent with the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management of and harmonisation of the use of spectrum across the Community and globally.***

*Justification*

*Spectrum management to be effective needs to be aligned with the broader international harmonisation agenda pursued by ITU and CEPT.*

**Amendment 5**

**Proposal for a directive – amending act**  
**Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

***(19a) Although spectrum management remains within the competence of the Member States, only coordination and, where appropriate, harmonisation at Community level can ensure that spectrum users derive the full benefits of the internal market and that EU interests can be effectively defended world-wide.***

Or. en

*Justification*

*An EU approach for spectrum can, while respecting subsidiarity, allow for significant economies of scale and multiplication of value (as for GSM).*

**Amendment 6**

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

*Text proposed by the Commission*

*Amendment*

***(47 a) Where it is necessary to adopt harmonisation measures for the implementation of the Community's electronic communications policy which go beyond technical implementing measures, the Commission should submit to the European Parliament and to the Council a legislative proposal.***



### *Justification*

*Harmonisation measures which involve adding new essential provisions to the regulatory framework should be dealt with a legislative proposal. Only the direct application of the rules set out in the framework or the addition of non-essential elements should be subject of Comitology procedures.*

## **Amendment 8**

### **Proposal for a directive – amending act Recital 60**

#### *Text proposed by the Commission*

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments and for adopting implementing measures to harmonise the authorisation rules, procedures and conditions for the authorisation of electronic communications networks and services. Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***When, on imperative grounds of urgency, the normal time limits for this procedure cannot be complied***

#### *Amendment*

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments and for adopting implementing measures to harmonise the authorisation rules, procedures and conditions for the authorisation of electronic communications networks and services. Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. ***Given that the conduct of the regulatory procedure with scrutiny within the normal time-limits could, in***

*with, the Commission **should be able to use the urgency procedure provided for in Article 5a(6) of the above Decision.***

***certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of those measures.***

Or. en

#### *Justification*

*On imperative and justified grounds of urgency the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of Comitology measures.*

#### **Amendment 9**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 1**

Directive 2002/21/EC

Article 1 – paragraph 1

##### *Text proposed by the Commission*

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment. It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.

##### *Amendment*

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks, associated facilities and associated services, and certain aspects of terminal equipment ***concerning access for disabled end-users.*** It lays down tasks of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.

Or. en

#### *Justification*

*There is a need to clarify that the aspects of terminal equipments addressed are accessibility aspects.*

## Amendment 10

### Proposal for a directive – amending act

#### Article 1 – point 2 – point c

Directive 2002/21/EC

#### Article 2 – point e

##### *Text proposed by the Commission*

(e) "associated facilities" means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include number or address translation systems, conditional access systems and electronic programme guides, as well as physical infrastructure such as **ducts**, masts, street cabinets, **and buildings**;

##### *Amendment*

(e) "associated facilities" means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include number or address translation systems, conditional access systems and electronic programme guides, as well as physical infrastructure such as **entries to buildings, wiring, tall support structures**, masts, **antennae, ducts, manholes and** street cabinets.

Or. en

##### *Justification*

*It seems better to have exactly the same list of physical infrastructure as in Article 12 of the Framework and Article 12 of the Access Directives (except “wiring”, which is not part of associated facilities of the network but part of the network itself). The expression “high locations” is also added meaning all high locations used by stakeholders to install masts and antennas such as high towers (for instance Eiffel Tower in Paris), water towers etc.*

## Amendment 11

### Proposal for a directive – amending act

#### Article 1 – point 4 – point a

Directive 2002/21/EC

#### Article 4 – paragraph 1 – subparagraph 1

##### *Text proposed by the Commission*

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications

##### *Amendment*

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications

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

networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the appropriate expertise to enable it to carry out its functions **effectively**. Member States shall ensure that the merits of the case are duly taken into account, that there is an effective appeal mechanism **and that proceedings before the appeal body are not unduly lengthy**.

Or. en

### *Justification*

*Effectiveness and reasonable duration are key aspects of appeal mechanisms. Expertise of appeal bodies should be internal and not just “available to it”.*

## **Amendment 12**

### **Proposal for a directive – amending act**

#### **Article 1 – point 6**

Directive 2002/21/EC

Article 6 – subparagraph 1

#### *Text proposed by the Commission*

Except in cases falling within Articles 7(10), 20, or 21, and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives **which have a significant impact on the relevant market**, or where they intend to provide for restrictions in accordance with Article 9(3) and 9(4), they give interested parties the opportunity to comment on the draft measure within a reasonable period.

#### *Amendment*

Except in cases falling within Articles 7(10), 20, or 21, and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives or where they intend to provide for restrictions in accordance with Article 9(3) and 9(4) **which have a significant impact on the relevant market**, they give interested parties the opportunity to comment on the draft measure within a reasonable period.

Or. en

*Justification*

*Syntax clarification.*

**Amendment 13**

**Proposal for a directive – amending act**

**Article 1 – point 6**

Directive 2002/21/EC

Article 7 – paragraph 4 – point c

*Text proposed by the Commission*

*Amendment*

***(c) imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive),*** ***deleted***

Or. en

*Justification*

*The veto on remedies is replaced by the mechanism set out in Article -7a (new).*

**Amendment 14**

**Proposal for a directive – amending act**

**Article 1 - point 6**

Directive 2002/21/EC

Article 7 – paragraph 6

*Text proposed by the Commission*

*Amendment*

***6. Within three months of the Commission issuing a decision in accordance with paragraph 5 requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the*** ***deleted***

*procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.*

Or. en

*Justification*

*The veto on remedies is replaced by the mechanism set out in Article -7a (new).*

**Amendment 15**

**Proposal for a directive – amending act**

**Article 1 – point 6**

Directive 2002/21/EC

Article 7 – paragraph 8

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*The veto on remedies is replaced by the mechanism set in Article -7a (new).*

## Amendment 16

### Proposal for a directive – amending act

#### Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 9

#### *Text proposed by the Commission*

9. The national regulatory authority shall communicate to the Commission all final measures which fall under ***conditions a) and b) in*** Article 7(3).

#### *Amendment*

'9. The national regulatory authority shall communicate to the Commission all final measures which fall under Article 7(3).'

Or. en

#### *Justification*

*The veto on remedies is replaced by the mechanism set in Article -7 a (new).*

## Amendment 17

### Proposal for a directive – amending act

#### Article 1 – point 6 a (new)

Directive 2002/21/EC

Article -7 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(6a) The following article Article -7a is inserted:***

***‘Article -7a***

***Procedure for the consistent application of remedies***

***1. Where a national regulatory authority intends to take a measure to impose, amend or withdraw an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13, 13a and 13b of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) the Commission and the***

*national regulatory authorities in the other Member States shall have a period of one month from the date of notification of the draft measure in which to make comments to the national regulatory authority concerned .*

*2. If the draft measure concerns the imposition, amendment or withdrawal of an obligation other than those laid down in Articles 13a and 13b of Directive 2002/19/EC (Access Directive), the Commission may, within the same period , notify the national regulatory authority concerned and the Body of the European Regulators in Telecommunications (BERT) of the reasons why it considers that the draft measure creates a barrier to the single market or that it has serious doubts as to its compatibility with Community law. In such case, the draft measure shall not be adopted for a further two months following the Commission's notification.*

*In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission or by other national regulatory authority.*

*3. Within the two month period referred to in paragraph 2, the Commission, BERT and the national regulatory authority concerned shall cooperate closely with the objective of identifying the most appropriate and effective measure in the light of the objectives laid down in Article 8, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.*

*Within the same two month period, BERT shall, acting by a simple majority, issue a reasoned opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure should be amended and*



*providing specific proposals to that end.  
This opinion shall be made public.*

*If BERT has issued a reasoned opinion indicating that the draft measure should be amended, the Commission may, taking utmost account of this opinion, adopt a reasoned decision requiring the national regulatory authority concerned to amend the draft measure and providing specific proposals to that end.*

*If BERT has issued a reasoned opinion confirming the appropriateness and effectiveness of the draft measure, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any recommendations made by the Commission and BERT.*

*4. If the draft measure concerns the imposition, amendment or withdrawal of an obligation laid down in Articles 13a and 13b of Directive 2002/19/EC (Access Directive), the draft measure shall not be adopted for a further two months after the end of the period referred to in Article 7(3).*

*Within this two month period, the Commission, BERT and the national regulatory authority concerned shall cooperate closely with the objective of identifying the most appropriate and effective measure in the light of the objectives laid down in Article 8, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.*

*Within the same two month period, BERT shall, acting by a simple majority, issue a reasoned opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure should not be applied. This opinion shall be made public.*

*Only if the Commission and BERT confirm the appropriateness and*

*effectiveness of the draft measure, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any recommendations made by the Commission and BERT.*

*5. Within three months of the adoption by the Commission, in accordance with paragraph 3, of a reasoned decision requiring the national regulatory authority concerned to amend the draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with Article 7.'*

Or. en

#### *Justification*

*Instead of the Commission's veto on remedies a new "co-regulation" procedure is proposed in which the Commission, BERT and the national regulatory authority cooperate closely. The proposed procedure aims at reaching a solution through peer review rather than imposing a "sanction" veto from above. The Commission and BERT (through majority vote) would need to agree on the necessity of amending a draft measure proposed by a NRA for the Commission to be able to take a decision to this end. Otherwise the NRA would take utmost account of the comments made by the Commission and BERT.*

#### **Amendment 18**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 7**

Directive 2002/21/EC

Article 7 a – paragraph 2

##### *Text proposed by the Commission*

2. The measures referred to in paragraph 1, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the

##### *Amendment*

2. The measures referred to in paragraph 1, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the

regulatory procedure with scrutiny referred to in Article 22(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).***

regulatory procedure with scrutiny referred to in Article 22(3). ***BERT shall be consulted.***

Or. en

#### *Justification*

*BERT should be consulted for any implementing measures relating to Article 7. The urgency procedure is not justified.*

### **Amendment 19**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 8 – point a**

Directive 2002/21/EC

Article 8 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

Unless otherwise provided in Article 9 regarding radio frequencies, Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities do likewise.

#### *Amendment*

Unless otherwise provided in Article 9 regarding radio frequencies ***or unless otherwise required in order to fulfil the objectives laid down in paragraphs 2 to 4,*** Member States shall take the utmost account of the desirability of making regulations technologically neutral and shall ensure that, in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities do likewise.

Or. en

#### *Justification*

*Technology neutrality is needed as a principle in order not to frustrate future technological innovation, but needs to be limited when it would be in frontal opposition to the primary objectives of the regulation.*

## **Amendment 20**

### **Proposal for a directive – amending act**

#### **Article 1 – point 8 – point b a (new)**

Directive 2002/21/EC

Article 8 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

***(ba) In paragraph 2, point (c) is replaced by the following:***

***‘(c) encouraging investment in infrastructures in a way that promotes efficiency and sustainable competition, and promoting innovation; and’.***

Or. en

*Justification*

*Encouraging sustainable competition is a guarantee for the consumer to get positive effects in the long run.*

## **Amendment 21**

### **Proposal for a directive – amending act**

#### **Article 1 – point 8 – point b b (new)**

Directive 2002/21/EC

Article 8 – paragraph 3 – point c

*Text proposed by the Commission*

*Amendment*

***(bb) In paragraph 3, point (c) is deleted.***

Or. en

*Justification*

*Point retaken in new paragraph 4a of Article 8.*

## Amendment 22

### Proposal for a directive – amending act

#### Article 1 – point 8 a (new)

Directive 2002/21/EC

#### Article 8 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(8a) In Article 8 the following paragraph 4a is inserted:***

***‘4a. The national regulatory authorities shall, in pursuit of the policy objectives referred to in paragraphs 2, 3 and 4, apply objective, transparent, non-discriminatory and proportionate regulatory principles inter alia by:***

***(a) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;***

***(b) taking due account of the variety of conditions relating to competition and consumers that exist in the Member States and the various geographic areas within Member States;***

***(c) imposing ex-ante regulatory obligations only where there is no effective competition and relaxing or lifting them as soon as there is;***

***(d) promoting regulatory predictability, thereby providing incentives to innovate and to invest in infrastructure to the benefit of consumers.’***

Or. en

### *Justification*

*The regulatory principles announced in the Article's title were missing. It is important to fill this gap, as those principles are the first step towards better consistency of the application of the regulatory framework.*

## **Amendment 23**

### **Proposal for a directive – amending act**

#### **Article 1 – point 8 b (new)**

Directive 2002/21/EC

Article 8 a (new)

*Text proposed by the Commission*

*Amendment*

***(8b) The following Article 8a is inserted:***

***‘Article 8a***

***Coordination of radio spectrum policies in the Community***

***1. Member States shall cooperate with each other and the Commission in the strategic planning and harmonisation of the use of radio frequencies in the Community.***

***2. Member States shall ensure the coordination of policy approaches and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market.***

***3. Member States shall ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio frequencies in the Community.***

***4. Member States shall ensure the effective coordination of Community interests in international organisations where radio spectrum use affects Community policies.***

***5. A Radio Spectrum Policy Committee (RSPC) is hereby created in order to contribute to the fulfilment of the objectives set out in paragraphs 1 to 4.***

***The RSPC shall provide advice to the European Parliament, the Council and the Commission on radio spectrum policy issues.***

***The RSPC shall be composed of one high-***

*level representative from each national regulatory authority responsible for radio spectrum policy in each Member State. The Commission shall be a non-voting member.*

*6. At the request of the European Parliament, the Council or the Commission or on its own initiative, the RCPC, acting on a simple majority, shall adopt opinions. Each Member State shall have one vote and the Commission shall not vote.*

*7. The Commission, taking utmost account of the opinion of the RSPC, shall formulate every three years common policy objectives and issue non-binding guidelines for the development of Community spectrum policy.*

*8. The Commission may, taking utmost account of the opinion of RSPC, propose legislative measures to fulfil common policy objectives as defined in paragraph 7.*

*9. Whenever necessary for ensuring the effective coordination of Community interests in international organisations, the Commission may, with the agreement of the RSPC, propose to the European Parliament and the Council a negotiation mandate.*

*10. The RSPC shall submit an annual activity report to the European Parliament and to the Council.'*

Or. en

#### *Justification*

*An effective policy framework is needed to ensure the cooperation of Member States with each other and the Commission with regard to the strategic planning of radio spectrum in the Community. Only through a better coordination of policy approaches will spectrum management in the EU advance. This also calls for a more coordinated participation of EU Member States in international fora. A new streamlined Committee, the RSPC, built upon the Radio Spectrum Committee and the Radio Spectrum Policy Group is proposed to assist in the development of an integral EU spectrum policy.*

## Amendment 24

### Proposal for a directive – amending act

#### Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 2 – point c

#### *Text proposed by the Commission*

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

#### *Amendment*

(c) ensure ***efficient use of radio frequencies, including*** maximisation of radio frequency sharing, or

Or. en

#### *Justification*

*Spectrum sharing should be pursued regardless of the type of authorisation.*

## Amendment 25

### Proposal for a directive – amending act

#### Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

4. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands ***available*** to electronic ***communication services as identified in their national frequency allocation tables and in the ITU Radio Regulations***. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.



*Justification*

*Service neutrality should be circumscribed to the possibilities offered by the ITU Radio Regulations that determine which services can coexist in the different bands.*

**Amendment 26**

**Proposal for a directive – amending act**

**Article 1 – point 9**

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

Restrictions that require a service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, or, as defined in national legislation in conformity with Community law, the promotion of cultural and linguistic diversity and media pluralism.

*Amendment*

Restrictions that require ***an electronic communication*** service to be provided in a specific band shall be justified in order to ensure the fulfilment of a general interest objective ***defined in national legislation*** in conformity with Community law, such as safety of life, the promotion of social, regional or territorial cohesion, the avoidance of inefficient use of radio frequencies, or, as defined in national legislation in conformity with Community law, the promotion of cultural and linguistic diversity and media pluralism.

Or. en

*Justification*

*It should be left to subsidiarity how general interest objectives should be interpreted in each Member State.*

**Amendment 27**

**Proposal for a directive – amending act**

**Article 1 – point 9**

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 3

*Text proposed by the Commission*

A restriction which prohibits the provision of any **other** service in a specific band may only be provided for where justified by the need to protect safety of life services.

*Amendment*

A restriction which prohibits the provision of any **other electronic communication** service in a specific band may only be provided for where justified by the need to protect safety of life services.

Or. en

*Justification*

*The framework applies only to electronic communication services and not to any service (meteorological, scientific, military, etc.).*

**Amendment 28**

**Proposal for a directive – amending act**

**Article 1 – point 10**

Directive 2002/21/EC

Article 9 a – paragraph 1

*Text proposed by the Commission*

1. For a period of five years starting on **[1 January 2010]**, Member States **shall** ensure that holders of rights to use radio frequencies which were granted before that date may submit an application to the competent national regulatory authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

*Amendment*

1. For a period of five years starting on **[date of transposition]**, Member States **may** ensure that holders of rights to use radio frequencies which were granted before that date **for a period of not less than five years** may submit an application to the competent national regulatory authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

Or. en

*Justification*

*No reassessment should be necessary for rights that expire before the end of the five year transition period*

## Amendment 29

### Proposal for a directive – amending act

#### Article 1 – point 10

Directive 2002/21/EC

Article 9 a – paragraph 2

#### *Text proposed by the Commission*

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, ***an application for reassessment can only be made in respect of the part of the radio frequencies which is*** necessary for the fulfilment of such objective. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective ***as a result of application of Article 9(3) and (4)*** shall be subject to a new assignment procedure in conformity with Article 7(2) of the Authorisation Directive.

#### *Amendment*

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, ***including the provision of broadcasting services, the right to use the part of the radio frequencies which is*** necessary for the fulfilment of that objective ***shall remain unchanged until its expiry***. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective shall be subject to a new assignment procedure in conformity with ***Article 9(3) and (4) of this Directive and Article 7(2) of Directive 2002/20/EC (the Authorisation Directive)***.

Or. en

#### *Justification*

*Broadcasting operators should be able to continue providing their broadcasting services and even to develop them further (i.e. HDTV) after the digital switchover. The part of the digital dividend which will not be used for broadcasting purposes should be re-assigned to other purposes according to the new rules.*

## Amendment 30

### Proposal for a directive – amending act

#### Article 1 – point 10

Directive 2002/21/EC

Article 9 b – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

1. Member States shall ensure that

#### *Amendment*

1. Member States shall ensure that

undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c ***without the prior consent of the national regulatory authority.***

undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c ***provided that such transfer or lease is in accordance with national procedures and does not result in a change in the service provided over that radio frequency band.***

Or. en

#### *Justification*

*Tradability shouldn't lead to imbalances in the diversity of services or to speculation. Also, national procedures shouldn't be ignored, since spectrum management remains a national competence.*

### **Amendment 31**

#### **Proposal for a directive – amending act**

##### **Article 1 – point 10**

Directive 2002/21/EC

Article 9 b – paragraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies ***as well as the effective transfer*** is notified to the ***competent*** authority responsible for spectrum assignment and is made public. Where radio frequency use has been harmonised through the application of ***Article 9c*** or other Community measures, any such transfer shall comply with such harmonised use.

Or. en

#### *Justification*

*Competent authorities should be also notified when the transfer is made. The reference to the Radio Spectrum Decision is replaced by the Article 9c which encompasses in a coherent way*

*all harmonisation measures in the field of spectrum.*

## **Amendment 32**

### **Proposal for a directive – amending act**

#### **Article 1 – point 10**

Directive 2002/21/EC

Article 9 c – paragraph 1 – point -a (new)

*Text proposed by the Commission*

*Amendment*

***(–a) harmonise the rules relating to the availability and efficient use of radio frequencies in accordance with the procedure set out in Annex I;***

Or. en

#### *Justification*

*It is important for achieving consistency and coherence that all harmonisation measures in the field of spectrum management are grouped together and not distributed along two different legal frameworks (Framework Directive and Radio Spectrum Decision).*

## **Amendment 33**

### **Proposal for a directive – amending act**

#### **Article 1 – point 10**

Directive 2002/21/EC

Article 9 c – paragraph 1 – point -aa (new)

*Text proposed by the Commission*

*Amendment*

***(-aa) ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio frequencies;***

Or. en

#### *Justification*

*It is important for achieving consistency and coherence that all harmonisation measures in the field of spectrum management are grouped together and not distributed along two different legal frameworks (Framework Directive and Radio Spectrum Decision).*

## Amendment 34

### Proposal for a directive – amending act

#### Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*The harmonisation procedures need to cover the actual identification of the bands and not only the procedure to be followed to this end.*

## Amendment 35

### Proposal for a directive – amending act

#### Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point d

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

*Justification*

*Any horizontal decision on further exceptions to these principles of service and technology*

*neutrality should be subject to legislative amendment.*

## **Amendment 36**

### **Proposal for a directive – amending act**

#### **Article 1 – point 10**

Directive 2002/21/EC

Article 9 c – paragraph 2

#### *Text proposed by the Commission*

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).*** In the implementation of the provisions of this paragraph, the Commission may be assisted by the ***Authority in accordance with Article 10 Regulation [.../EC].***

#### *Amendment*

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). In the implementation of the provisions ***of points (-a) to (c)*** of this paragraph, the Commission may be assisted by the ***RSPC***.

Or. en

#### *Justification*

*The RSPC should be the competent Committee for advising the Commission on spectrum harmonisation matters. The urgency procedure is not justified for the adoption of this type of measures.*

## **Amendment 37**

### **Proposal for a directive – amending act**

#### **Article 1 – point 11 – point b**

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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

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

The Commission may take appropriate technical implementing measures on this matter. The implementing measures may grant the Authority specific responsibilities in the application of those measures.

Or. en

*Justification*

*The establishment of tariff principles should be left to subsidiarity.*

**Amendment 38**

**Proposal for a directive – amending act**

**Article 1 – point 11 – point b**

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).  
*On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4)*

*Amendment*

The measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Or. en

*Justification*

*The urgency procedure is not justified for the adoption of this type of measures.*

**Amendment 39**

**Proposal for a directive – amending act**

**Article 1 – point 13**

Directive 2002/21/EC

Article 12 – title



*Text proposed by the Commission*

*Amendment*

Co-location and **facility** sharing for providers of electronic communications networks

Co-location and sharing **of network components and associated facilities** for providers of electronic communications networks

Or. en

*Justification*

*The word “facility” is not defined in the framework but only “associated facility”. The sharing of the associated facilities is also an important issue to facilitate the development of the terrestrial networks in zones of lower population density. To stimulate the development of fibre networks, it is necessary allow to impose the sharing of dark fibre, as well as associated facilities, such as existing ducts or new ducts to be laid down.*

**Amendment 40**

**Proposal for a directive – amending act**

**Article 1 – point 13**

Directive 2002/21/EC

Article 12 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

*Justification*

*The sharing location could be imposed to wiring outside and inside the buildings. “High locations” should be added to the list of associated facilities on which sharing could be*

*imposed (for instance the Eiffel Tower or water towers).*

#### **Amendment 41**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 13**

Directive 2002/21/EC

Article 12 – paragraph 3

##### *Text proposed by the Commission*

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

##### *Amendment*

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

Or. en

#### **Amendment 42**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 14**

Directive 2002/21/EC

Article 13 a – paragraph 3 – subparagraph 1

##### *Text proposed by the Commission*

3. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the ***national*** regulatory authority of any breach of security or integrity that had a significant impact on the operation of networks or services.

##### *Amendment*

3. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services notify the ***competent*** regulatory authority of any breach of security or integrity that had a significant impact on the operation of networks or services.

Or. en

##### *Justification*

*Usually it is not the Telecom regulatory authority which is in charge of network security.*

## Amendment 43

### Proposal for a directive – amending act

#### Article 1 – point 14

Directive 2002/21/EC

Article 13 a – paragraph 3 – subparagraph 2

#### *Text proposed by the Commission*

Where appropriate, the ***national*** regulatory authority concerned shall inform the ***national*** regulatory authorities in other Member States and the ***Authority***. Where disclosure of the breach is in the public interest, the ***national*** regulatory authority may inform the public.

#### *Amendment*

Where appropriate, the ***competent*** regulatory authority concerned shall inform the ***competent*** regulatory authorities in ***the*** other Member States and the ***Commission***. Where disclosure of the breach is in the public interest, the ***competent*** regulatory authority may inform the public.

Or. en

#### *Justification*

*Usually it is not the Telecom regulatory authority which is in charge of network security. The Commission and not BERT should be notified*

## Amendment 44

### Proposal for a directive – amending act

#### Article 1 – point 14

Directive 2002/21/EC

Article 13 a – paragraph 3 – subparagraph 3

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

#### *Justification*

*Submitting reports every three months seems excessive.*

## Amendment 45

### Proposal for a directive – amending act

#### Article 1 – point 14

Directive 2002/21/EC

Article 13 a – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

4. The Commission, ***taking the utmost account of the opinion of the Authority issued in accordance with Article 4(3)(b) of Regulation [.../EC]***, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

#### *Amendment*

4. The Commission may ***encourage the dissemination and exchange of best practices among undertakings and competent national authorities and*** adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

Or. en

#### *Justification*

*The Commission can play a positive role in coordinating and favouring the sharing of best practices, without necessarily imposing binding measures.*

## Amendment 46

### Proposal for a directive – amending act

#### Article 1 – point 15 – point b

Directive 2002/21/EC

Article 14 – paragraph 3

#### *Text proposed by the Commission*

***(b) Paragraph (3) is deleted.***

#### *Amendment*

***deleted***

Or. en

#### *Justification*

*In a context of convergence, it would be useful not to delete the paragraph 3 on leverage effect.*

## Amendment 47

### Proposal for a directive – amending act

#### Article 1 – point 16 – point d – subparagraph 2

Directive 2002/21/EC

Article 15 – paragraph 4

#### *Text proposed by the Commission*

This Decision, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

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

#### *Amendment*

This Decision, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Or. en

#### *Justification*

*The urgency procedure is not justified for the adoption of this type of measures.*

## Amendment 48

### Proposal for a directive – amending act

#### Article 1 – point 17 – point b

Directive 2002/21/EC

Article 16 – paragraph 6 – point a

#### *Text proposed by the Commission*

(a) within ***two years*** from a previous ***notification*** of a ***draft*** measure relating to that market;

#### *Amendment*

(a) within ***three years*** from a previous ***entry into force*** of a measure relating to that market;

Or. en

#### *Justification*

*The 2 years delay proposed for the revision of a decision is too tight. The validity period of a decision should be three years as from its coming into effect in the Member State (and not from the notification date).*

## Amendment 49

### Proposal for a directive – amending act

#### Article 1 – point 18 – point a

Directive 2002/21/EC

Article 17 – paragraph 1

#### *Text proposed by the Commission*

(a) In paragraph 1, in the second sentence, the words 'acting in accordance with the procedure referred to in Article 22(2)' are replaced by 'may take appropriate implementing measures and'.

#### *Amendment*

(a) In paragraph 1, ***in the first sentence, the words 'Article 22(2)' are replaced by 'Article 22(3)';*** in the second sentence, the words 'acting in accordance with the procedure referred to in Article 22(2)' are replaced by 'may take appropriate implementing measures and'.

Or. en

#### *Justification*

*It should not be left to the Commission to decide whether Parliament should have scrutiny powers or not.*

## Amendment 50

### Proposal for a directive – amending act

#### Article 1 – point 18 – point c

Directive 2002/21/EC

Article 17 – paragraph 6 a (new)

#### *Text proposed by the Commission*

6a. ***The*** implementing measures designed to amend non-essential elements of this Directive by supplementing it ***referred to in paragraphs 4 and 6*** shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).***

#### *Amendment*

'6a. ***The*** implementing measures ***referred to in paragraphs 1, 4 and 6,*** designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Or. en

### *Justification*

*All implementing measures under Article 17 should be adopted in accordance to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of this type of measures.*

## **Amendment 51**

### **Proposal for a directive – amending act**

#### **Article 1 – point 20**

Directive 2002/21/EC

Article 19 – paragraph 1

#### *Text proposed by the Commission*

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of *the Authority*, if any, issue *a recommendation or* a decision on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

#### *Amendment*

1. Without prejudice to Article 9 of this Directive and to Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by national regulatory authorities of the regulatory tasks specified in this Directive and the Specific Directives may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of **BERT**, if any, issue a decision on the harmonised application of the provisions in this Directive and the Specific Directives in order to further the achievement of the objectives set out in Article 8.

Or. en

### *Justification*

*Recommendations would allow the Commission to go ahead without the scrutiny of the European Parliament. Furthermore, to provide the necessary legal certainty a binding instrument should be used.*

## **Amendment 52**

### **Proposal for a directive – amending act**

#### **Article 1 – point 20**

Directive 2002/21/EC

Article 19 – paragraph 2

*Text proposed by the Commission*

*Amendment*

**2. Where the Commission issues a recommendation pursuant to paragraph 1, it shall act in accordance with the procedure referred to in Article 22(2).** *deleted*

**Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasoning for its position.**

Or. en

*Justification*

*In order to provide the necessary legal certainty for regulatory harmonisation measures only a binding instrument should be used.*

## **Amendment 53**

### **Proposal for a directive – amending act**

#### **Article 1 – point 20**

Directive 2002/21/EC

Article 19 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. The decision mentioned in paragraph 1 designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). *On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).***

**3. The decision mentioned in paragraph 1 designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).'**

Or. en



*Justification*

*The urgency procedure is not justified for the adoption of this type of measures*

**Amendment 54**

**Proposal for a directive – amending act**

**Article 1 – point 20**

Directive 2002/21/EC

Article 19 – paragraph 4 – point a

*Text proposed by the Commission*

(a) Consistent implementation of regulatory approaches, including regulatory treatment of new services;

*Amendment*

(a) Consistent implementation of regulatory approaches, including regulatory treatment of new services ***and of the definition of sub-national markets resulting from the varying competitive conditions;***

Or. en

*Justification*

*Like above, the idea is to focus regulation only where it is needed.*

**Amendment 55**

**Proposal for a directive – amending act**

**Article 1 – point 20**

Directive 2002/21/EC

Article 19 – paragraph 4 – point c

*Text proposed by the Commission*

(c) Consumer issues, ***including*** accessibility to electronic communications services and equipment by disabled end-users;

*Amendment*

(c) Consumer issues ***not included in Directive 2002/22/EC (Universal Service Directive), in particular*** accessibility to electronic communications services and equipment by disabled end-users;

Or. en

*Justification*

*Only consumer issues not covered by the Universal Service Directive should be regulated on the basis of this Article.*

## Amendment 56

### Proposal for a directive – amending act

#### Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 4 – point d

*Text proposed by the Commission*

*Amendment*

(d) Regulatory accounting.

(d) Regulatory accounting, ***including the calculation of investment risk.***

Or. en

#### *Justification*

*A harmonised calculation of investment risks is necessary to avoid regulatory distortions regarding the setting of regulated access conditions among Member States.*

## Amendment 57

### Proposal for a directive – amending act

#### Article 1 – point 24 a (new)

Directive 2002/21/EC

Article 25

*Text proposed by the Commission*

*Amendment*

***(24a) In Article 25 the following paragraph 2 is inserted:***

***'2. The Commission, with the assistance of BERT, shall monitor the level of competition in regulated markets and assess whether they are effectively competitive and whether it is appropriate to review the Recommendation referred to in Article 15(1).'***

Or. en

#### *Justification*

*There is a need to keep the list of relevant markets up-to-date according to regular*

*assessments and to adapt regulation to the level of effective competition in the market.*

## **Amendment 58**

### **Proposal for a directive – amending act**

#### **Article 1 – point 24 b (new)**

Directive 2002/21/EC

Article 26 – indent 8 a (new)

*Text proposed by the Commission*

*Amendment*

***(24b) In Article 26 a new indent 8a is inserted:***

***‘– Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community.’***

Or. en

### *Justification*

*Repeal of the Radio Spectrum Decision and inclusion of its provisions in the Framework with a view to favouring an integrated policy approach and coherent treatment of harmonisation measures.*

## **Amendment 59**

### **Proposal for a directive – amending act**

#### **Article 1 – point 26 a (new)**

Directive 2002/21/EC

Annex II a (new)

*Text proposed by the Commission*

*Amendment*

***(26a) A new Annex II a is inserted:***

***‘Annex IIa***

***Procedure for ensuring harmonised spectrum conditions***

***1. For the development of implementing measures referred to in Article 9c points (-a) and (-aa) which fall within the remit of the CEPT, such as the harmonisation of***

*radio frequency allocation and of information availability, the Commission shall issue mandates to the CEPT, setting out the tasks to be performed and the timetable therefor. The Commission shall act in accordance with the procedure referred to in Article 22(2).*

*2. On the basis of the work completed pursuant to paragraph 1, the Commission shall decide whether the recommendations of the CEPT should be put into effect in the Community and, if so, on the deadline for their implementation by the Member States. The decisions shall be published in the Official Journal of the European Union. For the purpose of this paragraph, the Commission shall act in accordance with the procedure referred to in Article 22(3).*

*3. Notwithstanding paragraph 3, if the Commission or any Member State considers that the work carried out on the basis of a mandate issued pursuant to paragraph 2 is not progressing satisfactorily, having regard to the set timetable set or if the recommendations of the CEPT are not acceptable, the Commission may adopt, acting in accordance with the procedure referred to in Article 22(3), measures to achieve the objectives of the mandate.*

*4. The measures referred to in paragraphs 3 and 4 may, where appropriate, provide that transitional periods and/or radio spectrum sharing arrangements in a Member State must be approved by the Commission, taking into account the specific situation in the Member State, on the basis of a reasoned request by the Member State concerned and provided that such exception would not unduly delay implementation or create unjustified differences in the competitive or regulatory situations between Member States.'*

*Justification*

*The same methodology for ensuring harmonised spectrum conditions as the one established by the Radio Spectrum Decision is retained.*

**Amendment 60**

**Proposal for a directive – amending act**

**Article 2 – point 1**

Directive 2002/19/EC

Article 2 – point a

*Text proposed by the Commission*

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services ***or delivering information society services or broadcast content services***. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

*Amendment*

(a) “access” means the making available of facilities and/or services to another undertaking, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services. It covers inter alia: access to network elements and associated facilities, which may involve the connection of equipment by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts and masts; access to relevant software systems including operational support systems; access to number translation or systems offering equivalent functionality; access to fixed and mobile networks, in particular for roaming; access to conditional access systems for digital television services; access to virtual network services.

### *Justification*

*This deletion prevents the regulation from covering content issues, which would open a much bigger field of litigation (already covered in AVMS and eCommerce directives).*

### **Amendment 61**

#### **Proposal for a directive – amending act**

#### **Article 2 – point 2 a (new)**

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

***(2a) In Article 5(1), the first subparagraph is replaced by the following:***

**‘1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), encourage and where appropriate ensure, in accordance with the provisions of the Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition and infrastructure development and gives the maximum benefit to end-users.’**

Or. en

### *Justification*

*NRAs should have among their objectives the promotion of infrastructure-based competition.*

### **Amendment 62**

#### **Proposal for a directive – amending act**

#### **Article 2 – point 3 – point a**

Directive 2002/19/EC

Article 5 – paragraph 2

*Text proposed by the Commission*

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6 **and** 7 of Directive 2002/21/EC (Framework Directive).

*Amendment*

2. Obligations and conditions imposed in accordance with paragraph 1 shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 6, 7 **and - 7a** of Directive 2002/21/EC (Framework Directive).

Or. en

*Justification*

*Inclusion of the alternative procedure to the veto on remedies.*

**Amendment 63**

**Proposal for a directive – amending act**

**Article 2 – point 3 – point aa (new)**

Directive 2002/19/EC

Article 5 – paragraph 2a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) In Article 5 a new paragraph 2a is inserted:***

***‘2a. Where assessing the proportionality of the measures to be imposed, national regulatory authorities shall take into account the varying conditions relating to competition and consumers in the various geographic areas within the Member States.’***

Or. en

*Justification*

*Geographic segmentation can be used not only to relax or remove regulation, but also to assess the balance of remedies chosen by NRAs. The different consumer conditions need also to be taken into account when assessing whether sub-national markets could be defined*

## Amendment 64

### Proposal for a directive – amending act

#### Article 2 – point 4

Directive 2002/19/EC

Article 6 – paragraph 2 – subparagraph 1

#### *Text proposed by the Commission*

2. In the light of market and technological developments, the Commission may adopt implementing measures to amend Annex I. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4).***

#### *Amendment*

2. In the light of market and technological developments, the Commission may adopt implementing measures to amend Annex I. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).

Or. en

#### *Justification*

*The urgency procedure is not justified for the adoption of this type of measures.*

## Amendment 65

### Proposal for a directive – amending act

#### Article 2 – point 6 – point aa (new)

Directive 2002/19/EC

Article 8 – paragraph 2

#### *Text proposed by the Commission*

#### *Amendment*

***(aa) Paragraph 2 is replaced by the following:***

***‘2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), national regulatory authorities shall, as appropriate, impose the obligations set***



**out in Articles 9 to 13 of this Directive in accordance with the procedure set out in Article -7a of Directive 2002/21/EC (Framework Directive).’**

Or. en

*Justification*

*Inclusion of the alternative procedure to the veto on remedies.*

**Amendment 66**

**Proposal for a directive – amending act**

**Article 2 – point 7**

Directive 2002/19/EC

Article 9 – paragraph 5

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The urgency procedure is not justified for the adoption of this type of measures.*

## Amendment 67

### Proposal for a directive – amending act

#### Article 2 – point 8 – point b a (new)

Directive 2002/19/EC

Article 12 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

***(ba) In paragraph 2, point (a) is replaced by the following:***

***‘(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development and of the benefits for consumers, taking into account the nature and type of interconnection and access involved, including the viability of other upstream access options;’***

Or. en

### *Justification*

*Infrastructure competition, while a primary goal of this regulation, needs to be assessed according to the benefit to the consumer too. Competition should be promoted as deep as possible in the value chain.*

## Amendment 68

### Proposal for a directive – amending act

#### Article 2 – point 8 – point bb new

Directive 2002/19/EC

Article 12 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

***(bb) In paragraph 2, point (c) is replaced by the following:***

***‘(c) the initial investment by the facility owner, bearing in mind the technical and economic viability of sharing this investment with other operators seeking access and the risks involved in making the investment, including its adequate sharing among the operators benefiting***

*from access to these new facilities;'*

Or. en

*Justification*

*Explicit mention to the need to assess the possibility of sharing investments among operators for developing new infrastructures and, when this is not possible, to share the risks of the investment by those using the infrastructure.*

**Amendment 69**

**Proposal for a directive – amending act**

**Article 2 – point 8 – point bc (new)**

Directive 2002/19/EC

Article 12 – paragraph 2 – point d

*Text proposed by the Commission*

*Amendment*

***(bc) In paragraph 2, point (d) is replaced by the following:***

***‘(d) the need to safeguard competition, in particular infrastructure competition, in the long term;’***

Or. en

*Justification*

*Infrastructure competition is an effective means to safeguard competition in the long term.*

**Amendment 70**

**Proposal for a directive – amending act**

**Article 2 – point 8a (new)**

Directive 2002/19/EC

Article 13 – paragraph 1

*Text proposed by the Commission*

*Amendment*

***(8a) Article 13(1) is replaced by the following:***

**‘1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. National regulatory authorities shall take into account the investment made by the operator and allow him a reasonable rate of return on adequate capital employed, taking into account the risks involved *and their adequate sharing among all the parties benefiting from access or interconnection.*’**

Or. en

*Justification*

*Explicit mention to the need to assess the possibility of sharing investments among operators for developing new infrastructures and, when this is not possible, to share the risks of the investment by those using the infrastructure.*

**Amendment 71**

**Proposal for a directive – amending act**

**Article 2 – point 10 – point b**

Directive 2002/19/EC

Article 14 – paragraph 4

*Text proposed by the Commission*

*Amendment*

***4. Where reference is made to this paragraph, Article 5a (1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.***

***deleted***

*Justification*

*The urgency procedure is not justified for the adoption of the measures proposed in the Access Directive.*

**Amendment 72**

**Proposal for a directive – amending act**

**Article 3 – point 3**

Directive 2002/20/EC

Article 5 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ***not make the use of radio frequencies subject to the granting of individual rights of use but shall include the conditions for*** usage of ***such*** radio frequencies ***in the*** general authorisation, ***unless it is justified to*** grant individual rights in order to:

*Amendment*

1. Member States shall ***facilitate the*** usage of radio frequencies ***under*** general authorisation. ***Member States may*** grant individual rights in order to:

*Justification*

*Although general authorisations might be a viable solution in the long term when technology develops, granting individual licenses should continue to be the normal procedure for assigning spectrum.*

**Amendment 73**

**Proposal for a directive – amending act**

**Article 3 – point 3**

Directive 2002/20/EC

Article 5 – paragraph 1 – point b

*Text proposed by the Commission*

(b) fulfil other objectives of general interest.

*Amendment*

(b) fulfil other objectives of general interest ***defined in national legislation that***

*are consistent with Community law.*

Or. en

*Justification*

*It is necessary to clarify how these objectives of general interest are defined.*

**Amendment 74**

**Proposal for a directive – amending act**

**Article 1 – point 3**

Directive 2002/20/EC

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

*Text proposed by the Commission*

*Amendment*

*'(aa) ensure the efficient use of spectrum;  
or'*

Or. en

*Justification*

*Optimising the usage of this scarce resource should also be a general principle for the assignment of spectrum.*

**Amendment 75**

**Proposal for a directive – amending act**

**Article 3 – point 3**

Directive 2002/20/EC

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

*Text proposed by the Commission*

*Amendment*

*(ab) comply with a restriction in  
accordance with Article 6a;*

Or. en

## *Justification*

*Radio spectrum assignment should comply with the restrictions imposed by the harmonisation measures adopted under Article 6a.*

### **Amendment 76**

#### **Proposal for a directive – amending act**

##### **Article 3 – point 3**

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

Without prejudice to specific criteria ***and procedures adopted*** by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through ***open***, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). ***Proceedings may, exceptionally, not be open*** in cases where the granting of individual rights of use for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

Or. en

## Amendment 77

### Proposal for a directive – amending act

#### Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 6

#### *Text proposed by the Commission*

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

#### *Amendment*

6. **Member States** shall ensure that radio frequencies are efficiently and effectively used in accordance with **Articles 8 and 9** of Directive 2002/21/EC (Framework Directive). **Member States** shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. For such purposes, **they** may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.

Or. en

#### *Justification*

*Not all NRAs have competencies in the field of spectrum. Article 8 should be mentioned as it sets the policy objectives of the framework.*

## Amendment 78

### Proposal for a directive – amending act

#### Article 3 – point 5

Directive 2002/20/EC

Article 6 a (new) – paragraph 1 – point c

#### *Text proposed by the Commission*

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

#### *Amendment*

**deleted**

Or. en



*Justification*

*The granting of general authorisations is a long term objective. No harmonisation measures should be considered at this stage.*

**Amendment 79**

**Proposal for a directive – amending act**

**Article 3 – point 5**

Directive 2002/20/EC

Article 6 a (new) – paragraph 1 – point e

*Text proposed by the Commission*

*Amendment*

*(e) to provide for the amendment or  
withdrawal of authorisations or rights of  
use and the procedures relating to point  
(d);* *deleted*

Or. en

*Justification*

*The granting of general authorisations is a long term objective. No harmonisation measures should be considered at this stage.*

**Amendment 80**

**Proposal for a directive – amending act**

**Article 3 – point 5**

Directive 2002/20/EC

Article 6 a (new)– paragraph 1 – point f

*Text proposed by the Commission*

*Amendment*

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

Or. en

### *Justification*

*EU-wide selection procedures for the issuing of rights should be subject to specific legislative proposals not Comitology.*

#### **Amendment 81**

##### **Proposal for a directive – amending act**

##### **Article 3 – point 5**

Directive 2002/20/EC

Article 6 a (new) – paragraph 1 – subparagraph 2

##### *Text proposed by the Commission*

*The measures listed in points (a) to (d) and (f), designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(3).  
**On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a(4).***

##### *Amendment*

*'These measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(3).*

Or. en

### *Justification*

*All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of this type of measures.*

#### **Amendment 82**

##### **Proposal for a directive – amending act**

##### **Article 3 – point 5**

Directive 2002/20/EC

Article 6 b (new)

##### *Text proposed by the Commission*

##### *Amendment*

##### *Article 6b*

*deleted*

*Common selection procedure for issuing rights*

##### *1. The technical implementing measure*

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

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

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

Or. en

#### *Justification*

*EU-wide selection procedures for the issuing of rights should be subject to specific legislative proposals not Comitology.*

#### **Amendment 83**

##### **Proposal for a directive – amending act**

##### **Article 3 – point 7**

Directive 2002/20/EC

Article 8

*Text proposed by the Commission*

*Amendment*

**(7) Article 8 is deleted.**

**deleted**

Or. en

*Justification*

*The function and wording of this Article are satisfactory.*

## **Amendment 84**

### **Proposal for a directive – amending act**

#### **Article 3 – point 8 – point d**

Directive 2002/20/EC

Article 10 – paragraph 6

*Text proposed by the Commission*

*Amendment*

6. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation rights of use or specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months.

6. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation rights of use or specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services **or other users of the radio spectrum**, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months.

Or. en

*Justification*

*Interim measures in case of such problem must protect all spectrum users.*

**Amendment 85**

**Proposal for a directive – amending act**

**Article 3 – point 11**

Directive 2002/20/EC

Article 14 a (new) – paragraph 4

*Text proposed by the Commission*

*Amendment*

***4. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.*** *deleted*

Or. en

*Justification*

*The type of Comitology measures adopted pursuant to the Authorisation Directive does not justify the employment of the urgency.*

## EXPLANATORY STATEMENT

### **1. SPECTRUM REFORM**

Spectrum, like other natural resources (sun, water, air), is a public good; market mechanisms, whilst constituting effective tools to derive optimal economic value (private and public), are not able alone to serve the general interest and provide public goods indispensable for achieving an information society for all. A combined policy and market approach is therefore required.

#### **1.1 Accommodating flexibility (service and technology neutrality, trading, etc.) and harmonisation goals**

Better coordination and more flexibility are required if we want to achieve an efficient exploitation of this scarce resource. However, an adequate balance should be struck between flexibility and the degree of harmonisation which is also needed in order to increase the internal market added value of spectrum (i.e. fixing specific spectrum bands for specific services and technologies such as GSM, UMTS, MCA and MSS).

The development of an absolute 'harmonisation agenda' (full command & control approach) is not compatible with an 'idealistic' neutrality regime (full market approach). That is why a mixed spectrum management regime, based on balanced combinations of options (scope of harmonisation vs. service neutrality, standardisation vs. technology neutrality, spectrum assignment modes) is preferable.

A gradual rather than a revolutionary spectrum reform seems realistic and preferable:

- Non-interference as well as compatibility with ITU radio regulations should be a precondition for reforms introduced;
- The scope and nature of service and technology neutrality should be consistent with ITU definitions;
- Technology neutrality should be pursued with clear rules on interoperability obligations and under which conditions standards could be imposed;
- Service neutrality should be understood as covering only electronic communication services, within their respective national frequency allocation tables and ITU regulations;
- Spectrum trading should be voluntary and compatible with the primary usage of the relevant band;
- General authorisations should remain a manageable principle and could be developed if there's a demand, even though it is a fact that most authorisations are individual rights of use;
- Member States should guarantee spectrum efficiency, and so impose the reduction, withdrawal or sale of radio frequencies in case of inefficient use;
- More spectrum should be harmonised for license-exempt spectrum on a non-interference basis.

## **1.2 Enhanced Commission's coordination role**

Spectrum does not know of frontiers. An effective use of spectrum in the Member States requires a stronger EU coordination, in particular regarding the development of pan-European services and the negotiation of international agreements.

While spectrum management remains a national competence, only an EU approach ensures that EU interests can be effectively defended at world level. As in the case of commercial policy, power should be conferred upon the Community to conduct international negotiations based on clear mandates granted by the EU co-legislators.

## **1.3 Digital Dividend**

The issue of the digital dividend requires an immediate political response; we can not wait until the reform Directives enter into force. The main guiding principle to allocate the spectrum released by the switchover should be social, cultural and economic value (better public service, wireless broadband to underserved areas, growth and jobs, etc.) and not only increasing public revenues. A coordinated EU approach is necessary to:

- Ensure that Member States undertake cost benefit analysis to determine the appropriate allocation of spectrum;
- Develop a common methodology for the cost benefit analysis;
- Identify bands that could be harmonised for well-defined pan-European or interoperable services at EU level or to promote efficient use and social benefit;
- Propose, if appropriate, binding legislation for harmonising these services.

## **2. IMPROVING EFFECTIVE AND CONSISTENT IMPLEMENTATION**

A consistent implementation of the telecom framework is decisive for achieving a well functioning electronic communications internal market and a competitive information society economy to the benefit of consumers and enterprises..

The current balance of power between the Commission ('guardian' of markets definition and significant market power designation) and NRAs (responsible for implementation at local level) has worked reasonably well. However, there is room for improving the consistency both regarding national decisions with internal market impact and the application of remedies.

### **2.1 National Regulatory Authorities**

A consistent application requires, first and foremost, independent and adequately resourced national regulatory authorities (NRAs). The rapporteur welcomes the independence provisions proposed by the Commission and stresses that these should not be compromised in the Interinstitutional negotiations.

An effective regulatory framework requires also the existence of specialised appeal bodies and effective appeal mechanisms (i.e. reasonable time limits for taking decisions) in order to prevent abuse of appeal procedures. Appeal bodies should also be entitled to consult BERT should the case have an internal market impact.

## **2.2 Consistent implementation through effective co-regulation**

The most appropriate means to ensure consistency and effectiveness in a system where competences are distributed is through co-regulation. Only with such a cooperative and collaborative approach between the Commission and NRAs can results be achieved without altering the delicate institutional balance of powers or undermining the subsidiarity elements of the regulation. The Commission should play more the role of arbitrator and facilitator rather than of judge or sanction-taker.

This new co-regulation role should not undermine but complement the Commission's right of initiative to lead the co-regulation agenda, to propose to the co-legislators binding legislation to address consistency problems.

### **2.2.1 Remedies**

A dispute resolution procedure, rather than a veto mechanism, should be put in place to engage actively all the parties concerned, the Commission, the individual NRAs, BERT and the stakeholders in searching for constructive solutions regarding the imposition of remedies.

The rapporteur puts forward in Amendment 17 an alternative procedure for the consistent application of remedies. The procedure is based upon the principle that only if the Commission and BERT (acting by a simple majority) agree that the proposed remedy is not appropriate the Commission could issue a reasoned decision requesting the NRA concerned to amend the draft measure. Functional separation, due to its far-reaching character, is subject to a special treatment whereby the Commission and BERT have to agree that it is the only effective remedy in order for the concerned NRA to be able to impose it.

## **3. TRANSITION TOWARDS FULL COMPETITION**

While accepting the transitory nature of ex-ante regulation a gradual approach should be followed removing regulation only and if markets become effectively competitive. In this regard, the introduction of a qualified revision clause (requesting the Commission to monitor continuously the level of competition of regulated markets and to conduct periodic reviews) might be an adequate approach.

In addition, care should be taken on assessing the implications on competition of new access technologies (fibre networks), which could call for adapted methodological and regulatory tools to ensure that competition in these new markets is preserved and that, at the same time, adequate incentives for deploying these new networks are provided. The Commission is therefore urged to take due account of the political debate on the regulation of these new access networks and to adopt any recommendation on this matter in complete accordance with it.

### **3.1 Sub-national markets**

In order to deregulate where it is no more needed, a more nuanced approach to market analyses, including sub-national markets is needed. Regulatory obligations could be lifted in geographic areas where competition is considered to have successfully taken off and, conversely, re-introduced or reinforced in non-competitive areas of markets that are considered competitive at national level. This could diminish the risk of dominant operators cross-subsidising between non competitive and competitive regions. NRAs should address in their market analysis this possibility.



#### **4. NEXT GENERATION NETWORKS**

How we treat next generation access is, together with spectrum, the two most important policy questions in the telecom sector today. Taking them into account in the Directives provides a complete view of the sector, in order to favour coherent investment.

Fibre networks offer much higher capacities than other telecommunications transport technologies. This new technological reality calls for a review and adaptation of the current electronic communications regulation with the triple objective of promoting investment (both by incumbents and new entrants), securing competition and consumer's choice, and fostering its rapid deployment as far as possible throughout the territory (and not only in densely populated areas).

While it is acknowledged that full infrastructure competition (parallel high capacity fibre access networks) is preferable and thus should be pursued as a primary goal, such deployment would probably not be feasible or economical in all countries or in all geographic areas within the different countries, as the current degree of deployment of competing networks already shows. Where not feasible, an open network approach favouring shared investments and, if necessary, mandating non-discriminatory access would be needed. When sharing is not feasible regulation should ensure that the investment risk is adequately borne by all operators accessing it.

In sum, regulators should have at their disposal an effective toolbox to pursue competition, investment and consumer benefits. This could involve, depending on the degree of competition in an area, making it mandatory to share in-building wiring, mandating access to passive infrastructure (such as access to ducts, poles and rights-of-way and inside wiring) and backhaul facilities, promoting shared investments and the use of demand aggregation or extending unbundling requirements to these new networks.