

**European single market for electronic communications \*\*\*I**

**European Parliament legislative resolution of 3 April 2014 on the proposal for a regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC, 2002/22/EC, and Regulations (EC) No 1211/2009 and (EU) No 531/2012 (COM(2013)0627 – C7-0267/2013 – 2013/0309(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0627),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0267/2013),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Irish House of Representatives and the Irish Senate, the Maltese Parliament, the Austrian Federal Council and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to the opinion of the European Economic and Social Committee of 21 January 2014<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of 31 January 2014<sup>2</sup>,
  - having regard to Rule 55 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 the Internal Market and Consumer Protection, the Committee on Regional Development, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A7-0190/2014),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 177, 11.6.2014, p. 64.

<sup>2</sup> OJ C 126, 26.4.2014, p. 53.

**Position of the European Parliament adopted at first reading on 3 April 2014 with a view to the adoption of Regulation (EU) No .../2014 of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC, Regulations (EC) No 1211/2009 and (EU) No 531/2012 and Decision No 243/2012/EU [Am. 1]**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

Whereas:

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<sup>1</sup> OJ C 177, 11.6.2014, p. 64.

<sup>2</sup> OJ C 126, 26.4.2014, p. 53.

<sup>3</sup> Position of the European Parliament of 3 April 2014.

- (1) Europe has to tap all sources of growth to exit the crisis, create jobs and regain its competitiveness. Restoring growth and job creation in the Union is the aim of the Europe 2020 Strategy. ***Furthermore, the Digital Sphere has become a part of the public space where new forms of cross-border trade are established, and business opportunities for European companies in the global digital economy are being created along with innovative market development and social and cultural interaction.*** The 2013 Spring European Council stressed the importance of the digital single market for growth and called for concrete measures, in order to establish a single market in information and communications technology (ICT) as early as possible. In line with the objectives of the Europe 2020 Strategy and with this call, this regulation aims at ~~establishing~~ ***contributing to the establishment of*** a single market for electronic communications by completing and adapting the existing Union Regulatory Framework for Electronic Communications (Directives 2002/19/EC<sup>1</sup>, 2002/20/EC<sup>2</sup>, 2002/21/EC<sup>3</sup>, 2002/22/EC<sup>4</sup>, 2002/58/EC<sup>5</sup> of the European Parliament and of the Council, Commission Directive 2002/77/EC<sup>6</sup>, as well as Regulations (EC) No 1211/2009<sup>7</sup>, (EU) No 531/2012<sup>8</sup> of the European Parliament and of the Council and Decision No 243/2012/EU of the European Parliament and of the

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<sup>1</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7).

<sup>2</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ L 108, 24.4.2002, p. 21).

<sup>3</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

<sup>4</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51).

<sup>5</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (E-Privacy Directive) (OJ L 201, 31.7.2002, p. 37).

<sup>6</sup> Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and service (OJ L 249, 17.9.2002, p. 21).

<sup>7</sup> Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ L 337, 18.12.2009, p. 1).

<sup>8</sup> Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10).

Council<sup>1</sup>) *in certain respects, and by defining the overall content, aim and timing of the next review of that framework.* [Am. 2]

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<sup>1</sup> Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).

- (2) The Digital Agenda for Europe (DAE), one of the flagship initiatives of Europe 2020 Strategy, has already recognised the role of ICT and network connectivity as an indispensable basis for the development of our economy and society. For Europe to reap the benefits of digital transformation, the Union needs a dynamic single market in electronic communications for all sectors and across all of Europe. Such a truly single communications market will be the backbone of an innovative and 'smart' digital economy and a foundation of the digital single market where online services can freely flow across borders *within a single, open, standardised and interoperable framework*. [Am. 3]

- (3) ~~In a seamless single market in electronic communications,~~ The freedom to provide electronic communications networks and services to every customer in the Union and the right of each user to choose the best offer available on the market should be ensured and should not be hindered by the fragmentation of markets along national borders. The current regulatory framework for electronic communications, ***while recognising and allowing for objectively different conditions in the Member States***, does not fully address such fragmentation, ~~with~~ ***due to other causes, with diverging*** national, ~~rather than Union-wide~~ ***implementation of the*** general authorisation regimes, ***regime***, national spectrum assignment schemes, ~~differences of access products available for electronic communications providers in different~~ ***and different sets of sector-specific consumer rules applicable. For example, while Directive 2002/20/EC (Authorisation Directive) limits the type of information which may be required, 12 Member States, and different sets of sector-specific consumer rules applicable. The Union rules in many cases merely define a baseline, and are often implemented in diverging ways demand additional detail such as a categorisation of the intended types of activities, the geographical scope of the activity, the targeted market, the company structure, including names of shareholders and of shareholders of shareholders, Chamber of Commerce certification and a criminal records of the representative of the undertaking. Additional requirements such as these underline the importance of a firm policy by the Member States Commission regarding infringement procedures.*** [Am. 4]

- (4) A truly single market for electronic communications should promote competition, ***coordination***, investment, innovation ***and more capacity*** in new and enhanced networks and services by fostering market integration and cross-border service offerings, ***and should reduce to a minimum unnecessary regulatory burdens on undertakings***. It should thus help to achieve, ***and even surpass***, the ~~ambitious~~ high-speed broadband targets set out in the DAE ***and facilitate the emergence of services and applications that are able to exploit open data and formats in an interoperable, standardised and safe way, ensuring that they are available at the same functional and non-functional levels throughout the Union***. The growing availability of digital infrastructures and services should in turn increase consumer choice, quality of service and diversity of content, and contribute to territorial and social cohesion, as well as facilitating mobility across the Union. [Am. 5]

- (4a) *As the European Parliament's Directorate-General for Internal Policies (Policy Department B – Structural and Cohesion Policies) stresses in its 2013 study entitled 'Internet, Digital Agenda and Economic Development of European Regions' ("the study"), a favourable regional context in terms of acceptance and receptiveness of ICT and information society development is an important or even decisive factor as this is the privileged place where demand for ICT development can emerge. [Am. 6]*
- (4b) *As the study notes, the regional level is pertinent for identifying the opportunities offered by the Information Society and for carrying out plans and programmes in support of it. The study also points out that the interplay between the different levels of governance yields great potential for growth. Top-down initiatives and bottom-up projects should be combined, or at least developed in parallel, in order to attain the objective of creating a common digital market. [Am. 7]*



- (4c) *If a European single market for electronic communications is to be established and territorial and social cohesion are to be strengthened, investment priority (2)(a) laid down in Article 5 of Regulation (EU) No 1301/2013 of the European Parliament and of the Council<sup>1</sup> should be implemented with a view to improving broadband access and high-speed networks and supporting the use of new technologies and networks in the digital economy and all European regions should be put in a position to make investments in this area, as specified in Article 4 of that Regulation. [Am. 8]*
- (4d) *Investment in the latest infrastructure, which is essential if people in the Union are to be in a position to take advantage of new, innovative services must not be restricted to central or densely populated areas where it is certain to yield a return. Such investment must also be made at the same time in outlying and outermost regions, which are less densely populated and less developed, so that these regions do not fall even further behind. [Am. 9]*

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<sup>1</sup> *Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ L 347, 20.12.2013, p. 289).*

- (5) The benefits arising from a single market for electronic communications should extend to the wider digital ecosystem that includes ~~Union~~ equipment manufacturers, content and application *and software* providers and the wider economy, covering sectors such as *education*, banking, automotive, logistics, retail, energy, *medicine, mobility* and transport, *and the intelligent management of emergencies and natural disasters*, which rely on connectivity *and broadband* to enhance their productivity, *quality and end-user provision* through, for example, ubiquitous cloud applications, *advanced analysis of big data from communications networks*, connected *and interoperable* objects and possibilities for integrated *cross-border* service provision ~~for different parts of the company~~, *against a background of open-standard system interoperability and open data*. *Citizens*, public administrations and the health sector should also benefit from a wider availability of e-government and e-health services. The offer of cultural *and educational* content and services, and cultural diversity in general, may be also enhanced in a single market for electronic communications. The provision of ~~connectivity~~ *communications* through electronic communications networks and services is of such importance to the wider economy and society *and to the smart cities of the future* that unjustified sector-specific burdens, whether regulatory or otherwise, should be avoided. [Am. 10]

- (6) This Regulation aims at *moving further towards* the completion of the single electronic communications market through action on three broad, inter-related axes. First, it should ~~secure~~ *affirm* the freedom to provide electronic communications services across borders and networks in different Member States, ~~building on the concept of a single EU authorisation which puts in place the conditions for ensuring greater consistency and predictability in the content and implementation of sector-specific regulation throughout the Union~~ *by harmonising and simplifying the application of the general authorisation scheme*. Second, it is necessary to ~~enable access on much more convergent terms and conditions to essential inputs for the cross-border provision of electronic communications networks and services, not only~~ *address the conditions and procedures for granting spectrum licenses* for wireless broadband communications, ~~for which both licensed and as well as the use of~~ unlicensed spectrum is key, but also for fixed line connectivity.

Third, in the interests of aligning business conditions and building the digital confidence of citizens, this Regulation should ~~harmonise~~ **address** rules on the protection of ~~end~~-users, especially consumers. This includes rules on non-discrimination, contractual information, termination of contracts and switching, in addition to rules on access to online content, applications and services and on traffic management **and shared, common standards on user privacy and data protection and security**, which not only protect ~~end~~-users but simultaneously guarantee the continued functioning of the Internet ecosystem as an engine of innovation. In addition, further reforms in the field of roaming should give ~~end~~-users the confidence to stay connected when they travel in the Union, ~~and should become over time a driver of convergent pricing and other conditions~~ **without being subject to additional charges over and above the tariffs which they pay** in the ~~Union~~ **Member State where their contract was concluded**. [Am. 11]

- (7) This Regulation should therefore ~~complement~~ **supplement** the existing Union regulatory framework and the applicable national legislations adopted in conformity with Union law, by **introducing certain targeted measures** establishing specific rights and obligations for both electronic communications providers and ~~end~~-users, by making consequential amendments to the existing Directives and to Regulation (EU) No 531/2012 in order to secure greater convergence as well as some substantive changes consistent with a more competitive Single Market. [**Am. 12**]

- (8) The measures provided in this Regulation respect the principle of technological neutrality, that is to say they neither impose nor discriminate in favour of the use of a particular type of technology.
- (9) ~~The provision of cross border electronic communications is still subject to greater burdens than those confined to the national borders. In particular, cross border providers still need to notify and pay fees in individual host Member States. Holders of a single EU~~ ***A certain degree of harmonisation of the general*** authorisation should be subject to a single notification system in the Member State of their main establishment (home Member State), ~~which will reduce the administrative burden for cross border operators. The single EU authorisation should apply to any undertaking that provides or intends,~~ ***involving the Body of European Regulators for Electronic Communications (BEREC) as the recipient of notifications, should further ensure the practical effectiveness of the freedom*** to provide electronic communications services and networks in ~~more than one Member State, thereby entitling it to enjoy the rights attached to the freedom to provide electronic communications services and networks in accordance with this Regulation in any Member State.~~

~~A single EU authorisation defining the legal framework applicable to electronic communications operators providing services across Member States on the basis of a general authorisation in the home Member State should ensure the effectiveness of the freedom to provide electronic communications services and networks in the whole Union~~  
*the whole Union. Furthermore, notification is not mandatory in order to benefit from the general authorisation scheme and not all Member States require it. As a notification requirement imposes an administrative burden on the operator, Member States requiring notification should show that it is justified, in line with Union policy on abolishing unnecessary regulatory burdens. The Commission should be required to evaluate such requirements and, where appropriate, be empowered to request their removal. [Am. 13]*

(10) — ~~The provision of electronic communications services or networks across borders may take different forms, depending on several factors such as the kind of network or services provided, the extent of the physical infrastructure needed or the number of subscribers in the different Member States. The intention to provide electronic communications services cross border or to operate an electronic communications network in more than one Member State may be demonstrated by activities such as negotiation of agreements on access to networks in a given Member State or marketing via an internet site in the language of the targeted Member State. [Am. 14]~~

(11) — ~~Irrespective of how the provider chooses to operate electronic communications networks or provide electronic communications services across borders, the regulatory regime applicable to a European electronic communications provider should be neutral vis-à-vis the commercial choices which underlie the organisation of functions and activities across Member States. Therefore, regardless of the corporate structure of the undertaking, the home Member State of a European electronic communications provider should be considered to be the Member State where the strategic decisions concerning the provision of electronic communications networks or services are taken. [Am. 15]~~



- (12) ~~The single EU authorisation should be based on the general authorisation in the home Member State. It should not be made subject to conditions which are already applicable by virtue of other existing national law which is not specific to the electronic communications sector. In addition, the provisions of this Regulation and Regulation (EU) No 531/2012 should also apply to European electronic communications providers. [Am. 16]~~
- (13) ~~Most sector-specific conditions, for example concerning access to or security and integrity of networks or access to emergency services, are strongly linked to the place where such network is located or the service is provided. Consequently a European electronic communications provider may be subject to conditions applicable in the Member States where it operates, to the extent that this Regulation does not provide otherwise. [Am. 17]~~

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

- (15) ~~It is necessary to ensure that in similar circumstances there is no discrimination in the treatment of any European electronic communications provider by different Member States and that consistent regulatory practices are applied in the single market, in particular as regards measures falling within the scope of Articles 15 or 16 of Directive 2002/21/EC, or Articles 5 or 8 of Directive 2002/19/EC. European electronic communications providers should therefore have a right to equal treatment by the different Member States in objectively equivalent situations in order to enable more integrated multi-territorial operations. Furthermore, there should be specific procedures at Union level for the review of draft decisions on remedies within the meaning of Article 7a of Directive 2002/21/EC in such cases, in order to avoid unjustified divergences in obligations applicable to European electronic communications providers in different Member States.~~ *The principle of equal treatment is a general principle of European Union law enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union. According to settled case-law, that principle requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified. It is necessary to ensure that in similar circumstances there is no discrimination in the treatment of any electronic communications provider by different Member States and that consistent regulatory practices are applied in the single market, in particular as regards measures falling within the scope of Articles 15 or 16 of Directive 2002/21/EC, or Articles 5 or 8 of Directive 2002/19/EC. [Am. 18]*

~~(16) — An allocation of regulatory and supervisory competences should be established between the home and any host Member State of European electronic communications providers with a view to reducing the barriers to entry while ensuring that the applicable conditions for the provision of electronic communications services and networks by these providers are properly enforced. Therefore, while each national regulatory authority should supervise compliance with the conditions applicable in its territory in accordance with Union legislation, including by means of sanctions and interim measures, only the national regulatory authority in the home Member State should be entitled to suspend or withdraw the rights of a European electronic communications provider to provide electronic communications networks and services in the whole Union or part thereof. [Am. 19]~~

- (17) Radio spectrum is a public good and ~~an essential~~ *finite* resource *vital for the achievement of a wide range of social, cultural and economic values* for the internal market for mobile, wireless broadband, *broadcasting* and satellite communications in the Union. *Radio spectrum policy in the Union should contribute to the freedom of expression, including the freedom of opinion and the freedom to receive and disseminate information and ideas, irrespective of borders, as well as freedom and plurality of the media.* Development of wireless broadband communications contributes to the implementation of the Digital Agenda for Europe and in particular to the aim of securing access to broadband at a speed of no less than 30 Mbps by 2020 for all Union citizens and of providing the Union with the highest possible broadband speed and capacity. However, *while some regions of the Union* ~~has fallen behind other major global regions — North America, Africa and parts of Asia — in terms of the roll-out and penetration of the latest generation of~~ *are far advanced, both with respect to the policy goals of the Digital Agenda for Europe and globally, others have been lagging behind. In particular, this is partly due to the fragmentation of the Union process for making available spectrum particularly suitable for high speed* wireless broadband technologies ~~that are necessary to achieve access, which jeopardises the achievement of those policy goals for the Union as a whole.~~

The piecemeal process of authorising and making available the 800 MHz band for wireless broadband communications, with over half of the Member States ~~seeking~~ ***having been granted*** a derogation ***by the Commission*** or otherwise failing to do so by the deadline laid down in Decision No 243/2012/EU, testifies to the urgency of action even within the term of the current Radio Spectrum Policy Programme. ***It also indicates a need for improvement in the Commission's exercise of its powers, of crucial importance for the loyal implementation of Union measures and sincere cooperation between Member States. Stringent efforts by the Commission to enforce already adopted*** Union measures to harmonise the conditions of availability and efficient use of radio spectrum for wireless broadband communications pursuant to Decision 676/2002/EC of the European Parliament and of the Council<sup>1</sup> ~~have not been sufficient to address~~ ***should, by themselves, contribute substantially to addressing*** this problem. [Am. 20]

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

**(17a) *Trading and leasing of spectrum harmonised for wireless broadband communications increases flexibility and leads to more efficient allocation of spectrum resources. It should therefore be further facilitated and stimulated, including by ensuring that all rights of use, including those already granted, are of a sufficiently long duration.***  
**[Am. 21]**

- (18) The application of various national policies creates inconsistencies and fragmentation of the internal market which hamper the roll-out of Union-wide services and the completion of the internal market for wireless broadband communications. It could in particular create unequal conditions for access to such services, hamper competition between undertakings established in different Member States and stifle investments in more advanced networks and technologies and the emergence of innovative services, thereby depriving citizens and businesses of ubiquitous integrated high-quality services and wireless broadband operators of increased efficiency gains from large-scale more integrated operations. Therefore, action at Union level regarding certain aspects of radio spectrum assignment should accompany the development of wide integrated coverage of advanced wireless broadband communications services throughout the Union. At the same time, *sufficient flexibility is needed to accommodate specific national requirements and* Member States should retain the right to adopt measures to organise their radio spectrum for *purposes of* public order, public security ~~purposes and defence~~ *and defence, safeguarding and promoting general interest objectives such as linguistic and cultural diversity and media pluralism.*

[Am. 22]



- (19) Electronic communications services providers, ~~including mobile operators or consortia of such operators, should be able to collectively~~ should be able to collectively organise the efficient, *technologically modern, advanced* and affordable coverage of a vast part of the Union's territory to the long-term benefit of end users, and therefore use radio spectrum across several Member States with similar conditions, procedures, costs, timing, duration in harmonised bands, and with complementary radio spectrum packages, such as a combination of lower and higher frequencies for coverage of densely and less densely populated areas. Initiatives in favour of greater coordination and consistency would also enhance the predictability of the network investment environment. Such predictability would also be greatly favoured by a clear policy in favour of long-term duration of rights of use related to radio spectrum, without prejudice to the indefinite character of such rights in some Member States, and linked in its turn to ~~clear~~ *improved* conditions for the transfer, lease or sharing of part of all of the radio spectrum subject to such an individual right of use. [Am. 23]

- (20) Coordination and consistency of rights of use for radio spectrum should be improved,~~at least for the bands which have been harmonised for wireless fixed, nomadic and mobile broadband communications.~~ This includes the bands identified at ITU level for International Mobile Telecommunications (IMT) Advanced systems, as well as bands used for radio local area networks (RLAN) such as 2.4 GHz and 5 GHz. It should also extend to bands that may be harmonised in the future for wireless broadband communications, as envisaged in Article 3(b) of the RSPP and in the RSPG Opinion on "Strategic challenges facing Europe in addressing the growing radio spectrum demand for wireless broadband" adopted on 13 June 2013,~~such as, in the near future, the 700 MHz, 1.5 GHz and 3.8-4.2 GHz bands.~~ *Considering the significant societal, cultural, social and economic impact of decisions regarding spectrum, such decisions should take due account of the considerations mentioned in Article 8a of Directive 2002/21/EC and, where relevant, of the general-interest objectives mentioned in Article 9(4) of that Directive.* [Am. 24]

- (21) Consistency between the different national radio spectrum assignment procedures would be favoured by more explicit provisions on the criteria relevant to the timing of authorisation procedures; the duration for which the rights of use are granted, fees and their payment modalities; capacity and coverage obligations; definition of the range of radio spectrum and spectrum blocks subject to a granting procedure; objective threshold requirements for the promotion of effective competition; conditions for the tradability of rights of use, including sharing conditions.
- (22) Limitation of the burden of fees to what is required by optimal radio spectrum management, with a balance between immediate payments and periodic fees, would encourage investment in infrastructure and technology roll-out, and pass-on of the attendant cost advantages to end users.

- (23) More synchronised radio spectrum assignments and consequential wireless broadband roll-out across the Union should support the achievement of scale effects in related industries such as for network equipment and terminal devices. Such industries could in turn take into account Union initiatives and policies regarding radio spectrum use, to a greater extent than has recently been the case. A harmonisation procedure for the timetables for assignment and minimum or common duration of rights of use in such bands should therefore be established.
- (24) ~~As regards the other main substantive conditions which may be attached to rights of use of radio spectrum for wireless broadband,~~ The convergent application by individual Member States of the regulatory principles and criteria set down in ~~this Regulation~~ ***the Union regulatory framework*** would be favoured by a coordination mechanism whereby the Commission and the competent authorities of the other Member States have an opportunity to comment in advance of the granting of rights of use by a given Member State and whereby the Commission has an opportunity, taking into account the views of the Member States, to forestall implementation of any proposal which appears to be non-compliant with Union law. [Am. 25]

- (25) Considering the massive growth in radio spectrum demand for wireless broadband, solutions for alternative spectrally efficient access to wireless broadband should be ~~promoted. This~~ ***encouraged and not prevented. This currently*** includes ***but is not restricted to*** the use of low-power wireless access systems with a small-area operating range such as so called 'hotspots' of radio local area networks (RLAN, ~~also known as 'Wi-Fi'~~), as well as networks of low-power small size cellular access points (also called femto-, pico- or metrocells). ***Dynamic spectrum access, including on a licence-exempt basis and other innovative technologies and uses of spectrum should be encouraged and made possible.*** [Am. 26]
- (26) Complementary wireless access systems such as RLAN, in particular publicly accessible RLAN access points, increasingly allow access to the internet for end users and allow mobile traffic off-loading by mobile operators, using harmonised radio spectrum resources without requiring an individual authorisation or right of use of the radio spectrum.

- (27) Most RLAN access points are so far used by private users as a local wireless extension of their fixed broadband connection. If end users, within the limits of their own internet subscription, choose to share access to their RLAN with others, the availability of a large number of such access points, particularly in densely populated areas, should maximise wireless data capacity through radio spectrum re-use and create a cost-effective complementary wireless broadband infrastructure accessible to other end users. Therefore, unnecessary restrictions for end users to share access to their own RLAN access points with other end users or to connect to such access points, should be removed or prevented.

- (28) In addition, unnecessary restrictions to the deployment and interlinkage of RLAN access points should also be removed. Public authorities or providers of public services increasingly use RLAN access points in their premises for their own purposes, for example for use by their personnel, to better facilitate cost-effective on-site access by citizens to e-Government services, or to support provision of smart public services with real-time information, such as for public transport or traffic management. Such bodies could also provide access to such access points for citizens in general as an ancillary service to services offered to the public on such premises, and should be enabled to do so in conformity with competition and public procurement rules. The making available of local access to electronic communications networks within or around a private property or a limited public area as an ancillary service to another activity that is not dependant on such an access, such as RLAN hotspots made available to customers of other commercial activities or to the general public in that area, should not qualify such a provider as an electronic communications provider.

- (29) Low power small-area wireless access points are very small and unobtrusive equipment similar to domestic Wi-Fi routers, for which technical characteristics should be specified at Union level for their deployment and use in different local contexts subject to general authorisation, without undue restrictions from individual planning or other permits. The proportionality of measures specifying the technical characteristics for such use to benefit from general authorisation should be ensured through characteristics which are significantly more restrictive than the applicable maximum thresholds in Union measures regarding parameters such as power output.
- ~~(30) Member States should ensure that the management of radio spectrum at national level does not prevent other Member States from using the radio spectrum to which they are entitled, or from complying with their obligations as regards bands for which the use is harmonised at Union level. Building on the existing activities of the RSPG, a coordination mechanism is necessary to ensure that each Member State has equitable access to radio spectrum and that the outcomes of coordination are consistent and enforceable. [Am. 27]~~



~~(31) Experience in the implementation of the Union's regulatory framework indicates that existing provisions requiring the consistent application of regulatory measures together with the goal of contributing to the development of the internal market have not created sufficient incentives to design access products on the basis of harmonised standards and processes, in particular in relation to fixed networks. When operating in different Member States, operators have difficulties in finding access inputs with the right quality and network and service interoperability levels, and when they are available, such inputs exhibit different technical features. This increases costs and constitutes an obstacle to the provision of services across national borders. [Am. 28]~~

~~(32) The integration of the single market for electronic communications would be accelerated through establishment of a framework to define certain key European virtual products, which are particularly important for providers of electronic communication services to provide cross-border services and to adopt a pan-Union strategy in an increasingly all-IP environment, based on key parameters and minimum characteristics. [Am. 29]~~

~~(33) — The operational needs served by various virtual products should be addressed. European virtual broadband access products should be available in cases where an operator with significant market power has been required under the terms of the Framework Directive and the Access Directive to provide access on regulated terms at a specific access point in its network. First, efficient cross border entry should be facilitated by harmonised products that enable initial provision by cross border providers of services to their end customers without delay and with a predictable and sufficient quality, including services to business customers with multiple sites in different Member States, where this would be necessary and proportionate pursuant to market analysis. These harmonised products should be available for a sufficient period in order to allow access seekers and providers to plan medium and long term investments. [Am. 30]~~

~~(34) Secondly, sophisticated virtual access products that require a higher level of investment by access seekers and allow them a greater level of control and differentiation, particularly by providing access at a more local level, are key to creating the conditions for sustainable competition across the internal market. Hence, these key wholesale access products to next generation access (NGA) networks should also be harmonised to facilitate cross-border investment. Such virtual broadband access products should be designed to have equivalent functionalities to physical unbundling, in order to broaden the range of potential wholesale remedies available for consideration by national regulatory authorities under the proportionality assessment pursuant to Directive 2002/19/EC. [Am. 31]~~

~~(35) Thirdly, it is also necessary to harmonise a wholesale access product for terminating segments of leased lines with enhanced interfaces, in order to enable cross-border provision of mission-critical connectivity services for the most demanding business users. [Am. 32]~~

**(35a) *There is a need to harmonise the conditions for high-quality wholesale products used for the supply of business services to enable the provision of seamless services to cross-border and multi-national corporations across the European Union. Such harmonisation could play a significant role in terms of EU business competitiveness with regards to communications costs. [Am. 33]***

(36) — In a context of progressive migration to 'all IP networks', the lack of availability of connectivity products based on the IP protocol for different classes of services with assured service quality that enable communication paths across network domains and across network borders, both within and between Member States, hinders the development of applications that rely on access to other networks, thus limiting technological innovation. Moreover, this situation prevents the diffusion on a wider scale of efficiencies which are associated with the management and provision of IP-based networks and connectivity products with an assured service quality level, in particular enhanced security, reliability and flexibility, cost effectiveness and faster provisioning, which benefit network operators, service providers and end users. A harmonised approach to the design and availability of these products is therefore necessary, on reasonable terms including, where requested, the possibility of cross supply by the electronic communications undertakings concerned.

**[Am. 34]**

(37) ~~The establishment of European virtual broadband access products under this Regulation should be reflected in the assessment by national regulatory authorities of the most appropriate access remedies to the networks of operators designated as having significant market power, while avoiding over-regulation through the unnecessary multiplication of wholesale access products, whether imposed pursuant to market analysis or provided under other conditions. In particular, the introduction of the European virtual access products should not, in and of itself, lead to an increase in the number of regulated access products imposed on a given operator. Moreover, the need for national regulatory authorities, following the adoption of this Regulation, to assess whether a European virtual broadband access product should be imposed instead of existing wholesale access remedies, and to assess the appropriateness of imposing a European virtual broadband access product in the context of future market reviews where they find significant market power, should not affect their responsibility to identify the most appropriate and proportionate remedy to address the identified competition problem in accordance with Article 16 of Directive 2002/21/EC. [Am. 35]~~

(38) — In the interests of regulatory predictability, key elements of evolving decisional practice under the current legal framework which affect the conditions under which wholesale access products, including European virtual broadband access products, are made available for NGA networks, should also be reflected in the legislation. These should include provisions reflecting the importance, for the analysis of wholesale access markets and in particular of whether there is a need for price controls on such access to NGA networks, of the relationship between competitive constraints from alternative fixed and wireless infrastructures, effective guarantees of non-discriminatory access, and the existing level of competition in terms of price, choice and quality at retail level. The latter consideration ultimately determines the benefits to end users. For example, in the conduct of their case-by-case assessment pursuant to Article 16 of Directive 2002/21/EC and without prejudice to the assessment of significant market power and the application of EU competition rules, national regulatory authorities may consider that in the presence of two fixed NGA networks, market conditions are competitive enough to be able to drive network upgrades and to evolve towards the provision of ultra fast services, which is one important parameter of retail competition. [Am. 36]

- (39) It is to be expected that intensified competition in a single market will lead to a reduction over time in sector-specific regulation based on market analysis. Indeed, one of the results of completing the Single Market should be a greater tendency towards effective competition on relevant markets, with *ex post* application of competition law increasingly being seen as sufficient to ensure market functioning. In order to ensure legal clarity and predictability of regulatory approaches across borders, clear and binding criteria should be provided on how to assess whether a given market still justifies the imposition of *ex-ante* regulatory obligations, by reference to the durability of bottlenecks and the prospects of competition, in particular infrastructure-based competition, and the conditions of competition at retail level on parameters such as price, choice and quality, which are ultimately what is relevant to end users and to the global competitiveness of the EU economy. This should underpin successive reviews of the list of markets susceptible to *ex ante* regulation and help national regulators to focus their efforts where competition is not yet effective and to do so in a convergent manner. The establishment of a true single market for electronic communications may in addition affect the geographical scope of markets, for the purposes of both sector-specific regulation based on competition principles and the application of competition law itself.



- (40) ~~Disparities in the national implementation of sector specific end user protection rules create significant barriers to the single digital market, in particular in the form of increased compliance costs for providers of electronic communications to the public wishing to offer services across Member States. Moreover, fragmentation and uncertainty as to the level of protection granted in different Member States undermines end users' trust and dissuades them from purchasing electronic communications services abroad. In order to achieve the Union's objective to remove barriers to the internal market it is necessary to replace existing, divergent national legal measures with a single and fully harmonised set of sector specific rules which create a high common level of end user protection. Such full harmonisation of the legal provisions should not prevent providers of electronic communications to the public from offering end users contractual arrangements which go beyond that level of protection. [Am. 37]~~
- (41) ~~As This Regulation harmonises only certain sector specific rules, it should be without prejudice to the general consumer protection rules, as established by Union acts *law* and national legislation implementing them. [Am. 38]~~

~~(42) Where the provisions in Chapters 4 and 5 of this Regulation refer to end users, such provisions should apply not only to consumers but also to other categories of end users, primarily micro enterprises. At their individual request, end users other than consumers should be able to agree, by individual contract, to deviate from certain provisions.~~

**[Am. 39]**

(43) The completion of the single market for electronic communications also requires the removal of barriers for end-users to have access to electronic communications services across the Union. Public authorities should therefore not raise or maintain obstacles to the cross-border purchase of such services. Providers of electronic communications to the public should not deny or restrict access or discriminate against end-users on the basis of their nationality or Member State of residence. Differentiation should, however, be possible on the basis of objectively justifiable differences in costs, risks and market conditions such as demand variations and pricing by competitors.

(44) — ~~Very significant price differences continue to prevail, both for fixed and mobile communications, between domestic voice and SMS communications and those terminating in another Member State. While there are substantial variations between countries, operators and tariff packages, and between mobile and fixed services, this continues to affect more vulnerable customer groups and to pose barriers to seamless communication within the Union. This occurs in spite of a very significant reduction, and convergence in absolute terms, of termination rates in the different Member States, and low prices on transit markets. Moreover, the transition to an "all-IP" electronic communications environment should in due course bring additional cost reductions. Any significant retail tariff differences between domestic fixed long distance communications which are communications other than those within one local area identified by a geographic area code in the national numbering plan, and fixed communications terminating in another Member State, should therefore be justified by reference to objective criteria.~~

~~Retail tariffs for international mobile communications should not exceed the euro voice and euro SMS tariffs for regulated roaming calls and SMS messages, respectively, provided for in Regulation (EU) No 531/2012 unless justified by reference to objective criteria. Such criteria may include additional costs and a reasonable related margin. Other objective factors may include differences in related price elasticity and the easy availability to all end-users of alternative tariffs from providers of electronic communications to the public which offer cross-border communications within the Union at little or no extra charge, or of information society services with comparable functionalities, provided that end-users are actively informed of such alternatives by their providers. [Am. 40]~~

- (45) The internet has developed over the past decades as an open platform for innovation with low access barriers for ~~end~~-users, content and application providers and internet service providers. The *principle of "net neutrality" in the open internet means that traffic should be treated equally, without discrimination, restriction or interference, independent of the sender, receiver, type, content, device, service or application. As stated by the European Parliament resolution of 17 November 2011 on the open internet and net neutrality in Europe<sup>1</sup>, the internet's open character has been a key driver of competitiveness, economic growth, social development and innovation – which has led to spectacular levels of development in online applications, content and services – and thus of growth in the offer of, and demand for, content and services, and has made it a vitally important accelerator in the free circulation of knowledge, ideas and information, including in countries where access to independent media is limited. The* existing regulatory framework aims at promoting the ability of users to access and distribute information or run applications and services of their choice. Recently, however, the report of the BEREC on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures. **[Am. 41]**
- (46) The freedom of ~~end~~-users to access and distribute information and ~~lawful~~ content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, ~~including copyright rules and Directive 2000/31/EC.~~ **[Am. 42]**

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<sup>1</sup> P7\_TA(2011)0511 (OJ C 153 E, 31.5.2013, p. 128).

- (47) In an open internet, providers of ~~electronic communications to the public~~ **internet access services** should, within contractually agreed limits on data volumes and speeds for internet access services, not block, slow down, degrade or discriminate against specific content, applications or services or specific classes thereof except for a limited number of ~~reasonable~~ traffic management measures. Such measures should be **technically necessary**, transparent, proportionate and non-discriminatory. ~~Reasonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography. Minimising the effects of network congestion should be considered reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.~~ **Addressing network congestion should be allowed provided that network congestion occurs only temporarily or in exceptional circumstances. National Regulatory Authorities should be able to require that a provider demonstrates that equal treatment of traffic will be substantially less efficient.** [Am. 43]

(47a) *This Regulation is without prejudice to Directive 2002/58/EC. [Am. 44]*

(48) Volume-based tariffs should be considered compatible with the principle of an open internet as long as they allow ~~end~~-users to choose the tariff corresponding to their normal data consumption based on *clear*, transparent *and explicit* information about the conditions and implications of such choice. At the same time, such tariffs should enable providers of ~~electronic communications to the public~~ *internet access services* to better adapt network capacities to expected data volumes. It is essential that ~~end~~-users are fully informed before agreeing to any data volume or speed limitations and the tariffs applicable, that they can continuously monitor their consumption and easily acquire extensions of the available data volumes if desired. [Am. 45]

- (49) ~~There is also end-~~ ***It should be possible to meet*** user demand for services and applications requiring an enhanced level of assured service quality ~~offered by providers of electronic communications to the public or by content, applications or service providers.~~ Such services may comprise inter alia broadcasting ~~via Internet Protocol (IP-TV),~~ video-conferencing and certain health applications. ~~End-~~Users should therefore also be free to conclude agreements on the provision of specialised services with an enhanced quality of service with either providers of ***internet access services, providers of*** electronic communications to the public or providers of content, applications or services. ***Where such agreements are concluded with the provider of internet access, that provider should ensure that the enhanced quality service does not cause material detriment to the general quality of internet access. Furthermore, traffic management measures should not be applied in such a way as to discriminate between competing services.*** [Am. 46]



- (50) In addition, there is demand on the part of content, applications and services providers, for the provision of transmission services based on flexible quality parameters, including lower levels of priority for traffic which is not time-sensitive. The possibility for content, applications and service providers to negotiate such flexible quality of service levels with providers of electronic communications ~~to the public is~~ ***may also be*** necessary for the provision of specialised services and ~~is expected to play an important role in the development of new~~ ***certain*** services such as machine-to-machine (M2M) communications. ~~At the same time such arrangements should allow providers of electronic communications to the public to better balance traffic and prevent network congestion.~~ Providers of content, applications and services and providers of electronic communications ~~to the public should therefore~~ ***should therefore continue to*** be free to conclude specialised services agreements on defined levels of quality of service as long as such agreements do not substantially impair the ~~general~~ quality of internet access services ***service***. [Am. 239]

- (51) National regulatory authorities play an essential role in ensuring that end-users are effectively able to exercise this freedom to avail of open internet access. To this end national regulatory authorities should have monitoring and reporting obligations, and ensure compliance of providers of *internet access services, other providers of* electronic communications ~~to the public~~ *and other service providers* and the availability of non-discriminatory internet access services of high quality which are not impaired by specialised services. In their assessment of a possible general impairment of internet access services, national regulatory authorities should take account of quality parameters such as timing and reliability parameters (latency, jitter, packet loss), levels and effects of congestion in the network, actual versus advertised speeds, performance of internet access services compared with specialised *enhanced quality* services, and quality as perceived by end-users. National regulatory authorities should *establish complaint procedures providing effective, simple and readily available redress mechanisms for end users and* be empowered to impose minimum quality of service requirements on all or individual providers of *internet access services, other providers of* electronic communications ~~to the public~~ *and other service providers* if this is necessary to prevent general impairment/degradation of the quality of service of internet access services. [Am. 240]

- (52) The measures to ensure better transparency and comparability of prices, tariffs, terms and conditions, and quality of service parameters including those specific to the provision of internet access services, should increase the ability of end-users to optimise their selection of providers and thus benefit fully from competition. ***Any voluntary certification scheme for interactive comparison websites, guides or similar tools should be independent from any provider of electronic communications, use plain and clear language, use complete and up-to-date information, have transparent methodology, be reliable and accessibility according to Web Content Accessibility Guidelines 2.0 and have an effective complaints handling procedure. [Am. 49]***

~~(53) — End users should be adequately informed of the price and the type of service offered before they purchase a service. This information should also be provided immediately prior to connection of the call when a call to a specific number or service is subject to particular pricing conditions, such as calls to premium rate services which are often subject to a special rate. Where such an obligation is disproportionate in view of the duration and cost of the tariff information for the service provider compared to the average call duration and the cost risk to which the end-user is exposed, national regulatory authorities may grant a derogation. End users should also be informed if a free phone number is subject to additional charges. [Am. 50]~~

- (54) Providers of electronic communications to the public should inform end-users adequately *inter alia* on their services and tariffs, quality of service parameters, access to emergency services and any limitation, and the choice of services and products designed for disabled consumers. ***In the case of tariff plans with a predefined volume of communications, providers of electronic communications to the public should also inform on the ability of consumers and other end-users so requesting to roll-over any unused volume of the previous billing period into the current billing period.*** This information should be provided in a clear and transparent manner and be specific to the Member States where the services are provided, and in the event of any change, be updated. Providers should be exempted from such information requirements as regards ~~those~~ offers which are individually negotiated. **[Am. 51]**
- (55) Availability of comparable information on products and services is paramount to the ability of end-users to make an independent evaluation of offers. Experience shows that availability of reliable and comparable information increases end-user confidence in the use of services and enhances the willingness to exercise their choice.

- (56) Contracts are an important means of giving end-users a high level of transparency of information and legal certainty. Providers of electronic communications to the public should give end-users clear and comprehensible information on all essential elements of the contract before the user is bound by the contract. The information should be mandatory and not be altered except by subsequent agreement of the end-user and the provider. The Commission and several national regulatory authorities recently found considerable discrepancies between the advertised speed of internet access services and the speed actually available to ~~end~~-users. Providers of electronic communications to the public should therefore inform ~~end~~-users, prior to the conclusion of the contract, of the speed and other quality of service parameters which they can realistically deliver at the ~~end~~-user's main location.

*For fixed and mobile data links, normally available speed is the speed of a communications service that a consumer could expect to receive most of the time when accessing the service, regardless of the time of day. Normally available speed should be derived from estimated speed ranges, speed averages, peak-hour speed and minimal speed. The methodology should be established in BEREC guidelines and regularly reviewed and updated to reflect technology and infrastructure evolution. Member States should ensure that providers enable end-users to have access to comparable information on the coverage of the mobile networks, including different technologies in their Member State, prior to the conclusion of the contract, to enable those end-users to make informed purchasing decisions. [Am. 52]*

- (57) With respect to terminal equipment, contracts should specify any restrictions imposed by the provider on the use of the equipment, for example by way of ‘SIM-locking’ mobile devices, and any charges due on termination of the contract prior to the agreed expiry date. No charges should be due after expiry of the agreed contract duration. ***Contracts should also specify the types of after-sales services, maintenance services and customer support services provided. Whenever possible, that information should also include technical information, provided on demand, concerning the proper functioning of the end-user's chosen terminal equipment. Provided that no technical incompatibility has been identified, that information should be provided free of charge.*** [Am. 53]
- (58) In order to avoid bill shocks ~~and~~, ***for all post-paid services***, users should be able to ~~define~~ ***set a predefined*** maximum financial limit for the charges related to their usage of calls and internet access services. This facility should ~~be available free of charge, with~~ ***include*** an appropriate notification that can be consulted again subsequently, when the limit is being approached. ~~Upon reaching the maximum limit, end users should no longer receive or be charged for those services unless they specifically request the continued provision as agreed with the provider.~~ [Am. 54]



(58a) *The processing of personal data referred to in Regulation of the European Parliament and of the Council laying down measures concerning the European Single Market for electronic communications and to achieve a Connected Continent should comply with Directive 95/46/EC of the European Parliament and of the Council <sup>1</sup>, which governs the processing of personal data carried out in the Member States pursuant to this Regulation and under the supervision of the Member States' competent authorities, in particular the independent public authorities designated by the Member States, and with Directive 2002/58/EC. [Am. 55]*

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<sup>1</sup> *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).*

(58b) *The processing of personal data referred to in Regulation of the European Parliament and of the Council laying down measures concerning the European Single Market for electronic communications and to achieve a Connected Continent should comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council <sup>1</sup>. [Am. 56]*

~~(59) Experience from Member States and from a recent study commissioned by the Executive Agency for Consumers and Health has shown that long contract periods and automatic or tacit extensions of contracts constitute significant obstacles to changing a provider. It is thus desirable that end-users should be able to terminate, without incurring any costs, a contract six months after its conclusion. In such a case, end-users may be requested to compensate their providers for the residual value of subsidised terminal equipment or for the *pro-rata-temporis* value of any other promotions. Contracts which have been tacitly extended should be subject to termination with a one-month notice period. [Am. 57]~~

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<sup>1</sup> *Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).*

- (60) Any significant changes to the contractual conditions imposed by providers of electronic communications services to the public to the detriment of the end-user, for example in relation to charges, tariffs, data volume limitations, data speeds, coverage, or the processing of personal data, should be considered as giving rise to the right of the end-user to terminate the contract without incurring any costs.
- (61) Bundles comprising electronic communications and other services such as linear broadcasting have become increasingly widespread and are an important element of competition. Where divergent contractual rules on contract termination and switching apply to the different services composing such bundles, end-users are effectively prevented from switching to competitive offers for the entire bundle or parts of it. The provisions of this Regulation regarding contract termination and switching should, therefore, apply to all elements of such a bundle.

- (62) In order to take full advantage of the competitive environment, end-users should be able to make informed choices and switch providers when it is in their interests. End-users should therefore be able to switch without being hindered by legal, technical or procedural obstacles, including contractual conditions and charges. Number portability is a key facilitator of consumer choice and effective competition. It should be implemented within a minimum delay so that the number is effectively activated within one working day of concluding an agreement to port a number. Settlement of outstanding bills should not be a condition for execution of a porting request.

- (63) In order to support the provision of one-stop shops and to facilitate a seamless switching experience for end-users, the switching process should be led by the receiving provider of electronic communications to the public. ***BEREC should be empowered to lay down guidelines setting out the respective responsibilities of the receiving and transferring provider in the switching and porting process, ensuring inter alia that the transferring provider of electronic communications to the public should does not delay or hamper the switching process. Automated processes should be used as widely, that the process is automated as much as possible and that a high level of protection of personal data is ensured. Those guidelines should be ensured also address the question of how to ensure continuity in the experience of end-users, including through identifiers, such as email addresses, through, for instance, the opportunity to opt for an email forwarding facility.*** Availability of transparent, accurate and timely information on switching should increase the end-users' confidence in switching and make them more willing to engage actively in the competitive process. [Am. 58]

~~(64) — Contracts with transferring providers of electronic communications to the public should be cancelled automatically after switching without any additional steps being required from end-users. In the case of pre-paid services any credit balance which has not been spent should be refunded to the switching consumer. [Am. 59]~~

~~(65) — End users need to experience continuity when changing important identifiers such as email addresses. To this end, and to ensure that email communications are not lost, end-users should be given the opportunity to opt, free of charge, for an email forwarding facility offered by the transferring internet access service provider in cases where the end-user has an email address provided by the transferring provider. [Am. 60]~~

- (66) Competent national authorities may prescribe the global processes of porting numbers and switching, taking into account technological development and the need to ensure a swift, efficient and consumer-friendly switching process. Competent national authorities should be able to impose proportionate measures to protect end-users adequately throughout the switching process including appropriate sanctions that are necessary to minimise risks of abuse or delays and of end-users being switched to another provider without their consent. They should also be able to set an automatic compensation mechanism for end-users in such instances.
- (67) National regulatory authorities should be able to take effective action to monitor and secure compliance with the provisions of this Regulation, including the power to impose effective financial or administrative penalties in the event of any breach thereof.

~~(68) In order to take account of market and technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of adapting the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.~~  
**[Am. 61]**

(69) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the decision requiring Member States to adapt their plans for compliance with a common timetable for granting rights of use and allowing actual use.



- (70) The implementing powers relating to the harmonisation and coordination of authorisation of radio spectrum, characteristics of small-area wireless access points, ~~coordination between Member States regarding allocation of radio spectrum, more detailed technical and methodological rules concerning European virtual access products and the safeguarding of internet access and of reasonable traffic management and quality of service,~~ *and fair use criteria* should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>1</sup>. [**Am. 62**]

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<sup>1</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (71) In order to ensure consistency between the objective and the measures needed to ~~complete the single market for electronic communications pursuant to~~ *meet the objectives of* this Regulation and some specific existing legislative provisions ~~and to reflect key elements of evolving decisional practice~~, Directives 2002/21/EC, 2002/20/EC, 2002/22/EC, Regulations (EU) No 531/2012 *and (EC) No 1211/2009, as well as Decision No 243/2012/EU*, should be amended. This includes ~~making provision for Directive 2002/21/EC and the related Directives to be read in conjunction with this Regulation, the introduction of strengthened powers of the Commission in order to ensure consistency of remedies imposed on European electronic communications providers having significant market power in the context of the European consultation mechanism~~ harmonisation of the criteria adopted in assessing the definition and competitiveness of relevant markets, the adaptation of the notification system under Directive 2002/20/EC ~~in view of the single EU authorisation~~ as well as the repeal of provisions on minimum harmonisation of end-users rights provided in Directive 2002/22/EC made redundant by the ~~full~~ harmonisation provided in this Regulation. **[Am. 63]**

~~(72) — The mobile communications market remains fragmented in the Union, with no mobile network covering all Member States. As a consequence, in order to provide mobile communications services to their domestic customers travelling within the Union, roaming providers have to purchase wholesale roaming services from operators in a visited Member State. These wholesale charges constitute an important impediment to providing roaming services at price levels corresponding to domestic mobile services. Therefore further measures should be adopted to facilitate lowering these charges. Commercial or technical agreements among roaming providers which allow a virtual extension of their network coverage across the Union provide a means to internalise wholesale costs. To provide appropriate incentives, certain regulatory obligations laid down in Regulation (EU) No 531/2012 of the European Parliament and the Council<sup>1</sup> should be adapted. In particular, when roaming providers, through their own networks or through bilateral or multilateral roaming agreements ensure that all customers in the Union are offered by default roaming tariffs at the level of domestic tariffs, the obligation of domestic providers to enable their customers to access voice, SMS and data roaming services of any alternative roaming provider should not apply to such providers, subject to a transitional period where such access has already been granted. [Am. 64]~~

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<sup>1</sup> — Regulation (EU) No 531/2012 of the European Parliament and the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10).

~~(73) Bilateral or multilateral roaming agreements can allow a mobile operator to treat roaming by its domestic customers on the networks of partners as being to a significant degree equivalent to providing services to such customers on its own networks, with consequential effects on its retail pricing for such virtual on-net coverage across the Union. Such an arrangement at the wholesale level could allow the development of new roaming products and therefore increase choice and competition at retail level. [Am. 65]~~

(74) — The Digital Agenda for Europe and Regulation (EU) No 531/2012 establish the policy objective that the difference between roaming and domestic tariffs should approach zero. In practical terms, this requires that consumers falling into any of the broad observable categories of domestic consumption, identified by reference to a party's various domestic retail packages, should be in a position to confidently replicate the typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union, without additional costs to those incurred in a domestic setting. Such broad categories may be identified from current commercial practice by reference, for example, to the differentiation in domestic retail packages between pre-paid and post-paid customers; GSM-only packages (i.e. voice, SMS); packages adapted for different volumes of consumption; packages for business and consumer use respectively; retail packages with prices per unit consumed and those which provide "buckets" of units (e.g. voice minutes, megabytes of data) for a standard fee, irrespective of actual consumption. The diversity of retail tariff plans and packages available to customers in domestic mobile markets across the Union accommodates varying user demands associated with a competitive market. That flexibility in domestic markets should also be reflected in the intra-Union roaming environment, while bearing in mind that the need of roaming providers for wholesale inputs from independent network operators in different Member States may still justify the imposition of limits by reference to reasonable use if domestic tariffs are applied to such roaming consumption. [Am. 66]

- (75) While it is in the first place for roaming providers to assess themselves the ~~reasonable character of the~~ volumes of roaming voice calls, SMS and data to be covered at domestic rates under their various retail packages, ***they may, notwithstanding the abolition of retail roaming charges by 15 December 2015, apply a "fair use clause" to the consumption of regulated retail roaming services provided at the applicable domestic price level, by reference to fair use criteria. These criteria should be applied in such a way that consumers are in a position to confidently replicate the typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union.*** National regulatory authorities should supervise the application by roaming providers of such ~~reasonable~~ ***fair*** use limits and ensure that they are specifically defined by reference to detailed quantified information in the contracts in terms which are clear and transparent to customers. In so doing, national regulatory authorities should take utmost account of relevant guidance from BEREC, ***based on the results of a public consultation, for the application of fair use criteria in retail contracts provided by roaming providers.*** In its guidance, BEREC should identify various usage patterns substantiated by the underlying voice, data and SMS usage trends at the Union level, and the evolution of expectations as regards in particular wireless data consumption. ***The maximum eurotariff price caps should continue to serve as a safeguard limit for charges for consumption in excess of fair use limits until the expiry of Regulation (EU) No 531/2012. [Am. 67]***

- (76) ~~In addition, the significant reduction in mobile termination rates throughout the Union in the recent past should now allow the elimination of additional roaming charges for incoming calls.~~ *In order to provide clarity and legal certainty, the date of 15 December 2015 should be set for the final phasing out of retail roaming surcharges which began with Regulation (EC) No 717/2007 of the European Parliament and of the Council<sup>1</sup>. In addition, the Commission should by 30 June 2015, in advance of that final abolition of retail surcharges, report on any necessary changes to the wholesale rates or wholesale market mechanisms, taking into account also mobile termination rates (MTR) applicable to roaming throughout the Union.* [Am. 68]

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<sup>1</sup> *Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (OJ L 171, 29.6.2007, p. 32)*

~~(77) In order to provide stability and strategic leadership to BEREC activities, BEREC Board of Regulators should be represented by a full-time Chairperson appointed by the Board of Regulators, on the basis of merit, skills, knowledge of electronic communication market participants and markets, and of experience relevant to supervision and regulation, following an open selection procedure organised and managed by the Board of Regulators assisted by the Commission. For the designation of the first Chairperson of the Board of Regulators, the Commission should, inter alia, draw up a shortlist of candidates on the basis of merit, skills, knowledge of electronic communication market participants and markets, and of experience relevant to supervision and regulation. For the subsequent designations, the opportunity of having a shortlist drawn up by the Commission should be reviewed in a report to be established pursuant to this Regulation. The Office of BEREC should therefore comprise the Chairperson of the Board of Regulators, a Management Committee and an Administrative Manager. [Am. 69]~~



- (78) Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012, **as well as Decision No 243/2012/EU**, should therefore be amended accordingly. [Am. 70]
- (79) The Commission ~~may always~~ **should** seek BEREC's opinion in accordance with Regulation (EC) No 1211/2009, when ~~it considers it~~ necessary for the implementation of the provisions of this Regulation. [Am. 71]
- (79a) *The regulatory framework for electronic communications should be reviewed as called for in the European Parliament resolution on Implementation report on the regulatory framework for electronic communications<sup>1</sup>. The review should be based on ex-post assessments of the impact of the framework since 2009, a full consultation and a thorough ex-ante assessment of expected impacts of the proposals emanating from the review. The proposals should be presented in sufficient time to enable the legislator to analyse and debate them properly.* [Am. 72]

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<sup>1</sup> P7\_TA(2013)0454.

- (80) This Regulation respects fundamental rights and observes the rights and principles enshrined in the Charter of Fundamental Rights of the European Union, notably Article 8 (the protection of personal data), Article 11 (freedom of expression and information), Article 16 (freedom to conduct a business), Article 21 (non-discrimination) and Article 38 (consumer protection).
- (81) Since the objective of this Regulation, namely to establish the regulatory principles and detailed rules necessary to complete a European single market for electronic communications, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Chapter I  
General provisions

Article 1  
Objective and scope

1. This Regulation establishes ~~the regulatory principles and detailed rules necessary to complete a European single market for electronic communications where:~~ **[Am. 73]**
  - (a) ~~providers of electronic communications services and networks have~~ *facilitate the practical exercise of* the right, ~~the ability and the incentive to develop, extend and of providers of electronic communications services and networks to~~ operate their networks and to provide services irrespective of where the provider is established or its customers are situated in the Union *through a harmonised and simplified notification system based on a harmonised template;* **[Am. 74]**

- (b) ~~citizens and businesses have~~ *facilitate the practical exercise of the right and the possibility of citizens and businesses* to access competitive, secure and reliable electronic communications services, ~~irrespective of where they are provided from in the Union,~~ *with common rules to guarantee high standards of protection, privacy and security of their personal data*, without being hampered by cross-border restrictions or unjustified additional costs *and penalties*; [Am. 75]
- (ba) *achieve a more coordinated Union framework for harmonised radio spectrum for wireless broadband communications services*; [Am. 76]
- (bb) *to address the phasing out of unjustified surcharges for roaming communications within the Union*. [Am. 77]

2. This Regulation establishes in particular regulatory principles pursuant to which the Commission, the Body of European Regulators for Electronic Communications (BEREC) and the national *and regional* competent authorities shall act, each within its own competences, in conjunction with the provisions of Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC: **[Am. 78]**
- (a) ~~to secure simplified, predictable and convergent regulatory conditions regarding key administrative and commercial parameters, including as regards the proportionality of individual obligations which may be imposed pursuant to market analysis;~~  
**[Am. 79]**
- (b) ~~to promote sustainable competition within the single market and the global competitiveness of the Union, and to reduce sector-specific market regulation accordingly as and when these objectives are achieved;~~ **[Am. 80]**
- (c) to favour investment and innovation in new and enhanced high-capacity infrastructures ~~which~~ *and to ensure that they* reach throughout the Union and ~~which~~ can cater for evolving end-user demand, *wherever end-users may be located in the Union*; **[Am. 81]**

~~(d) to facilitate innovative and high quality service provision; [Am. 82]~~

~~(e) to ensure the availability and highly efficient use of radio spectrum, whether subject to general authorisation or to individual rights of use, for wireless broadband services in support of innovation, investment, jobs and end user benefits; [Am. 83]~~

~~(f) to serve the interests of citizens and end users in connectivity by fostering the investment conditions for an increase in the choice and quality of network access and of service, and by facilitating mobility across the Union and both social and territorial inclusion. [Am. 84]~~

~~3. In order to ensure implementation of the overarching regulatory principles set out in paragraph 2, this Regulation furthermore establishes the necessary detailed rules for:~~

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

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

- ~~(c) — the harmonised provision at Union level of certain wholesale products for broadband under convergent regulatory conditions;~~
- ~~(d) — a coordinated European framework for the assignment of harmonised radio spectrum for wireless broadband communications services, thereby creating a European wireless space;~~
- ~~(e) — the harmonisation of rules related to rights of end-users and the promotion of effective competition in retail markets, thereby creating a European consumer space for electronic communications;~~
- ~~(f) — the phasing out of unjustified surcharges for intra-Union communications and roaming communications within the Union. [Am. 85]~~

**3a. *The provisions of this Regulation shall be without prejudice to the Union acquis relating to data protection and Articles 7 and 8 of the Charter of Fundamental Rights of the European Union. [Am. 86]***

## Article 2

### Definitions

For the purposes of this Regulation, the definitions set out in Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/77/EC shall apply.

The following definitions shall also apply:

- (1) ~~"European electronic communications provider" means an undertaking established in the Union providing or intending to provide electronic communications networks or services, whether directly or by means of one or more subsidiaries, directed to more than one Member State and which cannot be considered a subsidiary of another electronic communications provider; [Am. 87]~~
- (2) "provider of electronic communications to the public" means an undertaking providing public electronic communications networks or publicly available electronic communications services;



- ~~(3) "subsidiary" means an undertaking in which another undertaking directly or indirectly:~~
- ~~(i) has the power to exercise more than half the voting rights, or~~
  - ~~(ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or~~
  - ~~(iii) has the right to manage the undertaking's affairs; [Am. 88]~~
- ~~(4) "single EU authorisation" means the legal framework applicable to a European electronic communications provider in the whole Union based on the general authorisation in the home Member State and in accordance with this Regulation; [Am. 89]~~
- ~~(5) "home Member State" means the Member State where the European electronic communications provider has its main establishment; [Am. 90]~~
- ~~(6) "main establishment" means the place of establishment in the Member State where the main decisions are taken as to the investments in and conduct of the provision of electronic communications services or networks in the Union; [Am. 91]~~
- ~~(7) "host Member State" means any Member State different from the home Member State where a European electronic communications provider provides electronic communications networks or services; [Am. 92]~~

- (8) "harmonised radio spectrum for wireless broadband communications" means radio spectrum for which the conditions of availability and efficient, *efficiency and primary* use are harmonised at Union level, in ~~particular pursuant to~~ *accordance with provisions laid down in Directive 2002/21/EC and* Decision 676/2002/EC, and which serves for electronic communications services other than broadcasting; [Am. 93]
- (9) "small-area wireless access point" means a low power wireless network access equipment of small size operating within a small range, *using licensed spectrum or a combination of licensed and license-exempt spectrum*, which may or may not be part of a public terrestrial mobile communications network, and be equipped with one or more low visual impact antennas, which allows wireless access by the public to electronic communications networks regardless of the underlying network topology; [Am. 94]
- (10) "radio local area network" (RLAN) means a low power wireless access system, operating within a small range, with a low risk of interference to other such systems deployed in close proximity by other users, using on a ~~non-exclusive~~ *license-exempt* basis spectrum for which the conditions of availability and efficient use for this purpose are harmonised at Union level; [Am. 95]

- (11) ~~"virtual broadband access" means a type of wholesale access to broadband networks that consists of a virtual access link to the customer premises over any access network architecture, excluding physical unbundling, together with a transmission service to a defined set of points of handover, and including specific network elements, specific network functionalities and ancillary IT systems; [Am. 96]~~
- (12) ~~"assured service quality (ASQ) connectivity product" means a product that is made available at the internet protocol (IP) exchange, which enables customers to set up an IP communication link between a point of interconnection and one or several fixed network termination points, and enables defined levels of end-to-end network performance for the provision of specific services to end users on the basis of the delivery of a specified guaranteed quality of service, based on specified parameters; [Am. 97]~~
- (12a) *"net neutrality" means the principle according to which all internet traffic is treated equally, without discrimination, restriction or interference, independently of its sender, recipient, type, content, device, service or application; [Ams 234 and 241]*

- (13) ~~"long distance communications" means voice or messages services terminating outside the local exchange and regional charging areas as identified by a geographic area code in the national numbering plan; [Am. 98]~~
- (14) "internet access service" means a publicly available electronic communications service that provides connectivity to the internet *in accordance with the principle of net neutrality*, and thereby connectivity between virtually all end points of the internet, irrespective of the network technology *or terminal equipment* used;
- (15) "specialised service" means an electronic communications service ~~or any other service that provides the capability to access specific content, applications or services, or a combination thereof, and whose technical characteristics are controlled from end to end or provides the capability to send or receive data to or from a determined number of parties or endpoints;~~ *optimised for specific content, applications or services, or a combination thereof, provided over logically distinct capacity, relying on strict admission control, offering functionality requiring enhanced quality from end to end*, and that is not marketed or usable as a substitute for internet access service. [Ams 235 and 242]

~~(16) "receiving provider of electronic communications to the public" means the provider of electronic communications to the public to which the telephone number or service is transferred; [Am. 101]~~

~~(17) "transferring provider of electronic communications to the public" means the provider of electronic communications to the public from which a telephone number or service is transferred. [Am. 102]~~

Chapter II  
Single EU authorisation

Article 3

Freedom to provide electronic communications across the Union

1. ~~A European~~ **Any** electronic communications provider has the right to provide electronic communications networks and services in the whole Union and to exercise the rights linked to the provision of such networks and services in each Member State where it operates pursuant to a single EU authorisation which is subject only to the notification requirements provided in Article 4. **[Am. 103]**
2. ~~The European electronic communications provider is subject to the rules and conditions applied in each Member State concerned in compliance with Union law unless otherwise provided in this Regulation and without prejudice to Regulation (EU) No 531/2012.~~  
**[Am. 104]**

3. ~~By way of derogation from Article 12 of Directive 2002/20/EC, a European electronic communications provider may be subject to administrative charges applicable in the host Member State only if it has an annual turnover for electronic communications services in that Member State above 0,5% of the total national electronic communications turnover. In levying these charges only the turnover for electronic communications services in the Member State concerned shall be taken into account. [Am. 105]~~
4. ~~By way of derogation from Article 13(1)(b) of Directive 2002/22/EC a European electronic communications provider may be subject to the contributions imposed to share the net cost of universal service obligations in the host Member State only if it has an annual turnover for electronic communications services in that Member State above 3% of the total national electronic communications turnover. In levying any such contribution only the turnover in the Member State concerned shall be taken into account. [Am. 106]~~
5. ~~A European~~ *National regulatory authorities shall treat* electronic communications provider shall be entitled to equal treatment by the national regulatory authorities of different *providers equally in comparable situations, irrespective of their* Member States in objectively equivalent situations *State of establishment.* [Am. 107]

- ~~6. In the event of a dispute between undertakings involving a European electronic communications provider regarding obligations applicable in accordance with Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC, this Regulation or Regulation (EU) No 531/2012 in a host Member State, the European electronic communications provider may consult the national regulatory authority in the home Member State, which may deliver an opinion with a view to ensuring the development of consistent regulatory practices. The national regulatory authority in the host Member State shall take utmost account of the opinion issued by the national regulatory authority of the home Member State when deciding the dispute. [Am. 108]~~
- ~~7. European electronic communications providers who, at the date of entry into force of this Regulation, have the right to provide electronic communications networks and services in more than one Member State shall submit the notification provided for in Article 4 at the latest by 1 July 2016. [Am. 109]~~



#### Article 4

##### ~~Notification procedure for European electronic communications providers~~

- ~~1. A European electronic communications provider shall submit a single notification in accordance with this Regulation to the national regulatory authority of the home Member State, before beginning activity in at least one Member State.~~
- ~~2. The notification shall contain a declaration of the provision or the intention to commence the provision of electronic communications networks and services and shall be accompanied by the following information only:~~
  - ~~(a) the name of the provider, his legal status and form, registration number, where the provider is registered in trade or other similar public register, the geographical address of the main establishment, a contact person, a short description of the networks or services provided or intended to be provided, including identification of the home Member State;~~

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

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

- ~~3. Any change to the information submitted in accordance with paragraph 2 shall be made available to the national regulatory authority of the home Member State within one month following the change. In the event that the change to be notified concerns the intention to provide electronic communications networks or services in a host Member State that is not covered by a previous notification, the European electronic communications provider may begin activity in that host Member State upon notification.~~
- ~~4. Non-compliance with the notification requirement laid down in this Article shall constitute a breach of the common conditions applicable to the European electronic communications provider in the home Member State.~~
- ~~5. The national regulatory authority of the home Member State shall forward the information received in accordance with paragraph 2 and any change to that information in accordance with paragraph 3 to the national regulatory authorities of the concerned host Member States and to the BEREC Office within one week following reception of such information or any change.~~

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

- ~~6. At the request of a European electronic communications provider, the national regulatory authority of the home Member State shall issue a declaration in accordance with Article 9 of Directive 2002/20/EC, specifying that the undertaking in question is subject to the single EU authorisation.~~
- ~~7. In the event that one or more national regulatory authorities in different Member States consider that the identification of the home Member State in a notification made in accordance with paragraph 2 or any change to the provided information made available in accordance with paragraph 3 does not correspond or no longer corresponds to the main establishment of the undertaking pursuant to this Regulation, it shall refer the issue to the Commission, substantiating the grounds on which it bases its assessment. A copy of the referral shall be communicated to the BEREC Office for information. The Commission, having given the relevant European electronic communications provider and the national regulatory authority of the disputed home Member State the opportunity to express their views, shall issue a decision determining the home Member State of the undertaking in question pursuant to this Regulation within three months following the referral of the issue.~~
- [Am. 110]**

## Article 5

### Compliance with the single EU authorisation

1. ~~The national regulatory authority of each concerned Member State shall monitor and ensure, in accordance with its national legislation implementing the procedures provided for in Article 10 of Directive 2002/20/EC, that European electronic communications providers comply with the rules and conditions applicable in its territory in accordance with Article 3.~~
2. ~~The national regulatory authority of a host Member State shall transmit to the national regulatory authority of the home Member State any relevant information concerning individual measures adopted in relation to a European electronic communications provider with a view to ensuring compliance with the rules and conditions applicable in its territory in accordance with Article 3.~~ **[Am. 111]**

## Article 6

### ~~Suspension and withdrawal of the rights to provide electronic communications of European electronic communications providers~~

- ~~1. Without prejudice to measures concerning suspension or withdrawal of rights of use for spectrum or numbers granted by any concerned Member State and interim measures adopted in accordance with paragraph 3, only the national regulatory authority of the home Member State may suspend or withdraw the rights of a European electronic communications provider to provide electronic communications networks and services in the whole Union or part thereof in accordance with national legislation implementing Article 10(5) of Directive 2002/20/EC.~~
- ~~2. In cases of serious or repeated breaches of the rules and conditions applicable in a host Member State in accordance with Article 3, where measures aimed at ensuring compliance taken by the national regulatory authority in the host Member State in accordance with Article 5 have failed, it shall inform the national regulatory authority in the home Member State and request that it adopts the measures provided for in paragraph 1.~~

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

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

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

5. ~~Taking utmost account of any opinion of the national regulatory authority of the host Member States concerned, the national regulatory authority of the home Member State shall adopt a final decision and shall communicate it to the Commission, BEREC and the national regulatory authorities of the host Member States affected by such a decision within one week after its adoption.~~
6. ~~Where the national regulatory authority of the home Member State has decided to suspend or withdraw rights of a European electronic communications provider in accordance with paragraph 1, the national regulatory authority of any host Member State concerned shall take appropriate measures to prevent the European electronic communications provider from further providing services or networks concerned by this decision within its territory.~~
- [Am. 112]**



## Article 7

### Coordination of enforcement measures

1. ~~When applying Article 6, the national regulatory authority of the home Member State shall take supervisory or enforcement measures related to an electronic communications service or network provided in another Member State or which has caused damage in another Member State with the same diligence as if the electronic communications service or network concerned was provided in the home Member State.~~
2. ~~The Member States shall ensure that within their territories it is possible to serve the legal documents relating to measures taken in accordance with Articles 5 and 6. [Am. 113]~~

Chapter III  
European inputs

Section 1 - Coordination of use of radio spectrum within the single market

Article 8

Scope of application and general provisions

1. This section shall apply to harmonised radio spectrum for wireless broadband communications *in accordance with Directive 2002/21/EC, Decision No 676/2002/EC and Decision No 243/2012/EU*. [Am. 114]
2. This section shall be without prejudice to the right of the Member States to benefit from fees imposed to ensure the optimal use of radio spectrum resources in accordance with Article 13 of Directive 2002/20/EC and to organise and use their radio spectrum for public order, public security and defence *safeguarding general interest objectives such as cultural diversity and media pluralism*. [Am. 115]

3. In the exercise of powers conferred in this section, the Commission shall take utmost account of any relevant opinion issued by the Radio Spectrum Policy Group (RSPG) established by Commission Decision 2002/622/EC<sup>1</sup> *and of any regulatory best practice, report or advice issued by BEREC on matters within its competence*. [Am. 116]

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<sup>1</sup> Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (OJ L 198, 27.7.2002, p. 49).

## *Article 8a*

### *Harmonisation of certain aspects relating to transfer or lease of individual rights to use radio frequencies and their duration*

- 1. Without prejudice to Directive 2002/21/EC or to the application of competition rules to undertakings, the following shall apply with respect to the transfer or lease of rights of use of spectrum, or parts thereof, identified in Article 6(8) of Decision No 243/2012/EU:*
  - (a) Member States shall make current details of all such rights of use publicly available in a standardised electronic format;*
  - (b) Member States may not refuse to allow a transfer or lease to an existing holder of such rights of use;*
  - (c) in cases not covered by point (b), Member States may refuse a transfer only where it is found that there is a clear risk that the new holder would be unable to meet the existing conditions for the right of use;*
  - (d) in cases not covered by point (b), Member States may not refuse a lease where the transferor undertakes to remain liable for meeting the existing conditions for the right of use.*

2. *Any administrative charge imposed on undertakings in connection with processing an application for the transfer or lease of spectrum shall, in total, cover only the administrative costs, including ancillary steps such as the issuance of a new right of use, incurred in processing the application. Any such charges shall be imposed in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges. Article 12(2) of Directive 2002/20/EC shall apply to charges imposed under this paragraph.*
3. *All rights of use of spectrum shall be granted with a minimum duration of 25 years, and in any case for a duration appropriate to incentivise investment and competition and discourage the under-use or "hoarding" of spectrum. Member States may grant rights of use of indefinite duration.*
4. *Member States may provide for proportionate and non-discriminatory withdrawal of rights, including those with a 25 year minimum duration, in order to ensure the efficient use of spectrum including, but not limited to, spectrum management purposes, national security, breach of licence, harmonised change of use of a band and non-payment of fees.*

5. *The duration of all existing rights of use of spectrum is hereby extended to 25 years from their date of grant, without prejudice to other conditions attached to the right of use and to rights of use of indefinite duration.*
6. *The introduction of minimum 25 year licence duration should not impede the ability of regulators to issue temporary licences and licences for secondary uses in a harmonised band. [Am. 117]*

## Article 9

Radio Spectrum use for wireless broadband communications: regulatory principles

1. ***Without prejudice to general interest objectives***, the national competent authorities for radio spectrum shall contribute to the development of a wireless space where investment and competitive conditions for high-speed wireless broadband communications converge and which enables planning and provision of integrated, ***interoperable, open*** multi-territorial networks and services and economies of scale, thereby fostering innovation, economic growth and the long-term benefit of end users.

The national competent authorities shall refrain from applying procedures or imposing conditions for the use of radio spectrum which may unduly impede ~~European~~ electronic communications providers from providing integrated electronic communications networks and services in several Member States or throughout the Union. ***They shall ensure that the development of such a wireless space does not unduly impede, by creating interferences, the operation of existing services or applications in the concerned spectrum bands as well as in adjacent bands.*** [Am. 118]

2. The national competent authorities shall apply the least onerous authorisation system possible for allowing the use of radio spectrum, on the basis of objective, transparent, non-discriminatory and proportionate criteria, in such a way as to maximise flexibility and efficiency in radio spectrum use and to promote comparable conditions throughout the Union for integrated multi-territorial investments and operations by ~~European~~ electronic communications providers. **[Am. 119]**
3. When establishing authorisation conditions and procedures for the use of radio spectrum, national competent authorities shall have regard in particular to ~~equal~~ ***objective, transparent and non-discriminatory*** treatment between existing and potential operators ~~and, as well as to collective, shared and unlicensed use of spectrum. National competent authorities shall also ensure the coexistence~~ between ~~European electronic communications providers and other undertakings~~ ***existing and new radio spectrum users. To this end, they shall conduct a comprehensive impact assessment as well as consultations, which both shall involve all stakeholders.*** **[Am. 120]**



4. Without prejudice to paragraph 5, the national competent authorities shall take into account and, where necessary, shall reconcile the following regulatory principles when establishing authorisation conditions and procedures for rights of use for radio spectrum:
- (a) maximisation of end user interest, including end users' interest in both efficient long-term investment and innovation in wireless networks and services and in effective competition;
  - (b) ensuring the most efficient use and effective management of radio *spectrum as well as availability of unlicensed* spectrum;
  - (c) ensuring predictable and comparable conditions to enable the ~~planning of~~ *long-term* network investments and services on a multi-territorial basis and the achievement of scale economies;
  - (d) ensuring the necessity and proportionality of the conditions imposed, including through an objective *and transparent* assessment of whether it is justified to impose additional conditions which could be in favour of or to the detriment of certain operators;

- (e) ensuring wide territorial coverage of high-speed wireless broadband networks and a high level of penetration and consumption of related services *at the same time taking account of the public interest and the social, cultural and economic value of spectrum as a whole*;
- (ea) *ensuring that any change in policy with regard to the efficient use of spectrum takes account of its impact on the public interest in terms of harmful interference and costs.* [Am. 121]

5. When considering whether to impose any of the specific conditions in respect of rights of use of radio spectrum referred to in Article 10, national competent authorities shall have particular regard to the criteria laid down in that Article.

5a. *National competent authorities shall ensure that information is available on authorisation conditions and procedures for the use of radio spectrum, and allow stakeholders to present their views during the process.* [Am. 122]

## Article 10

### Relevant criteria to be taken in account for use of radio spectrum

1. When determining the amount and type of radio spectrum to be assigned in a given procedure for granting rights of use for radio spectrum, the national competent authorities shall have regard to the following:
  - (a) the technical characteristics *and the current and planned use* of different available radio spectrum bands; **[Am. 123]**
  - (b) the possible combination in a single procedure of complementary bands; and
  - (c) the relevance of coherent portfolios of radio spectrum rights of use in different Member States to the provision of networks or services to the entire Union market or a significant part thereof.

2. When determining whether to specify any minimum or maximum amount of radio spectrum, which would be defined in respect of a right of use in a given band or in a combination of complementary bands, national competent authorities shall ensure:
- (a) the most efficient use of the radio spectrum in accordance with Article 9(4)(b), taking into account the characteristics *and the current and planned use* of the band or bands concerned; **[Am. 124]**
  - (b) efficient network investment in accordance with Article 9(4)(a).

This paragraph shall be without prejudice to the application of paragraph 5 as regards conditions defining maximum amounts of radio spectrum.

3. National competent authorities shall ensure that the fees for rights of use for radio spectrum *of all types*, if any:
- (a) appropriately reflect the social, *cultural* and economic value of the radio spectrum, including beneficial externalities;
  - (b) avoid under-utilisation and foster investment in the capacity, coverage and quality of networks and services;
  - (c) avoid discrimination and ensure equality of opportunity between operators, including between existing and potential operators;
  - (d) achieve an optimal distribution between ~~immediate and, if any~~ *upfront and, preferably*, periodic payments, having regard in particular to the need to incentivise rapid network roll-out and radio spectrum utilisation in accordance with Article 9(4)(b) and (e);
- (da) are paid not more than one year before operators can start using the radio spectrum.*

***The technical and regulatory conditions attached to the rights of use for radio spectrum shall be defined and available to the operators and stakeholders prior the start of the auction process.***

This paragraph shall be without prejudice to the application of paragraph 5 as regards any conditions resulting in differentiated fees between operators which are laid down with a view to promoting effective competition. [Am. 125]

4. National competent authorities may impose obligations to reach minimum territorial coverage only when they are necessary and proportionate, in accordance with Article 9(4)(d), to achieve specific objectives of general interest determined at national level. When imposing such obligations, the national competent authorities shall have regard to the following:
  - (a) any pre-existing coverage of the national territory by the relevant services, or by other electronic communications services;
  - (b) the minimisation of the number of operators potentially subject to such obligations;

- (c) the possibility of burden sharing and reciprocity among various operators, including providers of other electronic communications services;
- (d) the investments required to achieve such coverage and the need to reflect these in the applicable fees;
- (e) the technical suitability of the relevant bands for efficient provision of wide territorial coverage.

5. When determining whether to impose any of the measures to promote effective competition provided for in Article 5(2) of Decision No 243/2012/EU national competent authorities shall base their decision on an objective, prospective assessment of the following, taking into account market conditions and available benchmarks:

- (a) whether or not effective competition is likely to be maintained or achieved in the absence of such measures; and
- (b) the likely effect of such temporary measures on existing and future investments by market operators.

6. National competent authorities shall determine conditions under which undertakings may transfer or lease part or all of their individual rights to use radio spectrum to other undertakings, including the sharing of such radio spectrum. When determining those conditions, national competent authorities shall have regard to the following:

- (a) optimisation of efficient radio spectrum use in accordance with Article 9(4)(b);
- (b) enabling the exploitation of beneficial sharing opportunities;
- (c) reconciliation of the interests of existing and potential right-holders;
- (d) creation of a better-functioning, more liquid market for access to radio spectrum.

This paragraph shall be without prejudice to the application of competition rules to undertakings.



7. National competent authorities shall authorise the sharing of passive and active infrastructure and the joint roll-out of infrastructure for wireless broadband communications, taking into account:
- (a) the state of infrastructure-based competition and any additional service-based competition;
  - (b) the requirements of efficient radio spectrum use;
  - (c) increased choice and a higher quality of service for end users;
  - (d) technological innovation.

This paragraph shall be without prejudice to the application of competition rules to undertakings.

## Article 11

### Additional provisions related to conditions for use of radio spectrum

1. Where the technical conditions for the availability and efficient use of harmonised radio spectrum for wireless broadband communications make it possible to use the relevant radio spectrum under a general authorisation regime, national competent authorities shall avoid imposing any additional condition and shall prevent any alternative use from impeding the effective application of such harmonised regime. ***This shall be without prejudice to the provisions of Article 2(8).*** [Am. 126]
2. National competent authorities shall establish authorisation conditions whereby an individual authorisation or right of use may be revoked or cancelled in case of persistent failure to use the relevant radio spectrum. The revocation or cancellation may be subject to appropriate compensation when the failure to use the radio spectrum is due to grounds beyond the control of the operator, and is objectively justified.

3. National competent authorities shall consider the need to establish, in conformity with competition rules, and with a view to the timely freeing up or sharing of sufficient harmonised radio spectrum in cost-efficient bands for high-capacity wireless broadband services:
  - (a) appropriate compensation or incentive payments to existing users or radio spectrum usage right holders, inter alia through incorporation in the bidding system or fixed amount for rights of use; or
  - (b) incentive payments to be paid by existing users or radio spectrum usage right holders.
4. The national competent authorities shall consider the need to fix appropriate minimum technology performance levels for different bands in accordance with Article 6(3) of Decision No 243/2012/EU with a view to improving spectral efficiency and without prejudice to measures adopted under Decision No 676/2002/EC.

When fixing those levels, they shall in particular:

- (a) have regard to the cycles of technology development and of renewal of equipment, in particular terminal equipment; and
- (b) apply the principle of technology neutrality to achieve the specified performance level, in accordance with Article 9 of Directive 2002/21/EC.

## Article 12

Harmonisation of certain authorisation conditions relative to wireless broadband communications

1. ***Taking full account of Directive 2002/21/EC, in particular Articles 7, 8, 8a, 9 and 9a thereof, Decision No 676/2002/EC and Decision No 243/2012/EU, in particular Articles 2, 3, 5 and 6 thereof,*** national competent authorities shall establish timetables for the granting or reassignment of rights of use, or for the renewal of those rights under the terms of existing rights, ~~which shall apply to radio spectrum harmonised for wireless broadband communications.~~ **[Am. 127]**

~~The duration of the rights of use or the dates for subsequent renewal shall be set well in advance of the relevant procedure included in the timetable referred to in the first subparagraph. The timetables, durations and renewal cycles shall take account of the need for a predictable investment environment, the effective possibility to release any relevant new radio spectrum bands harmonised for wireless broadband communications and of the period for amortisation of related investments under competitive conditions.~~ **[Am. 128]**

2. In order to ensure a coherent implementation of paragraph 1 throughout the Union and in particular to enable the synchronised availability of wireless services within the Union, the Commission ~~may~~ **shall**, by way of implementing acts ***to be adopted within one year from the date of entry into force of this Regulation***:
- (a) establish a common timetable for the Union as a whole, or timetables appropriate to the circumstances of different categories of Member States, the date or dates by which individual rights of use for a harmonised band, or a combination of complementary harmonised bands, shall be granted and actual use of the radio spectrum shall be allowed for exclusive or shared provision of wireless broadband communications throughout the Union;
  - (b) determine a minimum duration ***that is no less than 25 years***, for the rights granted in the harmonised bands, ***and in any case for a duration appropriate to incentivise investment, innovation and competition, and discourage the under-use or 'hoarding' of spectrum; or determine that the rights are to be granted for an indefinite duration***;

- (c) determine, in the case of rights which are not indefinite in character, a synchronised expiry or renewal date for the Union as a whole;
- (d) define the date of expiry of any existing rights of use of *by which, in bands* harmonised ~~bands other than~~ for wireless broadband communications, ~~or, in the case of rights of indefinite duration, the date by which the right of use~~ *an existing right of use of spectrum* shall be amended, in order to allow the provision of wireless broadband communications.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2) *as well as without prejudice to the provisions set in article 9 (3) and (4) of Directive 2002/21/EC*. [Am. 129]

3. ***Subject to Article 8a(4)***, the Commission ~~may~~ ***shall*** also adopt implementing acts ***within one year from the date of entry into force of this Regulation***, harmonising the date of expiry or renewal of individual rights to use radio spectrum for wireless broadband in harmonised bands, which already exist at the date of adoption of such acts, with a view to synchronising throughout the Union the date for renewal or reassignment of rights of use for such bands, including possible synchronisation with the date of renewal or reassignment of other bands harmonised by implementing measures adopted in accordance with paragraph 2 or with this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

Where implementing acts provided for in this paragraph define a harmonised date for renewal or reassignment of rights of use of radio spectrum which falls after the date of expiry or renewal of any existing individual rights of use of such radio spectrum in any of the Member States, ~~the national competent authorities shall extend the existing~~ ***duration of those*** rights ~~until the harmonised date under the same previously applicable substantive authorisation~~ ***of use shall be extended without prejudice to other*** conditions, ~~including any applicable periodic fees~~ ***attached to those rights***.



~~Where the extension period granted in accordance with the second subparagraph is significant in comparison with the original duration of the rights of use, national competent authorities may subject the extension of rights to any adaptations of the previously applicable authorisation conditions which are necessary in the light of the changed circumstances, including the imposition of additional fees. These additional fees shall be based on an application *pro rata temporis* of any initial fee for the original rights of use which was expressly calculated by reference to the originally foreseen duration.~~

The implementing acts provided for in this paragraph shall not require the shortening of the duration of existing rights of use in any Member State except in accordance with Article 14(2) of Directive 2002/20/EC and shall not apply to existing rights of indefinite duration.

Where the Commission adopts an implementing act pursuant to paragraph 2, it may apply the provisions of this paragraph *mutatis mutandis* to any rights of use of the harmonised band concerned for wireless broadband.**[Am. 130]**

4. When adopting the implementing acts provided for in paragraphs 2 and 3, the Commission shall have regard to:
- (a) the regulatory principles set out in Article 9;
  - (b) objective variations across the Union in the needs for additional radio spectrum for wireless broadband provision, while taking into account common radio spectrum needs for integrated networks covering several Member States;
  - (c) the predictability of operating conditions for existing radio spectrum users;
  - (d) the take-up, development and investment cycles of successive generations of wireless broadband technologies;
  - (e) end-user demand for high-capacity wireless broadband communications.

In determining timetables for different categories of Member States which have not already granted individual rights of use and allowed actual use of the harmonised band in question, the Commission shall have due regard to any submissions made by Member States regarding the way radio spectrum rights have been historically granted, the grounds of restriction provided for in Article 9(3) and (4) of Directive 2002/21/EC, the possible need to vacate the band in question, the effects on competition or geographical or technical constraints, taking into account the effect on the internal market. The Commission shall ensure that implementation is not unduly deferred and that any variation in timetables between Member States does not result in undue differences in the competitive or regulatory situations between Member States.

5. Paragraph 2 shall be without prejudice to the right of the Member States to grant rights of use for and to allow actual use of a harmonised band before the adoption of an implementing act in respect of that band, subject to compliance with the second subparagraph of this paragraph, or in advance of the harmonised date established by an implementing act for that band.

Where national competent authorities grant rights of use in a harmonised band before the adoption of an implementing act in respect of that band, they shall define the conditions of such grant, ~~and in particular those relative to duration,~~ in such a way that beneficiaries of the rights of use are made aware of the possibility that the Commission ~~would~~ **will** adopt implementing acts in accordance with paragraph 2 ~~establishing a minimum duration of such rights or a synchronised expiry or renewal cycle~~ for the Union as a whole. This subparagraph shall not apply to the grant of rights of indefinite duration. **[Am. 131]**

6. For the harmonised bands for which a common timetable for granting rights of use and allowing actual use has been established in an implementing act adopted in accordance with paragraph 2, national competent authorities shall provide timely and sufficiently detailed information to the Commission on their plans to ensure compliance. The Commission ~~may~~ **shall** adopt **an** implementing ~~aets~~ **act** defining the format and procedures for the provision of such information. ~~Those~~ ***within one year from the date of entry into force of this Regulation. That*** implementing ~~aets~~ **act** shall be adopted in accordance with the examination procedure referred to in Article 33(2). **[Am. 132]**

Where the Commission considers, upon reviewing such detailed plans provided by a Member State, that it is unlikely that the Member State in question will be able to comply with the timetable applicable to it, the Commission may adopt a decision by means of implementing act requiring that Member State to adapt its plans in an appropriate way to ensure such compliance.

## ***Article 12a***

### ***Joint authorisation process to grant individual rights of use of radio spectrum***

- 1. Two or several Member States may cooperate with each other, and with the Commission, in meeting their obligations under Article 6 and 7 of the Authorisation Directive with a view to establish a joint authorisation process to grant individual rights of use of radio spectrum, in line, where applicable, with any common timetable established in accordance with Article 12(2). The joint authorisation process shall meet the following criteria:***
  - (a) the individual national authorisation processes shall be initiated and implemented by the national competent authorities according to a common schedule;***
  - (b) it shall provide where appropriate for common conditions and procedures for the selection and granting of individual rights among the Member States concerned;***
  - (c) it shall provide where appropriate for common or comparable conditions to be attached to the individual rights of use among the Member States concerned inter alia allowing operators to be granted consistent spectrum portfolios with regard to the spectrum blocks to be assigned.***

2. *Where Member States intend to establish a joint authorisation process, the national competent authorities concerned shall simultaneously make their draft measures accessible to the Commission and the competent authorities. The Commission shall inform the other Member States.*

3. *A joint authorisation process shall be open at any time to other Member States.*

**[Am. 133]**

## Article 13

### Coordination of authorisation procedures and conditions for the use of radio spectrum for wireless broadband in the internal market

1. Where a national competent authority intends to subject the use of radio spectrum to a general authorisation or to grant individual rights of use of radio spectrum, or to amend rights and obligations in relation to the use of radio spectrum in accordance with Article 14 of Directive 2002/20/EC, it shall make accessible its draft measure, together with the reasoning thereof, simultaneously to the Commission and the competent authorities for radio spectrum of the other Member States, upon completion of the public consultation referred to in Article 6 of Directive 2002/21/EC, if applicable, and in any event only at a stage in its preparation which allows it to provide to the Commission and the competent authorities of the other Member States sufficient and stable information on all relevant matters.



The national competent authority shall provide information which shall include at least the following matters, where applicable:

- (a) the type of authorisation process;
- (b) the timing of the authorisation process;
- (c) the duration of the rights of use, *which shall be no less than 25 years, and in any case appropriate to incentivise investment and competition, and discourage the under-use or 'hoarding' of spectrum*; [Am. 134]
- (d) the type and amount of radio spectrum available, as a whole or to any given undertaking;
- (e) the amount and structure of any fees to be paid;
- (f) compensation or incentives regarding the vacation or sharing of radio spectrum by existing users;
- (g) coverage obligations;
- (h) wholesale access, national or regional roaming requirements;

- (i) the reservation of radio spectrum for certain types of operators, or the exclusion of certain types of operators;
- (j) conditions related to the assignment, *reassignment*, transfer or accumulation of rights of use; [**Am. 135**]
- (k) the possibility to use radio spectrum on a shared basis;
- (l) infrastructure sharing;
- (m) minimum technology performance levels;
- (n) restrictions applied in accordance with Articles 9(3) and 9(4) of Directive 2002/21/EC;
- (o) a revocation or withdrawal of one or several rights of use or an amendment of rights or conditions attached to such rights which cannot be considered as minor within the meaning of Article 14(1) of Directive 2002/20/EC.

2. National competent authorities and the Commission may make comments to the competent authority concerned within a period of two months. The two-month period shall not be extended.

When assessing the draft measure in accordance with this Article, the Commission shall have regard in particular to:

- (a) the provisions of Directives 2002/20/EC and 2002/21/EC and Decision No. 243/2012/EU;
- (b) the regulatory principles set out in Article 9;
- (c) the relevant criteria for certain specific conditions set out in Article 10 and the additional provisions set out in Article 11;
- (d) ~~any~~ implementing ~~act~~ *acts* adopted in accordance with Article 12; **[Am. 136]**
- (e) coherence with recent, pending or planned procedures in other Member States, and possible effects on trade between Member States.

If, within this period, the Commission notifies the competent authority that the draft measure would create a barrier to the internal market or that it has serious doubts as to its compatibility with Union law, the draft measure shall not be adopted for an additional period of two months. The Commission shall also inform the competent authorities of the other Member States of the position it has taken on the draft measure in such a case.

3. Within the additional two-month period referred to in paragraph 2, the Commission and the competent authority concerned shall cooperate closely to identify the most appropriate and effective measure in the light of the criteria referred to in paragraph 2, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.
4. At any stage during the procedure, the competent authority may amend or withdraw its draft measure taking utmost account of the Commission's notification referred to in paragraph 2.

5. Within the additional two-month period referred in paragraph 2, the Commission may:
- (a) present a draft decision to the Communications Committee requiring the competent authority concerned to withdraw the draft measure. The draft decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted as notified, together where necessary with specific proposals for amending the draft measure; or
  - (b) take a decision changing its position in relation to the draft measure concerned.
6. Where the Commission has not presented a draft decision referred to in paragraph 5(a) or takes a decision referred to in paragraph 5(b), the competent authority concerned may adopt the draft measure.

Where the Commission has presented a draft decision referred to in accordance with paragraph 5(a), the draft measure shall not be adopted by the competent authority for a period not exceeding six months from the notification sent to the competent authority pursuant to paragraph 2.

The Commission may decide to change its position in relation to the draft measure concerned at any stage of the procedure, including after the submission of a draft decision to the Communications Committee.

7. The Commission shall adopt any decision requiring the competent authority to withdraw its draft measure by means of implementing acts. Those implementing act shall be adopted in accordance with the examination procedure referred to in Article 33(2).
8. Where the Commission has adopted a decision in accordance with paragraph 7, the competent authority shall amend or withdraw the draft measure within six months of the date of notification of the Commission's decision. When the draft measure is amended, the competent authority shall undertake a public consultation where appropriate, and shall make the amended draft measure accessible to the Commission in accordance with paragraph 1.
9. The competent authority concerned shall take the utmost account of any comments of competent authorities of the other Member States and the Commission and may, except in cases covered by the third sub-paragraph of paragraph 2, by the second sub-paragraph of paragraph 6 and by paragraph 7, adopt the resulting draft measure and where it does so, shall communicate it to the Commission.
10. The competent authority shall inform the Commission of the results of the procedure to which its measure relates once that procedure has been concluded.

## Article 14

### Access to radio local area networks

1. National competent authorities shall allow the provision of access through radio local area networks to the network of a provider of electronic communications to the public as well as the use of the harmonised radio spectrum for such provision, subject only to general authorisation.
2. National competent authorities shall not prevent providers of electronic communications to the public from allowing access for the public to their networks, through radio local area networks, which may be located at an end user's premises, subject to compliance with the general authorisation conditions and the prior informed agreement of the end user.

3. Providers of electronic communications to the public shall not unilaterally restrict:
  - (a) the right of end users to accede to radio local area networks of their choice provided by third parties;
  - (b) the right of end users to allow reciprocally or more generally access to the networks of such providers by other end users through radio local area networks, including on the basis of third-party initiatives which federate and make publicly accessible the radio local area networks of different end users.
4. National competent authorities shall not restrict the right of end users to allow reciprocally or more generally access to their radio local area networks by other end users, including on the basis of third-party initiatives which federate and make publicly accessible the radio local area networks of different end users.



5. National competent authorities shall not restrict the provision of public access to radio local area networks:
  - (a) by public authorities on or in the immediate vicinity of premises occupied by such public authorities, when it is ancillary to the public services provided on such premises;
  - (b) by initiatives of non-governmental organisations or public authorities to federate and make reciprocally or more generally accessible the radio local area networks of different end users, including, where applicable, the radio local area networks to which public access is provided in accordance with sub-point (a).
6. An undertaking, public authority or other end user shall not be deemed to be a provider of electronic communications to the public solely by virtue of the provision of public access to radio local area networks, where such provision is not commercial in character, or is merely ancillary to another commercial activity or public service which is not dependent on the conveyance of signals on such networks.

## Article 15

### Deployment and operation of small-area wireless access points

1. National competent authorities shall allow the deployment, connection and operation of unobtrusive small-area wireless access points under the general authorisation regime and shall not unduly restrict that deployment, connection or operation through individual town planning permits or in any other way, whenever such use is in compliance with implementing measures adopted pursuant to paragraph 2.

This paragraph is without prejudice to the authorisation regime for the radio spectrum employed to operate small-area wireless access points.

2. For the purposes of the uniform implementation of the general authorisation regime for the deployment, connection and operation of small-area wireless access points pursuant to paragraph 1, the Commission ~~may~~ **shall**, by means of an implementing act ***to be adopted within one year from the date of entry into force of this Regulation***, specify technical characteristics for the design, deployment and operation of small-area wireless access points, compliance with which shall ensure their unobtrusive character when in use in different local contexts. The Commission shall specify those technical characteristics by reference to the maximum size, power and electromagnetic characteristics, as well as the visual impact, of the deployed small-area wireless access points. Those technical characteristics for use of small-area wireless access points shall at a minimum comply with the requirements of Directive 2013/35/EU<sup>1</sup> and with the thresholds defined in Council Recommendation No 1999/519/EC<sup>2</sup>. **[Am. 137]**

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<sup>1</sup> Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC (OJ L 179, 29.6.2013, p. 1).

<sup>2</sup> Recommendation 1999/519/EC of the Council of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ L 199, 30.7.1999, p. 59).

The *technical* characteristics specified in order for the deployment, connection and operation of small-area wireless access point to benefit from paragraph 1 shall be without prejudice to the essential requirements of Directive 1999/5/EC of the European Parliament and the Council relative to the placing on the market of such products<sup>1</sup>. **[Am. 138]**

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

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<sup>1</sup>

Directive 1999/5/EC of the European Parliament and the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ L 91, 7.4.1999, p. 10).

## Article 16

### ~~Radio spectrum coordination among Member States~~

- ~~1. Without prejudice to their obligations under relevant international agreements including ITU Radio Regulations, the national competent authorities shall ensure that the use of radio spectrum is organised on their territory, and shall in particular take all necessary radio spectrum allocation or assignment measures, in order that no other Member State is impeded from allowing on its territory the use of a specific harmonised band in accordance with Union legislation.~~
- ~~2. Member States shall cooperate with each other in the cross border coordination of the use of radio spectrum in order to ensure compliance with paragraph 1 and to ensure that no Member State is denied equitable access to radio spectrum.~~

~~3. Any concerned Member State may invite the Radio Spectrum Policy Group to use its good offices to assist it and any other Member State in complying with this Article.~~

~~The Commission may adopt implementing measures to ensure that coordinated outcomes respect the requirement of equitable access to radio spectrum among the relevant Member States, to resolve any practical inconsistencies between distinct coordinated outcomes between different Member States, or to ensure the enforcement of coordinated solutions under Union law. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2). [Am. 139]~~

## Section 2

### European virtual access products

#### Article 17

##### ~~European virtual broadband access product~~

- ~~1. The provision of a virtual broadband access product imposed in accordance with Article 8 and 12 of Directive 2002/19/EC shall be considered as the provision of a European virtual broadband access product if it is supplied in accordance with the minimum parameters listed in one of the Offers set out in Annex I and cumulatively meets the following substantive requirements:~~
  - ~~(a) ability to be offered as a high quality product anywhere in the Union;~~
  - ~~(b) maximum degree of network and service interoperability and non-discriminatory network management between operators consistently with network topology;~~
  - ~~(c) capacity to serve end-users on competitive terms;~~
  - ~~(d) cost effectiveness, taking into account the capacity to be implemented on existing and newly built networks and to co-exist with other access products that may be provided on the same network infrastructure;~~

~~(e) operational effectiveness, in particular in respect of limiting to the extent possible implementation obstacles and deployment costs for virtual broadband access providers and virtual broadband access seekers;~~

~~(f) respect of the rules on protection of privacy, personal data, security and integrity of networks and transparency in conformity with Union law.~~

~~2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex I in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 1. [Am. 140]~~



## *Article 17a*

### *Wholesale high-quality access products allowing the provision of business communications services*

- 1. National Regulatory Authorities shall consider the proportionality of imposing on providers of electronic communications services designated in accordance with article 16 of Directive 2002/21/EC (Framework Directive) as having significant market power in a relevant market relating to the provision of wholesale high-quality electronic communications services an obligation to publish a wholesale reference offer taking into account the BEREC guidelines referred to in paragraph 2. This consideration should take place within one month after the publication of the BEREC guideline.*
- 2. By 31 December 2015 BEREC shall, after consulting stakeholders and in cooperation with the Commission lay down guidelines specifying the elements to be included in the reference offer. The guidelines should cover terminating segments of leased lines as a minimum and may cover other business wholesale access products that BEREC deems appropriate taking into account retail and wholesale demand as well as regulatory best practices. NRAs may require additional elements to be included in the reference offer. BEREC shall review these guidelines regularly in light of market and technological developments. [Am. 141]*

## Article 18

### ~~Regulatory conditions related to European virtual broadband access product~~

- ~~1. A national regulatory authority which has previously imposed on an operator in accordance with Articles 8 and 12 of Directive 2002/19/EC any obligation to provide wholesale access to a next generation network shall assess whether it would be appropriate and proportionate to impose instead an obligation to supply a European virtual broadband access product which provides at least equivalent functionalities to the currently imposed wholesale access product.~~

~~National regulatory authorities referred to in the first subparagraph shall conduct the requisite assessment of existing wholesale access remedies as soon as possible after the entry into force of this Regulation, irrespective of the timing of the analysis of relevant markets in accordance with Article 16(6) of Directive 2002/21/EC.~~

~~Where a national regulatory authority which has previously imposed an obligation to provide virtual broadband access considers, following its assessment pursuant to the first sub-paragraph, that a European virtual broadband access product is not appropriate in the specific circumstances, it shall provide a reasoned explanation in its draft measure in accordance with the procedure set out in Articles 6 and 7 of Directive 2002/21/EC.~~

- ~~2. Where a national regulatory authority intends to impose on an operator an obligation to provide wholesale access to a next-generation network in accordance with Articles 8 and 12 of Directive 2002/19/EC, it shall assess in particular, in addition to the factors set out in Article 12(2) of that Directive, the respective merits of imposing~~
- ~~(i) a passive wholesale input, such as physical unbundled access to the local loop or the sub-loop;~~
  - ~~(ii) a non-physical or virtual wholesale input offering equivalent functionalities, and in particular a European virtual broadband access product that satisfies the substantive requirements and parameters set out in Article 17(1) and in Annex I, point 1, of this Regulation.~~

~~3. By way of derogation from Article 12(3) of Directive 2002/19/EC, where a national regulatory authority intends to impose on an operator an obligation to provide virtual broadband access in accordance with Articles 8 and 12 of that Directive, it shall impose an obligation to supply a European virtual broadband access product which has the most relevant functionalities to meet the regulatory need identified in its assessment. Where a national regulatory authority considers that a European virtual broadband access product would not be appropriate in the specific circumstances, it shall provide a reasoned explanation in its draft measure in accordance with the procedure set out in Articles 6 and 7 of Directive 2002/21/EC.~~

~~4. When assessing pursuant to paragraphs 1, 2 or 3 whether to impose a European virtual broadband access product instead of any other possible wholesale access product, the national regulatory authority shall have regard to the interest in convergent regulatory conditions throughout the Union for wholesale access remedies, the current and prospective state of infrastructure based competition and the evolution of market conditions towards provision of competing next-generation networks, to investments made respectively by the operator designated as having significant market power and by access-seekers, and to the amortisation period for such investments.~~

~~The national regulatory authority shall set a transitional period for replacing an existing wholesale access product by a European virtual broadband access product if necessary.~~

- ~~5. By way of derogation from Article 9(3) of Directive 2002/19/EC, where an operator has obligations under Articles 8 and 12 of that Directive to provide a European virtual broadband access product, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex I, point 1, point 2 or point 3, as the case may be.~~
- ~~6. By way of derogation from Article 16(3) of Directive 2002/21/EC, a national regulatory authority shall not impose a mandatory period of notice before withdrawing a previously imposed obligation to offer a European virtual broadband access product that satisfies the substantive requirements and parameters set out in Article 17(1) and in Annex I, point 2 of this Regulation, if the operator concerned voluntarily commits to make such product available at the request of third parties on fair and reasonable terms for a further period of three years.~~

~~7. Where a national regulatory authority is considering, in the context of an assessment pursuant to paragraphs 2 or 3, whether or not to impose or maintain price controls in accordance with Article 13 of Directive 2002/19/EC for wholesale access to next-generation networks, whether by means of one of the European virtual broadband access products or otherwise, it shall consider the state of competition in respect of the prices, choice and quality of products offered at retail level. It shall have regard to the effectiveness of protection against discrimination at wholesale level and to the state of infrastructure-based competition from other fixed line or wireless networks, giving due weight to the role of existing infrastructure-based competition between next-generation networks in driving further improvements in quality for end users, in order to determine whether price controls for wholesale access would not be necessary or proportionate in the specific case. [Am. 142]~~

## Article 19

### ~~Assured service quality (ASQ) connectivity product~~

- ~~1. Any operator shall have the right to provide a European ASQ connectivity product as specified in paragraph 4.~~
- ~~2. Any operator shall meet any reasonable request to provide a European ASQ connectivity product as specified in paragraph 4 submitted in writing by an authorised provider of electronic communications services. Any refusal to provide a European ASQ product shall be based on objective criteria. The operator shall state the reasons for any refusal within one month from the written request.~~

~~It shall be deemed to be an objective ground of refusal that the party requesting the supply of a European ASQ connectivity product is unable or unwilling to make available, whether within the Union or in third countries, a European ASQ connectivity product to the requested party on reasonable terms, if the latter so requests.~~
- ~~3. Where the request is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the written request, either party is entitled to refer the issue to the relevant national regulatory authority pursuant to Article 20 of Directive 2002/21/EC. In such a case, Article 3(6) of this Regulation may apply.~~



- ~~4. The provision of a connectivity product shall be considered as the provision of a European ASQ connectivity product if it is supplied in accordance with the minimum parameters listed in Annex II and cumulatively meets the following substantive requirements:~~
- ~~(a) ability to be offered as a high quality product anywhere in the Union;~~
  - ~~(b) enabling service providers to meet the needs of their end users;~~
  - ~~(c) cost effectiveness, taking into account existing solutions that may be provided on the same networks;~~
  - ~~(d) operational effectiveness, in particular in respect of limiting to the extent possible implementation obstacles and deployment costs for customers; and~~
  - ~~(e) ensuring that the rules on protection of privacy, personal data, security and integrity of networks and transparency in accordance with Union law are respected.~~
- ~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex II in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 4. [Am. 143]~~

## Article 20

### Measures relating to European access products

- ~~1. The Commission shall adopt by 1 January 2016 implementing acts laying down uniform technical and methodological rules for the implementation of a European virtual broadband access product within the meaning of Article 17 and of Annex I, point 1, in accordance with the criteria and parameters specified therein and in order to ensure the equivalence of the functionality of such a virtual wholesale access product to next-generation networks with that of a physical unbundled access product. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).~~
- ~~2. The Commission may adopt implementing acts laying down uniform technical and methodological rules for the implementation of one or more of the European access products within the meaning of Articles 17 and 19 and of Annex I, points 2 and 3, and Annex II, in accordance with the respective criteria and parameters specified therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).~~ **[Am. 144]**

## Chapter IV

### ~~Harmonised~~ *Users' rights of end-users to open internet access* [Am. 146]

#### Article 21

##### Elimination of restrictions and discrimination

1. The freedom of end-users to use public electronic communications networks or publicly available electronic communications services provided by an undertaking established in another Member State shall not be restricted by public authorities.
2. Providers of electronic communications to the public shall not apply any discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively justified.

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

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

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

**[Am. 145]**

## ~~Article 22~~

### ~~Cross-border dispute resolution~~

~~The out-of-court procedures set up in accordance with Article 34 (1) of Directive 2002/22/EC shall also apply to disputes related to contracts between consumers, and other end-users to the extent that such out-of-court procedures are available also for them, and providers of electronic communications to the public which are established in another Member State. For disputes within the scope of Directive 2013/11/EU<sup>1</sup>, the provisions of that Directive shall apply. **[Am. 147]**~~

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<sup>1</sup> ~~Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).~~

## Article 23

Freedom to provide and avail of open internet access, and ~~reasonable~~ traffic management [Am. 148]

1. End-users shall ~~be free~~ ***have the right*** to access and distribute information and content, run ***and provide*** applications and ~~use~~ services ***and use terminals*** of their choice ~~via their internet access service~~, ***irrespective of the end-user's or provider's location or the location, origin or destination of the service, information or content, via their internet access service.***

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

2. ~~End users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service.~~

~~In order to enable the provision of specialised services to end users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet access services.~~ ***Providers of internet access, of electronic communications to the public and providers of content, applications and services shall be free to offer specialised services to end-users. Such services shall only be offered if the network capacity is sufficient to provide them in addition to internet access services and they are not to the detriment of the availability or quality of internet access services. Providers of internet access to end-users shall not discriminate between functionally equivalent services and applications.***

- ~~3. This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted.~~
4. ~~The exercise of the freedoms provided for in paragraphs 1 and 2 shall be facilitated by the provision of complete information in accordance with Article 25(1), Article 26 (2), and Article 27 (1) and (2).~~

*End-users shall be provided with complete information in accordance with Article 20(2), Article 21(3) and Article 21a of Directive 2002/22/EC, including information on any traffic management measures applied that might affect access to and distribution of information, content, applications and services as specified in paragraphs 1 and 2 of this Article.*

5. ~~Within the limits of any contractually agreed~~ ***Providers of internet access services and end-users may agree to set limits on*** data volumes or speeds for internet access services. Providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, ***altering***, degrading or discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply ~~reasonable~~ traffic management measures. ~~Reasonable~~ Traffic management measures shall be transparent, non-discriminatory, proportionate and necessary to:
- (a) ~~implement a legislative provision or a court order, or prevent or impede serious crimes;~~
  - (b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;
  - ~~(c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;~~
  - (d) ~~minimise~~ ***prevent or mitigate*** the effects of temporary ~~or~~ ***and*** exceptional network congestion provided that equivalent types of traffic are treated equally.



~~Reasonable Traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph~~ *measures shall not be maintained longer than necessary.*

*Without prejudice to Directive 95/46/EC, traffic management measures shall only entail such processing of personal data that is necessary and proportionate to achieve the purposes set out in this paragraph, and shall also be subject to Directive 2002/58/EC, in particular with respect to confidentiality of communications.*

*Providers of internet access services shall put in place appropriate, clear, open and efficient procedures aimed at addressing complaints alleging breaches of this Article. Such procedures shall be without prejudice to the end-users right to refer the matter to the national regulatory authority. [Ams 236 and 243]*

## Article 24

### Safeguards for quality of service

1. ~~National regulatory authorities shall closely monitor and ensure the effective ability of end-users to benefit from the freedoms provided for in~~ ***In exercising their powers under Article 30a with respect to*** Article 23(1) and (2), ~~compliance with Article 23 (5), and,~~ ***national regulatory authorities shall closely monitor compliance with Article 23(5) and*** the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology ~~and that are not impaired by specialised services.~~ They shall, in cooperation with other competent national authorities, also monitor the effects of ~~specialised services~~ on cultural diversity and innovation. National regulatory authorities shall ~~report~~ ***publish reports*** on an annual basis ***regarding their monitoring and findings, and provide those reports*** to the Commission and BEREC ~~on their monitoring and findings.~~ [Am. 153]

2. In order to prevent the general impairment of quality of service for internet access services or to safeguard the ability of ~~end~~-users to access and distribute content or information or to run applications, services *and software* of their choice, national regulatory authorities shall have the power to impose minimum quality of service requirements, *and where appropriate, other quality of service parameters, as defined by the national regulatory authorities* on providers of electronic communications to the public.

National regulatory authorities shall, in good time before imposing any such requirements, provide the Commission with a summary of the grounds for action, the envisaged requirements and the proposed course of action. This information shall also be made available to BEREC. The Commission may, having examined such information, make comments or recommendations thereupon, in particular to ensure that the envisaged requirements do not adversely affect the functioning of the internal market. ~~The envisaged requirements shall not be adopted during a period of two months from the receipt of complete information by the Commission unless otherwise agreed between the Commission and the national regulatory authority, or the Commission has informed the national regulatory authority of a shortened examination period, or the Commission has made comments or recommendations.~~ National regulatory authorities shall take the utmost account of the Commission's comments or recommendations and shall communicate the adopted requirements to the Commission and BEREC. **[Am. 154]**

3. ***Within six months of adoption of this regulation, BEREC shall, after consulting stakeholders and in close cooperation with*** the Commission ~~may adopt implementing acts,~~ ***lay down general guidelines*** defining uniform conditions for the implementation of the obligations of national competent authorities under this Article. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2),~~ ***including with respect to the application of traffic management measures and for monitoring of compliance.*** [Am. 155]

#### ***Article 24a***

##### ***Review***

***The Commission shall, in close cooperation with BEREC, review the functioning of the provisions on specialised services and, after a public consultation, shall report and submit any appropriate proposals to the European Parliament and the Council by [insert date three years after the date of applicability of this regulation].*** [Am. 156]

## Article 25

### ~~Transparency and publication of information~~

- ~~1. Providers of electronic communications to the public shall, save for offers which are individually negotiated, publish transparent, comparable, adequate and up-to-date information on:~~
  - ~~(a) their name, address and contact information;~~
  - ~~(b) for each tariff plan the services offered and the relevant quality of service parameters, the applicable prices (for consumers including taxes) and any applicable charges (access, usage, maintenance and any additional charges), as well as costs with respect to terminal equipment;~~
  - ~~(c) applicable tariffs regarding any number or service subject to particular pricing conditions;~~
  - ~~(d) the quality of their services, in accordance with implementing acts provided for in paragraph 2;~~

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

- ~~(i) actually available data speed for download and upload in the end-user's Member State of residence, including at peak hours;~~
- ~~(ii) the level of applicable data volume limitations, if any; the prices for increasing the available data volume on an ad hoc or lasting basis; the data speed, and its cost, available after full consumption of the applicable data volume, if limited; and the means for end-users to monitor at any moment the current level of their consumption;~~
- ~~(iii) a clear and comprehensible explanation as to how any data volume limitation, the actually available speed and other quality parameters, and the simultaneous use of specialised services with an enhanced quality of service, may practically impact the use of content, applications and services;~~
- ~~(iv) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and on how those procedures could affect service quality and the protection of personal data;~~

- ~~(f) — measures taken to ensure equivalence in access for disabled end users, including regularly updated information on details of products and services designed for them;~~
- ~~(g) — their standard contract terms and conditions, including any minimum contractual period, the conditions for and any charges due on early termination of a contract, the procedures and direct charges related to switching and portability of numbers and other identifiers, and compensation arrangements for delay or abuse of switching;~~
- ~~(h) — access to emergency services and caller location information for all services offered, any limitations on the provision of emergency services under Article 26 of Directive 2002/22/EC, and any changes thereto;~~
- ~~(i) — rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I to Directive 2002/22/EC.~~

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



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

~~3. End users shall have access to independent evaluation tools allowing them to compare the performance of electronic communications network access and services and the cost of alternative usage patterns. To this end Member States shall establish a voluntary certification scheme for interactive websites, guides or similar tools. Certification shall be granted on the basis of objective, transparent and proportionate requirements, in particular independence from any provider of electronic communications to the public, the use of plain language, the provision of complete and up-to-date information, and the operation of an effective complaints handling procedure. Where certified comparison facilities are not available on the market free of charge or at a reasonable price, national regulatory authorities or other competent national authorities shall make such facilities available themselves or through third parties in compliance with the certification requirements. The information published by providers of electronic communications to the public shall be accessible, free of charge, for the purposes of making available comparison facilities.~~

4. ~~Upon request of the relevant public authorities, providers of electronic communications to the public shall distribute public interest information free of charge to end-users, where appropriate, by the same means as those ordinarily used by them in their communications with end-users. In such a case, that information shall be provided by the relevant public authorities to the providers of electronic communications to the public in a standardised format and may, inter alia, cover the following topics:~~
- ~~(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of data protection rights, copyright and related rights, and their legal consequences; and~~
  - ~~(b) the means of protection against risks to personal security and unlawful access to personal data when using electronic communications services. [Am. 157]~~

## Article 26

### Information requirements for contracts

- ~~1. Before a contract on the provision of connection to a public electronic communications network or publicly available electronic communications services becomes binding providers of electronic communications to the public shall provide consumers, and other end-users unless they have explicitly agreed otherwise, at least the following information:~~
  - ~~(a) the identity, address and contact information of the provider and, if different, the address and contact information for any complaints;~~
  - ~~(b) the main characteristics of the services provided, including in particular:
    - ~~(i) for each tariff plan the types of services offered, the included volumes of communications and all relevant quality of service parameters, including the time for the initial connection;~~
    - ~~(ii) whether and in which Member States access to emergency services and caller location information is being provided and any limitations on the provision of emergency services in accordance with Article 26 of Directive 2002/22/EC;~~~~

- ~~(iii) the types of after sales services, maintenance services and customer support services provided, the conditions and charges for these services, and the means of contacting these services;~~
- ~~(iv) any restrictions imposed by the provider on the use of terminal equipment supplied, including information on unlocking the terminal equipment and any charges involved if the contract is terminated before the end of the minimum contract period;~~
- ~~(e) details of prices and tariffs (for consumers including taxes and possibly due additional charges) and the means by which up to date information on all applicable tariffs and charges are made available;~~
- ~~(d) payment methods offered and any cost differences due to the payment method, and available facilities to safeguard bill transparency and monitor the level of consumption ;~~

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

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

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

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

~~(f) any compensation and refund arrangements, including an explicit reference to statutory rights of the end-user, which apply if contracted service quality levels are not met;~~

- ~~(g) — where an obligation exists in accordance with Article 25 of Directive 2002/22/EC, the end-users' options as to whether or not to include their personal data in a directory, and the data concerned;~~
- ~~(h) — for disabled end-users, details of products and services designed for them;~~
- ~~(i) — the means of initiating procedures for the settlement of disputes, including cross-border disputes, in accordance with Article 34 of Directive 2002/22/EC and Article 22 of this Regulation;~~
- ~~(j) — the type of action that might be taken by the provider in reaction to security or integrity incidents or threats and vulnerabilities.~~

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

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

- ~~(b) the actually available data speed for download and upload at the main location of the end-user, including actual speed ranges, speed averages and peak-hour speed, including the potential impact of allowing access to third parties through a radio local area network;~~
- ~~(c) other quality of service parameters;;~~
- ~~(d) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and information on how those procedures could impact on service quality and protection of personal data;~~
- ~~(e) a clear and comprehensible explanation as to how any volume limitation, the actually available speed and other quality of service parameters, and the simultaneous use of specialised services with an enhanced quality of service, may practically impact the use of content, applications and services.~~

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



4. ~~The Commission may adopt implementing acts specifying the details of the information requirements listed in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).~~
5. ~~The contract shall also include, upon request by the relevant public authorities, any information provided by these authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security and unlawful processing of personal data, referred to in Article 25(4) and relevant to the service provided. [Am. 158]~~

## Article 27

### Control of consumption

- ~~1. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge, for a facility which provides information on the accumulated consumption of different electronic communications services expressed in the currency in which the end-user is billed. Such a facility shall guarantee that, without the end-user's consent, the accumulated expenditure over a specified period of use does not exceed a specified financial limit set by the end-user.~~
- ~~2. Providers of electronic communications to the public shall ensure that an appropriate notification is sent to the end-user when the consumption of services has reached 80% of the financial limit set in accordance with paragraph 1. The notification shall indicate the procedure to be followed to continue the provision of those services, including their cost. The provider shall cease to provide the specified services and to charge the end-user for it if the financial limit would otherwise be exceeded, unless and until the end-user requests the continued or renewed provision of those services. After having reached the financial limit end-users shall continue to be able to receive calls and SMS messages and access free phone numbers and emergency services by dialling the European emergency number 112 free of charge until the end of the agreed billing period.~~

- ~~3. Providers of electronic communications to the public shall, immediately prior to connecting the call, enable end-users to access easily and without incurring any costs information on applicable tariffs regarding any number or service subject to particular pricing conditions unless the national regulatory authority has granted a prior derogation for reasons of proportionality. Any such information shall be provided in a comparable fashion for all such numbers or services.~~
- ~~4. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge for receiving itemised bills. [Am. 159]~~

## Article 28

### Contract termination

1. ~~Contracts concluded between consumers and providers of electronic communications to the public shall not provide for a minimum duration that exceeds 24 months. Providers of electronic communications to the public shall offer end users the possibility to conclude a contract with a maximum duration of 12 months.~~
2. ~~Consumers, and other end users unless they have otherwise agreed, shall have the right to terminate a contract with a one month notice period, where six months or more have elapsed since conclusion of the contract. No compensation shall be due other than for the residual value of subsidised equipment bundled with the contract at the moment of the contract conclusion and a *pro rata temporis* reimbursement for any other promotional advantages marked as such at the moment of the contract conclusion. Any restriction on the usage of terminal equipment on other networks shall be lifted, free of charge, by the provider at the latest upon payment of such compensation.~~

- ~~3. Where the contracts or national law provide for contract periods to be extended tacitly, the provider of electronic communications to the public shall inform the end-user in due time so that the end-user has at least one month to oppose a tacit extension. If the end-user does not oppose, the contract shall be deemed to be a permanent contract which can be terminated by the end-user at any time with a one-month notice period and without incurring any costs.~~
- ~~4. End-users shall have the right to terminate their contract without incurring any costs upon notice of changes in the contractual conditions proposed by the provider of electronic communications to the public unless the proposed changes are exclusively to the benefit of the end-user. Providers shall give end-users adequate notice, not shorter than one month, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new conditions. Paragraph 2 shall apply *mutatis mutandis*.~~

5. ~~Any significant and non temporary discrepancy between the actual performance regarding speed or other quality parameters and the performance indicated by the provider of electronic communications to the public in accordance with Article 26 shall be considered as non conformity of performance for the purpose of determining the end user's remedies in accordance with national law.~~
6. ~~A subscription to additional services provided by the same provider of electronic communications to the public shall not re-start the initial contract period unless the price of the additional service(s) significantly exceeds that of the initial services or the additional services are offered at a special promotional price linked to the renewal of the existing contract.~~
7. ~~Providers of electronic communications to the public shall apply conditions and procedures for contract termination which do not raise obstacles to or disincentives against changing service provider. [Am. 160]~~

## Article 29

### Bundled offers

~~If a bundle of services offered to consumers comprises at least a connection to an electronic communications network or one electronic communications service, Articles 28 and 30 of this Regulation shall apply to all elements of the bundle. [Am. 161]~~

## Chapter V

### Facilitating change of providers

## Article 30

### Switching and portability of numbers

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

2. ~~Pricing between providers of electronic communications to the public related to the provision of number portability shall be cost-oriented, and direct charges to end-users, if any, shall not act as a disincentive for end-users against changing provider.~~
3. ~~Porting of numbers and their activation shall be carried out within the shortest possible time. For end-users who have concluded an agreement to port a number to a new provider that number shall be activated within one working day from the conclusion of such agreement. Loss of service during the process of porting, if any, shall not exceed one working day.~~
4. ~~The receiving provider of electronic communications to the public shall lead the switching and porting process. End-users shall receive adequate information on switching before and during the switching process, and also immediately after it is concluded. End-users shall not be switched to another provider against their will.~~
5. ~~The end-users' contracts with transferring providers of electronic communications to the public shall be terminated automatically after conclusion of the switch. Transferring providers of electronic communications to the public shall refund any remaining credit to the consumers using pre-paid services.~~



- ~~6. Providers of electronic communications to the public which delay or abuse switching, including by not making available information necessary for porting in a timely manner, shall be obliged to compensate end-users who are exposed to such delay or abuse.~~
- ~~7. In the event that an end-user switching to a new provider of internet access services has an email address provided by the transferring provider, the latter shall, upon request by the end-user, forward to any email address indicated by the end-user, free of charge, all email communications addressed to the end-user's previous email address for a period of 12 months. This email forwarding service shall include an automatic response message to all email senders alerting them about the end-user's new email address. The end-user shall have the option of requesting that the new email address should not be disclosed in the automatic response message.~~

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

8. ~~The competent national authorities may establish the global processes of switching and porting, including provision of appropriate sanctions on providers and compensations for end-users. They shall take into account necessary end-user protection throughout the switching process and the need to ensure efficiency of such process. [Am. 162]~~

## *Article 30a*

### *Supervision and enforcement*

- 1. National regulatory authorities shall have the necessary resources to monitor and supervise compliance with this Regulation within their territories.*
- 2. National regulatory authorities shall make up-to-date information on the application of this Regulation publicly available in a manner that enables interested parties to have easy access to it.*
- 3. National regulatory authorities shall have the power to require undertakings subject to obligations under this Regulation to supply all information relevant to the implementation and enforcement of this Regulation. Those undertakings shall provide such information promptly on request and in accordance with time limits and the level of detail required by the national regulatory authority.*
- 4. National regulatory authorities may intervene on their own initiative in order to ensure compliance with this Regulation.*

5. *National regulatory authorities shall put in place appropriate, clear, open and efficient procedures to address complaints alleging breaches of Article 23. National regulatory authorities shall respond to complaints without undue delay.*
6. *Where a national regulatory authority finds that a breach of the obligations set out in this Regulation has occurred, it shall require the immediate cessation of such a breach.*  
[Am. 163]

## Chapter VI

### Organisational and final provisions

#### Article 31

#### Penalties

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 1 July 2016 at the latest and shall notify it without delay of any subsequent amendment affecting them.

~~With regard to European electronic communications providers, penalties shall be imposed in accordance with Chapter II regarding the respective competences of national regulatory authorities in the home and host Member States. [Am. 164]~~

## Article 32

### Delegation of powers

1. ~~The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~
2. ~~The power to adopt delegated acts referred to in Articles 17(2) and 19(5) shall be conferred on the Commission for an indeterminate period of time from the [date entry into force of the Regulation]~~
3. ~~The delegation of power referred to in Articles 17(2) and 19(5) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~
4. ~~As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~

~~5. A delegated act adopted pursuant to Articles 17(2) and 19(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council. [Am. 165]~~

#### Article 33

##### Committee procedure

1. The Commission shall be assisted by the Communications Committee established by Article 22(1) of Directive 2002/21/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 34

Amendments to Directive 2002/20/EC

(1) Article 3(2), ~~the second subparagraph is deleted~~ *is amended as follows:* [Am. 166]

(a) *paragraph 2 is replaced by the following:*

*"2. The provision of electronic communications networks or the provision of electronic communications services may, without prejudice to the specific obligations referred to in Article 6(2) or rights of use referred to in Article 5, only be subject to a general authorisation. Where a Member State deems that a notification requirement is justified, that Member State may require undertakings to submit a notification to BEREC but it may not require them to obtain an explicit decision or any other administrative act by the national regulatory authority or any other authority before exercising the rights stemming from the authorisation. Upon notification to BEREC, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use in Articles 5, 6 and 7.";* [Am. 167]



(b) *paragraph 3 is replaced by the following:*

*"3. A notification referred to in paragraph 2 shall not entail more than a declaration on a harmonised template in the form set out in part D of the Annex by a legal or natural person to BEREC of the intention to commence the provision of electronic communication networks or services and the submission of the minimal information which is required to allow BEREC and the national regulatory authority to keep a register or list of providers of electronic communications networks and services. Member States may not impose any additional or separate notification requirements."; [Am. 168]*

(c) *the following paragraph is added:*

*"3a. Member States shall provide the Commission and the other Member States with a reasoned notification within 12 months following the date of application of Regulation (EU) No [.../...]\* if they deem that a notification requirement is justified. The Commission shall examine the notification and, where appropriate, adopt a decision within a period of three months from the date of the notification requesting the Member State in question to abolish the notification requirement.*

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\* *Regulation (EU) No [.../...] of the European Parliament and of the Council of ... laying down measures concerning the European single market for electronic communications and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC, Regulations (EC) No 1211/2009 and (EU) No 531/2012 and Decision 243/2012/EU (OJ L... , p. ...)." [Am. 169]*

(2) *In Article 10, the following new paragraph 6a is added:*

*"6a. A national regulatory authority shall notify BEREC of any measures intended to be taken by it under paragraphs 5 and 6. Within two months from receipt of a notification, during which period the national regulatory authority may not adopt a final measure, BEREC shall adopt a reasoned opinion if it considers that the draft measure would create a barrier to the single market. BEREC shall forward any opinion to the national regulatory authority and the Commission. The national regulatory authority shall take the utmost account of any BEREC opinion and shall communicate any final measure to BEREC. BEREC shall update its register accordingly."* [Am. 170]

(3) *In the Annex, the following part D is added:*

***"D. Information required in a notification pursuant to Article 3***

*A notification shall contain a declaration of the intention to commence the provision of electronic communications networks and services and shall be accompanied by the following information only:*

- 1. the name of the provider,*
- 2. the provider's legal status, form and registration number, where the provider is registered in a trade or other similar public register,*
- 3. the geographical address of the provider's main establishment,*
- 4. a contact person,*
- 5. a short description of the networks or services intended to be provided,*
- 6. the Member States concerned, and*
- 7. an estimated date for starting the activity." [Am. 171]*

**Article 34a**

**Amendments to Decision No 243/2012/EU**

***In Article 6(8) of Decision No 243/2012/EU, the following subparagraph is added:***

***‘Member States shall allow the transfer or leasing of any additional harmonised bands on the same basis as those enumerated in the first subparagraph.’ [Am. 172]***

**Article 35**

**Amendments to Directive 2002/21/EC**

Directive 2002/21/EC is amended as follows:

~~(1) In Article 1, the following paragraph 6 is added:~~

~~‘This Directive and the Specific Directives shall be interpreted and applied in conjunction with the provisions of Regulation No [XX/2014].’ [Am. 173]~~

***(1a) In Article 2, point g is amended as follows:***

***“national regulatory authority” means the body charged by a Member State with the regulatory tasks assigned in this Directive and the Specific Directives;’[Am. 174]***

**(1b) In Article 3, paragraph 3a is replaced by the following:**

***‘3a. Without prejudice to the provisions of paragraphs 4 and 5, each national regulatory authority shall be responsible at least for ex-ante market regulation under Articles 7, 7a, 15 and 16 of this Directive and Articles 9 to 13b of Directive 2002/19/EC; for numbering, naming and addressing, co-location and sharing of network elements and associated facilities and for the resolution of disputes between undertakings in accordance with Articles 10, 12, 20 and 21 of this Directive and for affordability of tariffs, quality of service of designated undertakings, costing of universal service obligation, regulatory controls on retail services, contracts, transparency and publication of information, quality of service, ensuring equivalence in access and choice for disabled end-users, emergency services and the single European emergency call number, access to numbers and services, provision of additional facilities and facilitating change of provider under Articles 9, 11, 12, 17, 20, 20a, 21, 21a, 22, 23a, 26, 26a, 28, 29 and 30 of Directive 2002/22/EC, issues related to authorisation under Directive 2002/20/EC, as well as for Directive 2002/58/EC.***

*Each national regulatory authority shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 4 shall have the power to suspend or overturn decisions by the national regulatory authorities. Member States shall ensure that the head of a national regulatory authority, or where applicable, members of the collegiate body fulfilling that function within a national regulatory authority referred to in the first subparagraph or their replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the national regulatory authority concerned, or where applicable members of the collegiate body fulfilling that function shall be made public at the time of dismissal. The dismissed head of the national regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.*

*Member States shall ensure that national regulatory authorities referred to in the first subparagraph have separate annual budgets and that the budgets are sufficient for the performance of their tasks. The budgets and audited annual accounts shall be made public by each national regulatory authority. Each national regulatory authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities and shall have a number of competent personnel at its disposal for the proper performance of its tasks. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to actively participate in and contribute to the Body of European Regulators for Electronic Communications (BEREC)<sup>1</sup>.*

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<sup>1</sup> *Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office.*’ [Am. 175]



~~(2) Article 7a is amended as follows:~~

~~(a) in paragraph 1, the first sub-paragraph is replaced by the following:~~

~~'1. Where an intended measure covered by Article 7(3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article 16 of this Directive in conjunction with Article 5 and Articles 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission may, within the period of one month provided for by Article 7(3) of this Directive, notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its compatibility with Union law, taking into account as appropriate any Recommendation adopted pursuant to Article 19(1) of this Directive concerning the harmonised application of specific provisions of this Directive and the Specific Directives. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.'~~<sup>2</sup> [Am. 176]

(b) ~~paragraph 2 is replaced by the following:~~

~~‘2. Within the three-month period referred to in paragraph 1, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely to identify 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. When the intended measure aims at imposing, amending or withdrawing an obligation on a European electronic communications provider within the meaning of Regulation [XXX/2014] in a host Member State, the national regulatory authority of the home Member State may also participate in the cooperation process.’ [Am. 177]~~

~~(e) in paragraph 5 the following point (aa) is inserted:~~

~~‘(aa) take a decision requiring the national regulatory authority concerned to withdraw the draft measure, together with specific proposals for amending it, when the intended measure aims at imposing, amending or withdrawing an obligation on a European electronic communications provider within the meaning of Regulation [XXX/2014].’ [Am. 178]~~

~~(d) in paragraph 6 the following sub-paragraph is added:~~

~~‘Article 7(6) shall apply in the cases where the Commission takes a decision in accordance with paragraph 5 point (aa).’ [Am. 179]~~

**(2a) In Article 8(4), point (g) is deleted. [Am. 180]**

(2b) *In Article 9b(3), the first subparagraph is replaced by the following:*

- ‘3. The Commission shall adopt appropriate implementing measures to facilitate the transfer or lease of rights to use radio frequencies between undertakings. Those measures shall be adopted by within 12 months following the date of application of Regulation [.../...]\*. Those measures shall not cover frequencies which are used for broadcasting.*

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*\* Regulation (EU) No .../... of the European Parliament and of the Council of ... laying down measures concerning the European single market for electronic communications and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC, Regulations (EC) No 1211/2009 and (EU) No 531/2012 and Decision 243/2012/EU (OJ L ..., ..., p. ).’ [Am. 181]*

(3) Article 15 is amended as follows:

- (a) the following sub-paragraph is inserted between the first and second sub-paragraphs of paragraph 1:

‘In assessing whether a given market has characteristics which may justify the imposition of ex-ante regulatory obligations, and therefore has to be included in the Recommendation, the Commission shall have regard in particular to the need for convergent regulation throughout the Union, to the need to promote efficient investment and innovation in the interests of end users and of the global competitiveness of the Union economy, and to the relevance of the market concerned, alongside other factors such as existing infrastructure-based competition at retail level, to competition on the prices, choice and quality of products offered to end users. The Commission shall consider all relevant competitive constraints, irrespective of whether the networks, services or applications which impose such constraints are deemed to be electronic communications networks, electronic communications services, or other types of service or application which are comparable from the perspective of the end-user, in order to determine whether, as a general matter in the Union or a significant part thereof, the following three criteria are cumulatively met:

- (a) the presence of high and non-transitory structural, legal or regulatory barriers to entry;
  - (b) the market structure does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other competition behind the barriers to entry;
  - (c) competition law alone is insufficient to adequately address the identified market failure(s).’;
- (b) in paragraph 3 the following sub-paragraph is added:
- ‘In the exercise of its powers pursuant to Article 7, the Commission shall verify whether the three criteria set out in paragraph 1 are cumulatively met when reviewing the compatibility with Union law of a draft measure that concludes:
- (a) that a given market that is not identified in the Recommendation has characteristics justifying the imposition of regulatory obligations, in the specific national circumstances; or
  - (b) that a market identified in the Recommendation does not require regulation in the specific national circumstances.’.

(4) The first paragraph of Article 19 is amended as follows:

‘Without prejudice to Article 9 of this Directive and Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by the national regulatory authorities of the regulatory tasks specified in this Directive, and the Specific Directives and Regulation No [.../2014] may create a barrier to the internal market, the Commission ~~may~~ **shall**, taking the utmost account of the opinion of BEREC, issue a recommendation or a decision on the harmonised application of the provisions in this Directive, the Specific Directives and Regulation No [.../2014] in order to further the achievement of the objectives set out in Article 8.’. **[Am. 182]**

## Article 36

### Amendments to Directive 2002/22/EC

1. With effect from 1 July 2016, Directive 2002/22/EC is amended as follows:

(1) In Article 1 (3), the first sentence is deleted.

***(1a) In the second subparagraph of Article 2, the following points are inserted:***

***‘(fa) "receiving provider of electronic communications to the public" means the provider of electronic communications to the public to which the telephone number or service is transferred;***

***(fb) "transferring provider of electronic communications to the public" means the provider of electronic communications to the public from which a telephone number or service is transferred.’ [Am. 183]***

***(1b) The title of Article 20 is replaced by:***

***‘Information requirements for contracts’. [Am. 184]***



(1c) *In Article 20, the following paragraph is inserted:*

*‘-1a. Member States shall ensure that the information referred to in paragraphs 1 and 1a is provided prior to contract conclusion in a clear, comprehensive and easily accessible manner and without prejudice to the requirements set out in Directive 2011/83/EU \* regarding off-premises/ distance contracts. The consumer and other end-user so requesting shall have access to a copy of the contract on a durable medium.*

*Member States may maintain or introduce in their national law language requirements regarding the contractual information, so as to ensure that such information is easily understood by the consumer or other end-user so requesting.*

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\* *Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).’.*  
[Am. 185]

*(1d) Article 20(1) is replaced by the following:*

- ‘1. Member States shall ensure that, when subscribing to services providing connection to a public communications network and/or publicly available electronic communications services, consumers, and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. The contract shall specify at least the following information:*
  - (a) the identity, address and contact information of the undertaking and, if different, the address and contact information for any complaints;*
  - (b) the main characteristics of the services provided, including in particular:*

- (i) *the specific tariff plan or tariff plans to which the contract applies and, for each such tariff plan, the types of services offered, including the volumes of communications;*
- (ii) *access to information on emergency services and caller location for all relevant services offered, and any limitations on the provision of emergency services under Article 26;*
- (iii) *the minimum service quality levels offered, namely the time for the initial connection and, where appropriate, other quality of service parameters, as defined by the national regulatory authorities;*
- (iv) *the types of after-sales services, maintenance services and customer support services provided, including, where feasible, technical information for the proper functioning of the end-user's chosen terminal equipment, the conditions and charges for those services, and the means of contacting those services;*

- (v) *any restrictions imposed by the provider on the use of terminal equipment supplied, including information on unlocking the terminal equipment and any charges involved if the contract is terminated before the end of the minimum contract period;*
  - (vi) *any restrictions imposed on the consumption of regulated retail roaming services provided at the applicable domestic price level, by reference to fair use criteria, including detailed information on how such fair use criteria are applied in relation to the main pricing, volume or other parameters of the tariff plan in question;*
- (c) *where an obligation exists under Article 25, the subscriber's options as to whether or not to include his or her personal data in a directory, and their ability to verify, correct or withdraw their entry;*
- (d) *details of prices and tariffs including taxes and additional charges that may possibly be levied, and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;*

- (da) payment methods offered and any differences in costs due to the payment method chosen, and available facilities to safeguard bill transparency and monitor the level of consumption;*
- (e) the duration of the contract and the conditions for renewal and termination of services and of the contract, including:*
  - (i) any minimum usage or duration required to benefit from promotional terms;*
  - (ii) any charges related to switching and portability of numbers and other identifiers, including compensation and refund arrangements for delay or abuse of switching;*
  - (iii) any charges due on early termination of the contract, including any cost recovery with respect to terminal equipment, on the basis of customary depreciation methods, and other promotional advantages, on a pro rata temporis basis;*

- (f) *any compensation and the refund arrangements, including, where applicable, an explicit reference to statutory rights of the consumer which apply if contracted service quality levels are not met;*
- (g) *the means of initiating procedures for the settlement of disputes, including cross-border disputes, in accordance with Article 34;*
- (ga) *details on how disabled end-users can obtain information on products and services designed for them;*
- (h) *the type of action that might be taken by the undertaking in reaction to security or integrity incidents or threats and vulnerabilities.*

*Member States may also require that the contract include any information which may be provided by the relevant public authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security, privacy and personal data, referred to in Article 21(4) and relevant to the service provided.’. [Am. 186]*

***(1e) In Article 20, the following paragraph is inserted:***

***‘1a. In addition to the information referred to in paragraph 1, if the contract includes the provision of internet access services, that contract shall also include the following information:***

- (a) details of unit data pricing plans, pricing plans for bulk data and any applicable thresholds related to the specific tariff plan or tariff plans to which the contract applies. For data volumes above thresholds, unit or bulk pricing on an ad hoc or lasting basis and any data speed limitations that may be applied to the specific tariff plan or tariff plans to which the contract applies;***
- (b) how end-users can monitor the current level of their consumption, whether and how any voluntary limits can be set;***
- (c) for fixed data links, the normally available and minimum download and upload speed at the main location of the end-user;***

- (d) *for mobile data links, the estimated and minimum download and upload speed when connected through the provider's wireless network in the end-user's Member State of residence;*
- (e) *other quality of service parameters, as set out in accordance with Article 24 (2) of Regulation (EU) .../...<sup>+</sup>;*
- (f) *information on any procedures put in place by the provider to measure and shape traffic including an indication of the underlying communication inspection methods used for reasonable traffic management measures and information on how those procedures could impact on service quality, end-users' privacy and the protection of personal data; and*
- (g) *a clear and comprehensible explanation as to how any volume limitation, the speed and other quality of service parameters may in practice have an impact on internet access services, in particular the use of content, applications and services.''. [Am. 187]*

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<sup>+</sup> *Number of this Regulation.*



*(If) Article 20 (2) is deleted. [Am. 188]*

*(1g) In Article 20, the following paragraph is added:*

*‘2a. Member States may maintain or introduce additional contractual information requirements in relation to contracts to which this Article applies.’ [Am. 189]*

*(1h) In Article 20, the following paragraph is added:*

*‘2b. BEREC shall issue guidelines for the establishment of standard contractual information templates containing the information required under paragraphs 1 and 1a of this Article.*

*National regulatory authorities may specify additional requirements on the content, form and manner of the contractual information to be published, including in particular data delivery speeds, taking utmost account of the BEREC guidelines for the methods of measuring the speed and for the content, form and manner of the information to be published, as set out in Article 21(3a).’ [Am. 190]*

***(Ii) The following Article is inserted:***

***‘Article 20a***

***Contract duration and termination***

- 1. Member States shall ensure that the maximum duration of contracts concluded between consumers and providers of electronic communications to the public is 24 months. Providers of electronic communications to the public shall offer end-users the possibility of 12 month contracts.***
- 2. The consumer shall have the right to withdraw from a distance or off premises contract within 14 days after its conclusion in accordance with Directive 2011/83/EU.***

3. *Where a contract or national law provides for contract periods with a fixed term (as opposed to a minimum term) to be automatically rolled over, the provider of electronic communications to the public shall inform the consumer in due time thereof so that the consumer has at least one month to oppose such automatic roll-over. If the consumer does not oppose such automatic roll-over, the contract shall be deemed to be a permanent rolling contract which can be terminated by the consumer, at any time with a one-month notice period and without incurring any costs except the cost of providing service during the notice period.*
4. *Member States shall ensure that consumers have the right to terminate their contract without incurring any costs upon receiving notice of changes in the contractual conditions proposed by the provider of electronic communications to the public unless the proposed changes are exclusively to the benefit of the end-user. Providers shall give consumers adequate notice, not less than one month, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new contractual conditions. Paragraph 2 shall apply mutatis mutandis.*

5. *Any significant discrepancy, continuous or regularly recurring, between the actual performance regarding speed or other quality of service parameters and the performance indicated by the provider of electronic communications to the public in accordance with Article 20 shall be deemed to constitute non-conformity of performance for the purposes of determining the remedies available to the consumer in accordance with national law.*
6. *Member States shall ensure that a subscription to additional services provided by the same provider of electronic communications to the public shall not re-start the initial contract period unless the additional services are offered at a special promotional price available only on the condition that the existing contract period is re-started.*
7. *Member States shall ensure that providers of electronic communications to the public apply conditions and procedures for contract termination which do not raise obstacles to or disincentives against changing service providers.*

8. *If a bundle of services offered to consumers comprises at least a connection to an electronic communications network or an electronic communications service, the provisions of this Article shall apply to all elements of the bundle.*
9. *Member States may maintain or introduce additional requirements to ensure a higher level of consumer protection in relation to contracts to which this Article applies.’ [Am. 191]*

(1j) *Article 21 is replaced by the following:*

*‘Article 21*

- 1. Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on any charges due on early termination of a contract and on standard terms and conditions in respect of access to, and use of, services provided by them to end-users in accordance with Annex II. Such information shall be published in a clear, comprehensive and easily accessible form and shall be updated regularly. Any differentiation in the conditions applied to consumers and other end-users so requesting shall be made explicit.*

*National regulatory authorities may specify additional requirements regarding the form in which such information is to be published, which may in particular include the introduction of language requirements so as to ensure that such information is easily understood by consumers and other end-users so requesting. Member States shall ensure that providers of electronic communications to the public are obliged upon request to supply the information, to the relevant national regulatory authorities, in advance of its publication.*

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



- 2a. *Member States shall ensure that national regulatory authorities, under guidance from BEREC and following consultation with relevant stakeholders, establish a voluntary certification scheme for interactive comparison websites, guides or similar tools, based on objective, transparent and proportionate requirements, including in particular independence from any provider of electronic communications to the public.*
3. *Member States shall ensure that national regulatory authorities are able to oblige undertakings providing public electronic communications networks and/or publicly available electronic communications services to inter alia:*
  - (a) *provide end-users with applicable tariff information regarding any number or service subject to particular pricing conditions; with respect to individual categories of services, national regulatory authorities may require such information to be provided immediately prior to connecting the call;*

- (b) provide end-users with information on access to emergency services and caller location for all relevant services offered, and any limitations on the provision of emergency services under Article 26, and to ensure that any changes are notified without delay;***
- (da) provide information on internet access services, where offered, specifying the following:***

  - (i) for fixed data links, the normally available and minimum download and upload speed in the end-user's Member State of residence; for mobile data links, the estimated and minimum download and upload speed when connected through the provider's wireless network in the end-user's Member State of residence;***
  - (ii) details of unit data pricing plans, pricing plans for bulk data and any applicable thresholds. For data volumes above thresholds: unit or bulk pricing on an ad hoc or lasting basis and any data speed limitations that may be applied;***

- (iii) *how end-users can monitor the current level of their consumption, whether and how any voluntary limitations can be set;*
- (iv) *a clear and comprehensible explanation as to how any data volume limitation, the speed and other quality of service parameters may in practice have an impact on the use of internet access services, in particular the use of content, applications and services;*
- (v) *information on any procedures put in place by the provider to measure and shape traffic as defined in Article 23(5) of Regulation (EU) .../...<sup>+</sup> including an indication of the underlying communication inspection methods used for reasonable traffic management measures and information on how those procedures could impact on service quality, end-users' privacy and the protection of personal data;*

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<sup>+</sup> *Number of this Regulation.*

- (e) *inform consumers, and other end-users where applicable, of their right to determine whether or not to include their personal data in a directory, and of the types of data concerned, in accordance with Article 12 of Directive 2002/58/EC; and*
- (f) *regularly inform disabled consumers, and other end-users, where applicable, of details of products and services designed for them and the measures taken to ensure equivalence of access.*

*If deemed appropriate, national regulatory authorities may promote self- or co-regulatory measures prior to imposing any obligation. Member States may specify additional requirements on the content, form and manner of the information to be published, taking utmost account of the BEREC guidelines referred to in paragraph 3a of this Article.*

3a. *By ...<sup>+</sup>, BEREC, after consulting stakeholders and in close cooperation with the Commission, shall lay down general guidelines for the methods of measuring the speed, the quality of service parameters to be measured (inter alia average versus advertised speeds; quality as perceived by users), and the methods for measuring them over time, as well as the content, form and manner of the information to be published, including possible quality certification mechanisms, in order to ensure that end-users, including disabled end-users, have access to comprehensive, comparable, reliable and user-friendly information. Where appropriate, the parameters, definitions and measurement methods set out in Annex III may be used.*

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<sup>+</sup> *Date of application of this Regulation.*

4. *Member States may require that the undertakings referred to in paragraph 3 distribute public interest information free of charge to end-users, where appropriate, by the same means as those ordinarily used by them in their communications with end-users. In such a case, that information shall be provided by the relevant public authorities to the providers of electronic communications to the public in a standardised format and may, inter alia, cover the following topics:*
- (a) *the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of data protection rights, copyright and related rights, and their legal consequences; and*
  - (b) *the means of protection against risks to personal security, privacy and personal data when using electronic communications services."*

[Am. 192]

***(1k) The following Article is inserted:***

***‘Article 21a***

***Control of consumption***

***1. Member States shall ensure that providers of electronic communications offer consumers and end-users the facility to monitor and control their usage of electronic communications services billed on time or volume consumption. This facility must include:***

- (a) for pre-paid and post-paid services, access to timely information on their service consumption free of charge;***
- (b) for post-paid services, the ability to set free of charge a predefined financial cap on their usage, to request notification when a predefined proportion of the cap and the cap itself has been reached, the procedure to be followed to continue usage if the cap is exceeded, and the applicable pricing plans;***
- (c) itemised bills on a durable medium.***

2. *BEREC shall lay down guidelines for the implementation of paragraph 1.*

*After having reached the financial limit end-users shall continue to be able to receive calls and SMS messages and access free-phone numbers and emergency services by dialling the European emergency call number "112" free of charge until the end of the agreed billing period.' [Am. 193]*

(2) ~~Articles 20, 21, 22 and 30~~ *Article 22 is deleted.* [Am. 194]

(2a) *Article 26 is replaced by the following:*

*'1. Member States shall ensure that all end-users of the service referred to in paragraph 2, including users of public pay telephones are able to call the emergency services free of charge and without having to use any means of payment, by using the single European emergency call number "112" and any national emergency call number specified by Member States.*

*1a. Member States shall ensure that all users of private electronic communication networks are able to call the emergency services, or, where applicable, the internal emergency services, free of charge, by using the single European emergency call number "112" and any national emergency call number specified by the Member States.*



2. *Member States, in consultation with national regulatory authorities, emergency services and providers, shall ensure that undertakings providing end-users with an electronic communications service for originating national calls to a number or numbers in a national telephone numbering plan provide access to emergency services.*
3. *Member States shall ensure that calls to the single European emergency call number "112" are appropriately answered and handled in the manner best suited to the national organisation of emergency systems. Such calls shall be answered and handled at least as expeditiously and effectively as calls to the national emergency number or numbers, where these continue to be in use.*

*The Commission, in consultation with the relevant competent authorities, shall adopt a recommendation on performance indicators for Member States. The Commission shall submit to the European Parliament and the Council a report on the effectiveness of the implementation of the European emergency call number "112" and on the functioning of the performance indicators by the 31 December 2015 and every two years thereafter.*

4. *Member States shall ensure that access for disabled end-users to emergency services is equivalent to that enjoyed by other end-users. Measures taken to ensure that disabled end-users are able to access emergency services whilst travelling in other Member States shall be based to the greatest extent possible on European standards or specifications published in accordance with the provisions of Article 17 of Directive 2002/21/EC (Framework Directive), and they shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in this Article.*
5. *Member States shall ensure that undertakings concerned make caller location information available free of charge to the authority handling emergency calls as soon as the call reaches that authority. This shall apply to all calls to the single European emergency call number "112". Member States may extend this obligation to cover calls to national emergency numbers. The Commission shall ensure that competent regulatory authorities shall lay down criteria for the accuracy and reliability of the location information provided in accordance with paragraph 7 and taking utmost account of the BEREC guidelines.*

*By...<sup>+</sup> BEREC, after consulting relevant stakeholders and in close cooperation with the Commission, shall lay down guidelines for the criteria for the accuracy and reliability of the caller location information provided to emergency services. Those guidelines shall take into account the feasibility of using a mobile terminal equipped with a GNSS devices of mobile terminals in order to improve the accuracy and reliability of the caller location information of a “112” call.*

- 6. Member States and the Commission shall ensure that citizens are adequately informed about the existence and use of the single European emergency call number "112", in particular through initiatives specifically targeting persons travelling between Member States. The Commission shall support and complement Member States' action.*

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<sup>+</sup> *6 months after the date of application of this Regulation.*

- 7. *In order to ensure the effective access to "112" services in the Member States, the Commission, having consulted BEREC, shall be empowered to adopt delegated acts in accordance with Article 37a concerning caller location criteria and key performance indicators on access to "112". However, these measures shall be adopted without prejudice to, and shall have no impact on, the organisation of emergency services, which remains of the exclusive competence of Member States.***
- 7a. *The Commission shall maintain a database of E.164 numbers of European emergency services to ensure that they are able to contact each other from one Member State to another.*** [Am. 195]

***(2b) The following Article is inserted:***

***‘Article 26a***

***Reverse EU “112” communication system***

***No later than [1 year after the transposition deadline] the Commission shall submit a report to the European Parliament and the Council on the feasibility for setting up a Reverse EU “112” communication system using existing electronic communication networks, that covers the whole Union, is universal, multilingual, accessible, straightforward and effective in order to alert the public in the event of an imminent or developing disaster or major state of emergency.***

***The Commission shall consult BERECA and civil defence services, and examine the standards and specifications necessary for the setting up of the system referred to in paragraph 1. While preparing that report the Commission shall take into account existing national and regional “112” systems and shall comply with the Union law on the protection of private data. Where appropriate, that report shall be accompanied by a legislative proposal.’ [Am. 196]***

*(2c) Article 30 is replaced by the following:*

- ‘1. Member States shall ensure that all subscribers with numbers from the national telephone numbering plan who so request can retain their number(s) independently of the provider of electronic communications to the public providing the service in accordance with the provisions of Part C of Annex I.*
- 2. National regulatory authorities shall ensure that pricing between operators and/or service providers related to the provision of number portability is cost-oriented, and that direct charges to subscribers, if any, do not act as a disincentive for subscribers against changing service provider.*
- 3. National regulatory authorities shall not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.*

4. *Porting of numbers and their subsequent activation shall be carried out within the shortest possible time. For end-users who have concluded an agreement to port a number to a new provider that number shall be activated within one working day.*

*Without prejudice to the first subparagraph, competent national authorities may establish the global process of switching and porting of numbers taking into account the BEREC guidelines referred to in paragraph 4b. They shall take into account necessary end-user protection throughout the switching process, the need to ensure the efficiency of such a process for the end-user, the need to maintain continuity of service to the end-user and the need to ensure that switching processes are not harmful to competition. In any event, loss of service during the process of porting shall not exceed one working day. End-users shall not be switched to another provider against their will.*

*Member States shall ensure that appropriate sanctions on undertakings are provided for, including an obligation to compensate subscribers in case of delay in porting, of not making available information necessary for porting in a timely manner, or abuse of porting by them or on their behalf.*

- 4a. *The receiving provider of electronic communications to the public shall lead the switching and porting process. End-users shall receive adequate information on switching before and during the switching process, and also immediately after it is concluded.***
- 4b. *BEREC shall lay down guidelines on all the modalities and procedures of the switching and porting process, in particular the respective responsibilities of the receiving and transferring provider in the process of switching and porting, information to be provided to consumers during that process, timely termination of an existing contract the refund of any pre-payments and effective e-mail forwarding services.***
- 4c. *If a bundle of services offered to consumers comprises at least a connection to an electronic communications network or an electronic communications service, the provisions of this Article shall apply to all elements of the bundle.***. [Am. 197]



***(2d) In Article 34 the following paragraph is added:***

***‘1a. The out-of-court procedures set up in accordance with paragraph 1 shall also apply to disputes related to contracts between consumers, and other end-users to the extent that such out-of-court procedures are available also for them, and providers of electronic communications to the public which are established in another Member State. In the case of disputes falling within the scope of Directive 2013/11/EU\*, the provisions of that Directive shall apply.***

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***\* Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).’. [Am. 198]***

(2e) *The following Article 37a is inserted:*

*‘Article 37a*

*Exercise of the delegation*

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.*
- 2. The power to adopt delegated acts referred to in Article 26 shall be conferred on the Commission for an indeterminate period of time from ...<sup>+</sup>.*
- 3. The delegation of power referred to in Article 26 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*
- 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.’ [Am. 199]*

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<sup>+</sup> *Date of entry into force of this Regulation.*

**(2f) In Annex II, point 1 is replaced by the following:**

***‘1. Name(s), address(es) and contact information of undertaking(s)***

***i.e. names and head office addresses of undertakings providing public communications networks and/or publicly available telephone services.’***

**[Am. 200]**

**(2g) In Annex II, point 2.2 is replaced by the following:**

***‘2.2. For each tariff plan, the services provided and the relevant quality of service parameters, the applicable tariff plan(s) and, for each such tariff plan, the types of services offered, including the volumes of communications, and any applicable charges (access, usage, maintenance and any additional charges), as well as costs with respect to terminal equipment.’*** [Am. 201]

***(2h) In Annex II, the following point is inserted:***

***‘2.2.a. Additional information on internet access services, where offered, including in particular details on data pricing, download and upload data speeds and any applicable speed limitations, on possibilities to monitor consumption levels, on any applicable traffic management procedures and their impact on service quality, on end-user privacy and on the protection of personal data.’ [Am. 202]***

***(2i) In Annex II, Point 2.5 is replaced by the following:***

***‘2.5. Standard contract terms and conditions, including any minimum contractual period, the conditions for and any charges due on early termination of the contract, the procedures and direct charges related to the switching and portability of numbers and other identifiers, if relevant, and compensation arrangements for delay or abuse of switching.’ [Am. 203]***

2. Member States shall maintain in force until 1 July 2016 all measures transposing the provisions referred to in paragraph 1.

## Article 37

### Amendments to Regulation (EU) No 531/2012

Regulation (EU) No 531/2012 is amended as follows:

(1) ~~In Article 1(1), the following third subparagraph is inserted:~~

~~‘This Regulation shall apply to roaming services provided in the Union to end users whose domestic provider is a provider of electronic communications to the public in a Member State.’ [Am. 204]~~

(2) ~~In Article 2 (2), the following point (r) is inserted:~~

~~‘(r) "bilateral or multilateral roaming agreement" means one or more commercial or technical agreements among roaming providers that allow the virtual extension of the home network coverage and the sustainable provision by each roaming provider of regulated retail roaming services at the same price level as their respective domestic mobile communications services.’ [Am. 205]~~

(3) ~~In Article 4, the following paragraph 7 is added:~~

~~‘7. This Article shall not apply to roaming providers that provide regulated retail roaming services in accordance with Article 4a.’ [Am. 206]~~

~~(4) The following Article 4a is inserted:~~

~~‘Article 4a~~

~~1. This Article shall apply to roaming providers which:~~

- ~~(a) apply, by default and in all their respective retail packages that include regulated roaming services, the applicable domestic service rate to both domestic services and regulated roaming services throughout the Union, as if the regulated roaming services were consumed on the home network; and~~
- ~~(b) ensure, whether through their own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the provisions of point (a) are complied with by at least one roaming provider in all Member States.~~

~~2. Paragraphs 1, 6 and 7 shall not preclude the limitation by a roaming provider of consumption of regulated retail roaming services at the applicable domestic service rate by reference to a reasonable use criterion. Any reasonable use criterion shall be applied in such a way that consumers availing of the roaming provider's various domestic retail packages are in a position to confidently replicate the typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union. A roaming provider availing of this possibility shall publish, in accordance with Article 25(1)(b) of Regulation XXX/2014, and include in its contracts, in accordance with Article 26(1)(b) and (c) of that Regulation, detailed quantified information on how the reasonable use criterion is applied, by reference to the main pricing, volume or other parameters of the retail package in question.~~

~~By 31 December 2014, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down general guidelines for the application of reasonable use criteria in the retail contracts provided by roaming providers availing of this Article. BEREC shall develop such guidelines by reference to the overall objective set out in the first subparagraph, and shall have regard in particular to the evolution of pricing and consumption patterns in the Member States, to the degree of convergence of domestic price levels across the Union, to any observable effect of roaming at domestic service rates on the evolution of such rates, and to the evolution of wholesale roaming rates for unbalanced traffic between roaming providers.~~

~~The competent national regulatory authority shall monitor and supervise the application of reasonable use criteria, taking utmost account of the BEREC general guidelines once they are adopted, and shall ensure that unreasonable terms are not applied.~~



- ~~3. Individual end users served by a roaming provider availing of this Article may, upon their own request, make a deliberate and explicit choice to renounce the benefit of the application to regulated roaming services of the applicable domestic service rate under a given retail package in return for other advantages offered by that provider. The roaming provider shall remind those end users of the nature of the roaming advantages which would thereby be lost. National regulatory authorities shall monitor in particular whether roaming providers availing of this Article engage in business practices which would amount to circumvention of the default regime.~~
- ~~4. Regulated retail roaming charges laid down in Articles 8, 10 and 13 shall not apply to roaming services offered by a roaming provider availing of this Article to the extent that these are charged at the level of the applicable domestic service rate.~~

~~Where a roaming provider availing of this Article applies charges which are different from the applicable domestic service rate for consumption of regulated roaming services going beyond reasonable use of such services in accordance with paragraph 2, or where an individual end user explicitly renounces the benefit of domestic service rates for regulated roaming services in accordance with paragraph 3, the charges for those regulated roaming services shall not exceed the retail roaming charges laid down in Articles 8, 10 and 13.~~

- ~~5. A roaming provider wishing to avail of this Article shall notify its own declaration and any bilateral or multilateral agreements by virtue of which it fulfills the conditions of paragraph 1, and any changes thereto, to the BEREC Office. The notifying roaming provider shall include in its notification proof of agreement to such notification by any contractual partners to notified bilateral or multilateral roaming agreements.~~

~~6. In the period from 1 July 2014 until 30 June 2016, this Article shall apply to roaming providers which do not fulfill the conditions set out in paragraph 1, when they respect the following conditions:~~

- ~~(a) the roaming provider notifies its own declarataion and any relevant bilateral or multilateral roaming agreements to the BEREC Office in accordance with paragraph 5, making specific reference to this paragraph;~~
- ~~(b) the roaming provider ensures, whether through its own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the conditions of points (c),(d) and (e) are complied with in at least 17 Member States representing 70% of the population of the Union;~~
- ~~(c) the roaming provider and any contractual partners within the meaning of point (b) each undertakes to make available and actively offer, at the latest as from 1 July 2014, or as from the date of notification, whichever is the later, at least one retail package with a tariff option according to which the applicable domestic service rate applies to both domestic services and regulated roaming services throughout the Union, as if those regulated roaming services were consumed on the home network;~~

~~(d) — the roaming provider and any contractual partners within the meaning of point (b) each undertakes to make available and actively offer, at the latest as from 1 July 2015, or as from the date of notification, whichever is the later, such tariff options in retail packages which, on 1 January of that year, were used by at least 50% of their respective customer base;~~

~~(e) — the roaming provider and any contractual partners within the meaning of point (b) each undertakes to comply, at the latest as from 1 July 2016, with paragraph 1(b) in all of their respective retail packages.~~

~~The roaming provider availing of this Article and any contractual partners within the meaning of point (b) may, as an alternative to the undertaking referred to in point (d), undertake, as from 1 July 2015, or as from the date of notification, whichever is the later, that any roaming surcharges applied in addition to the applicable domestic service rate in its various retail packages are, in aggregate, no more than 50% of those applicable in those packages on 1 January 2015, irrespective of whether such surcharges are calculated on the basis of units such as voice minutes or megabytes, of periods such as days or weeks of roaming, or by any other means or combination thereof. Roaming providers invoking this point shall demonstrate compliance with the requirement of a 50% reduction to the national regulatory authority and shall supply all necessary supporting evidence requested of them.~~

~~Where the roaming provider availing of this Article notifies its own declaration and any relevant bilateral or multilateral roaming agreements to the BEREC Office pursuant to point (a) of the first subparagraph and thereby falls under this paragraph, the notifying roaming provider and any contractual partners within the meaning of point (b) shall each be bound to comply with their respective undertakings in accordance with points (c), (d) and (e) of the first subparagraph, including any alternative undertaking to that provided for in point (d) of that subparagraph, until at least 1 July 2018.~~

~~7. — In the period from 1 July 2014 until 30 June 2016, this Article shall apply to roaming providers which do not fulfill the conditions set out in paragraph 1, when they respect the following conditions:~~

~~(a) — the roaming provider notifies its own declarataion and any relevant bilateral or multilateral roaming agreements to the BEREC Office in accordance with paragraph 5, making specific reference to this paragraph;~~

- ~~(b) — the roaming provider ensures, whether through its own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the conditions of paragraph 1(a) are complied with in at least 10 Member States representing 30% of the population of the Union, at the latest as from 1 July 2014, or as from the date of notification, whichever is the later;~~
- ~~(c) — the roaming provider ensures, whether through its own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the conditions of paragraph 1(a) are complied with in at least 14 Member States representing 50% of the population of the Union, at the latest as from 1 July 2015, or as from the date of notification, whichever is the later;~~
- ~~(d) — the roaming provider ensures, whether through its own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the conditions of paragraph 1(a) are complied with in at least 17 Member States representing 70% of the population of the Union, at the latest as from 1 July 2016.~~

~~Where a roaming provider availing of this Article notifies its own declaration and any relevant bilateral or multilateral roaming agreements to the BEREC Office pursuant to point (a) of the first subparagraph and thereby falls under this paragraph, the notifying roaming provider and any contractual partners within the meaning of point (b) shall each be bound to comply with their respective undertakings to comply with the conditions of paragraph 1(a), until at least 1 July 2018.~~

- ~~8. — Roaming providers shall negotiate in good faith the arrangements towards establishing bilateral or multilateral roaming agreements, on fair and reasonable terms having regard to the objective that such agreements with other roaming providers should allow the virtual extension of the home network coverage and the sustainable provision by each of the roaming providers availing of this Article of regulated retail roaming services at the same price level as their respective domestic mobile communications services.~~



~~9. By way of exception to paragraph 1, after 1 July 2016, this Article shall apply to roaming providers availing of this Article when those roaming providers demonstrate that they have sought in good faith to establish or extend a bilateral or multilateral roaming agreements on the basis of fair and reasonable terms in all Member States where they do not yet fulfill the requirements of 1 and have been unable to secure any bilateral or multilateral roaming agreement with a roaming provider in one or more Member States, provided they comply with the minimum coverage referred to in paragraph 6(b) and with all other relevant provisions of this Article. In those cases, roaming providers availing of this Article shall continue to seek to establish reasonable terms for conclusion of a roaming agreement with a roaming provider from any unrepresented Member State.~~

- ~~10. Where an alternative roaming provider has already been granted access to a domestic provider's customers pursuant to Article 4(1) and has already made the necessary investments to serve those customers, Article 4(7) shall not apply to such a domestic provider during a transitional period of three years. The transitional period is without prejudice to the need to respect any longer contractual period agreed with the alternative roaming provider.~~
- ~~11. This Article is without prejudice to the application of Union competition rules to bilateral and multilateral roaming agreements.<sup>2</sup> [Am. 207]~~

***(4a) The following articles are inserted:***

***‘Article 6a***

***Abolition of retail roaming charges***

***With effect from 15 December 2015, roaming providers shall not levy any surcharge in comparison to the charges for mobile communications services at domestic level on roaming customers in any Member States for any regulated roaming call made or received, for any regulated roaming SMS/MMS message sent and for any regulated data roaming services used, nor any general charge to enable the terminal equipment or service to be used abroad.***

## ***Article 6b***

### ***Fair usage***

- 1. By way of derogation from article 6a, and to prevent anomalous or abusive usage of retail roaming services, roaming providers may apply a "fair use clause" to the consumption of regulated retail roaming services provided at the applicable domestic price level, by reference to fair use criteria. These criteria shall be applied in such a way that consumers are in a position to confidently replicate the typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union.***
- 2. In accordance with Article 20 of Directive 2002/22/EC, roaming providers shall publish and include in their contracts detailed quantified information on how any fair use criteria are applied, by reference to the main pricing, volume or other parameters of the retail package in question.***

3. *By 31 December 2014, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down general guidelines for the application of fair use criteria in retail contracts provided by roaming providers. BEREC shall have regard in particular to the evolution of pricing and consumption patterns in the Member States, to the degree of convergence of domestic price levels across the Union, to any observable effect of roaming at domestic service rates on the evolution of such rates, and to the evolution of effective wholesale roaming rates for unbalanced traffic between roaming providers. In addition, BEREC's guidelines may also have regard to relevant objective variations between Member States or between roaming providers in respect of factors such as domestic price levels, typical volumes included in retail packages or the average period during which customers travel within the Union.*
4. *In order to ensure consistent and simultaneous implementation across the Union of the application of the fair use criteria, the Commission shall, by means of implementing acts and based on the BEREC guidelines referred on paragraph 3, adopt, by 30 June 2015, detailed rules on the application of fair use criteria.*

5. *The competent national regulatory authority shall strictly monitor and supervise the application of fair use criteria as defined by the Commission implementing act referred on paragraph 4, taking utmost account of the BEREC general guidelines, of relevant objective factors specific to its Member State and of relevant objective variations between roaming providers, and shall ensure that unreasonable terms are not applied.*
6. *The retail charges for euro tariff services established by Articles 8, 10 and 13 of this Regulation apply for regulated roaming services in excess of any fair usage limit applied in accordance with Article 6b. ' [Am. 208]*

(5) In Article 8, paragraph 2 is amended as follows:

(a) the first subparagraph is replaced by the following:

‘2. With effect from 1 July ~~2013~~ **2012**, the retail charge (excluding VAT) for a euro-voice tariff which a roaming provider may levy on its roaming customer for the provision of a regulated roaming call may vary for any roaming call but shall not exceed EUR ~~0,24~~ **0,29** per minute for any call made or EUR ~~0,07~~ **0,08** per minute for any call received. The maximum retail charge for calls made shall decrease to EUR ~~0,19~~ **0,24** on 1 July 2014. ~~As of 2013 and to EUR 0,19 on 1 July 2014, roaming providers shall not levy any charge on their roaming customers for calls received, without prejudice to measures taken to prevent anomalous or fraudulent usage. Without prejudice to Article 19 those maximum retail charges for the euro-voice tariff shall remain valid until 30 June 2017 and the maximum retail charge for calls received shall decrease to EUR 0,07 on 1 July 2013 and to EUR 0,05 on 1 July 2014. The maximum charges applicable as of 1 July 2014 shall expire 16 December 2015 save for regulated roaming calls in excess of any fair use limit applied in accordance with Article 6b.’~~ [Am. 209]

~~(b) the third subparagraph is replaced by the following:~~

~~‘Every roaming provider shall charge its roaming customers for the provision of any regulated roaming call to which a euro voice tariff applies on a per-second basis.’~~

~~[Am. 210]~~

(5a) *In Article 10, paragraph 2 is replaced by the following:*

*‘2. With effect from 1 July 2012, the retail charge (excluding VAT) for a euro-SMS tariff which a roaming provider may levy on its roaming customer for a regulated roaming SMS message sent by that roaming customer may vary for any regulated roaming SMS message but shall not exceed EUR 0,09. That maximum charge shall decrease to EUR 0,08 on 1 July 2013 and to EUR 0,06 on 1 July 2014. The maximum charges applicable as of 1 July 2014 shall expire 16 December 2015 save for regulated roaming SMS messages in excess of any fair use limit applied in accordance with Article 6b.’ [Am. 211]*



**(5b) In Article 13, paragraph 2, the first subparagraph is replaced by the following:**

- ‘2. With effect from 1 July 2012, the retail charge (excluding VAT) of a euro-data tariff which a roaming provider may levy on its roaming customer for the provision of a regulated data roaming service shall not exceed EUR 0,70 per megabyte used. The maximum retail charge for data used shall decrease to EUR 0,45 per megabyte used on 1 July 2013 and to EUR 0,20 per megabyte used on 1 July 2014. The maximum charges applicable as of 1 July 2014 shall expire 16 December 2015 save for regulated data roaming services in excess of any fair use limit applied in accordance with Article 6b.’ [Am. 212]**

(6) — In Article 14, the following paragraph 1a is inserted:

~~‘1a. When the consumption of regulated retail roaming services at the applicable domestic service rate is limited by reference to a reasonable use criterion in accordance with Article 4a(2), roaming providers shall alert roaming customers when the consumption of roaming calls and SMS messages has reached the reasonable use limit and at the same time shall provide roaming customers with basic personalised pricing information on the roaming charges applicable to making a voice call or sending an SMS message outside the domestic service rate or package in accordance with the second, fourth and fifth sub-paragraphs of paragraph 1 of this Article.’~~

**[Am. 213]**

**(6a) Article 14 is deleted and replaced by the following with effect from 15 December 2015:**

- ‘1. To alert roaming customers to the fact that they will be subject to roaming charges when making or receiving a call or when sending an SMS message, each roaming provider shall, except when the customer has notified the roaming provider that he does not require this service, provide the customer, automatically by means of a Message Service, without undue delay and free of charge, when he enters a Member State other than that of his domestic provider, with basic personalised pricing information on the roaming charges (including VAT) that apply to the making and receiving of calls and to the sending of SMS messages by that customer in the visited Member State.**

*That basic personalised pricing information shall include the maximum charges (in the currency of the home bill provided by the customer's domestic provider) to which the customer may be subject under his tariff scheme for:*

- (a) making regulated roaming calls within the visited Member State and back to the Member State of his domestic provider, as well as for regulated roaming calls received; and*
- (b) sending regulated roaming SMS messages while in the visited Member State.*

*It shall also include the free-of-charge number referred to in paragraph 2 for obtaining more detailed information and information on the possibility of accessing emergency services by dialling the European emergency number 112 free of charge.*

*On the occasion of each message, a customer shall have the opportunity to give notice to the roaming provider, free of charge and in an easy manner, that he does not require the automatic Message Service. A customer who has given notice that he does not require the automatic Message Service shall have the right at any time and free of charge to require the roaming provider to provide the service again.*

*Roaming providers shall provide blind or partially-sighted customers with the basic personalised pricing information referred to in the first subparagraph automatically, by voice call, free of charge, if they so request.*

- 2. In addition to paragraph 1, customers shall have the right to request and receive, free of charge, and irrespective of their location within the Union, more detailed personalised pricing information on the roaming charges that apply in the visited network to voice calls and SMS, and information on the transparency measures applicable by virtue of this Regulation, by means of a mobile voice call or by SMS. Such a request shall be to a free-of-charge number designated for this purpose by the roaming provider. Obligations provided for in paragraph 1 shall not apply to devices which do not support SMS functionality.*
- 3. Roaming providers shall make available information to their customers on how to avoid inadvertent roaming in border regions. Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services while situated in their home Member State.*

4. *The present article shall also apply to roaming calls and roaming SMS/MMS messages used by roaming customers travelling outside the Union and provided by a roaming provider.*

*With effect from 15 December 2015, this article shall also apply in cases where the consumption of roaming calls and roaming SMS/MMS messages at the applicable domestic service rate is limited by reference to a fair use criterion in accordance with Article 6b and when the consumption has reached the fair use limit.’.*

[Am. 214]

(7) In Article 15, the following paragraph 2a is inserted:

~~‘2a. When the consumption of regulated retail roaming services at the applicable domestic service rate is limited by reference to a reasonable use criterion in accordance with Article 4a(2), roaming providers shall alert roaming customers when the consumption of data roaming services has reached the reasonable use limit and at the same time shall provide roaming customers with basic personalised pricing information on the roaming charges applicable to data roaming outside the domestic service rate or package in accordance with paragraph 2 of this Article. Paragraph 3 of this Article shall apply to data roaming services consumed outside the applicable domestic service rates or packages referred to in Article 4a(2).’ [Am. 215]~~

(7a) *Article 15 is deleted and replaced by the following with effect from 15 December 2015:*

*‘Transparency and safeguard mechanisms for retail data roaming services*

- 1. Roaming providers shall ensure that their roaming customers, both before and after the conclusion of a contract, are kept adequately informed of the charges which apply to their use of regulated data roaming services, in ways which facilitate customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on regulated data roaming services in accordance with paragraphs 2 and 3.*

*Where appropriate, roaming providers shall inform their customers, before the conclusion of a contract and on a regular basis thereafter, of the risk of automatic and uncontrolled data roaming connection and download. Furthermore, roaming providers shall notify to their customers, free of charge and in a clear and easily understandable manner, how to switch off these automatic data roaming connections in order to avoid uncontrolled consumption of data roaming services.*



2. *An automatic message from the roaming provider shall inform the roaming customer that the latter is roaming and provide basic personalised tariff information on the charges (in the currency of the home bill provided by the customer's domestic provider), expressed in price per megabyte, applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except where the customer has notified the roaming provider that he does not require that information.*

*Such basic personalised tariff information shall be delivered to the roaming customer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the mobile device, every time the roaming customer enters a Member State other than that of his domestic provider and initiates for the first time a data roaming service in that particular Member State. It shall be provided free of charge at the moment the roaming customer initiates a regulated data roaming service, by an appropriate means adapted to facilitate its receipt and easy comprehension.*

*A customer who has notified his roaming provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the roaming provider to provide this service again.*

3. *Each roaming provider shall grant to all their roaming customers the opportunity to opt deliberately and free of charge for a facility which provides information on the accumulated consumption expressed in volume or in the currency in which the roaming customer is billed for regulated data roaming services and which guarantees that, without the customer's explicit consent, the accumulated expenditure for regulated data roaming services over a specified period of use, excluding MMS billed on a per-unit basis, does not exceed a specified financial limit.*

*To this end, the roaming provider shall make available one or more maximum financial limits for specified periods of use, provided that the customer is informed in advance of the corresponding volume amounts. One of those limits (the default financial limit) shall be close to, but not exceed, EUR 50 of outstanding charges per monthly billing period (excluding VAT).*

*Alternatively, the roaming provider may establish limits expressed in volume, provided that the customer is informed in advance of the corresponding financial amounts. One of those limits (the default volume limit) shall have a corresponding financial amount not exceeding EUR 50 of outstanding charges per monthly billing period (excluding VAT).*

*In addition, the roaming provider may offer to its roaming customers other limits with different, that is, higher or lower, maximum monthly financial limits.*

*The default limits referred to in the second and third subparagraphs shall be applicable to all customers who have not opted for another limit.*

*Each roaming provider shall also ensure that an appropriate notification is sent to the roaming customer's mobile device, for example by an SMS message, an e-mail or a pop-up window on the computer, when the data roaming services have reached 80 % of the agreed financial or volume limit. Each customer shall have the right to require the roaming provider to stop sending such notifications and shall have the right, at any time and free of charge, to require the provider to provide the service again.*

*When the financial or volume limit would otherwise be exceeded, a notification shall be sent to the roaming customer's mobile device. That notification shall indicate the procedure to be followed if the customer wishes to continue provision of those services and the cost associated with each additional unit to be consumed. If the roaming customer does not respond as prompted in the notification received, the roaming provider shall immediately cease to provide and to charge the roaming customer for regulated data roaming services, unless and until the roaming customer requests the continued or renewed provision of those services.*

*Whenever a roaming customer requests to opt for or to remove a financial or volume limit facility, the change shall be made within one working day of receipt of the request, shall be free of charge, and shall not entail conditions or restrictions pertaining to other elements of the subscription.*

- 4. Paragraphs 2 and 3 shall not apply to machine-to-machine devices that use mobile data communication.*

5. *Roaming providers shall take reasonable steps to protect their customers from paying roaming charges for inadvertently accessed roaming services while situated in their home Member State. This shall include informing customers on how to avoid inadvertent roaming in border regions.*
6. *This article shall apply in cases where the consumption of data roaming services at the applicable domestic service rate is limited by reference to a fair use criterion in accordance with Article 6b and when the consumption has reached the fair use limit.*

*It shall also apply to data roaming services used by roaming customers travelling outside the Union and provided by a roaming provider.*

*Where the customer opts for the facility referred to in the first subparagraph of paragraph 3, the requirements provided in paragraph 3 shall not apply if the visited network operator in the visited country outside the Union does not allow the roaming provider to monitor its customers' usage on a real-time basis.*

*In such a case the customer shall be notified by an SMS message when entering such a country, without undue delay and free of charge, that information on accumulated consumption and the guarantee not to exceed a specified financial limit are not available. ' [Am. 216]*

~~(8) Article 19 is amended as follows:~~

~~(a) Paragraph 1 is amended as follows:~~

~~(i) the first sentence is replaced by the following:~~

~~‘The Commission shall review the functioning of this regulation and, after a public consultation, shall report to the European Parliament and the Council by 31 December 2016 at the latest.’~~<sup>2</sup>

~~(ii) point (g) is replaced by the following:~~

~~‘(g) the extent to which the implementation of the structural measures provided for in Articles 3 and 4 and of the alternative regime provided for in Article 4a has produced results in developing competition in the internal market for roaming services to the extent that there is no effective difference between roaming and domestic tariffs;’~~<sup>2</sup>

~~(iii) — the following point (i) is inserted:~~

~~'(i) — the extent, if any, to which the evolution of domestic retail prices is observably affected by the application by roaming providers of the domestic service rate to both domestic services and regulated roaming services throughout the Union.~~

~~(b) — Paragraph 2 is amended as follows:~~

~~(i) — The first sentence is replaced by the following:~~

~~'If the report shows that tariff options, in which the domestic service rate applies both to domestic and regulated roaming services, are not provided in all retail packages for reasonable use by at least one roaming provider in each Member State, or that the offers by alternative roaming providers have not made substantially equivalent retail roaming tariffs easily available to consumers throughout the Union, the Commission shall by the same date make appropriate proposals to the European Parliament and the Council to address the situation and ensure that there is no difference between national and roaming tariffs within the internal market.'~~<sup>2</sup>

~~(ii) Point (d) is replaced by the following:~~

~~‘(d) to change the duration or reduce the level of maximum wholesale charges provided for in Articles 7, 9 and 12 with a view to reinforcing the ability of all roaming providers to make available in their respective retail packages for reasonable use tariff options in which the applicable domestic service rate applies to both domestic services and regulated roaming services, as if the latter were consumed on the home network.’~~

**[Am. 217]**



(8a) *Article 19 is deleted and replaced by the following:*

- ‘1. The Commission shall review the functioning of this Regulation and shall report to the European Parliament and the Council in accordance with paragraphs 2 to 6.*
- 2. The Commission shall, by 30 June 2015, after a public consultation, report to the European Parliament and the Council on whether to change the duration or revise the level of maximum wholesale charges provided for in Articles 7, 9 and 12 or to provide for other arrangements to address wholesale market problems, including as regards mobile termination rates applicable to roaming. BEREC shall, by 31 December 2014, after a public consultation, lay down guidelines on measures to prevent anomalous or abusive usage for the purpose of Article 6a.*

3. *The Commission shall, by 30 June 2016, after a public consultation, report to the European Parliament and the Council on, inter alia:*
- (a) the availability and quality of services including those which are an alternative to voice, SMS and data roaming services, in particular in the light of technological developments;*
  - (b) the degree of competition in both the retail and wholesale markets, in particular the competitive situation of smaller, independent or newly started operators, including the competition effects of commercial agreements and the degree of interconnection between operators;*
  - (c) the extent to which the implementation of the structural measures provided for in Articles 3 and 4 has produced results in developing competition in the internal market for roaming services.*

*The Commission shall examine, in particular, whether it is necessary to lay down additional technical and structural measures or to modify the structural measures.*

4. *If the report referred to in paragraph 2 shows that there is no level playing field between roaming providers and consequently that there is a need to change the duration or lower the level of maximum wholesale charges or to provide for other arrangements to address wholesale market problems, including by a significant reduction of the mobile termination rates applicable to roaming throughout the Union, the Commission shall, after consulting BEREC, make appropriate legislative proposals to the European Parliament and the Council to address this situation by 30 June 2015.*

*If the report referred to in paragraph 3 shows that the structural measures provided for by this Regulation have not been sufficient to promote competition in the internal market for roaming services for the benefit of all European consumers, the Commission shall make appropriate proposals to the European Parliament and the Council to address this situation. With respect to both reports, proposals for any appropriate measures shall be presented simultaneously with the reports.*

5. *In addition, the Commission shall submit a report to the European Parliament and the Council every two years after the report referred to in paragraph 3. Each report shall include a summary of the monitoring of the provision of roaming services in the Union and an assessment of the progress towards achieving the objectives of this Regulation.*
6. *In order to assess the competitive developments in the Union-wide roaming markets, BEREC shall regularly collect data from national regulatory authorities on the development of retail and wholesale charges for voice, SMS and data roaming services. Those data shall be notified to the Commission at least twice a year. The Commission shall make them public.*

*BEREC shall also annually collect information from national regulatory authorities on transparency and comparability of different tariffs offered by operators to their customers. The Commission shall make those data and findings public.’ [Am. 218]*

## Article 38

### Amendments to Regulation (EC) No 1211/2009

Regulation (EC) No 1211/2009 is amended as follows:

(1) In Article 1, paragraph 2 is replaced by the following:

‘2. BEREC shall act within the scope of Directive 2002/21/EC (Framework Directive) and Directives 2002/19/EC, 2002/20/EC, 2002/22/EC and 2002/58/EC (Specific Directives), and of Regulations (EU) No 531/2012 and No .../2014.’.

(1a) ***In Article 3(1), the following points (ma) and (mb) are inserted:***

***‘(ma) to receive notifications submitted pursuant to Article 3 of Directive 2002/20/EC, to maintain an inventory of those notifications and to inform the national regulatory authorities concerned about notifications received;***

***(mb) to issue opinions on measures intended to be adopted by national regulatory authorities under Article 10, paragraphs 5 and 6, of Directive 2002/20/EC.’.***

**[Am. 219]**

(1b) *In Article 3(1), the following point (na) is inserted:*

*‘(na) to support the development of Union policy and law in the field of electronic communications, including by delivering opinions to the Commission with respect to any planned initiative.’ [Am. 220]*

~~(2) In Article 4, paragraphs 4 and 5 are deleted. [Am. 221]~~

~~(3) The following Article 4a is inserted:~~

~~‘Article 4a~~

~~Appointment and tasks of the Chairperson~~

~~1. The Board of Regulators shall be represented by a Chairperson, who shall be a full-time independent professional.~~

~~The Chairperson shall be engaged as a temporary agent of the Office under Article 2(a) of the Conditions of Employment of Other servants.~~

~~The Chairperson shall be responsible for preparing the work of the Board of Regulators and shall chair without the right to vote the meetings of the Board of Regulators and the Management Committee.~~

~~Without prejudice to the role of the Board of Regulators in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor accept any instruction from any government or NRA, from the Commission, or from any other public or private entity.~~

- ~~2. The Chairperson shall be appointed by the Board of Regulators on the basis of merit, skills, knowledge of electronic communication market participants and markets, and of experience relevant to supervision and regulation, following an open selection procedure.~~

~~Before appointment, the candidate selected by the Board of Regulators may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.~~

~~The appointment of the Chairperson is effective only after approval of the Management Committee.~~

~~The Board of Regulators shall also elect, from among its members, a Vice Chair who shall carry out the functions of the Chairperson in his absence.~~

~~3. The Chairperson's term of office shall be 3 years and may be extended once.~~

~~4. In the course of the 9 months preceding the end of the 3-year term of office of the Chairperson, the Board of Regulators shall evaluate:~~

~~(a) the results achieved in the first term of office and the way they were achieved;~~

~~(b) the Board of Regulators' duties and requirements in the coming years.~~

~~The Board of Regulators shall inform the European Parliament if it intends to extend the Chairperson's term of office. Within one month before any such extension, the Chairperson may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.~~

~~5. The Chairperson may be removed from office only upon a decision of the Board of Regulators acting on a proposal from the Commission and after approval of the Management Committee.~~

~~The Chairperson shall not prevent the Board of Regulators and the Management Committee from discussing matters relating to the Chairperson, in particular the need for his removal, and shall not be involved in deliberations concerning such a matter.<sup>2</sup>~~

**[Am. 222]**



~~(4) Article 6 is amended as follows:~~

~~(a) Paragraph 2, indent 4 is deleted.~~

~~(b) Paragraph 3 is amended as follows:~~

~~‘3. The Office shall comprise:~~

~~(a) a Chairperson of the Board of Regulators;~~

~~(b) a Management Committee;~~

~~(c) an Administrative Manager.’ [Am. 223]~~

~~(5) Article 7 is amended as follows:~~

~~(a) Paragraph 2 is amended as follows:~~

~~‘2. The Management Committee shall appoint the Administrative Manager and, where relevant, extend his/her term of office or remove him/her from office in accordance with Article 8. The Administrative Manager designated shall not participate in the preparation of, or vote on, such a decision.’~~

~~(b) Paragraph 4 is deleted. [Am. 224]~~

~~(6) Article 8 paragraphs 2, 3, 4, are deleted and replaced as follows:~~

- ~~2. The Administrative Manager shall be engaged as a temporary agent of the Office under Article 2(a) of the Conditions of Employment of Other servants.~~
- ~~3. The Administrative Manager shall be appointed by the Management Committee from a list of candidates proposed by the Commission, following an open and transparent selection procedure.~~

~~For the purpose of concluding the contract with the Administrative Manager, the Office shall be represented by the Chairperson of the Management Committee.~~

~~Before appointment, the candidate selected by the Management Committee may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.~~

- ~~4. The term of office of the Administrative Manager shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Administrative Manager's performance and the Office's future tasks and challenges.~~

5. ~~The Management Committee, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 4, may extend the term of office of the Administrative Manager once, for no more than five years.~~
6. ~~The Management Committee shall inform the European Parliament if it intends to extend the Administrative Manager's term of office. Within one month before any such extension, the Administrative Manager may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.~~
7. ~~An Administrative Manager whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.~~
8. ~~The Administrative Manager may be removed from office only upon a decision of the Management Committee acting on a proposal from the Commission.~~
9. ~~The Management Committee shall reach decisions on appointment, extension of the term of office or removal from office of the Administrative Manager on the basis of a two-thirds majority of its members with voting rights.~~ [Am. 225]

~~(7) In Article 9, paragraph 2 is amended as follows:~~

- ~~‘2. The Administrative Manager shall assist the Chairperson of the Board of Regulators with the preparation of the agenda of the Board of Regulators, the Management Committee and the Expert Working Groups. The Administrative Manager shall participate, without having the right to vote, in the work of the Board of Regulators and the Management Committee.’ [Am. 226]~~

~~(8) Article 10 is amended as follows:~~

- ~~‘1. The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Office, including the Chairperson of the Board of Regulators and the Administrative Manager.~~
- ~~2. The Management Committee shall adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.~~

3. ~~The Management Committee shall ,in accordance with paragraph 4, exercise with respect to the staff of the Office the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment ("the appointing authority powers").~~
4. ~~The Management Committee shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2.(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Administrative Manager and defining the conditions under which this delegation of powers can be suspended. The Administrative Manager shall be authorised to sub-delegate those powers.~~

~~Where exceptional circumstances so require, the Management Committee may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Administrative Manager and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Administrative Manager.<sup>2</sup> [Am. 227]~~

~~(9) The following Article 10a is inserted:~~

~~‘Article 10a~~

~~Seconded national experts and other staff~~

~~1. The Office may make use of Seconded national experts or other staff not employed by the Office.~~

~~2. The Management Committee shall adopt a decision laying down rules on the secondment of national experts to the Office.’ [Am. 228]~~

## Article 39

### Review clause

The Commission shall ~~submit reports on the~~ ***perform a comprehensive*** evaluation and review of ~~this Regulation~~ ***the entire regulatory framework for electronic communications, and shall submit a report with appropriate proposals*** to the European Parliament and the Council ~~at regular intervals. The first report shall be submitted no later than 1 July 2018. Subsequent reports shall be submitted every four years thereafter. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation, and aligning other legal instruments, taking account in particular of developments in information technology and of the state of progress in the information society. The reports shall be made public. by 30 June 2016 in order to allow sufficient time for the legislator to analyse and debate the proposals properly.~~

***The review shall be based on a full public consultation as well as on ex-post assessments of the impact of the regulatory framework since 2009 and a thorough ex-ante assessment of the expected impact of the options emanating from the review.***

*The main goals of the review shall include:*

- (i) ensuring that substitutable services are subject to the same rules, taking into consideration the definition of electronic communications services in Article 2(c) of Directive 2002/21/EC, in order to achieve equivalent, coherent and consistent regulation of electronic communications services and services substitutable to them, including with respect to access, all aspects of consumer protection, including portability, as well as privacy and data protection;*
- (ii) ensuring a high degree of consumer protection and more informed consumer choice through increased transparency and access to clear and comprehensive information, including on data delivery speeds and mobile network coverage;*
- (iii) ensuring that users of digital services are able to control their digital life and data by removing obstacles to switching operating systems without losing their applications and data;*
- (iv) further promoting effective and sustainable competition;*



- (v) *providing a stable and sustainable framework for investment;*
- (vi) *ensuring a harmonised, consistent and effective application;*
- (vii) *facilitating the development of pan-European providers and the provision of cross-border business services;*
- (viii) *ensuring that the regulatory framework is adequate for the digital age and delivers an internet ecosystem that supports the entire economy, and*
- (ix) *increasing user confidence in the internal market for electronic communications, including through measures to implement the future regulatory framework for the protection of personal data and measures to increase the security of electronic communications in the internal market.*

*The review shall inter alia include:*

- (i) the universal service obligation, including a review of the need for an additional obligation to offer broadband internet access at a fair price;*
- (ii) the competence of national regulatory authorities for all issues, including spectrum, that are addressed by the framework; the powers granted to the national regulatory authorities in the Member States and the scope of the requirement of independence of national regulatory authorities;*
- (iii) cooperation between the national regulatory authorities and national competition authorities;*
- (iv) the symmetric obligations relating to network access;*
- (v) the rules on leverage effects and joint dominance;*
- (vi) the market review processes;*
- (vii) the impact of services that are substitutable to electronic communications services; including whether clarifications are needed regarding the reach of the regulatory framework's technological neutrality and regarding the dichotomy between services in the 'information society' bracket and those in the 'electronic communications' bracket;*

- (viii) *the necessity of abolishing redundant regulation;*
- (ix) *the lifting of regulation where a market analysis has shown the market concerned to be truly competitive and that ways and means exist for extended monitoring;*
- (x) *the experience with non-discrimination obligations and remedies;*
- (xi) *the effectiveness and functioning of the procedures established in Articles 7 and 7a of Directive 2002/21/EC;*
- (xii) *initiation of an Article 7/7a procedure in situations where phase II of the procedure is not triggered due to an NRA withdrawal of its draft measure or where an NRA does not propose a remedy to a problem recognised on a certain market;*
- (xiii) *the effectiveness and functioning of the procedure established in Article 19 of Directive 2002/21/EC;*
- (xiv) *transnational services and operators, taking into account the possibility for the Commission to identify transnational markets under Article 15(4) of Directive 2002/21/EC, and with a focus on the competitive provision of communications services to EU businesses and to the effective and consistent application of business grade remedies across the EU;*

- (xv) *identification of transnational markets, initially at least with respect to business services; enabling providers to notify BEREC of their intention to serve such markets, and supervision of providers serving such markets by BEREC;*
- (xvi) *the scope of BEREC's competencies;*
- (xvii) *a single Union authorisation and the supervisory structure for the framework as a whole;*
- (xviii) *active and passive inputs;*
- (xix) *the recommendation on relevant markets;*
- (xx) *the regulation of equipment, including bundling of equipment and operating systems;*
- (xxi) *the effectiveness of the implementation of the European emergency call number '112', including in particular necessary measures to improve the accuracy and reliability of caller location criteria;*
- (xxii) *the feasibility of setting up a "reverse EU '112' communication system";*
- (xxiii) *the impact of the internet having become a crucial infrastructure for conducting a wide array of economic and social activities. [Am. 229]*

*Article 39a*

*Transposition*

1. *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 34, 35 and 36 by 12 months after the date of entry into force of this Regulation. They shall forthwith communicate to the Commission the text of those provisions.*
2. *When Member States adopt those provisions, they shall contain a reference to this Regulation or be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.*
3. *Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by Articles 34, 35 and 36. [Am. 230]*

## Article 40

### Entry into force

1. This Regulation shall enter into force the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 1 July 2014.

~~However, Articles 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 shall apply from 1 July 2016.~~

**[Am. 231]**

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

*For the European Parliament*

*The President*

*For the Council*

*The President*

## ANNEX I

### ~~MINIMUM PARAMETERS FOR OFFERS OF EUROPEAN VIRTUAL BROADBAND ACCESS PRODUCTS~~

~~1. OFFER 1 Fixed network wholesale access product offered over next generation networks at Layer 2 of the International Standards Organisation seven layer model for communications protocols ('Data Link Layer'), that offers equivalent functionalities to physical unbundling, with handover points at a level that is closer to the customer premises than the national or regional level.~~

~~1.1 Network elements and related information:~~

- ~~(a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);~~
- ~~(b) the locations at which network access will be provided;~~
- ~~(c) any relevant technical standards for network access, including any usage restrictions and other security issues;~~
- ~~(d) technical specifications for the interface at handover points and network termination points (customer premises);~~
- ~~(e) specifications of equipment to be used on the network; and~~
- ~~(f) details of interoperability tests.~~

~~1.2 — Network functionalities:~~

- ~~(a) — flexible allocation of VLANs based on common technical specification;~~
- ~~(b) — service agnostic connectivity, enabling control of download and upload traffic speeds;~~
- ~~(c) — security enabling;~~
- ~~(d) — flexible choice of customer premises equipment (as long as technically possible);~~
- ~~(e) — remote access to the customer premise equipment; and~~
- ~~(f) — multicast functionality, where there is demand and such functionality is necessary to ensure technical replicability of competing retail offers.~~

~~1.3 — Operational and business process:~~

- ~~(a) — eligibility requirement processes for ordering and provisioning;~~
- ~~(b) — billing information;~~
- ~~(c) — procedures for migration, moves and ceases; and~~
- ~~(d) — specific time scales for repair and maintenance.~~

~~1.4 — Ancillary services and IT Systems:~~

- ~~(a) — information and conditions concerning the provision of co-location and backhaul;~~
- ~~(b) — specifications for access to and use of ancillary IT systems for operational support systems, information systems and databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, including their usage restrictions and procedures to access those services.~~



~~2. OFFER 2: Fixed network wholesale access product offered at Layer 3 of the International Standards Organisation seven layer model for communications protocols ('Network Layer'), at the IP level bit stream level with handover points offering a higher degree of resource aggregation such as at national and/or regional level~~

~~2.1 Network elements and related information:~~

- ~~(a) the characteristics of the connection link provided at the handover points (in terms of speed, Quality of Service, etc.);~~
- ~~(b) a description of the broadband network connecting the customer premise to the handover points, in terms of backhaul and access network architectures;~~
- ~~(c) the location of the handover point(s); and~~
- ~~(d) the technical specifications for interfaces at handover points.~~

~~2.2 Network functionalities:~~

~~Ability to support different quality of service levels (e.g. QoS 1, 2 and 3) with regard to:~~

- ~~(i) delay;~~
- ~~(ii) jitter;~~
- ~~(iii) packet loss; and~~
- ~~(iv) contention ratio.~~

~~2.3 — Operational and business process:~~

- ~~(a) — eligibility requirement processes for ordering and provisioning;~~
- ~~(b) — billing information;~~
- ~~(c) — procedures for migration, moves and ceases; and~~
- ~~(d) — specific time scales for repair and maintenance.~~

~~2.4 — Ancillary IT Systems:~~

~~Specifications for access to and use of ancillary IT systems for operational support systems, information systems and databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, including their usage restrictions and procedures to access those services.~~

~~3. — OFFER 3: Wholesale terminating segments of leased lines with enhanced interface for the exclusive use of the access seeker providing permanent symmetric capacity without restriction as regards usage and with service level grade agreements, by means of a point-to-point connection and with Layer 2 of the International Standards Organisation (ISO) seven-layer model for communications protocols ('Data Link Layer') network interfaces.~~

### ~~3.1 Network elements and related information:~~

- ~~(a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);~~
- ~~(b) the locations at which network access will be provided;~~
- ~~(c) the different speeds and maximum length offered;~~
- ~~(d) any relevant technical standards for network access (including any usage restrictions and other security issues);~~
- ~~(e) details of interoperability tests;~~
- ~~(f) specifications of equipment allowed on the network;~~
- ~~(g) network to network (NNI) interface available;~~
- ~~(h) maximum frame size allowed, in bytes.~~

### ~~3.2 Network and product functionalities:~~

- ~~(a) uncontended and symmetrical dedicated access;~~
- ~~(b) service agnostic connectivity, enabling control of traffic speed and symmetry;~~
- ~~(c) protocol transparency, flexible allocation of VLANs based on common technical specification;~~
- ~~(d) Quality of Service parameters (delay, jitter, packet loss) enabling business critical performance.~~

~~3.3 — Operational and business process:~~

- ~~(a) — eligibility requirement processes for ordering and provisioning;~~
- ~~(b) — procedures for migration, moves and ceases;~~
- ~~(c) — specific time scales for repair and maintenance;~~
- ~~(d) — changes to IT systems (to the extent that it impacts alternative operators); and~~
- ~~(e) — relevant charges, terms of payment and billing procedures.~~

~~3.4 — Service level agreements~~

- ~~(a) — the amount of compensation payable by one party to another for failure to perform contractual commitments, including provisioning and repair time, as well as the conditions for eligibility to compensations;~~
- ~~(b) — a definition and limitation of liability and indemnity;~~
- ~~(c) — procedures in the event of alterations being proposed to the service offerings, for example, launch of new services, changes to existing services or change to prices;~~
- ~~(d) — details of any relevant intellectual property rights;~~
- ~~(e) — details of duration and renegotiation of agreements.~~

~~3.5 — Ancillary IT systems:~~

~~specifications for access to and use of ancillary IT systems for operational support systems, information systems and databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, including their usage restrictions and procedures to access those services.~~

**[Am. 232]**

## ~~ANNEX II~~

### ~~MINIMUM PARAMETERS OF EUROPEAN ASQ CONNECTIVITY PRODUCTS~~

#### ~~Network elements and related information~~

- ~~—— A description of the connectivity product to be provided over a fixed network, including technical characteristics and adoption of any relevant standards.~~

#### ~~Network functionalities:~~

- ~~—— connectivity agreement ensuring end-to-end Quality of Service, based on common specified parameters that enable the provision of at least the following classes of services:~~
  - ~~—— voice and video calls;~~
  - ~~—— broadcast of audio-visual content; and~~
  - ~~—— data critical applications. [Am. 233]~~