

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0435/2001

4 December 2001

*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and Council directive on a common regulatory framework for electronic communications networks and services (Framework Directive) (10420/1/2001 – C5-0415/2001 – 2000/0184(COD))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Reino Paasilinna

Symbols for procedures

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

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 1 March 2001 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive on a common regulatory framework for electronic communications networks and services (Framework Directive) (COM(2000) 393 - 2000/0184 (COD)).

At the sitting of 19 September 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Industry, External Trade, Research and Energy (10420/1/2001 - C5-0415/2001).

The committee had appointed Reino Paasilinna rapporteur at its meeting of 22 June 2000.

It considered the common position and draft recommendation for second reading at its meetings of 10 October 2001, 6, 21, 27 November 2001 and 4 December 2001.

At last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Nuala Ahern, vice-chairman, Peter Michael Mombaur, vice-chairman; Reino Paasilinna, rapporteur; Gordon J. Adam (for Massimo Carraro), Ward Beysen (for Willy C.E.H. De Clercq), Guido Bodrato, David Robert Bowe (for Glyn Ford), Giles Bryan Chichester, Nicholas Clegg, Elisa Maria Damião (for Hans Karlsson), Harlem Désir, Concepció Ferrer, Christos Folias, Norbert Glante, Michel Hansenne, Roger Helmer, Rolf Linkohr, Caroline Lucas, Eryl Margaret McNally, Hans-Peter Martin (for Erika Mann), Hans-Peter Mayer (for Umberto Scapagnini), Angelika Niebler, Hervé Novelli (for Godelieve Quisthoudt-Rowohl), Yves Piétrasanta, Elly Plooi-j-van Gorsel, Samuli Pohjamo (for Astrid Thors), John Purvis, Bernhard Rapkay (for Elena Valenciano Martínez-Orozco), Imelda Mary Read, Christian Foldberg Røvsing, Paul Rübig, Konrad K. Schwaiger, Esko Olavi Seppänen, Claude Turmes (for Nelly Maes), Jaime Valdivielso de Cué, W.G. van Velzen, Alejo Vidal-Quadras Roca, Dominique Vlasto, Anders Wijkman, Myrsini Zorba, Olga Zrihen Zaari.

The recommendation for second reading was tabled on 4 December 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session...

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on a common regulatory framework for electronic communications networks and services (Framework Directive) (10420/1/2001 – C5-0415/2001 – 2000/0184(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (10420/1/2001 – C5-0415/2001),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2000) 393²),
 - having regard to the amendments to the Commission proposal (COM(2001) 380³),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Industry, External Trade, Research and Energy (A5- 0435/2001),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 277, 1.10.2001, p.115.

² OJ C 365, 19.12.2000, p.198.

³ OJ C 270 E, 25.9.2001, pp.199-230.

Amendment 1
Recital 12

(12) Any party who is the subject of a decision by a national regulatory authority should have the right to appeal to a body that is independent of the parties involved. This appeal procedure is without prejudice to the rights of legal entities or natural persons under national law.

(12) Any party who is the subject of a decision by a national regulatory authority should have the right to appeal to a body that is independent of the parties involved.

Furthermore, any understanding which considers that its applications for the granting of rights to instal facilities have not been treated in accordance with the principles set out in this Directive, or where such decisions have been unduly delayed, should be entitled to appeal against such decisions or against delays in such decisions.

This appeal procedure is without prejudice to the rights of legal entities or natural persons under national law.

Justification

This amendment is necessary in order to ensure compatibility with the provisions of the authorisation directive, and in particular with recital 26 thereof. Recital 26 states: 'Where undertakings find that their applications for rights to install facilities have not been dealt with in accordance with the principles set out in Directive 2001/.../EC (Framework Directive) or where such decisions are unduly delayed, they should have the right to appeal against decisions or delays in such decisions in accordance with that Directive.'

Amendment 2
Recital 27

(27) It is essential that ex-ante regulatory obligations should only be imposed where there is not effective competition and where national and Community competition law remedies are not sufficient to address the problem. It is necessary therefore for the Commission to draw up guidelines at Community level in accordance with the principles of competition law for national regulatory authorities to follow in assessing

(27) It is essential that ex-ante regulatory obligations should only be imposed where there is not effective competition, ***i.e. in markets where there is one or more undertakings with SMP***, and where national and Community competition law remedies are not sufficient to address the problem. It is necessary therefore for the Commission to draw up guidelines at Community level in accordance with the principles of

whether competition is effective in a given market and in assessing significant market power. National regulatory authorities should analyse whether a given product or service market is effectively competitive in a given geographical area, which could be the whole or a part of the territory of the Member State concerned or neighbouring parts of territories of Member States considered together. An analysis of effective competition should include an analysis as to whether the market is prospectively competitive, and thus whether any lack of effective competition is durable. Those guidelines will also address the issue of newly emerging markets, where de facto the market leader is likely to have a substantial market share but should not be subjected to inappropriate obligations. The Commission should review the Guidelines regularly to ensure that they remain appropriate in a rapidly developing market. National regulatory authorities will need to cooperate with each other where the relevant market is found to be **pan-European**. **A pan-European market means a trans-national market covering the Community or a substantial part thereof.**

competition law for national regulatory authorities to follow in assessing whether competition is effective in a given market and in assessing significant market power. National regulatory authorities should analyse whether a given product or service market is effectively competitive in a given geographical area, which could be the whole or a part of the territory of the Member State concerned or neighbouring parts of territories of Member States considered together. An analysis of effective competition should include an analysis as to whether the market is prospectively competitive, and thus whether any lack of effective competition is durable. Those guidelines will also address the issue of newly emerging markets, where de facto the market leader is likely to have a substantial market share but should not be subjected to inappropriate obligations. The Commission should review the Guidelines regularly to ensure that they remain appropriate in a rapidly developing market. National regulatory authorities will need to cooperate with each other where the relevant market is found to be **trans-national**.

Justification

The draft commission guidelines make clear that a lack of effective competition is equivalent to the presence of SMP on a relevant market, and vice versa. It is important to clarify that the test of "effective competition" in article 15 is in effect a test of dominance. The only test of effective competition is whether one or more undertakings are able to act independently of competitors, i.e. that they are in a dominant position and therefore have SMP for the purposes of the new framework.

More than the quantitative geographical extent, it is the multiplicity of authorities that causes problems requiring specific mechanisms. The term 'trans-national' needs to be defined as it is used in Articles 14 and 15. A trans-national market can be identified as such only where national regulatory authorities' measures to safeguard effective competition are not adequate and Community-wide regulation under a uniform procedure is required. Regarding formal aspects, a term that is used in the articles should not be defined in a recital, specially where there is already an article devoted entirely to definitions.

(30a) Interoperability of digital interactive TV services and terminal equipment, at the level of the consumer, shall be encouraged in order to ensure the free flow of information, media pluralism and access of consumers to cultural diversity. Therefore, consumers shall be able to receive, regardless of the transmission mode, all digital interactive television services broadcast on new digital interactive TV platforms according to a common standard which has been standardized by a recognized European standardization body. This would allow portability of interactive content between new delivery mechanisms, and full functionality of this content on digital interactive TV receivers.

Existing digital interactive television platforms should strive to adopt a single open interoperable API which has been standardized by a recognized European standardization body as soon as economically possible. Migration from existing APIs to the new common API should be encouraged and organised by e.g. Memoranda of Understanding between all relevant market players. Each time an existing platform upgrades its existing APIs, this should be done with the aim of enhancing overall interoperability.

Justification

The purpose of this amendment is to fine-tune an amendment which has been adopted by the European Parliament in the first reading.

This text strikes a good balance between consumer interests and investments already done, with a clear focus on the final goal of a standardized, interoperable and open system for digital TV services in the European Union, regardless of the transmission mode and hence in a technological neutral way. The possibility to examine the effects of this article offers flexibility.

See also the amendment on article 16 Standardisation

Amendment 4

Recital 34a (new)

(34a) Member States decide which bodies are national regulatory authorities for the purposes of this Directive and the Specific Directives.

Justification

In the various Member States, the functions prescribed to the NRA in this Directive may be split between several bodies (competition authority, telecoms regulator, audiovisual supervisory board, etc.). This recital confirms that the new regulatory framework does not preclude of Member States' own organisation.

Amendment 5

Article 1(1)

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

1. This Directive establishes a harmonised framework for the regulation of electronic communications services, electronic communications networks ***and*** associated facilities and services ***with the aim of achieving effective competition on the market in the interest of end-users and to ensure universal service for all citizens.*** It lays down ***the competences and duties*** of national regulatory authorities and establishes a set of procedures to ensure the harmonised application of the regulatory framework throughout the Community.

Justification

This text has been adopted by the EP in first reading.

Or. en

Amendment 6
Article 2, letter (a)

(a) "electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, networks used for radio and television broadcasting, and cable TV networks, irrespective of the type of information conveyed;

(a) "electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, ***electricity cable systems, to the extent that they are used for the purpose of transmitting signals,*** networks used for radio and television broadcasting, and cable TV networks, irrespective of the type of information conveyed;

Justification

While such systems are not yet in use, a technological breakthrough during the lifetime of this Directive is to be expected.

Amendment 7
Article 2, letter (d)

(d) 'associated facilities' means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service. It includes conditional access systems ***and*** electronic programme guides;

(d) 'associated facilities' means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service. It includes conditional access systems, electronic programme guides ***and those features of terminal equipment the specification of which are determined or influenced by the network;***

Justification

Terminal equipment that is an integral part of the network must be able to allow access for

disabled users to services such as reception of audio description, sub-titling of television programmes, audio output of electronic programme guides or caller line identification.

Amendment 8
Article 2, letter (la) (new)

(1a) 'transnational markets' means markets identified in accordance with Article 14 covering the Community or a substantial part thereof and on which effective competition can be safeguarded only through uniform regulation in the Member States concerned.

Justification

More than the quantitative geographical extent, it is the multiplicity of authorities that causes problems requiring specific mechanisms. The term 'trans-national' needs to be defined as it is used in Articles 14 and 15. A trans-national market can be identified as such only where national regulatory authorities' measures to safeguard effective competition are not adequate and Community-wide regulation under a uniform procedure is required. Regarding formal aspects, a term that is used in the articles should not be defined in a recital, specially where there is already an article devoted entirely to definitions.

Amendment 9
Article 2, letters ma), mb), mc), md) (new)

ma) new digital interactive television platform means a content delivery system or network for the distribution of digital interactive television services which is launched, or switched to a new API, as from the entry into force of this directive; upgraded versions of the same API are not to be regarded as a new API

mb) terminal equipment means set top boxes and integrated digital TV sets for the reception of digital interactive TV services.

mc) API (Application Programming Interface) means the software interface

between external applications, made available by broadcasters/ service providers, and the resources in the terminal equipment

md) a digital interactive television service means a digital TV service that includes one or more software components, presented to terminal as external applications

Justification

This text must be seen together with the amendment on article 16, Standardisation.

Amendment 10
Article 3(2)

2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services.

Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

2. Member States shall guarantee the ***political and financial*** independence of national regulatory authorities by ensuring that national regulatory authorities are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services.

Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.
Member States shall ensure that national regulatory authorities are able to act freely, without further authorisation or control from any other agency or body, subject only to the provisions of Articles 4 and 6 of this directive.

Justification

Political independence is as important as independence from market players.

Amendment 11
Article 3(5)

5. National regulatory authorities and national competition authorities shall ***have the right to exchange*** information. ***In order to facilitate cooperation and the mutual exchange of information, national regulatory authorities shall have the same rights and duties of confidentiality in respect of exchange of information as a "competent authority" as defined in Regulation No 17.***

5. National regulatory authorities and national competition authorities shall ***provide each other with the information necessary for the application of the provisions of this Directive. In respect of the information exchanged, the receiving authority exchanged, the receiving authority shall be bound by the same rule of confidentiality as the originating authority.***

Justification

This amendment will ensure that appropriate co-operation takes place and that both NRAs and NCAs provide each other with information necessary for effective application of the new regulatory package. the amendment clarifies that both NRAs and NCAs must accord the same treatment of confidentiality to any information disclosed whether originating or receiving authority.

Amendment 12 Article 4(1)

1. Member States shall ensure that effective mechanisms exist at national level under which ***a*** user or undertaking providing electronic communications networks and/or services ***has, where*** affected by a decision of a national regulatory authority, the right of appeal against ***the*** decision to ***an appeal*** body that is independent of the parties involved.

1. Member States shall ensure that effective mechanisms exist at national level under which ***any*** user or undertaking providing electronic communications networks and/or services ***who is*** affected by a decision of a national regulatory authority ***has*** the right of appeal against ***that*** decision to ***a*** body that is independent of the parties involved ***and has the appropriate expertise to enable it to carry out its functions. The appeal body shall be able to consider not only the procedure according to which the decision was reached, but also the facts and the merits of the case. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides for urgent and imperative reasons that the decision shall be suspended.***

Justification

It is fundamental that the merits of the case can be reviewed in the appeal procedure. This does not impede or preclude a further judicial consideration under the normal rules of procedure in the Member State concerned. The last sentence aims at avoiding the adverse consequences of a fait accompli in markets with rapid evolution, while avoiding abusive law suits.

Amendment 13 Article 5(1)

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

National regulatory authorities shall also be granted powers by Member States to impose penalties for non-production of information (or of inadequate production) and to conduct all necessary inspections of undertakings. Where necessary, national regulatory authorities may authorise their officials to enter and search the undertaking's premises.

Justification

Article 5 should be strengthened, so that Member States are required to grant NRAs the powers to request all necessary information from undertakings. NRAs should also be granted powers to impose penalties for non-production of information (or of inadequate production).

The collection of information on undertakings may take place at both Member State and Commission level only to carry out the tasks under this Directive and the Specific Measures pursuant to Article 2(j) that are based on this Directive. As confidential company details are involved to some extent the disclosure of which may considerably harm to the undertakings concerned and/or give rivals unwarranted competitive advantages, appropriate constraints on communicating information acquired in this way are imperative.

Amendment 14
Article 6

1. Except in cases falling within Article 18 or 19 Member States shall ensure that where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives which have a significant impact on the market, they give interested parties the opportunity to comment on the draft measure within a reasonable period. National regulatory authorities shall publish their national consultation procedures.

2...5 deleted

2. In addition to the consultation referred to in paragraph 1, where a national regulatory authority intends to take measures which have a significant impact on the market under Article 14(3) or Article 15(3), (4) and (5) of this Directive or Article 8(3) of Directive 2001/.../EC (Access Directive), it shall at the same time make the draft measure accessible to the Commission and the national regulatory authorities in other Member States, together with the reasoning on which the measure is based, in accordance with Article 5(3) of this Directive, and inform the Commission and other national regulatory authorities thereof. National regulatory authorities

Except in cases falling within Article 18 or 19 Member States shall ensure that where national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives which have a significant impact on the **relevant** market, they give interested parties the opportunity to comment on the draft measure within a reasonable period. National regulatory authorities shall publish their national consultation procedures. ***The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality. Member States shall establish a single information point where all current consultations are listed.***

Deleted

and the Commission may make comments to the national regulatory authority concerned only within one month or within the period referred to in paragraph 1 if that period is longer. The one-month period cannot be prolonged.

3. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities and the Commission, and, except in cases referred to in paragraph 4, may adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

Deleted

4. If the resulting draft measure referred to in paragraph 3:

Deleted

(a) is significantly different in substance from the draft measure made available according to paragraph 2; or

(b) if the Commission has indicated to the national regulatory authority that it has serious doubts as to the compatibility of the draft measure made available according to paragraph 2 with Community law and in particular the objectives referred to in Article 7,

then the measure shall not be adopted for a further one month. Within that period the Commission may, where appropriate, make public a detailed opinion which it shall communicate to the national regulatory authority concerned stating why it considers that the draft measure is not compatible with Community law, and in particular the objectives referred to in Article 7. The national regulatory authority may adopt the envisaged measures after the publication of the detailed opinion of the Commission, or after the one-month period has expired, and shall communicate them to the Commission. In any case the one-month period cannot be prolonged. If the

national regulatory authority chooses not to follow the detailed opinion of the Commission, it shall communicate its reasoning to the Commission.

5. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 1, 2, 3 and 4, in order to safeguard competition and protect the interests of users, it may adopt measures immediately. It shall, without delay, communicate those measures, with full reasons, to the Commission and the other national regulatory authorities.

Deleted

Justification

The amendment on the substance fulfils requirements of transparency as well as business confidentiality.

The splitting of the Article 6 of the Common Position in several different articles aims at providing a simpler, more intelligible reading of the Directive, and deal with the various cases encountered in a positive way rather than a complex set of intricate exceptions.

Amendment 15 Article 6a (new)

Co-operation of National Regulatory Authorities

1. In carrying out their tasks under this Directive and the Specific Directives, national regulatory authorities shall take the utmost account of the objectives set out in Article 7, including insofar as they relate to the functioning of the Internal market.

2. National regulatory authorities shall co-operate with each other and with the Commission in a transparent manner to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, seek to

agree on the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. The national regulatory authorities shall seek to achieve agreed positions on specific implementation issues, in particular in the areas covered by the provisions of Article 8, 13, 14, 15 of this Directive, Article 5, 6, 7, 8 of Directive 2001/.../EC (Access Directive), or Articles 16, 17, 18, 19 of Directive 2001/.../EC (Universal Service Directive).

These agreed positions shall in all cases be consistent with Community law and with the Recommendations issued by the Commission in accordance with Articles 14(1) or 17(1).

National regulatory authorities shall make these agreed positions public.

Justification

This amendment follows logically from EP resolution A5-0145/2000 of 13 June 2000. “Takes the view that the NRAs must be encouraged to undertake cross-border cooperation and be responsible for cross-border cooperation dispute settlements in cooperation with the Commission.”

Furthermore, this encourages a harmonised implementation of the framework, through peer review rather than through mandatory impositions from the Commission.

Amendment16 Article 6b (new)

Integrity of the Single market

1. In addition to the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles 8, 14 and 15 of this Directive, Articles 5 and 8 of Directive [Access] and Article 16 of Directive [Universal Service]; and

(b) would significantly affect trade between Member States; and

(c) is not covered by or is not compatible with an agreed position as provided for in Article 6a or is not compatible with a Recommendation issued by the Commission in accordance with Articles 14(1) or 17(1) it shall at the same time make the draft measure accessible to the Commission and the national regulatory authorities in other Member States, together with the reasoning on which the measure is based, in accordance with Article 5(3) of this Directive, and inform the Commission and other national regulatory authorities thereof. National regulatory authorities and the Commission may make comments to the national regulatory authority concerned only within one month or within the period referred to in Article 6 if that period is longer. The one-month period cannot be prolonged.

2. Where the intended measure aims at :

(a) measures providing for the allocation or availability of radio frequencies which may be used for the provision of electronic communications services, in a band where usage has not been harmonised in accordance with Community law, under Article 8(1);

(b) providing for a particular assignment mechanism where a Member State aims to limit the number of undertakings that can be granted rights-of-use in a given radio frequency band, under Article 8(1);

(c) providing for the trading of rights-of-use of spectrum in specific radio frequency bands, under Article 8(3) and 8(4);

(d) defining a relevant market which differs from those defined in the Recommendation in accordance with Article 14(1);

(e) deciding whether or not to designate an undertaking as having, either

individually or jointly with others, significant market power, under Article 15(3), 15(4) or 15(5) the Commission, if it considers that the draft measure would create a barrier to the single European market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 7, may take within a further one month period a decision requiring the national regulatory authority concerned to amend or withdraw its draft measure, giving its detailed reasoning. This one month period cannot be prolonged.

3. If the intended measure is not covered by paragraph 2, the national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities and the Commission and, except in cases referred to in Article 6c, may adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

Justification

Unlike the current Directives, the new regulatory framework will give NRAs a wide power of assessment and intervention. While bringing flexibility and closeness to market evolutions, this bears a risk of divergences between Member States which could endanger the development of a real European single market in communications.

The original proposal of the Commission, supported by the Parliament in its first reading, envisaged that all measures taken by the NRAs in implementing the regulatory framework would be subject to supervision by the Commission to avoid such divergences. The Council strongly opposes this both for reasons of the complexity of the procedure, especially when considering the high number of measures taken by NRAs and for reasons linked to the independence of NRAs.

To cope with these concerns, the Parliament supports the principle of restricting the supervision by the Commission only to those areas most critical for achieving the Single Market objectives of the Directive, as they are recalled in Article 7, and where the absence of agreed positions by the NRAs or the intention of one given NRA to shift from such an agreed position is a further indication of a weakness in the implementation of a harmonised framework.

For other areas, NRAs would retain their autonomy, subject to the adoption of technical implementation measures under Article 17(2), a possibility which would be helped by a

corresponding "standstill period".

Amendment 17

Article 6c (new)

If:

(a) the resulting draft measure taken by the NRA in accordance with Article 6b(3) is significantly different in substance from the draft measure made available according to Article 6b(1); or

(b) the Commission has indicated to the national regulatory authority that it has serious doubts as to the compatibility of the draft measure made available according to Article 6b(1) with Community law and in particular the objectives referred to in Article 7; or

(c) the Commission has indicated to the national regulatory authority that the draft measure made available according to Article 6b(1) would create a barrier to the single European market

then the measure shall not be adopted for a further period of one month (hereinafter referred to as "the standstill period").

Within that period, the Commission may, where appropriate, make public a detailed opinion, which it shall communicate to the national regulatory authority concerned, giving a detailed and objective analysis of why it considers that the draft measure should not be adopted together with specific proposals for amending the draft measure. Additionally, where the Commission considers that the draft measure would create a barrier to the single European market it may, within the standstill period, propose a technical implementing measure in accordance with Article 17(2). Where it does so the standstill period may be extended with the agreement of the Committee.

The national regulatory authority may adopt the envisaged measure, or an

amended version of it, at the expiry of the standstill period.

Justification

See justification to Article 6b.

Amendment 18
Article 6d (new)

In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in articles 6b and 6c, in order to safeguard competition and protect the interests of users, it may adopt immediately proportionate measures, which may be applicable for a limited period only. It shall, without delay, communicate those measures, with full reasons, to the Commission and the other national regulatory authorities. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of article 6b.

Justification

Urgency is not a reason to escape the requirements of normal procedure beyond necessary.

Amendment 19
Article 7(1), first part

1. Member States shall ensure that in carrying out the regulatory tasks specified

1. Member States shall ensure that in carrying out the regulatory tasks specified

in this Directive and the Specific Directives, the national regulatory authorities take all reasonable measures which are aimed at achieving the objectives set out in paragraphs 2, 3 and 4. Such measures shall be proportionate to those objectives.

in this Directive and the Specific Directives, the national regulatory authorities take all reasonable measures which are aimed at achieving the objectives set out in paragraphs 2, 3 and 4, **and abstain from any measure which would contradict, restrict or distort these objectives**. Such measures shall be proportionate to those objectives.

Justification

The risks reside in excessive or inappropriate national regulations as much, or even more, than in absence of intervention.

Amendment 20 Article 7(1), second part

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities take the utmost account of the desirability of making regulations technologically neutral.

Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, in particular those designed to ensure effective competition, national regulatory authorities take the utmost account **of the need for regulation to foster the interoperability of equipments and services and, with due regard to proportionate public interest objectives and effective use of scarce resources and** of the desirability of making regulation technologically neutral.

Justification

The first objective for regulating communications is to ensure that end-users can enjoy the widest choice of services at a reasonable price and with user-friendly access. The new framework should encourage interoperability through standards and otherwise while remaining technologically neutral so as to encourage innovation. Unfortunately, it is unavoidable that in some cases these objectives are conflicting. This amendment seeks an adequate balance, or at least modus operandi setting priorities in line with customers' general long term interests.

Amendment 21
Article 7(1), third part

<i>National regulatory authorities may contribute within their competencies to ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism.</i>	(Delete)
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Justification

Ensuring universal access to diverse content is a key objective for the establishment of an inclusive information society. To avoid the risk of technology developments widening the so-called digital divide, it is important that the national regulatory authorities are explicitly required to actively pursue the above objectives.

Amendment 22
Article 7(3), letter b)

b) encouraging the establishment and development of trans-European networks and the interoperability of pan-European services,	b) encouraging the establishment and development of trans-European networks and ensuring the interoperability of pan-European services and end-to-end connectivity ,
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Justification

The scope of this amendment is to promote a good level of interoperability, which in turn will determine a greater choice for end-users.

Amendment23
Article 7(3), letter (d)

(d) cooperating with each other and with the Commission in a transparent manner to ensure the consistent application of this Directive and the Specific Directives.	(d) cooperating with each other and with the Commission in a transparent manner to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.
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Justification

Developing pan-European services is hampered by the fact that regulatory regimes in different Member States are simply different, often without any underlying market reason for the difference. The simple fact of difference slows product development and increases overheads of undertakings.

Amendment 24 Article 7(4), letter fa (new)

(fa) ensuring the implementation of policies aimed at the promotion of cultural and linguistic diversity, media pluralism, and universal and easy access by citizens to a full range of digital media content.

Justification

It is both important and necessary that this phrase should appear in the list of objectives to be pursued by the NRAs (National Regulatory Authorities) in a new paragraph (g) in Article 7(4).

The European Parliament had already included these aspects in its first reading (amendments 42 and 43). The Council position on the other hand provided in Article 7(1), third paragraph, that the 'National Regulatory Authorities may contribute within their competency to ensure the implementation of policies aimed at the promotion of cultural and linguistic diversity, as well as media pluralism'; this is a step in the right direction but is still inadequate.

Amendment 25 Article 10(2a) (new)

2a. Member States shall ensure that effective mechanisms exist to allow undertakings to appeal against decisions on the granting of rights to install facilities to a body that is independent of the parties involved.

Justification

The creation of a level playing field is of vital importance for the European communications

sector. While the national traditions in the centuries-old regulation of rights of way vary, a proper appeal mechanism will help making the procedures more transparent and equitable in all cases, independently of the legal status of the parties involved.

Amendment26
Article 14(1)

1. After consultation with national regulatory authorities the Commission shall adopt a Recommendation on Relevant Product and Service Markets (hereinafter "the Recommendation"). The Recommendation shall identify in accordance with Annex I hereto those product and service markets within the electronic communications sector, the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

The Commission shall regularly review the Recommendation.

1. After **public consultation and** consultation with national regulatory authorities the Commission shall adopt a Recommendation on Relevant Product and Service Markets (hereinafter "the Recommendation"). The Recommendation shall identify in accordance with Annex I hereto those product and service markets within the electronic communications sector, the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

The Commission shall regularly review the Recommendation.

Justification

Given the importance of this Recommendation, it should be adopted in an informed and transparent way to ensure its acceptance and legitimacy.

Amendment 27
Article 14(4)

4. After consultation with national regulatory authorities the Commission may, acting in accordance with the procedure referred to in Article 20(3), adopt a Decision identifying **pan-European** markets.

4. After consultation with national regulatory authorities the Commission may, acting in accordance with the procedure referred to in Article 20(3), adopt a Decision identifying **trans-national** markets.

Justification

More than the quantitative geographical extent, it is the multiplicity of authorities that causes problems requiring specific mechanisms. A trans-national market can be identified as such only where national regulatory authorities' measures to safeguard effective competition are not adequate and Community-wide regulation under a uniform procedure is required.

Amendment 28 Article 15(2)

2. Where a national regulatory authority is required under Articles 16, 17, 18 or 19 of Directive 2001/.../EC (Universal Service Directive), or Articles 7 or 8 of Directive 2001/.../EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive.

2. Where a national regulatory authority is required under Articles 16, 17, 18 or 19 of Directive 2001/.../EC (Universal Service Directive), or Articles 7 or 8 of Directive 2001/.../EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive.

Where NRAs make such determinations pursuant to the first Commission Recommendation referred to in paragraph 1, such determinations shall be made no more than three months after the date of application referred to in Article 26.1. Determinations made by NRAs after the adoption of an updated Recommendation shall be made within no more than six months of adoption of that Recommendation.

Justification

This addition is necessary to ensure that market analyses do not continue for an unlimited period. The Commission's proposal required the analysis to be completed within two months. The common position has removed any deadline, merely requiring it to be carried out "as soon as possible". Given that NRAs will have 15 months between entry into force of the framework and its application in the Member States, it is appropriate for the first determinations under the initial Commission Decision (or Recommendation) to be completed within three months, whereas for subsequent determinations, a period of six months is necessary.

Amendment 29
Article 15(5)

5. In the case of ***pan-European*** markets identified in the Decision referred to in Article 14(4), the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the Guidelines and decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in paragraph 2 of this Article in a concerted fashion.

5. In the case of ***trans-national*** markets identified in the Decision referred to in Article 14(4), the national regulatory authorities concerned shall jointly conduct the market analysis taking the utmost account of the Guidelines and decide on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in paragraph 2 of this Article in a concerted fashion.

Justification

More than the quantitative geographical extent, it is the multiplicity of authorities that causes problems requiring specific mechanisms. A trans-national market can be identified as such only where national regulatory authorities' measures to safeguard effective competition are not adequate and Community-wide regulation under a uniform procedure is required.

Amendment 30
Article 16(1) and (2)

1. The Commission, acting in accordance with the procedure referred to in Article 20(2), shall draw up and publish in the Official Journal of the European Communities a List of standards and/or specifications to serve as a basis for encouraging the harmonised provision of electronic communications networks, electronic communications services and associated facilities and services. Where necessary, the Commission may, acting in accordance with the procedure referred to in Article 20(2) and following consultation of the Committee established by Directive 98/34/EC, request that standards be drawn up by the European Standards Organisations (European Committee for Standardisation (CEN), European Committee for Electrotechnical Standardisation (CENELEC), and

1. Member States shall ensure that

2. Member States shall encourage the use of the standards and/or specifications referred to in paragraph 1, for the provision of services, technical interfaces and/or network functions, to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users. As long as standards and/or specifications have not been published in accordance with paragraph 1, Member States shall encourage the implementation of standards and/or specifications adopted by the European Standards Organisations. In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunications Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Committee (IEC).

a) providers of digital interactive TV services for distribution to the public in the Community on new digital interactive TV platforms, regardless of the transmission mode, shall use a single open, interoperable API which has been standardized by a recognized European standardisation body;

b) all terminal equipment deployed for the reception of digital interactive television services on new interactive digital TV platforms comply with the open API in a fully functional form, in accordance with the minimum requirements of the standard.

2. The obligation under paragraph 1 shall be without prejudice to the use of proprietary APIs on existing digital interactive TV platforms. However, proprietors of APIs shall make available on fair, reasonable and non-discriminatory terms, and against appropriate remuneration, all such information as is necessary to enable providers of digital interactive TV services to provide all these services supported by the API in a fully functional form.

Justification

This text strikes a good balance between consumer interests and investments already done, with a clear focus on the final goal of a standardized, interoperable and open system for digital TV services in the European Union, regardless of the transmission mode and hence in a technological neutral way. The possibility to examine the effects of this article offers flexibility.

Amendment 31
Article 16(3) and (4)

3. If the standards and/or specifications referred to in paragraph 1 have not been adequately implemented so that interoperability of services in one or more Member States cannot be ensured, the implementation of such standards and/or specifications may be made compulsory under the procedure laid down in paragraph 4, to the extent strictly necessary to ensure such interoperability and to improve freedom of choice for users.

4. Where the Commission intends to make the implementation of certain standards and/or specifications compulsory, it shall publish a notice in the Official Journal of the European Communities and invite public comment by all parties concerned. The Commission, acting in accordance with the procedure in Article 20(3), shall make implementation of the relevant standards compulsory by making reference to them as compulsory standards in the List of standards and/or specifications published in the Official Journal of the European Communities.

3. Within one year after the date of implementation of this directive, the Commission shall examine the effects of the present article. If interoperability and freedom of choice for users have not been adequately achieved throughout the internal market, the Commission shall propose measures to ensure interoperability across all digital interactive TV platforms.

Justification

This text strikes a good balance between consumer interests and investments already done, with a clear focus on the final goal of a standardized, interoperable and open system for digital TV services in the European Union, regardless of the transmission mode and hence in a technological neutral way. The possibility to examine the effects of this article offers flexibility.

Amendment 32
Article 17(2)

2. Where the Commission finds that divergence at national level in regulations aimed at implementing **Article 9(4)** creates a barrier to the single European market, the Commission may, acting in accordance

2. Where the Commission finds that divergence at national level in regulation aimed at implementing ***the provisions of the present Directive or of the Specific Directives*** creates a barrier to the single

with the procedure in Article **20(3)**, take the appropriate technical implementing measures.

European market, the Commission may, acting in accordance with the procedure in Article **20(2)**, take the appropriate technical implementing measures.

Justification

Technical implementing measures might be required in several aspects. The common position is by far too restrictive, and would force premature revisions of the Directive for minor reasons.

Amendment 33 Article 21(1)

1. The Commission shall provide all relevant information to the Communications Committee on the outcome of regular consultations with the representatives of network operators, service providers, users, consumers, manufacturers and trade unions, as well as third countries and international organisations.

1. The Commission shall provide all relevant information to the Communications Committee on the outcome of regular consultations with the representatives of network operators, service providers, users, consumers, manufacturers and trade unions, as well as third countries and international organisations. ***The Commission shall discuss with a working group mandated by the European Parliament the same subjects that it raises in the Communications Committee.***

Justification

This text has been adopted by the EP in first reading.

Amendment 34 Article 21(2a) (new)

2a. The Communications Committee, and its sub-groups, shall publish draft recommendations, reports and advice to be issued to the Commission and give interested parties the chance to comment within a reasonable time, proportionate to the extent of the issue considered.

Justification

This text has been adopted by the EP in first reading.

Amendment 35
Article 21a (new)

Article 21a. "Advisory Communications Group"

1. An Advisory Communications Group is hereby set up.

2. The Group shall be composed of representatives designated by the national regulatory authorities. It shall act according to the advisory procedure laid down on Article 3 of Decision 468/99 in compliance with Art. 7 and Art. 8 thereof.

3. The Group may invite representatives of national competition authorities and other relevant authorities where appropriate to participate in the work of the Group.

4. The Group shall:

(a) Examine any question concerning the application of the national measures adopted under this Directive and the Specific Measures in order to promote the uniform application of such measures in all Member States;

(b) adopt agreed positions on the detailed application of Community legislation, with a view to facilitating pan-European services;

(c) advise the Commission on drawing up the Decision on Relevant Product and Service Markets referred to in Article 14;

(d) consider issues brought to their attention by Member States, national regulatory authorities, market players, or users, and propose solutions where appropriate;

(e) inform the Commission of any difficulties encountered in implementation of this Directive and the Specific Measures;

(f) monitor and publicise, if appropriate by means of a data-base, the activities of national regulatory authorities throughout the Community, in particular national consultations on specific regulatory issues and subsequent decisions by national regulatory authorities.

5. The Group shall inform the Commission of any divergences between the laws or practices of Member States which are likely to affect the Community market for electronic communications networks or services, having particular regard for the need to develop trans-national services and remedy differences between Member States' national regulatory regimes. The Group may, on its own initiative, give opinions or make recommendations on all matters relating to electronic communications networks or services in the Community.

6. The Group's opinions and recommendations shall be forwarded to the Commission and to the Communications Committee. The Commission shall inform the Group of what action, if any, it intends to take in response to its opinions and recommendations.

7. The Group shall take the utmost account of the views of all interested parties, including consumers, users, network operators, service providers, broadcasters, manufacturers and relevant associations at Community level. The Group shall state to which extent the views of interested parties have been heard and taken into account and shall give interested parties the opportunity to comments within a reasonable time, proportionate to the extent of the issue considered.

Justification

This text has been adopted by the EP in first reading.

Amendment 36
Article 23

The Commission shall periodically review the functioning of this directive and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 26(1), second subparagraph. For this purpose, the commission may request information from the Member States, which shall be supplied without undue delay.

The Commission shall periodically review the functioning of this directive ***in the light of ending this transitional period and achieving a full competitive market in the electronic communications sector in conjunction with Directive 1999/5/EC*** and report to the European Parliament and to the Council, on the first occasion not later than three years after the date of application referred to in Article 26(1), second subparagraph. For this purpose, the commission may request information from the Member States, which shall be supplied without undue delay.

Justification

The effective operation of the single market in communications can only be judged if the entire communications chain is considered as a whole. Any review should recognise the increasing interrelation between hardware and network. For example, access to emergency services by disabled people requires usable terminal equipment as well as a fully operational network service: Users of text phone services are dependent on the compatibility of the network with their terminal equipment to make use of such services.

The review shall be consistent with the overall objective of moving towards full competition, when sector-specific regulation is no longer needed.

Amendment 37
Annex I, point 3a (new)

3a. Additional markets

The national market for International roaming services on public mobile telephone network

Justification

In order to guarantee that National Regulatory Authorities will assess whether the roaming market is effectively competitive as early as possible, the Commission should adopt a recommendation in which the roaming market is defined. This will allow for NRAs to take swift regulatory action in case the market is found not to be effectively competitive.