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*Committee on the Internal Market and Consumer Protection*

**2007/0247(COD)**

14.5.2008

## **AMENDMENTS 10 - 94**

**Draft opinion**  
**Marian Zlotea**  
(PE404.724v01-00)

on Electronic communications networks and services

Proposal for a directive – amending act  
(COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))

AM\_Com\_LegOpinion

**Amendment 10**  
**Emmanouil Angelakas**

**Proposal for a directive – amending act**  
**Recital 2**

*Text proposed by the Commission*

(2) In that regard, the Commission presented its initial findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services. On the basis of these initial findings, a public consultation was held, which ***identified the continued lack of an internal market for electronic communications as the most important aspect needing to be addressed. In particular, regulatory fragmentation and inconsistencies between the activities of the national regulatory authorities were found to jeopardise not only the competitiveness of the sector, but also the substantial consumer benefits from cross-border competition.***

*Amendment*

(2) In that regard, the Commission presented its initial findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services. On the basis of these initial findings, a public consultation was held, which ***showed support for a continuation of the current model of the framework. The current framework introduces technical adjustments of a transitory nature to ensure a full transition to competition law becomes a reality, as the nature of the framework remains transitory and should end in 2014 by which point a fully competitive telecoms market should be a reality. The provisions of this Directive shall apply until 31 December 2014.***

Or. en

*Justification*

*The current regulatory framework has been in place for a very short time only and has proven to function well. This review should make certain technical adjustments only to tune the current framework. To this end it is advisable to insert a sunset clause which will ensure the framework is reviewed as to the necessity of its continuation after 2014 by which point a fully competitive market should have become a reality.*

**Amendment 11**  
**Christel Schaldemose**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

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

**Amendment 12**  
**Olle Schmidt**

**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 effective and competitive infrastructure and service markets, the latter thanks to increasing information society developments.***

Or. en

## *Justification*

*Infrastructure-based competition is a prerequisite for a well functioning telecom market in the long run, and it should be made clear that it is one of the primary goals of this regulation.*

### **Amendment 13**

**Marian Zlotea**

**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.***

Or. en

### **Amendment 14**

**Emmanouil Angelakas**

**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.*

Or. en

*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 15**  
**Christel Schaldemose**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

*Justification*

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

**Amendment 16**  
**Jacques Toubon**

**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 the international and regional organisations dealing with radioelectric spectrum management, such as the International Telecommunications Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), so as to ensure the efficient management and harmonisation of use of the spectrum across the Community and globally.***

Or. fr

*Justification*

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

**Amendment 17**  
**Christel Schaldemose**

**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 18**  
**Jacques Toubon**

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

*Text proposed by the Commission*

(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.***

*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 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 19**

**Cristian Silviu Buşoi, Adina-Ioana Vălean**

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

*Amendment*

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**Amendment 20**  
**Šarūnas Birutis**

**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, ***where there is a lack of infrastructure competition***. Improving facility sharing can significantly improve competition and lower the overall financial and environmental cost of deploying electronic communications infrastructure for undertakings.

Or. en

*Justification*

*Similar to the remedy to introduce functional separation, a decision to impose duct access must be appraised against the investment signals it gives to alternative next generation access investors. National Regulatory Authorities must show due caution in adopting a simplistic view of the conditions under which sustainable investment in next generation access competition is likely to occur.*

**Amendment 21**  
**Bill Newton Dunn**

**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.

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Or. en

**Amendment 22**  
**Emmanouil Angelakas**

**Proposal for a directive – amending act**  
**Recital 31**

*Text proposed by the Commission*

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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.

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.***

Or. en

#### *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 23 Bill Newton Dunn**

#### **Proposal for a directive – amending act Recital 33**

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

(33) Where there is a need to agree on a common set of security requirements, power should be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic

##### *Amendment*

(33) Where there is a need to agree on a common set of security requirements, power should be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic

communications networks and services in the internal market. The Authority should contribute to the harmonization of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

communications networks and services in the internal market ***where industry-led self-regulatory initiatives have not achieved an adequate level of security in the internal market in one or more Member States. Where technical implementing measures are deemed necessary, a cost reimbursement scheme at national level is required.*** The Authority should contribute to the harmonization of appropriate technical and organisational security measures by providing expert advice. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

Or. en

**Amendment 24**  
**Marian Zlotea**

**Proposal for a directive – amending act**  
**Recital 43**

*Text proposed by the Commission*

(43) The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators, including the vertically integrated operator's own downstream divisions. Functional separation has the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier for compliance with non-discrimination obligations to be verified and enforced. In exceptional cases, it may

*Amendment*

(43) The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators, including the vertically integrated operator's own downstream divisions. Functional separation has the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier for compliance with non-discrimination obligations to be verified and enforced. In exceptional cases, it may

be justified as a remedy where ***there has been persistent failure*** to achieve effective non-discrimination in several of the markets concerned, and where there is little or no prospect of infrastructure competition within a reasonable timeframe after recourse to one or more remedies previously considered to be appropriate. However, it is very important to ensure that its imposition preserves the incentives of the concerned undertaking to invest in its network and that it does not entail any potential negative effects on consumer welfare. Its imposition requires a coordinated analysis of different relevant markets related to the access network, in accordance with the market analysis procedure set out in Article 16 of the Framework Directive. When performing the market analysis and designing the details of this remedy, national regulatory authorities should pay particular attention to the products to be managed by the separate business entities, taking into account the extent of network roll-out and the degree of technological progress, which may affect the substitutability of fixed and wireless services. In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.

be justified as a remedy where ***it would help*** to achieve effective non-discrimination in several of the markets concerned, and where there is little or no prospect of infrastructure competition within a reasonable timeframe after recourse to one or more remedies previously considered to be appropriate. However, it is very important to ensure that its imposition preserves the incentives of the concerned undertaking to invest in its network and that it does not entail any potential negative effects on consumer welfare. Its imposition requires a coordinated analysis of different relevant markets related to the access network, in accordance with the market analysis procedure set out in Article 16 of the Framework Directive. When performing the market analysis and designing the details of this remedy, national regulatory authorities should pay particular attention to the products to be managed by the separate business entities, taking into account the extent of network roll-out and the degree of technological progress, which may affect the substitutability of fixed and wireless services. In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.

Or. en

### *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 25**  
**Cristian Silviu Buşoi**

**Proposal for a directive – amending act**  
**Recital 43 a (new)**

*Text proposed by the Commission*

*Amendment*

***(43a) Functional separation is not a suitable regulatory solution for markets in which there is competition for the provision of infrastructure-based retail services and/or in which the penetration by fixed telecommunications services is very low. In view of the exceptional nature of this solution it is necessary to assess the impact thereof, so as to demonstrate the non-discriminatory nature of vertical restrictions and the economic efficiency achieved as a result. The assessment of its impact must also consider the impact of alternative policies (less intrusive) and should be forwarded to the Commission for review.***

Or. ro

**Amendment 26**  
**Cristian Silviu Buşoi**

**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***

Or. en

**Amendment 27**  
**Jacques Toubon**

**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 standard fees or charges for use of the spectrum.***

***deleted***

Or. fr

*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 28**  
**Cristian Silviu Buşoi, Adina-Ioana Vălean**

**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.

Or. en



**Amendment 29**  
**Cristian Silviu Buşoi**

**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*

(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 harmonize the regulatory treatment of pan-European services, such as global telecommunications services.***

Or. en

**Amendment 30**  
**Jacques Toubon**

**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 on-line content protection. Such cooperation could for example be achieved on a wider scale without detracting from 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)<sup>1</sup>, Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights<sup>2</sup>, or Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>3</sup>. Such cooperation between stakeholders is essential to promoting on-line content, in particular European cultural content and realise the potential of the information society.***

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<sup>1</sup> JO L 178, 17.7.2000, p. 1.

<sup>2</sup> JO L 157, 30.4.2004, p. 45.

<sup>3</sup> JO L 281, 23.11.1995.

Or. fr

*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 31**

**Christel Schaldemose**

**Proposal for a directive – amending act**

**Article 1 – point 1**

Directive 2002/21/EC

Article 1 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

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

**Amendment 32**  
**Emmanouil Angelakas**

**Proposal for a directive – amending act**

**Article 1 – point 2 – point (c)**

Directive 2002/21/EC

Article 2 – point e

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Access to basic infrastructure like ducts and masts might in a number of cases constitute the real remaining bottleneck in telecommunications. Thus access should be granted to support third party infrastructure roll-out. But in that case sharing of ducts must include all operators – public and private. New generation services will not run along the current copper wires.*

**Amendment 33**  
**Zuzana Roithová**

**Proposal for a directive – amending act**

**Article 1 – point 3 a (new)**

Directive 2002/21/EC

Article 3 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. National competition authorities, the Commission and national regulatory authorities shall not impose sanctions in relation to the same facts sanctioned or dismissed by another authority acting within the scope of its own competences where the same facts and subject matter is involved.***

Or. en

*Justification*

*National competition authorities and the Commission have competence to investigate and sanction infringements against national or European competition law. National regulatory authorities are competent to foster competition regarding network deployment and provision of electronic communications services. Acting within the scope of their respective competences, those authorities may arrive at different decisions.*

*To avoid this potential conflict authorities may impose penalties on facts that have been sanctioned or dismissed by another authority, provided they have acted in accordance with their competences and that the facts have the same object and subject.*

**Amendment 34**

**Christel Schaldemose**

**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*

*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

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***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.

to enable it to carry out its functions ***effectively***. Member States shall ensure that the merits of the case are duly taken into account, that there is an effective appeal mechanism ***and that proceedings before the appeal body are not unduly lengthy***.

Or. en

### *Justification*

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

## **Amendment 35** **Jacques Toubon**

**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 6 a***

***Procedure for the consistent implementation of proposed solutions.***

- 1. When 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, and Articles 13 a and 13 b of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission and the national regulatory authorities of the other Member States shall have a one-month deadline following the date of notification of the draft measure 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 13 a and 13 b 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 is obstructing the internal market or if it has serious doubts regarding its compatibility with Community law. In this case, adoption of the proposed measure shall be postponed for a further two months following notification of the Commission.*

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

*3. During the two-month deadline laid down in paragraph 2, the Commission, the BERT and the national regulatory authority concerned shall cooperate closely in order to identify the most effective and appropriate measure to take regarding the objectives set out in Article 8, while taking account of the opinions of market operators and the need to ensure consistent regulatory practices.*

*Within the same two-month period, the BERT may, by simple majority, adopt a reasoned opinion confirming the advisability and effectiveness of the proposed measure or indicate whether it should be modified, forwarding all specific proposals to this effect. This opinion shall be made public.*

*If the opinion by the BERT indicates that the proposed measure must 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, forwarding specific proposals to this effect.*

*If the opinion by the 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 by the Commission and the BERT.*

*4. If the proposed measure concerns the imposition, amendment or withdrawal of an obligation under Articles 13 a and 13 b of Directive 2002/19/EC (Access Directive), the adoption of the proposed measure shall be postponed by a further two months after expiry of the deadline set in Article 7(3).*

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

*During the same two-month period, the 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. This opinion shall be made public,*

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

*5. Within three months from adoption by Commission of a reasoned decision under paragraph 3 requiring the national regulatory authority concerned to amend*



***the 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 amended proposed measure back to the Commission pursuant to Article 7.***

Or. fr

#### *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 36 Jacques Toubon**

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

#### **Article 1 – point 6**

Directive 2002/21/EC

Article 7 – paragraph 4 – point c

*Text proposed by the Commission*

*Amendment*

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

Or. fr

#### *Justification*

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

**Amendment 37**  
**Jacques Toubon**

**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**

Or. fr

*Justification*

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

**Amendment 38**  
**Jacques Toubon**

**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,** **deleted**

*requiring the national regulatory authority to impose a specific obligation under Articles 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) within a given time-limit.*

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

Or. fr

*Justification*

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

**Amendment 39**  
**Zuzana Roithová**

**Proposal for a directive – amending act**  
**Article 1– point 6**  
Directive 2002/21/EC  
Article 7 –paragraph 8

*Text proposed by the Commission*

*Amendment*

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

***deleted***

*national regulatory authorities in Article 8. The Commission shall take utmost account of the opinion of the Authority submitted in accordance with Article 6 of Regulation [.../EC], in particular in elaborating the details of the obligation(s) to be imposed.*

Or. en

*Justification*

*The proposed text gives the Commission the competence to prescribe which obligation shall be imposed by the national regulatory authority. This would lead to imbalance in responsibility, because the NRA would still be fully responsible for the obligations imposed (in case of a court dispute), but would not be able to decide about their contents*

**Amendment 40**  
**Jacques Toubon**

**Proposal for a directive – amending act**

**Article 1 – point 6**

Directive 2002/21/EC

Article 7 – paragraph 9

*Text proposed by the Commission*

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

*Amendment*

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

Or. fr

*Justification*

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

**Amendment 41**  
**Zuzana Roithová**

**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*

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

*Amendment*

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector;

Or. en

*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 42**  
**Olle Schmidt**

**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*

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

*Amendment*

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

Or. en

### *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 43**

**Cristian Silviu Buşoi**

#### **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*

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

#### *Amendment*

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of content. ***However for countries with a less developed fixed infrastructures and a low level of fixed and broadband services, consideration shall be given to the need to promote investment as a matter of priority rather than stimulating competition;***

Or. ro

#### **Amendment 44**

**Marian Zlotea**

#### **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.*

Or. en

**Amendment 45**  
**Jacques Toubon**

**Proposal for a directive – amending act**  
**Article 1 – point 8 – point (e)**  
Directive 2002/21/EC  
Article 8 – paragraph 4 – point g b (new)

*Text proposed by the Commission*

*Amendment*

*(gb) ensuring that undertakings providing electronic communications networks and services cooperate with the sectors interested in the protection and promotion of lawful content in electronic communication networks and services.*

Or. fr

*Justification*

*The promotion and protection of lawful content on electronic communications networks and services must be included in the tasks of the national regulatory authorities in order to encourage competition between lawful creative content in the interest of European consumers. It is also necessary to encourage self-regulation and the prevention of conflicts of interest by means of cooperation.*

**Amendment 46**  
**Jacques Toubon**

**Proposal for a directive – amending act**  
**Article 1 – point 8 – point (e)**  
Directive 2002/21/EC  
Article 8 – paragraph 4 – point g c (new)

*Text proposed by the Commission*

*Amendment*

***(gc) introducing consultation platforms including representatives of all stakeholders, in particular consumers and eligible parties. These platforms shall set out the principles for the resolution of disputes between users, access suppliers and content producers under national law.***

Or. fr

*Justification*

*The promotion and protection of legal content on electronic communications networks and services should be among the tasks of the national regulatory authorities so as to encourage competition between legal creative content in the interests of European consumers and encourage self-regulation and prevent conflicts of interest through cooperation.*

#### **Amendment 47**

**Marian Zlotea**

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

#### **Article 1 – point 9**

Directive 2002/21/EC

Article 9 – paragraph 1

*Text proposed by the Commission*

*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.

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 avoids distorting competition.***

Or. en



### *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 48** **Marian Zlotea**

#### **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,***

Or. en

### *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 49** **Jacques Toubon**

#### **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*

*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

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.

communications services may be provided in the radio frequency bands *available* to electronic communications *services as identified on the national allocation networks and under 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.

Or. fr

### *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 50** **Jacques Toubon**

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

#### **Article 1 – point 9**

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. fr

*Justification*

*Interpretation of general interest objectives in each Member State should be governed by subsidiarity.*

**Amendment 51**

**Šarūnas Birutis, Erna Hennicot-Schoepges**

**Proposal for a directive – amending act**

**Article 1 – point 9**

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*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 52**

**Šarūnas Birutis, Erna Hennicot-Schoepges**

**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.***

Or. en

*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 53**  
**Jacques Toubon**

**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. fr

*Justification*

*The framework applies only to electronic communication services and not to the others without distinction (weather forecast, scientific, military, etc.).*

**Amendment 54**  
**Šarūnas Birutis, Erna Hennicot-Schoepges**

**Proposal for a directive – amending act**

**Article 1 – point 9**

Directive 2002/21/EC

Article 9 – paragraph 5

*Text proposed by the Commission*

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

*Amendment*

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.***

Or. en

*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 55**  
**Jacques Toubon**

**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*

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

*Amendment*

1. For a period of five years starting on ***[date of transposition]***, Member States ***may*** ensure that holders of rights to use radio frequencies which were granted before that date 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).

Or. fr

## *Justification*

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

### **Amendment 56** **Jacques Toubon**

#### **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. This article does not apply to restrictions introduced by the Member States in order to promote cultural and media policy objectives, for example cultural and linguistic diversity and media pluralism.***

Or. fr

## *Justification*

*Since the Member States are responsible for defining the scope, nature and duration of principles of technological and service neutrality seeking to promote cultural and media policy objectives, the review procedure contained in Article 9 would not be appropriate. Furthermore, paragraph 2 confuses two different points: the review of restrictions and the review of user rights as such, the second being covered by Article (2) of the Authorisation Directive.*

**Amendment 57**  
**Jacques Toubon**

**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 ***remains unchanged until expiry***. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective ***shall be included in a new assignment procedure pursuant to Article 9(3) and (4) of this directive and Article 7(2) of Directive 2002/20/EC*** (the Authorisation Directive).

Or. fr

*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 58**  
**Jacques Toubon**

**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*

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

*Amendment*

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

Or. fr

*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 59**  
**Jacques Toubon**

**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:

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

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

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

(b) harmonise the conditions attached to such rights;

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

(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 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.***

***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***

***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

***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].***

provisions of this paragraph, the Commission may be assisted by the ***RSCP.***

Or. en

#### *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 60**

**Cristian Silviu Buşoi, Adina-Ioana Vălean**

#### **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 61**  
**Emmanouil Angelakas**

**Proposal for a directive – amending act**

**Article 1 – point 13**

Directive 2002/21/EC

Article 12 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

1. Where a *public or private* undertaking has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities, *taking due account of the principle of proportionality*, shall be able to impose the sharing of such facilities or property, including masts, antennae, ducts *and* manholes.

*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 62**  
**Christel Schaldemose**

**Proposal for a directive – amending act**

**Article 1 – point 13**

Directive 2002/21/EC

Article 12 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 63**  
**Bill Newton Dunn**

**Proposal for a directive – amending act**  
**Article 1 – point 13**  
Directive 2002/21/EC  
Article 12 – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

3. Measures taken by a national regulatory authority in accordance with paragraph 1 shall be objective, transparent, **non-discriminatory** and proportionate **and undertaken in accordance with the procedure laid down in Article 7a(4) of Directive 2002/21/EC.**

Or. en

**Amendment 64**  
**Emmanouil Angelakas**

**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.*

Or. en

*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 65**  
**Bill Newton Dunn**

**Proposal for a directive – amending act**

**Article 1 – point 14**

Directive 2002/21/EC

Article 13a – paragraph 2

*Text proposed by the Commission*

2. Member States shall ensure that undertakings providing public communications networks take ***all necessary*** steps to ensure the integrity of their networks so as to ensure the continuity of supply of services provided over those networks.

*Amendment*

2. Member States shall ensure that undertakings providing public communications networks take ***appropriate*** steps to ensure the integrity of their networks so as to ensure the continuity of supply of services provided over those networks. ***Member States shall ensure that national regulatory authorities regularly consult with undertakings in order to ensure appropriate steps have been taken to ensure security or integrity.***

Or. en

**Amendment 66**  
**Bill Newton Dunn**

**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*

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

*Amendment*

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.

Or. en

**Amendment 67**  
**Bill Newton Dunn**

**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*

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

Or. en

**Amendment 68**  
**Bill Newton Dunn**

**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*

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.

Or. en

**Amendment 69**  
**Christel Schaldemose**

**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*

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

Or. en

*Justification*

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

**Amendment 70**  
**Bill Newton Dunn**

**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).

Or. en

**Amendment 71**  
**Bill Newton Dunn**

**Proposal for a directive – amending act**  
**Article 1 – point 14**  
Directive 2002/21/EC  
Article 13b – paragraph 2 – introductory part

*Text proposed by the Commission*

2. Member States shall ensure that national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

*Amendment*

2. Member States shall ensure that national regulatory authorities, ***where appropriate***, have the power to require undertakings providing public communications networks or publicly available electronic communications services to:

Or. en



**Amendment 72**  
**Bill Newton Dunn**

**Proposal for a directive – amending act**  
**Article 1 – point 14**  
Directive 2002/21/EC  
Article 13b – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. Member States shall ensure that a cost reimbursement scheme is made available to undertakings providing public communications networks or publicly available electronic communications services where the Commission adopts technical implementing measures under Article 13a(4).***

Or. en

**Amendment 73**  
**Marian Zlotea**

**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*

*Amendment*

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

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

Or. en

*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 74**  
**Cristian Silviu Buşoi**

**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;

Or. en

**Amendment 75**  
**Christel Schaldemose**

**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;

Or. en

*Justification*

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

**Amendment 76**  
**Zuzana Roithová**

**Proposal for a directive – amending act**

**Article 2 – point 1**

Directive 2002/19/EC

Article 2 – point a

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*The proposal may lead to the untenable situation that i.e. mail order business, call centres of insurances could request specific access to telecommunications networks. As retail customers, broadcast providers do already benefit from the non discrimination principle laid down in Art. 17 and 31 of the Universal Service Directive. The Commission has decided to remove market 18 from its Recommendation, explicitly stating that national competition law sufficiently covers access problems in this context.*

**Amendment 77**  
**Marian Zlotea**

**Proposal for a directive – amending act**  
**Article 2 – point 1 a (new)**  
Directive 2002/19/EC  
Article 2 – point e

*Text proposed by the Commission*

*Amendment*

**(e) "local loop" means the physical circuit connecting the network termination point at the subscriber's premises to a distribution frame or equivalent facility in the fixed public *electronic communications* network, where the connection can technically be accessed.**

Or. en

**Amendment 78**  
**Christel Schaldemose**

**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*;**

Or. en

*Justification*

*Infrastructure competition, while a primary goal of this regulation, needs to be assessed*

*according to the benefit to the consumer too. Competition should be promoted as deep as possible in the value chain.*

**Amendment 79**  
**Emmanouil Angelakas**

**Proposal for a directive – amending act**  
**Article 2 – point 9**  
Directive 2002/19/EC  
Article 13a

*Text proposed by the Commission*

*Amendment*

*Article 13a*

*deleted*

***Functional separation***

***1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit. That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.***

***2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a request to the Commission that includes.***

***(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.*

*(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;*

*(c) a draft of the measure being proposed*

*3. The draft measure shall include the following elements:*

*(a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;*

*(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;*

*(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;*

*(d) rules for ensuring compliance with the obligations;*

*(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;*

*(f) a monitoring programme to ensure compliance, including publication of an annual report.*

*4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of*

*Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).*

*5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8*

Or. en

#### *Justification*

*Proposal will add an additional remedy although the case for its necessity has not been made. Once introduced, functional separation will be hard to dismantle, can lead to a re-monopolisation of the access network and thereby make regulation permanent. Separation hinders the coordination of investment decisions in a vertically integrated company and will negatively affect the roll-out of next generation high-speed access networks.*

**Amendment 80**  
**Zuzana Roithová**

**Proposal for a directive – amending act**  
**Article 2 – point 9**  
Directive 2002/19/EC  
Article 13a

*Text proposed by the Commission*

*Article 13a*

*Amendment*

*deleted*

#### *Functional separation*

*1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second*

*subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit. That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.*

*2. When a national regulatory authority intends to impose an obligation for functional separation, it shall submit a request to the Commission that includes.*

*(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.*

*(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;*

*(c) a draft of the measure being proposed*

*3. The draft measure shall include the following elements:*

*(a) the precise nature and level of separation, specifying in particular the legal status of the separate business*



*entity;*

*(b) identification of the assets of the separate business entity, and the products or services to be supplied by this entity;*

*(c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive structure;*

*(d) rules for ensuring compliance with the obligations;*

*(e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;*

*(f) a monitoring programme to ensure compliance, including publication of an annual report.*

*4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).*

*5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8*

Or. en

## *Justification*

*Proposal will add an additional remedy although the case for its necessity has not been made. Once introduced, functional separation will be hard to dismantle, can lead to a re-monopolisation of the access network and thereby make regulation permanent. Separation hinders the coordination of investment decisions in a vertically integrated company and will negatively affect the roll-out of next generation high-speed access networks. Already the introduction of the remedy in the EU regulatory framework increases uncertainty for investing companies in the market.*

### **Amendment 81**

**Cristian Silviu Buşoi**

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

##### **Article 2 – point 9**

Directive 2002/19/EC

Article 13a – paragraph 1

#### *Text proposed by the Commission*

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

#### *Amendment*

1. A national regulatory authority may, in accordance with the provisions of Article 8, and in particular the second subparagraph of Article 8(3), impose an obligation, ***as an exceptional regulatory measure***, on vertically integrated undertakings to place activities related to the wholesale provision of access products in an independently operating business unit.

That business unit shall supply access products and services to all undertakings, including other business units within the parent company, on the same timescales, terms and conditions, including with regard to price and service levels, and by means of the same systems and processes.

***The national regulatory authority shall not impose functional separation as a regulatory solution on markets where competition exists for the supply of in infrastructure-based retail services and/or where penetration by fixed telecommunication services is very low.***

**Amendment 82**  
**Marian Zlotea**

**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*

(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.

*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 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.***

Or. en

*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 83**  
**Marian Zlotea**

**Proposal for a directive – amending act**

**Article 2 – point 9**

Directive 2002/19/EC

Article 13a – paragraph 2 – point b

*Text proposed by the Commission*

(b) an analysis of the expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition and any potential entailing effects on consumers;

*Amendment*

(b) an analysis of the **costs and benefits of the measure, including its** expected impact on the regulatory authority, on the undertaking, and on its incentives to invest in its network, and on other stakeholders including in particular the expected impact on infrastructure competition, **investment,** and any potential entailing effects on consumers;

Or. en

*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 84**  
**Cristian Silviu Buşoi**

**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 with locations in different countries and often different continents. They are inherently cross-border and, within Europe, pan-European.*

Or. en

**Amendment 85**  
**Jacques Toubon**

**Proposal for a directive – amending act**  
**Article 3 – point 3**  
Directive 2002/20/EC  
Article 5 – paragraph 1 – introduction

*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:

Or. fr

*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 86**  
**Jacques Toubon**

**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 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.*

*Amendment*

*Where individual **rights** to use radio frequencies **are** granted for ten years or more and may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive, the **national regulatory authority must ensure that it has the means to verify that the criteria to grant individual rights of use continue to apply and to be respected for the duration of the licence. If these 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 deadline**, 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 return on investments.***

Or. fr

*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 87**  
**Cristian Silviu Buşoi**

**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.***

Or. en

**Amendment 88**  
**Jacques Toubon**

**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*

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

*Amendment*

***deleted***

Or. fr

*Justification*

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

**Amendment 89**  
**Cristian Silviu Buşoi**

**Proposal for a directive – amending act**  
**Article 3 – point 5**  
Directive 2002/20/EC  
Article 6a – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(ca) to harmonise the conditions for  
general authorizations specified in Annex  
I.***

Or. en

**Amendment 90**  
**Jacques Toubon**

**Proposal for a directive – amending act**  
**Article 3 – point 5**  
Directive 2002/20/EC  
Article 6b

*Text proposed by the Commission*

*Amendment*

***Common selection procedure for issuing  
rights***

***deleted***

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

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



*procedure shall be open, transparent, non-discriminatory and objective.*

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

Or. fr

*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 91**  
**Šarūnas Birutis**

**Proposal for a directive – amending act**  
**Annex I – point 3 – point g**  
Directive 2002/20/EC  
Annex I – Part A – point 19

*Text proposed by the Commission*

*Amendment*

**19. Compliance with national measures implementing Directive 2001/29/EC of the European Parliament and of the Council and Directive 2004/48/EC of the European Parliament and of the Council** **deleted**

Or. en

*Justification*

*Member States, under Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related, can apply limitations on the application of copyright if these do not conflict with a normal exploitation of the work or other subject-matter and do not*

*unreasonably prejudice the legitimate interests of the right holder.*

*This has resulted in a very diverse application of copyright protection across the EU which should be addressed but not by amending the Authorisation Directive.*

*It would be more efficient to deal with it within the Content Online consultation.*

**Amendment 92**  
**Bill Newton Dunn**

**Proposal for a directive – amending act**  
**Annex I – point 3 – point g**  
Directive 2002/20/EC  
Annex I – Part A – point 19

*Text proposed by the Commission*

*Amendment*

**19. Compliance with national measures  
implementing Directive 2001/29/EC of the  
European Parliament and of the Council  
and Directive 2004/48/EC of the  
European Parliament and of the Council**                      **deleted**

Or. en

*Justification*

*Member States can apply limitations on the application of copyright if these do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holder. This has resulted in a very diverse application of copyright protection which should be addressed but not by amending the Authorisation Directive. This point added in the Annexe of the Authorisation Directive would create legal uncertainty for the undertakings as the interpretation of this concept differs among the Member States.*

**Amendment 93**  
**Marian Zlotea**

**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.**

Or. en

**Amendment 94  
Jacques Toubon**

**Proposal for a directive – amending act  
Annex II – point 1  
Directive 2002/20/EC  
Annex II – paragraph 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;***

Or. fr

*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.*