

EUROPEAN PARLIAMENT

2004



2009

Committee on the Internal Market and Consumer Protection

2007/0247(COD)

26.6.2008

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Industry, Research and Energy

on the proposal for a directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and services, and 2002/20/EC on the authorisation of electronic communications networks and services

(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

Draftsman: Marian Zlotea

PA_Legam

SHORT JUSTIFICATION

This proposal amends the Framework¹, Authorisation² and Access³ Directives, which the Commission proposed in November 2007. Your Draftsman welcomes the 'Better Regulation' proposals in the package with strong support overall since the package is very important in improving a true European internal market in the field of telecommunication. The aim of the package is to enhance investment, innovation and consumer benefits in electronic communications, in other words to support and further develop a regulatory framework for the digital economy that is future-proof, market-oriented and exploits the advantages brought by the completion of the internal market, which your Draftsman also strongly supports.

Although your Draftsman welcomes the proposal on common regulatory framework for networks and services, access, interconnection and authorisation of electronic communications, he is of the opinion that there is scope for improvement.

Spectrum Management

The EU needs to rapidly move on to better forms of spectrum management which combine openness, flexibility and harmonization. There is a clear need for flexibility in spectrum utilisation and maximised efficiency.

A '*harmonized*' view of spectrum management, which would bring 27 different national spectrum management schemes into line, would be useful to improve pan-European and cross-border services. A single spectrum regime returns technology and services benefits to users and thus economic and social and benefits (e.g. in volume production of standard equipment, lowering prices and the barrier to entry for new users). In that respect, attention should be paid to frequency management and network planning to avoid interferences as far as possible, as technology neutral harmonisation can not solve the problems of interference.

The introduction by the Commission of *flexibility in assignment of spectrum to a specific technology or services* is welcomed by your draftsman. Allowing more flexible uses will lead to more innovation and consumer benefit. However, some bands may need to be reserved for one application across the EU (emergency services, for example) so caution with technical and service neutrality may be necessary.

Therefore, a gradual approach, rather than a revolutionary reform seems preferable. While technology neutrality will lead to innovative and technology developments, to the benefit of the consumer, it should be complemented by trading to ensure competition.

The Commission seeks to add market-based *spectrum trading* with secondary trading and auctions to the 'traditional method'. Spectrum trading by itself does not necessarily improve flexibility in spectrum use. It should however ease access to the spectrum and lead to more

¹ 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 (OJ L 108, 24.4.2002)

² 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 (OJ L 108, 24.4.2002)

³ 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 (OJ L 108, 24.4.2002)

intensive (hence more valuable) use of the spectrum. Therefore, your Draftsman supports the establishment of tradability of rights of use throughout the EU for selected bands, when individual rights of use are granted.

New coordination and regulatory powers

The Commission proposes that National Regulatory Authorities should be given the power to mandate *functional separation* on dominant operators where it would help to increase competition for consumers and provide a level playing field for operators. Your draftsman fully supports the Commission proposal, recognising that this remedy may not be suitable in every Member States, but it should be a remedy available for NRAs to use.

Under the current proposal, Commission's power is extended. Commission has powers to veto NRA dominance designations and to issue Recommendations on all issues and Decisions on numbers. Your Draftsman is against the current proposals which would give the Commission such veto powers.

Facilitating access

The current regulatory framework already foresees the imposition of the least burdensome authorisation scheme, i.e. recourse to general authorisations as the preferred approach. However, in practice, spectrum usage rights are more frequently assigned through individual usage rights. The proposals confirm the general authorisation approach and establish it as the default method. They consequently introduce an obligation to justify cases where individual usage rights are to be issued. Such justification can be that it is necessary to prevent interference or to fulfil objectives of general interest. The rationale underlying this proposal is two-fold: (i) to prevent individual licences from being used as assignment methods where not necessary, and thereby overall to reduce the hurdle to access spectrum; (ii) technological progress increasingly allows the collective use of spectrum.

Your Draftsman is convinced that the protection of consumers requires strengthened measures and therefore suggests amendments which are improvements on these consumer protection issues. With regard to the duties and power of national regulatory authorities, the proposal sets out further measures regarding consumer protection. Your Draftsman seeks to strengthen and clarify the role of the authorities in order to attain improvements on these consumer protection issues.

Furthermore, as recognized by the Commission, a fully functioning European retail market has not yet been achieved. Therefore, further concrete proposals are necessary to reach a true internal market.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following

amendments in its report:

Amendment 1

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 2

Proposal for a directive – amending act Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) Next generation networks have enormous potential to deliver benefits to businesses and consumers across the European Union. It is therefore vital that a lack of regulatory clarity does not act as an impediment to sustainable investment in the development of these new networks, while boosting competition and consumer choice.

Amendment 3

**Proposal for a directive – amending act
Recital 5 a (new)**

Text proposed by the Commission

Amendment

(5a) In its Communication “Bridging the Broadband Gap” of 20 March 2006, the Commission acknowledged that there is a territorial divide in Europe regarding access to high speed broadband services. Despite the general increase in broadband connectivity, access in various regions is limited because of high costs due to low density of population and remoteness. Commercial incentives to invest in broadband deployment in these areas often turn out to be insufficient. On the positive side, technological innovation is reducing deployment costs. In order to ensure investment in new technologies in underdeveloped regions, telecoms regulation needs to be consistent with other policy measures taken, such as state aid policy, structural funds or wider industrial policy aims.

Justification

The regulatory framework should also take into account the need for closing regional gaps in development. The specific importance of broadband roll out should be emphasised.

Amendment 4

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

Text proposed by the Commission

Amendment

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

***harmonisation of the use of spectrum
across the Community and globally.***

Justification

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

Amendment 5

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

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 6

**Proposal for a directive – amending act
Recital 22**

Text proposed by the Commission

Amendment

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. It should be possible for exceptions to the principle of service neutrality which require the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or

the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible. ***In order that the holder of the authorisation may choose freely the most efficient means to carry the content of services provided over radio frequencies, the content should not be regulated in the authorisation to use radio frequencies.***

the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives should include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible.

Justification

As pointed out in recital 5 of the framework directive, the separation between the regulation of transmission and the regulation of content must not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection. Member States must therefore conserve the freedom to make the granting of individual user rights dependent on commitments regarding the provision of specific service content.

Amendment 7

Proposal for a directive – amending act Recital 29

Text proposed by the Commission

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be given the power to grant the Authority specific responsibilities in the area of numbering. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of

Amendment

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be given the power to grant the Authority specific responsibilities in the area of numbering. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of

the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism.

the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism, ***as well as the establishment of a single European front-up call number ensuring user-friendly access to these services.***

Amendment 8

Proposal for a directive – amending act Recital 31

Text proposed by the Commission

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

Amendment

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in an environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, the entry into buildings and a better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings. ***The sharing of ducts should be extended to cover all public infrastructure (water, sewage, electricity, gas) through which electronic communications infrastructure can be deployed to create a level playing field and improve possibilities for the roll out of alternative infrastructure.***

Justification

New generation services will not run along the current copper wires; a whole new infrastructure will be deployed, for which the bottleneck is the physical ducts through which connections will be deployed. Real duct sharing – i.e. including not only telecoms

incumbents' ducts but also, for example all public infrastructure (electricity, gas, sewage ducts) - enables more than one player to have access to infrastructure to provide their services.

Amendment 9

Proposal for a directive – amending act Recital 50

Text proposed by the Commission

Amendment

(50) In order to ensure equal treatment, no spectrum users should be exempted from the obligation to pay the normal fees or charges set for the use of the spectrum. ***deleted***

Justification

Member States must remain free to maintain or introduce alternatives replacing the compulsory payment of user fees with the obligation to meet general interest objectives. Such arrangements, which seek to achieve media pluralism, are common practice with regard to the allocation of terrestrial broadcasting frequencies.

Amendment 10

Proposal for a directive – amending act Recital 57

Text proposed by the Commission

Amendment

(57) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities to communicate with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

(57) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities ***and emergency services*** to communicate ***between themselves and*** with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

Amendment 11

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

Text proposed by the Commission

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to the security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred ***to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments and for adopting implementing measures to harmonise the authorisation rules, procedures and conditions for the authorisation of electronic communications networks and services. Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. When, on imperative grounds of urgency, the normal time limits for this procedure cannot be complied with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of the above Decision.***

Amendment 12

Amendment

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the fields of spectrum and numbering as well as in matters related to the security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Power should also be conferred ***on the Commission by the Framework and Authorisation Directives to harmonise the regulatory treatment of pan-European services, such as global telecommunications services.***

**Proposal for a directive – amending act
Recital 60 a (new)**

Text proposed by the Commission

Amendment

(60a) It is the responsibility of the Member States to encourage cooperation arrangements between the parties concerned in order to promote efficient on-line services and a high level of consumer confidence. In particular, companies supplying electronic communications networks and/or services and other stakeholders should be encouraged to cooperate so as to promote legal content and protect on-line content. Such cooperation could for example be achieved on a wider scale without prejudice to the regulatory framework, by the drafting of negotiated and agreed codes of conduct between stakeholders. The introduction of such codes of conduct has already been envisaged in numerous Community instruments, for example Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')¹, Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights², and 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 data³. Such cooperation between stakeholders is essential to promoting on-line content, in particular European cultural content, and to realise the potential of the information society.

¹ OJ L 178, 17.7.2000, p. 1.

² OJ L 157, 30.4.2004, p. 45; corrected version in OJ L 195, 2.6.2004, p. 16.

³ OJ L 281, 23.11.1995, p.31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

Justification

This recital stresses the need to encourage good cooperation between stakeholders to promote on-line content and realise the potential of the information society.

Amendment 13

Proposal for a directive – amending act

Article 1 – point 1

Directive 2002/21/EC

Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 14

Proposal for a directive – amending act

Article 1 - point 3

Directive 2002/21/EC

Article 3 - paragraph 3 - subparagraph 1

Text proposed by the Commission

Member States shall ensure that national regulatory authorities exercise their powers

Amendment

Member States shall ensure that national regulatory authorities exercise their powers

independently, impartially **and** transparently. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

independently, impartially, transparently **and in a timely manner**. National regulatory authorities shall not seek or take instructions from any other body in relation to the day-to-day performance of the tasks assigned to them under national law implementing Community law. Only appeal bodies set up in accordance with Article 4 or national courts shall have the power to suspend or overturn decisions by the national regulatory authorities.

Justification

In order to ensure competition and innovation in the market, NRAs have to act in a timely manner, for example in relation to market reviews.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 4 – point (a)

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 16

Proposal for a directive – amending act

Article 1 - point 4

Directive 2002/21/EC

Article 4 - paragraph 1 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall set time limits for consideration of such appeals.

Justification

Currently appeal processes can be held up for as much as several years, by which time it is too late to address the original problem. A time limit has therefore to be set.

Amendment 17

Proposal for a directive – amending act

Article 1 - point 5

Directive 2002/21/EC

Article 5 - paragraph 1

Text proposed by the Commission

Amendment

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. Those undertakings shall also be required to submit information concerning future network or service developments that could have an impact on the wholesale services made available to competitors. 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

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. Those undertakings shall also be required to submit information concerning future network or service developments that could have an impact on the wholesale services made available to competitors. 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 authority shall give the reasons justifying its request for information, ***while ensuring business confidentiality in accordance with Community and national law.***

Amendment 18

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

Procedure for the consistent implementation of proposed solutions

1. Where a national regulatory authority seeks to take a measure imposing, amending or withdrawing an obligation to be met by an operator under Article 16, together with Articles 5 and 9 to 13, under Articles 13a and 13b of Directive 2002/19/EC (Access Directive) or under Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission and the national regulatory authorities of the other Member States shall have a period of one month following the date of notification of the draft measure within which to forward their observations to the national regulatory authority concerned.

2. If the proposed measure involves the imposition, amendment or withdrawal of an obligation other than those laid down in Articles 13a and 13b of Directive 2002/19/EC (Access Directive), the Commission may, within the same period, notify the national regulatory authority concerned and the Body of European Regulators in Telecommunications (BERT) of the reasons for which it considers that the proposed measure obstructs the internal market, or if it has

serious doubts regarding the compatibility of the proposed measure with Community law. In this case, adoption of the proposed measure shall be postponed for a further two months following that notification.

In the absence of such a notification, the national regulatory authority concerned may adopt the proposed measure, taking account of all observations of the Commission or any other national regulatory authority.

3. During the two month period provided for in paragraph 2, the Commission, BERT and the national regulatory authority concerned shall cooperate closely in order to identify the most effective and appropriate measure to achieve the objectives set out in Article 8, taking account of the opinions of market operators and the need to ensure consistent regulatory practice.

Within the same period, BERT may, by simple majority, adopt a reasoned opinion confirming the advisability and effectiveness of the proposed measure, or indicate whether it should be amended, submitting specific proposals to this effect. That opinion shall be made public.

If the opinion of BERT indicates that the proposed measure should be amended, the Commission may, taking full account of this opinion, adopt a reasoned decision requiring the national regulatory authority concerned to amend the proposed measure, submitting specific proposals to this effect.

If the opinion of BERT confirms the suitability and effectiveness of the proposed measure, the national regulatory authority concerned may adopt the proposed measure, taking full account of all the recommendations of the Commission and BERT.

4. If the proposed measure concerns the imposition, amendment or withdrawal of

an obligation under Articles 13a and 13b of Directive 2002/19/EC (Access Directive), the adoption of the proposed measure shall be postponed by a further two months after the expiry of the deadline laid down in Article 7(3).

During that two month period, the Commission, BERT and the national regulatory authority concerned shall cooperate closely in order to identify the most effective and suitable measure to achieve the objectives set out in Article 8, taking account of the opinions of market operators and the need to ensure consistent regulatory practice.

During the same period, BERT may, by simple majority, issue a reasoned opinion confirming the suitability and effectiveness of the draft measure, or indicate that it should not be implemented. That opinion shall be made public.

After confirmation by the Commission and BERT of the suitability and effectiveness of the proposed measure, the national regulatory authority concerned may adopt that measure, taking full account of all the recommendations of the Commission and BERT.

5. Within three months of the adoption by the Commission of a reasoned decision under paragraph 3 requiring the national regulatory authority concerned to amend a proposed measure, the national regulatory authority should amend or withdraw the proposed measure. If the proposed measure is amended, the national regulatory authority shall carry out public consultation pursuant to Article 6 and refer the proposed measure as amended back to the Commission pursuant to Article 7.

Justification

A new 'coregulation' procedure is proposed based on close cooperation between the

Commission, the BERT and the national regulatory authorities. Rather than a ‘sanction’ veto imposed from above, this procedure involves consideration by peers in order to achieve a solution. In order for the Commission to take a decision along these lines, the Commission and the BERT (by simple majority vote) must agree on the need to amend a measure proposed by a national regulatory authority. Otherwise, the national regulatory authority must take full account of observations by the Commission and BERT.

Amendment 19

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC

Article 7- paragraph 2

Text proposed by the Commission

2. National regulatory authorities shall contribute to the development of the Internal Market by working with the Commission and the Authority so as 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, work with the Commission and the Authority to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

Amendment

2. National regulatory authorities shall contribute to the development of the Internal Market by working with the Commission and the Authority ***in a transparent manner*** so as 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, work with the Commission and the Authority to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

deleted

Justification

The veto is replaced by the mechanism set out in Article 6a (new).

Amendment 21

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 6

Text proposed by the Commission

Amendment

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

Justification

The veto on remedies is replaced by the mechanism set out in Article 6a (new).

Amendment 22

Proposal for a directive – amending act

Article 1 - point 6

Directive 2002/21/EC

Article 7- paragraph 8

Text proposed by the Commission

Amendment

8. Where a draft measure has been amended in accordance with paragraph 6, the Commission may take a decision, requiring the national regulatory authority to impose a specific obligation under Articles 9 to 13a of *deleted*

Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) within a given time-limit.

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

Justification

To improve consistency, without altering the delicate institutional balance of powers or undermining the subsidiarity elements of the Regulation, the Commission should play the role of an arbitrator rather than of a judge.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 9

Text proposed by the Commission

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

Amendment

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

Justification

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

Amendment 24

Proposal for a directive – amending act

Article 1 – point 8 – point b

Directive 2002/21/EC

Article 8 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of content;

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, ***taking State aid rules into account***, in particular for the delivery of content;

Justification

The proposed expansion of the NRA's objective to promote competition "in particular for the delivery of content" should be rejected. The market for content delivery is already competitive. Accordingly, the market of broadcasting transmission services has already been removed from the list of recommended markets susceptible to ex-ante regulation. It stays unclear why this change is introduced. The addition moreover undermines the aim of a level playing field in competition, if competition in one areas judged more important than in another.

Amendment 25

Proposal for a directive – amending act

Article 1 - point 8 - point b a (new)

Directive 2002/21/EC

Article 8 - paragraph 2 - point c

Text proposed by the Commission

Amendment

(ba) In paragraph 2, point (c) shall be replaced by the following:

"(c) encouraging and facilitating efficient market-driven investment in infrastructure, and promoting innovation; and"

Amendment 26

Proposal for a directive – amending act

Article 1 – point 8 – point e

Directive 2002/21/EC

Article 8 – paragraph 4 – point g a (new)

Text proposed by the Commission

Amendment

(ga) ensuring the cooperation of undertakings providing electronic

communications networks and services with the sectors interested in the protection and the promotion of lawful content over electronic communication networks and services.

Amendment 27

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radiofrequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

Amendment

1. Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with Article 8. They shall ensure that the allocation and assignment of such radiofrequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria ***and avoid distorting competition.***

Justification

Effective management of radio spectrum for electronic communication services should require the competent authorities to take into account competition aspects when allocation and assigning radio frequencies and avoid any distortions to competition. The proposed wording is consistent with that in recital 28 of the Commission's proposal for the framework directive.

Amendment 28

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) avoid distortion of competition,

Justification

Effective management of radio spectrum for electronic communication services should require the competent authorities to take into account competition aspects when allocation and assigning radio frequencies and avoid any distortions to competition. The proposed wording is consistent with that in recital 28 of the Commission's proposal for the framework directive.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Justification

Service neutrality must be limited to the possibilities provided by ITU radio broadcasting regulations determining which services can operate together within the various band widths.

Amendment 30

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Restrictions that require a service to be

Amendment

Restrictions that require a *particular*

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

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

Amendment 31

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 3

Text proposed by the Commission

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

Amendment

A restriction which prohibits the provision of any other *electronic communication* service in a specific band may only be provided for where justified by the need to protect safety of life services *or to ensure the fulfilment of a general interest as defined in national legislation in conformity with Community law, such as the promotion of cultural and linguistic diversity and media pluralism*.

Justification

It is important that the definition of cultural and media policies remains in the hands of Member States and that legal safeguards and flexibility on national level are guaranteed in this matter.

Amendment 32

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4.

5. Member States shall regularly review the necessity of the restrictions referred to in paragraphs 3 and 4. ***It lies within the competence of the Member States to define the scope and nature of any exception.***

Justification

It is important that the definition of cultural and media policies remains in the hands of Member States and that legal safeguards and flexibility on national level are guaranteed in this matter.

Amendment 33

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9a – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

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

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

Justification

No review should be necessary regarding rights expiring before the end of the five-year transitional period.

Amendment 34

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9a – paragraph 2

Text proposed by the Commission

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

Amendment

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

Justification

Operators should be able to continue offering and further developing (for example through HD TV) their broadcasting services after transition to digital technology. The digital dividend which is not used for broadcasting should be reassigned to other purposes under the new rules.

Amendment 35

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9b – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

Member States shall ensure that undertakings may transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to Article 9c, ***provided that the transfer or lease is in accordance with national procedures and that the change does not affect the service provided within those bands***.

Justification

Radio frequency interchangeability should not lead to any imbalance regarding service diversity or to speculation. However, national procedures cannot be ignored since spectrum management is the responsibility of the national authorities.

Amendment 36

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c

Text proposed by the Commission

In order to contribute to the development of the internal market, for the achievement of the principles of this Article, the Commission may adopt appropriate implementing measures to:

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

(b) harmonise the conditions attached to such rights *and the conditions, procedures, limits, restrictions, withdrawals and transitional rules applicable to such transfers or leases*;

Amendment

In order to contribute to the development of the internal market, *and without prejudice to Article 8a*, for the achievement of the principles of this Article, the Commission may adopt appropriate *technical* implementing measures to:

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

(-aa) ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio frequencies in accordance with the procedure set out in Annex IIa;

(a) *identify* the bands for which usage rights may be transferred or leased between undertakings, *excluding radio frequencies allocated or planned by Member States for broadcasting services*;

(b) harmonise the conditions attached to such rights;

(c) harmonise the specific measures to ensure fair competition where individual rights are transferred;

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

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

(c) harmonise the specific measures to ensure fair competition where individual rights are transferred.

These implementing measures are without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, and in particular those relating to the promotion of cultural and linguistic diversity and media pluralism.

Measures adopted pursuant to points (a) to (c) of the first subparagraph, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). In the implementation of the provisions of this paragraph, the Commission may be assisted by the ***Radio Spectrum Policy Committee.***

Justification

Bringing the Commission's implementing powers of the Radio Spectrum Decision within the Framework Directive must go along with the inclusion in the Directive of a clause equivalent to Article 1(4) of the Radio Spectrum Decision. In view of Member States' competence for cultural and media policy, the Commission should not identify broadcasting bands as bands for which usage rights might be transferred or leased. Under Article 9b, the transfer or lease of individual rights is subject to national procedures, and the Commission should thus not harmonize these procedures.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 11 – point (b)

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter, which may include establishing tariff principles for specific numbers or number ranges. The implementing measures may grant the Authority specific responsibilities in the application of those measures.

Amendment

Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter, which may include establishing tariff principles for specific numbers or number ranges, ***as well as establishing a single European front-up call number ensuring user-friendly access to these services.*** The implementing measures may grant the Authority specific responsibilities in the application of those measures.

Amendment 38

Proposal for a directive – amending act

Article 1 - point 13

Directive 2002/21/EC

Article 12 - paragraph 3

Text proposed by the Commission

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

Amendment

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

Amendment 39

Proposal for a directive – amending act

Article 1 – point 13

Directive 2002/21/EC

Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. To ensure that measures adopted under paragraph 1 are proportionate, national regulatory authorities will investigate the availability of all ducts, including those of telecommunications operators, energy providers, local communities and sewage pipes, capable of carrying telecommunications lines in the area where access is requested.

Justification

In order to foster infrastructure roll-out access to ducts should not be artificially confined to ducts of telecommunications operators but should encompass all ducts available. The more ducts are available the better the chances for sustainable competition due to third party network roll-out.

Amendment 40

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 41

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment 42

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 3 – subparagraph 3

Text proposed by the Commission

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

Amendment 43

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

Where appropriate, the national regulatory authority concerned shall inform the national regulatory authorities in other Member States and the Authority.

Amendment

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

Amendment

The Commission, taking the utmost account of the opinion of the Authority issued in accordance with Article 4(3)(b) of Regulation [.../EC], may ***encourage the dissemination and exchange of best practices among undertakings and competent national authorities*** and adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the

circumstances, format and procedures applicable to notification requirements.

Justification

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

Amendment 44

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13a – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

These implementing measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 22(3) ***where industry-led self-regulatory initiatives have not achieved an adequate level of security in the internal market in one or more Member States***. On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

Amendment 45

Proposal for a directive – amending act

Article 1 - point 17

Directive 2002/21/EC

Article 16 - paragraph 5 - subparagraph 2

Text proposed by the Commission

The Commission, taking the utmost account of the opinion of the Authority, may issue a decision designating one or more undertakings as having significant market power on that market, and imposing one or more specific obligations under Articles 9 to 13a of Directive 2002/19/EC (Access Directive)

Amendment

deleted

and Article 17 of Directive 2002/22/EC (Universal Service Directive). In so doing, the Commission shall pursue the policy objectives set out in Article 8.

Justification

To improve consistency without altering the delicate institutional balance of powers or undermining the subsidiarity elements of the Regulation, the Commission should play the role of an arbitrator rather than of a judge.

Amendment 46

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 4 – point a

Text proposed by the Commission

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

Amendment

(a) Consistent implementation of regulatory approaches, including regulatory treatment of **pan-European services, such as global telecommunications services, and** new services;

Justification

Pan-European telecommunications services with its current lead example of global telecommunications services (GTS) offered to multinational companies with offices in a number of European countries are one of the areas where the Commission should have the power to ensure a harmonised regulatory approach within the EU.

Amendment 47

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 4 – point c

Text proposed by the Commission

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

Amendment

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

users;

Justification

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

Amendment 48

Proposal for a directive – amending act

Article 2 – point 8 – point b a (new)

Directive 2002/19/EC

Article 12 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

Justification

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

Amendment 49

Proposal for a directive – amending act

Article 2 – point 9

Directive 2002/19/EC

Article 13a – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has

(a) evidence that the imposition of appropriate obligations amongst those identified in Articles 9-13 to achieve effective competition following a co-ordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has

failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets.

failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting competition problems/market failures identified in several of these product markets ***and that this measure would be the most effective and efficient means to enforce remedies aimed at addressing such failures.***

Justification

Since functional separation can provide a means to simplify enforcement for the Authority and regulated operator, it should be possible for Regulators to make use of this measure on a forward-looking basis and not only after there is a long-standing failure of enforcement which means that remedies have been ineffective over an extended period (and thus competition has failed to develop). It is important to refer to 'effective' competition as some infrastructure competition could exist without being sufficient to provide an effective constraint on the dominant operator.

Amendment 50

Proposal for a directive – amending act

Article 3 – point 2

Directive 2002/20/EC

Article 3 – paragraph 2 – subparagraphs 1 a and b (new)

Text proposed by the Commission

Amendment

Global telecommunications services shall be subject to no more than a simplified notification process with specified registration of electronic communications service activity as “global telecommunications services”.

Global telecommunications services are managed business data and voice services for multinational companies located in different countries and often different continents. They are inherently cross-border and, within Europe, pan-European.

Amendment 51

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – introductory wording

Text proposed by the Commission

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

Amendment

Member States shall **facilitate** the use of radio frequencies **within the framework of** the general authorisation. **Member States may** grant individual rights in order to:

Justification

General authorisations may be a viable solution in the long term once the technology has developed. However, the granting of individual rights should remain the normal procedure for spectrum allocation.

Amendment 52

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) fulfil other objectives of general interest.

Amendment

(b) fulfil other objectives of general interest, **including the provision of broadcasting services.**

Amendment 53

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 5

Text proposed by the Commission

Any individual **right** to use radio frequencies **that is** granted for ten years or more and **that** may not be transferred or

Amendment

Where individual **rights** to use radio frequencies **are** granted for ten years or more and may not be transferred or leased

leased between undertakings *as allowed by* Article 9b of the Framework Directive **shall, every five years and for the first time five years after its issuance, be subject to a review in the light of the criteria in paragraph 1.** If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice **of not more than five years from the conclusion of the review,** or shall be made freely transferable or leaseable between undertakings.

between undertakings *under* Article 9b of the Framework Directive, **the national regulatory authority shall ensure that it has the means to verify that** the criteria to grant **those** individual rights of use **continue to apply and to be complied with for the duration of the licence.** **If those criteria** are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice **and after a reasonable period,** or shall be made freely transferable or leaseable between undertakings. **When such a decision is taken, due account shall be taken of the need to accord a suitable period for amortization of investments.**

Justification

There are numerous new platforms and services on which investment must be recouped over a period exceeding ten or at least five years. It is not unusual to sustain considerable losses during the first one or two years of operation. It would be disproportionate to require the national regulatory authority on an inflexible basis to carry out a formal review every five years of all broadcasting spectrum licences.

Amendment 54

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

deleted

Justification

The granting of general authorisations is a long-term objective and harmonisation should not be envisaged at this stage.

Amendment 55

Text proposed by the Commission

Amendment

Article 6b

deleted

Common selection procedure for issuing rights

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

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

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

Justification

Regarding the granting of these rights, selection should be carried out by means of specific legal proposals throughout the EU and not through the comitology procedure.

Amendment 56

Proposal for a directive – amending act

Annex I – point 4 a (new)

Directive 2002/20/EC

Annex – Part C – point 1

Text proposed by the Commission

Amendment

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply to specific number ranges for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC.

Amendment 57

Proposal for a directive – amending act

Annex II – point 1

Directive 2002/20/EC

Annex II – point 1 – point d

Text proposed by the Commission

Amendment

(d) the method of determining usage fees for the right of use of the radio frequencies;

(d) the method of determining usage fees for the right of use of the radio frequencies, ***without prejudice to the mechanisms adopted by the Member States to replace the user fee obligation with the obligation to fulfil specific general interest objectives;***

Justification

Member States must remain free to maintain or introduce mechanisms to replace user fee obligations with obligations to fulfil specific general interest objectives. These mechanisms, which are intended to meet media pluralism objectives, are commonly applicable to terrestrial broadcasting frequencies.

PROCEDURE

Title	Electronic communications networks and services			
References	COM(2007)0697 – C6-0427/2007 – 2007/0247(COD)			
Committee responsible	ITRE			
Opinion by Date announced in plenary	IMCO 10.12.2007			
Drafts(wo)man Date appointed	Marian Zlotea 31.1.2008			
Discussed in committee	28.2.2008	26.3.2008	6.5.2008	28.5.2008
Date adopted	16.6.2008			
Result of final vote	+: -: 0:	33 0 0		
Members present for the final vote	Cristian Silviu Buşoi, Charlotte Cederschiöld, Janelly Fourtou, Evelyne Gebhardt, Martí Grau i Segú, Małgorzata Handzlik, Malcolm Harbour, Edit Herczog, Iliana Malinova Iotova, Kurt Lechner, Lasse Lehtinen, Arlene McCarthy, Nickolay Mladenov, Catherine Neris, Bill Newton Dunn, Zita Pleštinská, Karin Riis-Jørgensen, Giovanni Rivera, Zuzana Roithová, Heide Rühle, Leopold Józef Rutowicz, Salvador Domingo Sanz Palacio, Christel Schaldemose, Andreas Schwab, Eva-Britt Svensson, Jacques Toubon, Bernadette Vergnaud			
Substitute(s) present for the final vote	Giovanna Corda, Jan Cremers, Dragoş Florin David, Manuel Medina Ortega, Rovana Plumb, Anja Weisgerber			