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Committee on Industry, Research and Energy

2007/0247(COD)

23.2.2009

*****II**

DRAFT RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services
(16496/1/2008 – C6-0066/2009 – 2007/0247(COD))

Committee on Industry, Research and Energy

Rapporteur: Catherine Trautmann

Symbols for procedures

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

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

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council common position for adopting a directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (16496/1/2008 – C6 0066/2009 – 2007/0247(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position (16496/1/2008 – C6 0066/2009),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2007)0697),
 - having regard to the amended Commission proposal (COM(2008)0724),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 62 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Industry, Research and Energy (A6-0000/2009),
1. Approves the common position as amended;
 2. Instructs its President to forward its position to the Council and Commission.

Amendment 1

**Council common position – amending act
Recital 2a (new)**

Council common position

Amendment

(2a) A revision of Directive 89/552/EEC of 3 October 1989 of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services

¹ Texts adopted, P6_TA(2008)0449.

(Audiovisual Media Services Directive)¹, was carried out in 2007 with the intention of ensuring optimal conditions of competitiveness and legal certainty for information technologies and media industries and services in the European Union, as well as respect for cultural and linguistic diversity. In this context, a fair and balanced regulatory framework for electronic communications networks and services constitutes an essential pillar of the EU audiovisual sector.

OJ L 298, 17.10.1989, p. 23.

Or. en

Justification

This AM restores AM 1 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 2

Council common position – amending act Recital 3

Council common position

(3) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. This is complemented by Regulation (EC) No .../2009 of the European Parliament and of the Council of ... [establishing the **Group of European Regulators in Telecoms (GERT)**]. The reform also includes the definition of an efficient and coordinated spectrum management strategy in order to achieve a single European information space and the reinforcement of provisions

Amendment

(3) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. This is complemented through the establishment by Regulation (EC) No .../2009 of the European Parliament and of the Council of ... [establishing the **Body of European Regulators in Telecoms (BERT)**]. The reform also includes the definition of an efficient and coordinated spectrum management strategy in order to achieve a Single European Information Space and the

for users with disabilities in order to obtain an inclusive information society.

reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.

This Amendment applies throughout the text of the amending Directive

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 3

**Council common position – amending act
Recital 3a (new)**

Council common position

Amendment

(3a) A primary objective of the EU regulatory framework for electronic communications networks and services is to create a sustainable ecosystem for electronic communications based on supply and demand, the former through effective and competitive infrastructure and service markets and the latter through information society developments.

Or. en

Justification

This AM restores AM 3 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 4

**Council common position – amending act
Recital 4**

Council common position

Amendment

(4) The aim is progressively to reduce ex

(4) The aim is progressively to reduce ex

ante sector specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. Considering that the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that ex ante regulatory obligations should only be imposed where there is no effective and sustainable competition.

ante sector specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. Considering that the markets for electronic communications have shown strong competitive dynamics in recent years, it is essential that ex ante regulatory obligations should only be imposed where there is no effective and sustainable competition. ***The necessity of the continuation of ex-ante regulation should be reviewed no later than three years from the date of transposition of this Directive.***

Or. en

Justification

This AM restores AM 4, last sentence adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 5

Council common position – amending act Recital 5

Council common position

(5) In order to ensure a proportionate and adaptable approach to varying competitive conditions, national regulatory authorities **may** define markets on a sub-national basis and lift regulatory obligations in markets and/or geographic areas where there is effective infrastructure competition.

Amendment

(5) In order to ensure a proportionate and adaptable approach to varying competitive conditions, national regulatory authorities **should be able to** define markets on a sub-national basis and **to** lift regulatory obligations in markets and/or geographic areas where there is effective infrastructure competition. ***This should apply even where geographic areas are not defined as separate markets.***

Or. en

Justification

This AM restores AM 5 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 6

Council common position – amending act Recital 6

Council common position

(6) ***A key issue in the coming years in the achievement of the goals of the Lisbon Agenda will be provision of the conditions for efficient investments in new high-speed networks that will support innovation in content-rich internet services and strengthen the international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and businesses across the European Union. It is therefore vital to foster sustainable investment in the development of these new networks, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency.***

Amendment

(6) ***In order to achieve the goals of the Lisbon Agenda it is necessary to give appropriate incentives for investment in high-speed networks that will support innovation in content-rich internet services and strengthen the international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and businesses across the European Union. It is therefore vital to promote sustainable investment in the development of these new networks, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency.***

Or. en

Justification

This AM restores AM 6 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 7

Council common position – amending act Recital 6a (new)

Council common position

Amendment

(6a) In its Communication of 20 March 2006 entitled “Bridging the Broadband Gap”¹, the Commission acknowledged that there is a territorial divide in the European Union regarding access to high-speed broadband services. Despite the general increase in broadband connectivity, access in various regions is

limited on account of high costs resulting from low population densities and remoteness. Commercial incentives to invest in broadband deployment in these areas often turn out to be insufficient. However, technological innovation reduces deployment costs. In order to ensure investment in new technologies in underdeveloped regions, electronic communications regulation should be consistent with other policies, such as state aid policy, cohesion policy or the aims of wider industrial policy.

OJ C 151, 29.6.2006, p. 15.

Or. en

Justification

This AM restores AM 7 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 8

Council common position – amending act Recital 6b (new)

Council common position

Amendment

(6b) Investment in research and development is of vital importance for the development of next generation fibre optical networks and for achieving flexible and efficient radio access, which enhances competition and innovation in applications and services for the benefit of consumers. The challenge is to deliver the next generation of ubiquitous and converged network and service infrastructures for electronic communications, information technology and media.

Or. en

Justification

This AM restores AM 8 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 9

**Council common position – amending act
Recital 6c (new)**

Council common position

Amendment

(6c) Public policy should play a role in complementing the effective functioning of electronic communications markets, addressing both the supply and demand sides so as to stimulate a virtuous circle where development of better content and services follows from infrastructure deployment, and vice versa. Public intervention should be proportionate, should neither distort competition nor inhibit private investment, should increase incentives to invest and should lower entry barriers. In this respect, public authorities may support the roll-out of future-proof high-capacity infrastructure. In so doing, public support should be given by means of open, transparent and competitive procedures, should not favour any given technology a priori and should provide access to infrastructure on a non-discriminatory basis.

Or. en

Justification

This AM restores AM 9 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 10

Council common position – amending act Recital 6d (new)

Council common position

Amendment

(6d) The views of national regulatory authorities and industry stakeholders should be taken into account by the Commission when adopting measures pursuant to this Directive through the use of effective consultation ensuring transparency and proportionality. The Commission should issue detailed consultation documents which explain the different courses of action being considered, and stakeholders should be given a reasonable time in which to respond. Following the consultation, and after having considered the responses, the Commission should give reasons for the decision it takes in a statement which should include a description of how the views of respondents were taken into account.

Or. en

Justification

This AM restores AM 11 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 11

Council common position – amending act Recital 6e (new)

Council common position

Amendment

(6e) The activities of national regulatory authorities and of the Commission in the context of the EU regulatory framework for electronic communications networks and services contribute to the fulfilment

of broader public policy objectives in the areas of culture, employment, the environment, social cohesion, regional development and town and country planning.

Or. en

Justification

This AM restores AM 13 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 12

**Council common position – amending act
Recital 11a (new)**

Council common position

Amendment

(11a) It is essential that national regulatory authorities and BERT possess the powers and knowledge necessary to build a competitive EU internal market in electronic communications services while at the same time understanding national and regional differences and complying with the principle of subsidiarity.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 13

**Council common position – amending act
Recital 13**

Council common position

Amendment

(13) The national consultation provided for under Article 6 of the Framework Directive should be conducted prior to the

(13) The national consultation provided for under Article 6 of the Framework Directive should be conducted prior to the

Community consultation provided for under **Article** 7 of that Directive, in order to allow the views of interested parties to be reflected in the Community consultation. This would also avoid the need for a second Community consultation in the event of changes to a planned measure as a result of the national consultation.

Community consultation provided for under **Articles 7 and -7a** of that Directive, in order to allow the views of interested parties to be reflected in the Community consultation. This would also avoid the need for a second Community consultation in the event of changes to a planned measure as a result of the national consultation.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 14

Council common position – amending act Recital 19

Council common position

(19) Radio frequencies should be considered a scarce public resource that has an important public and market value. It is in the public interest that such a radio spectrum is managed as efficiently and effectively as possible from an economic, social and environmental perspective, taking **into** account the objectives of cultural diversity and of media pluralism, and **that** obstacles to its efficient use are gradually withdrawn.

Amendment

(16) Radio frequencies should be considered a scarce public resource that has an important public and market value. It is in the public interest that spectrum is managed as efficiently and effectively as possible from an economic, social and environmental perspective, taking account **of the important role of radio spectrum for electronic communications**, the objectives of cultural diversity and media pluralism, and **of social and territorial cohesion**. Obstacles to its efficient use should therefore be gradually withdrawn.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 15

Council common position – amending act Recital 19a (new)

Council common position

Amendment

(19a) Radio spectrum policy activities in the European Community should be without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular with regard to content regulation and audio-visual and media policies, the provisions of Directive 1999/5/EC and the right of Member States to organise and use their radio spectrum for the purposes of public order, public security and defence.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 16

Council common position – amending act Recital 19b (new)

Council common position

Amendment

(19b) In order to contribute to the fulfilment of the objectives laid down in Article 8a of Directive 2002/21/EC (Framework Directive), a spectrum summit should be convened in 2010, driven by Member States and including the European Parliament, the Commission and all stakeholders. The summit should in particular contribute to ensuring greater consistency in EU spectrum policies, providing guidance regarding the switchover from analogue to digital terrestrial television, and freeing spectrum for new electronic communications services once the digital

switchover has taken place.

Or. en

Justification

This AM restores AM 18 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 17

**Council common position – amending act
Recital 19c (new)**

Council common position

Amendment

(19c) The switchover from analogue to digital terrestrial television should, as a result of the superior transmission efficiency of digital technology, free up a significant amount of spectrum in the European Union, the so-called "digital dividend". Member States should release their digital dividends as quickly as possible, allowing citizens to benefit from the deployment of new, innovative and competitive services. To this end, obstacles existing at national level for the efficient allocation or reallocation of the digital dividend should be removed, and a more coherent and integrated approach to the allocation of the digital dividend in the Community should be pursued.

Or. en

Justification

This AM restores AM 19 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 18

Council common position – amending act Recital 22

Council common position

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

Amendment

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

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 19

Council common position – amending act Recital 26

Council common position

(26) Flexibility in spectrum management and access to spectrum should be increased through technology and service-neutral authorisations to allow spectrum users to choose the best technologies and services to apply in frequency bands available to electronic communications services as identified in national frequency allocation tables and in the ITU Radio Regulations (the "principles of technology and service neutrality"). The administrative determination of technologies and

Amendment

deleted

services should apply when general interest objectives are at stake and should be clearly justified and subject to regular periodic review.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 20

**Council common position – amending act
Recital 28**

Council common position

(28) 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. Exceptions should be allowed 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 the 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 by Member States in conformity with Community law. Except where necessary to protect safety of life **or to fulfil other general interest objectives**, exceptions should not result in certain services having exclusive use, but should rather grant them priority so that, insofar as possible, other services or technologies may coexist in the same band.

Amendment

(28) 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. Exceptions should be allowed 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 the 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 by Member States in conformity with Community law. Except where necessary to protect safety of life, exceptions should not result in certain services having exclusive use, but should rather grant them priority so that, insofar as possible, other services or technologies may coexist in the same band.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 21

Council common position – amending act Recital 36

Council common position

(36) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory authorities should therefore ensure that the integrity and security of public communications networks are maintained. The European Network and Information Security Agency (ENISA) should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both ENISA and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information in order to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in accordance with the assessed

Amendment

(36) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services. National regulatory authorities should therefore ensure that the integrity and security of public communications networks are maintained. The European Network and Information Security Agency (ENISA) should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both ENISA and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information in order to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should be required to take measures to safeguard their integrity and security in accordance with the assessed

risks, taking into account the state of the art of such measures.

risks, taking into account the state of the art of such measures. ***Member States should allow for an appropriate period of public consultation before the adoption of specific measures to ensure that undertakings providing public electronic communications networks or publicly available electronic communications services take the necessary technical and organisational measures to appropriately manage risk to security of networks and services or to ensure the integrity of their networks.***

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by moving the amendment to Article 13a(2) to the corresponding recital.

Amendment 22

Council common position – amending act Recital 43

Council common position

(43) Both ***efficient*** investment and competition should be encouraged in tandem, in order to increase economic growth, innovation and consumer choice.

Amendment

(43) Both investment and competition should be encouraged in tandem, in order to increase economic growth, innovation and consumer choice.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 23

Council common position – amending act Recital 45

Council common position

(45) It may not be economically viable for new entrants to duplicate the incumbent's local access network in part or in its entirety within a reasonable period of time. In this context, mandating unbundled access to the local loop or sub-loop of operators enjoying significant market power may facilitate market entry and increase competition in retail broadband access markets. In circumstances where unbundled access to local loop or sub-loop is not technically or economically feasible, relevant obligations for the provision of non-physical or virtual network access offering equivalent functionality may apply.

Amendment

deleted

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 24

Council common position – amending act Recital 46

Council common position

(46) 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 operator's own vertically integrated downstream divisions. Functional separation *has* the capacity to improve competition in several relevant

Amendment

(46) 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 operator's own vertically integrated downstream divisions. Functional separation *may have* the capacity to improve competition in several

markets by significantly reducing the incentive for discrimination and by making it easier to verify and enforce compliance with non-discrimination obligations. ***In exceptional cases, functional separation 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 undertaking 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.

relevant markets by significantly reducing the incentive for discrimination and by making it easier to verify and enforce compliance with non-discrimination obligations. 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

This AM restores AM 31 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 25

Council common position – amending act Recital 50a (new)

Council common position

Amendment

(50a) The Commission should submit a proposal to the European Parliament and to the Council for the adoption of those harmonisation measures for the implementation of Community electronic communications policy which go beyond technical implementing measures.

Or. en

Justification

This AM restores AM 34 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 26

Council common position – amending act Recital 57

Council common position

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. In addition, 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

Justification

This AM restores AM 38 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 27

Council common position – amending act Recital 60

Council common position

(60) In particular, the Commission should be empowered to adopt **Recommendations and/or** implementing measures in relation to the **notifications under Article 7 of the Framework Directive**; harmonisation in the fields of spectrum and numbering as well as in matters related to security of networks and services; the identification of the relevant product and service markets; the identification of trans-national markets; the implementation of standards and the harmonised application of the provisions of the regulatory framework. Power should also be conferred on the Commission to adopt implementing measures to update Annexes I and II to the Access Directive to market and technological developments. Since those measures are of general scope and are designed to amend non-essential elements of these Directives, inter alia by supplementing them with 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.

Amendment

(60) In particular, the Commission should be empowered to adopt implementing measures in relation to the harmonisation in the fields of spectrum and numbering as well as in matters related to security of networks and services; the identification of the relevant product and service markets; the identification of trans-national markets; the implementation of the standards and 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. Since those measures are of general scope and are designed to amend non-essential elements of these Directives, inter alia by supplementing them with 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.

Or. en

Justification

This AM restores partly AM 39 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 28

Council common position – amending act

Article 1 – point 1

Directive 2002/21/EC

Article 1 – paragraph 1

Council common position

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

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 to facilitate access for disabled 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

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a))

Amendment 29

Council common position – amending act

Article 1 – point 2 – point e

Directive 2002/21/EC

Article 1 – point e

Council common position

(e) "associated facilities" means those physical infrastructures and other facilities or elements 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 inter alia buildings or entries to buildings,

Amendment

(e) "associated facilities" means those physical infrastructures and other facilities or elements 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 inter alia buildings or entries to buildings,

antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;

building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes, and cabinets;

Or. en

Justification

This AM restores partly the position adopted by Parliament in its first reading (Rule 62(2)(a))

Amendment 30

Council common position – amending act

Article 1 – point 3 – point a

Directive 2002/21/EC

Article 3 – paragraph 3

Council common position

3. Member States shall ensure that national regulatory authorities exercise their powers impartially, transparently and in a timely manner. ***Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the task assigned to them.***

Amendment

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

Or. en

Justification

This AM restores AM 43 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 31

Council common position – amending act

Article 1 – point 3 – point b

Directive 2002/21/EC

Article 3 – paragraph 3a – subparagraph 1

Council common position

3a. Without prejudice to the provisions of paragraphs 4 and 5, national regulatory authorities responsible for ex ante market regulation or for the resolution of disputes between undertakings in accordance with Article 20 or 21 of this Directive shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 4 shall have the power to suspend or overturn decisions by the national regulatory authorities.

Member States shall ensure that the head of a national regulatory authority, **or where applicable, members of the collegiate body fulfilling that function within a national regulatory authority referred to in the first subparagraph** or **their** replacements may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. The decision to dismiss the head of the national regulatory authority **concerned, or where applicable members of the collegiate body fulfilling that function** shall be made public at the time of dismissal. **The dismissed head of the national regulatory authority, or where applicable, members of the collegiate body fulfilling that function shall receive a statement of reasons and shall have the right to request its publication, where this would not otherwise take place, in which case it shall be published.**

Amendment

3a. Member States shall ensure that the head of a national regulatory authority or **his/her** replacement may be dismissed only if he no longer fulfils the conditions required for the performance of his duties which are laid down in advance in national law, **or if he has been guilty of serious misconduct**. The decision to dismiss the head of the national regulatory authority **shall contain a statement of reasons and** shall be made public at the time of dismissal.

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a))

Amendment 32

Council common position – amending act

Article 1 – point 3 – point b

Directive 2002/21/EC

Article 3 – paragraph 3a – subparagraph 2

Council common position

Member States shall ensure that national regulatory authorities referred to in the first subparagraph have separate annual budgets. **The** budgets shall be made public.

Amendment

Member States shall ensure that national regulatory authorities referred to in the first subparagraph have ***adequate financial and human resources to carry out the tasks assigned to them and to enable them to actively participate in and contribute to BERT. National regulatory authorities shall have*** separate annual budgets ***and those*** budgets shall be made public.

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a))

Amendment 33

Council common position – amending act

Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 1

Council common position

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

Amendment

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

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

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

Or. en

Justification

This AM (see AMs 46 and 47, first reading) seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b))

Amendment 34

Council common position – amending act

Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 2

Council common position

Pending the outcome of the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted in accordance with national law.

Amendment

Pending the outcome of the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted in accordance with national law. ***Interim measures as defined in national legislation in conformity with Community law may be granted if there is an urgent need to suspend the effect of the decision in order to prevent serious and irreparable damage to the party applying for those measures and the balance of interests so requires.***

Or. en

Justification

This AM (see AMs 46 and 47, first reading) seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b))

Amendment 35

Council common position – amending act

Article 1 – point 4 – point aa (new)

Directive 2002/21/EC

Article 4 – paragraph 2a (new)

Council common position

Amendment

(aa) the following paragraph shall be added:

"2a. Appeal bodies shall be entitled to request the opinion of BERT before reaching a decision in the course of an appeal proceeding."

Or. en

Justification

This AM restores AM 48 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 36

Council common position – amending act

Article 1 – point 4 – point b

Directive 2002/21/EC

Article 4 – paragraph 3

Council common position

Amendment

3. Member States shall collect information on the number of requests for appeal, the duration of the appeal proceedings and the number of decisions to grant interim measures. Member States shall ***provide*** such information to the Commission and ***GERT after a reasoned request from***

3. Member States shall collect information on ***the subject of appeals***, the number of requests for appeal, the duration of the appeal proceedings, the number of decisions to grant interim measures ***taken in accordance with paragraph 1 and the reasons for such decisions***. Member States shall ***make available*** such information to

either.

the Commission and **BERT on an annual basis.**

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a))

Amendment 37

Council common position – amending act

Article 1 – point 5

Directive 2002/21/EC

Article 5 – paragraph 1 – subparagraph 1

Council common position

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. In particular, those undertakings **may also be required** to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors. Undertakings with significant market power on wholesale markets may also be required to submit accounting data on the retail markets that are associated with those wholesale markets.

Amendment

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. In particular, **national regulatory authorities shall have the power to require** those undertakings to submit information concerning future network or service developments that could have an impact on the wholesale services that they make available to competitors. Undertakings with significant market power on wholesale markets may also be required to submit accounting data on the retail markets that are associated with those wholesale markets.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b))

Amendment 38

Council common position – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraphs 2 to 5

Council common position

2. National regulatory authorities shall contribute to the development of the internal market by ***cooperating with each other and*** with the Commission and ***GERT*** in a transparent manner so as to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, ***cooperate*** with the Commission and ***GERT*** to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. Except where otherwise provided in recommendations or guidelines adopted pursuant to Article 7a upon completion of the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles 15 or 16 of this Directive, Articles 5 or 8 of Directive 2002/19/EC (Access Directive), and

(b) would affect trade between Member States,

it shall make the draft measure accessible to the Commission, ***GERT***, and the national regulatory authorities in other Member States, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission, ***the GERT*** and other national regulatory authorities thereof. National regulatory authorities, ***the GERT*** and the Commission may make comments to the national regulatory authority

Amendment

2. National regulatory authorities shall contribute to the development of the internal market by ***working*** with the Commission and ***BERT*** in a transparent manner so as to ensure the consistent application, in all Member States, of the provisions of this Directive and the Specific Directives. To this end, they shall, in particular, ***work*** with the Commission and ***BERT*** to identify the types of instruments and remedies best suited to address particular types of situations in the marketplace.

3. Except where otherwise provided in recommendations or guidelines adopted pursuant to Article 7a upon completion of the consultation referred to in Article 6, where a national regulatory authority intends to take a measure which:

(a) falls within the scope of Articles 15 or 16 of this Directive, ***or*** Articles 5 or 8 of Directive 2002/19/EC (Access Directive), and

(b) would affect trade between Member States,

it shall make the draft measure accessible to the Commission, ***BERT*** and the national regulatory authorities in other Member States, ***at the same time***, together with the reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission, ***BERT*** and other national regulatory authorities thereof. National regulatory authorities, ***BERT*** and the Commission may make comments to the national regulatory authority concerned

concerned only within one month. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

(a) defining a relevant market which differs from those defined in the Recommendation in accordance with Article 15(1); or

(b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 16(3), (4) or (5); *or*

(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),

and would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8, the draft measure shall not be adopted for a further two months. This period may not be extended. ***The Commission shall inform other national regulatory authorities of its reservations in such a case.***

5. Within the two-month period referred to in paragraph 4, the Commission may:

only within one month. The one-month period may not be extended.

4. Where an intended measure covered by paragraph 3 aims at:

(a) defining a relevant market which differs from those defined in the Recommendation in accordance with Article 15(1); or

(b) deciding whether or not to designate an undertaking as having, either individually or jointly with others, significant market power, under Article 16(3), (4) or (5),

and would affect trade between Member States, and the Commission has indicated to the national regulatory authority that it considers that the draft measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular the objectives referred to in Article 8, the draft measure shall not be adopted for a further two months. This period may not be extended.

5. Within the two month period referred to in paragraph 4, the Commission may ***take a decision requiring the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of BERT submitted in accordance with Article 5 of Regulation (EC) No.../2009 of the European Parliament and of the Council of ... [establishing the Body of European Regulators in Telecom (BERT)] before issuing a decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers***

that the draft measure should not be adopted together with specific proposals for amending the draft measure.

(a) take a decision in relation to the draft measure referred to in paragraph 4(a) and 4(b) requiring the national regulatory authority concerned to withdraw the draft measure, and/or

(b) issue an opinion in relation to the draft measure referred to in paragraph 4(c), or

(c) take a decision to lift its reservations in relation to a draft measure referred to in paragraph 4.

The Commission shall take utmost account of the opinion of the GERT before issuing a decision or an opinion under points (a) to (c). A decision or opinion under points (a) and (b) shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted, together with specific proposals for amending the draft measure.

Or. en

Justification

This AM restores partly AM 52 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 39

Council common position – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraphs 7 and 8

Council common position

7. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, *the GERT* and the Commission

Amendment

7. The national regulatory authority concerned shall take the utmost account of comments of other national regulatory authorities, *BERT* and the Commission

and may, except in cases covered by **paragraph 4(a) and (b)**, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission.

and may, except in cases covered by **paragraph 4**, adopt the resulting draft measure and, where it does so, shall communicate it to the Commission. **Any other national body exercising functions under this Directive or the Specific Directives shall also take the utmost account of the comments of the Commission.**

Where the national regulatory authority decides to amend the draft measure according to the opinion issued under paragraph 5(b), it shall, within six months of the date of the Commission's opinion, undertake a public consultation in accordance with the procedures referred to in Article 6 and communicate the amended measure to the Commission.

Where the national regulatory authority decides not to amend the draft measure on the basis of the opinion issued under paragraph 5(b), it shall also publish the reasons justifying its decision and shall communicate those reasons to the Commission within six months of the date of the Commission's opinion.

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

Or. en

Justification

This AM restores partly AM 52 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 40

Council common position – amending act

Article 1 – point 6a (new)

Directive 2002/21/EC

Article -7a (new)

(6a) the following Article shall be inserted:

"Article -7a

Procedure for the consistent application of remedies

1. Where an intended measure covered by Article 7(3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) the Commission may, within the period of one month provided for by Article 7(3), notify the national regulatory authority concerned and BERT of the reasons why it considers that the draft measure would create a barrier to the single market or that it has serious doubts as to its compatibility with Community law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification. In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission, BERT or any other national regulatory authority.

2 Within the three month period referred to in paragraph 1, the Commission, BERT and the national regulatory authority concerned shall cooperate closely with the objective of identifying the most appropriate and effective measure in the light of the objectives laid down in Article 8, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

3. Within one month from the beginning of the three month period referred to in paragraph 1, BERT shall, acting by a majority of its component members, issue

an opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure would create a barrier to the single market or be incompatible with Community law and in particular the objectives referred to in Article 8, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, providing specific proposals to that end. This opinion shall be reasoned and made public.

4. If BERT has indicated in its opinion that the draft measure should be amended or withdrawn, the Commission may, taking utmost account of the opinion of BERT, adopt a decision before the end of the three month period referred to in paragraph 1, requiring the national regulatory authority concerned to amend or withdraw the draft measure and providing reasons and specific proposals to that end.

5. In all other cases the Commission may, taking utmost account of any opinion of BERT and in accordance with the procedure referred to in Article 22(2a) (regulatory committee procedure), submit a draft decision requiring the national regulatory authority concerned to amend or withdraw the draft measure and providing specific proposals to that end.

6. If the Commission has not taken a decision pursuant to paragraph 4 or submitted a draft decision pursuant to paragraph 5 by the end of the three month period referred to in paragraph 1, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission and BERT. The national regulatory authority shall make public how it has taken these comments into account.

7. Within six months of the adoption by the Commission of a reasoned decision, in accordance with paragraphs 4 or 5, requiring a national regulatory authority

to amend or withdraw the draft measure, the national regulatory authority concerned shall amend or withdraw the draft measure in accordance with that decision. If the draft measure is to be amended, the national regulatory authority shall undertake a public consultation in accordance with the consultation and transparency procedure referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with Article 7.
8. The national regulatory authority may withdraw the proposed draft measure at any stage of the procedure.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by allowing appropriate supervision (regulatory procedure) by Member States of the Decision on remedies to be taken in case of disagreement between BERT and the Commission. It also extends the supervision of Member States to the obligation of functional separation currently only subject to an advisory procedure by COCOM.

Amendment 41

Council common position – amending act

Article 1 - point 7

Directive 2002/21/EC

Article 7a – paragraph 2

Council common position

Amendment

2. The measures referred to in paragraph 1 shall be adopted in accordance with the advisory procedure referred to in Article 22(2).

deleted

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a))

Amendment 42

Council common position – amending act

Article 1 – point 8 – point a

Directive 2002/21/EC

Article 8 – paragraph 1 – subparagraph 2

Council common position

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

Amendment

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

Or. en

Justification

This AM restores AM 56 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 43

Council common position – amending act

Article 1 – point 8 – point ba (new)

Directive 2002/21/EC

Article 8 – paragraph 2 – point b

Council common position

Amendment

(ba) in paragraph 2, point (b) shall be replaced by the following

"(b) ensuring that there is no distortion or restriction of competition

**in the electronic communications sector,
in particular for the delivery of and access
to content and services across all
networks;"**

Or. en

Justification

This AM restores AM 58 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 44

Council common position – amending act

Article 1 – point 8 – point e

Directive 2002/21/EC

Article 8 – paragraph 3 - point d

Council common position

(d) cooperating **with each other**, with the Commission and **GERT** so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.

Amendment

(d) cooperating with the Commission and **BERT** so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 45

Council common position – amending act

Article 1 – point 8 – point fa (new)

Directive 2002/21/EC

Article 8 – paragraph 4 - point fa (new)

Council common position

Amendment

(fa) in paragraph 4, point (fa) shall be added:

“(fa) applying the principle that end-users

should be able to access and distribute any lawful content and use any lawful applications and/or services of their choice;”

Or. en

Justification

This AM restores partly AM 61 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 46

Council common position – amending act

Article 1 – point 8 – point fb (new)

Directive 2002/21/EC

Article 8 – paragraph 4 - point fb (new)

Council common position

Amendment

(fb) in paragraph 4, point (fb) shall be added:

“(fb) applying the principle that no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened in which case the ruling may be subsequent.”

Or. en

Justification

This AM restores AM 138 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 47

Council common position – amending act

Article 1 – point 8 – point g

Directive 2002/21/EC

Article 8 – paragraph 5 – point (a)

Council common position

(a) promoting regulatory predictability;

Amendment

(a) promoting regulatory predictability **by ensuring a consistent regulatory approach over successive review periods**;

Or. en

Justification

This AM restores partly AM 62 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 48

Council common position – amending act

Article 1 – point 8 – point g

Directive 2002/21/EC

Article 8 – paragraph 5 – point (c)

Council common position

(c) safeguarding competition to the benefit of consumers and promoting, **where appropriate**, infrastructure-based competition;

Amendment

(c) safeguarding competition to the benefit of consumers and promoting, **wherever possible**, infrastructure-based competition;

Or. en

Justification

This AM restores partly AM 62 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 49

Council common position – amending act

Article 1 – point 8 – point g

Directive 2002/21/EC

Article 8 – paragraph 5 – point (d)

Council common position

(d) promoting **efficient** investment and innovation in new and enhanced infrastructures, including by **taking into account** investment **risks**;

Amendment

(d) promoting **market driven** investment and innovation in new and enhanced infrastructures including by **encouraging sharing of** investment **and by ensuring appropriate sharing of risk between investors and those undertakings enjoying access to the new facilities**;

Or. en

Justification

This AM restores partly AM 62 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 50

Council common position – amending act

Article 1 – point 8a (new)

Directive 2002/21/EC

Article -8a

Council common position

Amendment

8a) the following Article shall be inserted:

“Article -8a

Radio Spectrum Policy Committee

1. A Radio Spectrum Policy Committee ("RSPC") is hereby created in order to contribute to the fulfilment of the objectives set out in paragraphs 1, 3 and 5 of Article 8a.

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

The RSPC shall be composed of high-level representatives from the competent national authorities responsible for radio spectrum policy in each Member State. Each Member State shall have one vote and the Commission shall not vote.

2. At the request of the European Parliament, the Council or the Commission or on its own initiative, the RSPC, acting by an absolute majority, shall adopt opinions.

3. The RSPC shall submit an annual activity report to the European Parliament and to the Council.”

Or. en

Justification

This AM restores AM 63/rev, Article 8a adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 51

Council common position – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 8a

Council common position

Article 8a

Strategic planning and coordination of radio spectrum policy ***in the European Union***

1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European ***Union***. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of EU policies as well as the various interests of radio

Amendment

Article 8a

Strategic planning and coordination of radio spectrum policy

1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European ***Community***. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of EU policies as well as the various interests

spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

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

3. *Member States shall promote* the effective coordination of the *EU* interests in international organisations competent in radio spectrum matters. *Whenever necessary for promoting this effective coordination*, the Commission, taking utmost account of the opinion of the *Radio Spectrum Policy Group (RSPG) established by Commission Decision 622/2002/EC of 26 July 2002 establishing a Radio Spectrum Policy Group*, may propose common policy objectives to the European Parliament and the Council.

4. The Commission, taking utmost account of the opinion of the RSPG, may submit legislative proposals for establishing multiannual radio spectrum policy programmes.

of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

2. *By cooperating with each other and with the Commission*, Member States shall promote the coordination of radio spectrum policy approaches in the European *Community* and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market.

3. *Whenever necessary for ensuring* the effective coordination of the interests *of the European Community* in international organisations competent in radio spectrum matters, the Commission, taking utmost account of the opinion of the *RSPC*, may propose common policy objectives to the European Parliament and the Council.

4. The Commission, taking utmost account of the opinion of the *RSPC*, *shall* submit, *in accordance with the Article 251 of the Treaty*, legislative proposals for establishing multiannual radio spectrum policy programmes. *Such programmes shall set out the policy orientations and objectives for the strategic planning, coordination and harmonisation of the use of radio spectrum in the Community in accordance with the provisions of this Directive and the Specific Directives.*

4a. The Commission may adopt appropriate implementing measures to apply the multiannual radio spectrum policy programmes referred to in paragraph 4.

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).

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by specifying further that the radio spectrum policy programmes shall set out the policy orientations and objectives for the strategic planning, coordination and harmonisation of the use of radio spectrum in the Community and by moving the implementing measures provided for in Article 8c to this Article. This will allow in the future and subject to the agreement by the European Parliament and Council through the radio spectrum policy programmes to apply harmonisation measures in this field following the regulatory procedure with scrutiny. The deletion of Article 9c (radio frequency management harmonisation measures) is accepted as part of the compromise.

Amendment 52

Council common position – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 – paragraphs 1 and 2

Council common position

1. Taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value, 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 spectrum allocation used for electronic communications services and issuing general authorisations or individual rights of use of such radio frequencies by competent national authorities are based on objective, transparent, non-discriminatory and proportionate criteria. In doing so, they shall respect relevant international agreements and may take public policy considerations into account.

2. Member States shall promote the harmonisation of the use of radio

Amendment

1. Taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value, Member States shall ensure the effective management of radio frequencies for electronic communication services in their territory in accordance with **Articles 8 and 8a**. They shall ensure that spectrum allocation used for electronic communications services and issuing general authorisations or individual rights of use of such radio frequencies by competent national authorities are based on objective, transparent, non-discriminatory and proportionate criteria. In doing so, they shall respect relevant international agreements and may take public policy considerations into account.

2. Member States shall promote the harmonisation of use of radio frequencies

frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and in pursuit of benefits for the consumer such as economies of scale and interoperability of services. In so doing, they shall act in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).

across the Community, consistent with the need to ensure effective and efficient use thereof and in pursuit of benefits for the consumer such as economies of scale and interoperability of services. In so doing, they shall act in accordance **with Article 8a of this Directive and** with the Decision No 676/2002/EC (Radio Spectrum Decision).

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by specifying that measures adopted pursuant to this Article shall be in accordance with Article 8a (strategic planning and coordination of radio spectrum policy).

Amendment 53

Council common position – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 1

Council common position

3. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of technology used for electronic communications services may be used in the radio frequency bands, available for electronic communications services ***in accordance with their National Frequency Allocation Plan and the ITU Radio Regulations.***

Amendment

3. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of technology used for electronic communications services may be used in the radio frequency bands ***declared available for electronic communications services by Member States in conformity with Community law.***

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by clarifying that Member States can derogate from the principle of service neutrality in order to fulfil a requirement under the ITU Radio Regulations (e.g. in order to avoid interference problems with neighbouring countries). The consistency of measures adopted pursuant to this Article and international spectrum organisations is further

emphasised with a recital.

Amendment 54

Council common position – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 1

Council common position

4. Unless otherwise provided for in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands, available for electronic communications services ***in accordance with their National Frequency Allocation Plan and the ITU Radio Regulations***. Member States may, however, provide for proportionate and non discriminatory restrictions to the types of electronic communications services to be provided.

Amendment

4. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency bands ***declared*** available for electronic communications services ***by Member States in conformity with Community law***. The Member States may, however, provide for proportionate and non discriminatory restrictions to the types of electronic communications services to be provided, ***including, where necessary, to fulfil a requirement under the ITU Radio Regulations***.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by clarifying that Member States can derogate from the principle of service neutrality in order to fulfil a requirement under the ITU Radio Regulations (e.g. in order to avoid interference problems with neighbouring countries). The consistency of measures adopted pursuant to this Article and international spectrum organisations is further emphasised with a recital.

Amendment 55

Council common position – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 3

Council common position

A measure which prohibits the provision of

PE420.223v01-00

Amendment

A measure which prohibits the provision of

48/93

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any other electronic communications service in a specific band may only be provided for where justified by the need to protect safety of life services. **Member States may also extend such a measure in order to fulfil other general interest objectives.**

any other electronic communications service in a specific band may only be provided for where justified by the need to protect safety of life services.

Or. en

Justification

This AM (see AM 64/rev, point 4, last para) restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 56

Council common position – amending act

Article 1 – point 11

Directive 2002/21/EC

Article 9a – paragraph 4

Council common position

Amendment

4. Measures adopted in applying this Article do not constitute the granting of new rights of use and therefore are not subject to the relevant provisions of Article 5(2) of Directive 2002/20/EC (Authorisation Directive).

deleted

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 57

Council common position – amending act

Article 1 – point 11

Directive 2002/21/EC

Article 9b – paragraph 1 – subparagraph 1

Council common position

Amendment

1. Member States **may make provision for** undertakings **to** transfer or lease individual

1. Member States **shall ensure that** undertakings **may** transfer or lease **to other**

rights to use radio frequencies *to other undertakings* in accordance with national procedures.

undertakings in accordance with national procedures individual rights to use radio frequencies in *the bands for which this is provided in the implementing measures adopted pursuant to Article 8a(4a)*. *These implementing measures may also provide for the harmonisation of the conditions attached to such rights.*

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by making subject the application in the future of implementation measures (following the regulatory procedure with scrutiny) in this field to the agreement by the European Parliament and Council through the radio spectrum policy. The deletion of Article 9c (radio frequency management harmonisation measures) is accepted as part of the compromise.

Amendment 58

Council common position – amending act

Article 1 – point 11

Directive 2002/21/EC

Article 9b – paragraph 1 – subparagraph 1a (new)

Council common position

Amendment

In other bands, Member States may also make provision for undertakings to transfer or lease individual rights to use radio frequencies to other undertakings in accordance with national procedures.

Or. en

Justification

This AM (see AM 66, point 1, second para) seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 59

Council common position – amending act

Article 1 – point 12 – point a

2002/21/EC

Article 10 – paragraph 2

Council common position

2. National regulatory authorities shall ensure that national numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services. In particular, Member States shall ensure that an undertaking to which the right of use for a range of numbers has been granted does not discriminate against other providers of electronic communications services as regards the number sequences used to give access to their services.

Amendment

2. National regulatory authorities shall ensure that numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services **and users of numbers across the European Union**. In particular, Member States shall ensure that an undertaking assigned a range of numbers does not discriminate against other providers of electronic communications services **and users** as regards the number sequences used to give access to their services.

Or. en

Justification

This AM restores AM 68 (slightly modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 60

Council common position – amending act

Article 1 – point 12 – point b

2002/21/EC

Article 10 – paragraph 4

Council common position

4. Member States shall support the harmonisation of specific numbers or numbering ranges within the Community where it promotes both the functioning of the internal market and the development of pan-European services. The Commission may take appropriate technical

Amendment

4. Member States shall support harmonisation of specific numbers or numbering ranges within the Community where it 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

implementing measures on this matter.

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

matter *which may include ensuring appropriate cross-border access to national numbering by end-users and electronic communications service providers. The implementing measures may grant BERT specific responsibilities in the application of those measures.*

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).

Or. en

Justification

This AM restores AM 69(partly modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 61

Council common position – amending act

Article 1 – point 14

2002/21/EC

Article 12 – paragraph 1

Council common position

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 inter alia buildings or entries to buildings, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets, and network elements which are not active.

Amendment

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall, ***taking full account of the principle of proportionality***, be able to impose the sharing of such facilities or property, including inter alia buildings or entries to buildings, ***building wiring***, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes, cabinets, and network elements which are not active.

Or. en

Justification

This AM restores AM 70 (partly modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 62

Council common position – amending act

Article 1 – point 14

2002/21/EC

Article 12 – paragraph 2a (new)

Council common position

Amendment

2a. Member States, after an appropriate period of public consultation during which all interested parties are given the opportunity to state their views, the holders of the rights referred to in paragraph 1 to share facilities or property, including by means of physical co-location, in order to encourage efficient investment in infrastructure and the promotion of innovation. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing and shall ensure that there is an adequate sharing of risks between the undertakings concerned.

Or. en

Justification

This AM restores AM 70, point 2a (partly modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 63

Council common position – amending act

Article 1 – point 14

2002/21/EC

Article 12 – paragraph 3

Council common position

3. Member States **may, where appropriate**, ensure that undertakings provide the necessary information, if requested by the competent authorities, in order for these authorities, in conjunction with national regulatory authorities, to be able to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 and make it available to interested parties.

Amendment

3. Member States **shall** ensure that undertakings provide the necessary information, if requested by the competent authorities, in order for these authorities, in conjunction with national regulatory authorities, to be able to establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 and make it available to interested parties.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 64

Council common position – amending act

Article 1 – point 14

2002/21/EC

Article 12 – paragraph 3a (new)

Council common position

Amendment

3a. Member States shall ensure that the competent authorities establish appropriate coordination procedures, in cooperation with national regulatory authorities, with respect to the public works referred to in paragraph 2 and to other appropriate public facilities or property. Those procedures may include procedures that ensure that interested parties have information concerning appropriate public facilities or property and on-going and planned public works, that they are notified in a timely manner of such works, and that sharing is facilitated to the maximum extent possible.

Or. en

Justification

This AM restores AM 70, point 2c adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 65

Council common position – amending act

Article 1 – point 14

2002/21/EC

Article 12 – paragraph 3

Council common position

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

Amendment

4. Measures taken by a national regulatory authority in accordance with **this Article** shall be objective, transparent, non-discriminatory, and proportionate.

Or. en

Justification

This AM restores AM 70, point 3 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 66

Council common position – amending act

Article 1 – point 15

2002/21/EC

Article 13a – paragraph 3 – subparagraph 2

Council common position

The national **regulatory** authority concerned shall inform the national regulatory authorities in other Member States and the European Network and Information Security Agency (ENISA) **if other Member States could be or have been affected. The national regulatory authority concerned may inform the public or require the undertakings to do so, where it determines that disclosure of the breach is in the public interest.**

Amendment

Where appropriate, the competent national authority concerned shall inform the **competent** national regulatory authorities in other Member States and the European Network and Information Security Agency (ENISA). **Where disclosure of the breach is in the public interest, the competent national authority may inform the public.**

Justification

This AM restores AM 71, point 3, second para (partly modify) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 67**Council common position – amending act****Article 1 – point 15**

2002/21/EC

Article 13b – paragraph 1

Council common position

1. Member States shall ensure that competent national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement Article 13a.

Amendment

1. Member States shall ensure that the competent national regulatory authorities have the power to issue binding instructions to undertakings providing public communications networks or publicly available electronic communications services in order to implement *the provisions of* Article 13a. ***These binding instructions shall be proportionate and shall be implemented within a reasonable timeframe.***

Justification

This AM restores AM 72 (partly modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 68**Council common position – amending act****Article 1 – point 15**

2002/21/EC

Article 13b – paragraph 3

Council common position

3. Member States shall ensure that national regulatory authorities have all the powers

Amendment

3. Member States shall ensure that national regulatory authorities have all the powers

necessary to investigate cases of non-compliance.

necessary to investigate cases of non-compliance **and their effects on the security and integrity of the networks.**

Or. en

Justification

This AM restores AM 75 (slightly modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 69

Council common position – amending act

Article 1 – point 16

2002/21/EC

Article 14 – paragraph 3

Council common position

3. Where an undertaking has significant market power on a specific market, it may also be **deemed to have** significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in **one** market to be leveraged into the **other** market, thereby strengthening the market power of the undertaking. Consequently, remedies aimed at preventing such leverage may be applied in the **linked** market pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/EC (Access Directive), and where such remedies prove to be insufficient, remedies pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive) may be imposed.

Amendment

3. Where an undertaking has significant market power on a specific market **(hereafter referred to as "the first market")**, it may also be **designated as having** significant market power on a closely related market **(hereafter referred to as "the second market")**, where the links between the two markets are such as to allow the market power held in **the first** market to be leveraged into the **second** market, thereby strengthening the market power of the undertaking. Consequently, remedies aimed at preventing such leverage may be imposed in the **second** market pursuant to Articles 9, 10, 11 and 13 of Directive 2002/19/EC (Access Directive), and where such remedies prove to be insufficient, remedies pursuant to Article 17 of Directive 2002/22/EC (Universal Service Directive) may be imposed.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 70

Council common position – amending act

Article 1 – point 17 – point b

2002/21/EC

Article 15 – paragraph 1 – subparagraph 1

Council common position

1. After public consultation and consultation with ***national regulatory authorities and taking the utmost account of the opinion of GERT***, the Commission shall, ***in accordance with the procedure referred to in Article 22(2)***, adopt a Recommendation on Relevant Product and Service Markets (the Recommendation). The Recommendation shall identify those product and service markets within the electronic communications sector the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.

Amendment

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

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 71

Council common position – amending act

Article 1 – point 17 – point d

2002/21/EC

Article 15 – paragraph 4

Council common position

4. ***After consultation with national regulatory authorities*** the Commission may, taking the utmost account of the opinion of ***GERT***, adopt a Decision identifying transnational markets, acting in accordance with the procedure referred to

Amendment

4. The Commission may, taking the utmost account of the opinion of ***BERT submitted in accordance with Article 7 of Regulation [.../EC]***, adopt a Decision identifying transnational markets, acting in accordance with the procedure referred to

in *Article 22(2a)*.

in *Article 22(3)*.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 72

Council common position – amending act

Article 1 – point 18 – point b

2002/21/EC

Article 16 – paragraphs 5 and 6

Council common position

5. In the case of transnational markets identified in the Decision referred to in Article 15(4), ***the national regulatory authorities concerned shall jointly*** conduct the market analysis taking the utmost account of the Guidelines and, ***in a concerted fashion, shall decide*** on any imposition, maintenance, amendment or withdrawal of regulatory obligations referred to in paragraph 2 of this Article.

6. Measures taken in accordance with the provisions of paragraphs 3 and 4 shall be subject to the procedures referred to in Articles 6 and 7. National regulatory authorities shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Article 7:

Amendment

5. In the case of transnational markets identified in the Decision referred to in Article 15(4), ***the Commission shall request BERT to*** conduct the market analysis taking the utmost account of the Guidelines and ***deliver an opinion*** on any imposition, maintenance, amendment or withdrawal of regulatory obligations as referred to in paragraph 2 of this Article.

The Commission, taking the utmost account of the opinion of BERT, may issue a decision designating one or more undertakings as having significant market power on that market, and imposing one or more specific obligations under Articles 9 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive). In so doing, the Commission shall pursue the policy objectives set out in Article 8.

6. Measures taken in accordance with the provisions of paragraphs 3 and 4 shall be subject to the procedures referred to in Articles 6 and 7. National regulatory authorities shall carry out an analysis of the relevant market and notify the corresponding draft measure in accordance with Article 7:

(a) within three years from the adoption of a previous measure relating to that market. However, exceptionally, that period may be extended **beyond three** years, where the national regulatory authority has notified a reasoned proposed extension to the Commission and the Commission has not objected within one month of the notified extension;

(b) within two years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the Commission, or;

(c) within two years from their accession, for Member States which have newly joined the Union.

(a) within three years from the adoption of a previous measure relating to that market. However, exceptionally, that period may be extended **for up to two additional** years, where the national regulatory authority has notified a reasoned proposed extension to the Commission and the Commission has not objected within one month of the notified extension;

b) within two years from the adoption of a revised Recommendation on relevant markets, for markets not previously notified to the Commission, or;

(c) within two years from their accession, for Member States which have newly joined the Union.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 73

Council common position – amending act

Article 1 – point 18 – point c

2002/21/EC

Article 16 – paragraph 7

Council common position

7. Where a national regulatory authority has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in Article 16(6), the ***GERT shall, upon request, provide assistance to the national regulatory authority concerned in completing*** the analysis of the specific market and the specific obligations to be imposed. ***With this assistance, the national regulatory authority concerned shall within six months notify the draft measure to the Commission in accordance***

Amendment

7. Where a national regulatory authority has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in Article 16(6), the ***Commission may request BERT to issue an opinion, including a draft measure***, the analysis of the specific market and the specific obligations to be imposed. ***BERT shall carry out a public consultation on the draft measure concerned.***

with Article 7.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 74

Council common position – amending act

Article 1 – point 19 – point a

Directive 2002/21/EC

Article 17 – paragraph 1

Council common position

(a) In the **second** sentence of paragraph 1, the words "acting in accordance with the procedure referred to in Article 22(2)" are replaced by "acting in accordance with the procedure referred to in **Article 22(2a)**."

Amendment

(a) In the **first** sentence of paragraph 1, the words "acting in accordance with the procedure referred to in Article 22(2)" are replaced by "acting in accordance with the procedure referred to in **Article 22(3)**."

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 75

Council common position – amending act

Article 1 – point 19 – point b

Directive 2002/21/EC

Article 17 – paragraph 2 – subparagraph 3

Council common position

In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the **Electronic Communications Committee (ECC)**, the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC).

Amendment

In the absence of such standards and/or specifications, Member States shall encourage the implementation of international standards or recommendations adopted by the International Telecommunication Union (ITU), the **European Conference of Postal and Telecommunications Administrations (CEPT)**, the International Organisation for Standardisation (ISO) and the International Electrotechnical Commission (IEC).

Justification

This AM restores AM 83 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 76**Council common position – amending act****Article 1 – point 19 – point c**

Directive 2002/21EC

Article 17 – paragraph 5

Council common position

5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall, acting in accordance with the procedure referred to in **Article 22(2a)**, remove them from the list of standards and/or specifications referred to in paragraph 1.

Amendment

5. Where the Commission considers that standards and/or specifications referred to in paragraph 1 no longer contribute to the provision of harmonised electronic communications services, or that they no longer meet consumers' needs or are hampering technological development, it shall, acting in accordance with the procedure referred to in **Article 22(3)**, remove them from the list of standards and/or specifications referred to in paragraph 1.

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 77**Council common position – amending act****Article 1 – point 19 – point e**

Directive 2002/21EC

Article 17 – paragraph 6a

Council common position

6a. The implementing measures designed to amend non-essential elements of this Directive by supplementing it, referred to

Amendment

6a. The implementing measures designed to amend non-essential elements of this Directive by supplementing it, referred to

in *paragraphs 4 and 6*, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

in *paragraphs 1, 4, 5 and 6*, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 78

Council common position – amending act

Article 1 – point 21

Directive 2002/21EC

Article 19

Council common position

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

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

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

Amendment

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

position.

2a. The decision referred to in paragraph 1 designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3).

2b. Measures adopted pursuant to paragraph 1 may include the identification of a harmonised or coordinated approach to deal with the following issues:

(a) the consistent implementation of regulatory approaches, including the regulatory treatment of new services, sub-national markets and of cross-border electronic communications services provided to businesses;

(b) numbering, naming and addressing issues, including number ranges, portability of numbers and identifiers, number and address translation systems, and access to 112 emergency services;

(c) consumer issues not covered by Directive 2002/22/EC (Universal Service Directive), including in particular access to electronic communications services and equipment by disabled end-users;

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

3. GERT may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

3. GERT may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

Or. en

Justification

This AM restores AM 84 (modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 79

Council common position – amending act

Article 1 – point 23

Directive 2002/21/EC

Article 21 – paragraphs 2 and 3

Council common position

2. Any party may refer the dispute to the national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the objectives set out in Article 8.

Any national regulatory authority which has competence in such a dispute may request **GERT** to **adopt an opinion** as to the action to be taken in accordance with the provisions of the Framework Directive and/or the Specific Directives to resolve the dispute.

Where such a request has been made to **GERT**, any national regulatory authority with competence in any aspect of the dispute shall await **GERT's opinion** before taking action to resolve the dispute. This shall not preclude national regulatory authorities from taking urgent measures where necessary.

Any obligations imposed on an

Amendment

2. Any party may refer the dispute to the national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts **within BERT** in order to bring about a resolution of the dispute, **as far as possible through the adoption of a joint decision**, in accordance with the objectives set out in Article 8. **Any obligations imposed on undertakings by the national regulatory authorities as part of the resolution of a dispute shall comply with the provisions of this Directive and the Specific Directives.**

Any national regulatory authority which has competence in such a dispute may request **BERT to issue a recommendation pursuant to Article 18 of Regulation (EC) No.../2009 of the European Parliament and of the Council of ... [establishing the Body of European Regulators in Telecom (BERT)]** as to the action to be taken in accordance with the provisions of the Framework Directive and/or the specific Directives to resolve the dispute.

Where such a request has been made to **BERT**, any national regulatory authority with competence in any aspect of the dispute shall await the **BERT's recommendation pursuant to Article 18 of Regulation (EC) No.../2009 of the European Parliament and of the Council of ... [establishing the Body of European Regulators in Telecom (BERT)]** before taking action to resolve the dispute. This shall not preclude national regulatory authorities from taking urgent measures where necessary.

Any obligations imposed on an

undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives and take the utmost account of the *opinion adopted by GERT*.

3. Member States may make provision for the competent national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolving of the dispute in a timely manner in accordance with the provisions of Article 8.

They shall inform the parties without delay. If after four months the dispute is not resolved, where the dispute has not been brought before the courts by the party seeking redress and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to resolve the dispute, in accordance with the provisions set out in Article 8 and taking the utmost account of any opinion adopted by *GERT*.

undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives and take the utmost account of the *recommendation issued by BERT in accordance with Article 18 of Regulation (EC) No.../2009 of the European Parliament and of the Council of ... [establishing the Body of European Regulators in Telecom (BERT)]*.

3. Member States may make provision for the competent national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolving of the dispute in a timely manner in accordance with the provisions of Article 8.

They shall inform the parties without delay. If after four months the dispute is not resolved, where the dispute has not been brought before the courts by the party seeking redress and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, *as far as possible through the adoption of a joint decision*, in accordance with the provisions set out in Article 8 and taking the utmost account of any recommendation issued by *BERT in accordance with Article 18 of Regulation (EC) No.../2009 of the European Parliament and of the Council of ... [establishing the Body of European Regulators in Telecom (BERT)]*.

Or. en

Justification

First paragraph of this AM restores AM 86 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 80

Council common position – amending act

Article 1 – point 24

Directive 2002/21EC

Article 21a

Council common position

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by ... and shall notify it without delay of any subsequent amendment affecting them.

Amendment

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be ***appropriate***, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by ...* and shall notify it without delay of any subsequent amendment affecting them.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 81

Council common position – amending act

Article 1 – point 28

Directive 2002/21EC

Annex II – subparagraph 1 – introductory part

Council common position

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market which is characterised by a lack of effective competition and in which no single undertaking has significant market power. In accordance with ***the provisions*** on joint dominance ***set out in Council Regulation (EC) No 139/2004 of 20 January 2004 on***

Amendment

Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market which is characterised by a lack of effective competition and in which no single undertaking has significant market power. In accordance with the ***applicable Community law and with the case-law of the Court of Justice of the European***

the control of concentrations between undertakings (the EC Merger Regulation), this is likely to be the case where the market is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of communications:

Union on joint dominance, this is likely to be the case where the market is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of communications:

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 82

Council common position – amending act

Article 2 – point 1 - point b

Directive 2002/19/EC

Article 2 – point e

Council common position

(e) "local loop" means the physical circuit connecting the network termination point *at the subscriber's premises to the main* distribution frame or equivalent facility in the fixed public electronic communications network.";

Amendment

(e) "local loop" means the physical circuit connecting the network termination point *to a* distribution frame or equivalent facility in the fixed public electronic communications network.";

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 83

Council common position – amending act

Article 2 – point 2

Directive 2002/19/EC

Article 4 – paragraph 1

Council common position

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5 to 8.

Amendment

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services ***or delivering broadcast content or information society services***, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5 to 8. ***However, the terms and conditions of interconnection shall not introduce unjustified barriers to interoperability.***

Or. en

Justification

This AM restores AMs 93 and 94 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 84

Council common position – amending act

Article 2 – point 3 – point a

Directive 2002/19/EC

Article 5 – paragraph 1 – subparagraph 1

Council common position

1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), encourage and where appropriate ensure, in accordance with the provisions of this Directive,

Amendment

1. National regulatory authorities shall, acting in pursuit of the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), encourage and where appropriate ensure, in accordance with the provisions of this Directive,

adequate access and interconnection, and the interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, **efficient** investment and innovation, and gives the maximum benefit to end-users.

adequate access and interconnection, and the interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, investment and innovation, and gives the maximum benefit to end-users.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 85

Council common position – amending act

Article 2 – point 3 – point aa (new)

Directive 2002/19/EC

Article 5 – paragraph 1 – point a

Council common position

Amendment

(aa) in paragraph 1, point (a) shall be replaced by:

“(a) to the extent that is necessary to ensure end-to-end connectivity or fair and reasonable access to third-party services, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case or to make their services interoperable on fair, transparent and reasonable terms;”

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 86

Council common position – amending act

Article 2 – point 3 – point b

Directive 2002/19/EC

Article 5 – paragraph 2

Council common position

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

Amendment

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

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 87

Council common position – amending act

Article 2 – point 4

Directive 2002/19/EC

Article 6 – paragraph 2

Council common position

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

Amendment

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

In preparing the provisions referred to in this paragraph, the Commission may be assisted by the Body of European Regulators in Telecom (hereinafter referred to as "BERT").

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 88

Council common position – amending act

Article 2 – point 6 – point aa (new)

Directive 2002/19/EC

Article 8 – paragraph 2

Council common position

Amendment

(aa) paragraph 2 shall be replaced by the following:

"2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), national regulatory authorities shall, as appropriate, impose the obligations set out in Articles 9 to 13a of this Directive in accordance with the procedure laid down in Article -7a of Directive 2002/21/EC (Framework Directive).

When assessing the proportionality of the obligations and conditions to be imposed, national regulatory authorities shall take into account the different competitive conditions existing in the different areas within their Member States."

Or. en

Justification

This AM (see AM 97) restores the position adopted by Parliament in its first reading (Rule 62(2)(a)). Reference to adaptation of remedies to geographical competition conditions moved from Article 5.

Amendment 89

Council common position – amending act

Article 2 – point 6 – point b – point ii

Directive 2002/19/EC

Article 8 – paragraph 3 – subparagraph 2

Council common position

In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Articles 9 to **13** in this Directive, it shall submit this request to the Commission. The Commission shall take utmost account of the opinion of *the Group of European Regulators in Telecoms (GERT)**. The Commission, acting in accordance with Article 14(2), shall take a decision authorising or preventing the national regulatory authority from taking such measures.

Amendment

In exceptional circumstances, when a national regulatory authority intends to impose on operators with significant market power obligations for access or interconnection other than those set out in Articles 9 to **13a** in this Directive, it shall submit this request to the Commission. The Commission shall take utmost account of the opinion of **BERT**. The Commission, acting in accordance with Article 14(2), shall take a decision authorising or preventing the national regulatory authority from taking such measures.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by making subject the obligation of Functional Separation to the provisions of Article -7a (co-regulation).

Amendment 90

Council common position – amending act

Article 2 – point 7 - point a

Directive 2002/19/EC

Article 9 – paragraph 1

Council common position

1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting

Amendment

1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting

information, technical specifications, network characteristics, terms and conditions for supply and use, including traffic management policies, and prices.

information, technical specifications, network characteristics, **restrictions on access to services and applications, traffic management policies**, terms and conditions for supply and use, including traffic management policies, and prices.

Or. en

Justification

This AM restores AM 98 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 91

Council common position – amending act

Article 2 – point 7 - point b

Directive 2002/19/EC

Article 9 – paragraph 4

Council common position

4. Notwithstanding paragraph 3, where an operator has ***obligations under Article 12 concerning wholesale network infrastructure access, including unbundled access to the local loop at a fixed location***, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II.

Amendment

4. Notwithstanding paragraph 3, where an operator has ***been found, in accordance with Article 14 of Directive 2002/21/EC (Framework Directive), to have significant market power in a relevant market relating to local access at a fixed location***, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II.

Or. en

Justification

This AM restores AM 99 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 92

Council common position – amending act

Article 2 – point 8 – point d

Directive 2002/19/EC

Article 12 – paragraph 2 – introductory wording

Council common position

2. When national regulatory authorities are considering the obligations referred in paragraph 1, and in particular when assessing **how** such obligations would be imposed proportionate to the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), they shall take account in particular of the following factors:

Amendment

2. When national regulatory authorities are considering the obligations referred in paragraph 1, and in particular when assessing **whether** such obligations would be imposed proportionate to the objectives set out in Article 8 of Directive 2002/21/EC (Framework Directive), they shall take account in particular of the following factors:

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 93

Council common position – amending act

Article 2 – point 8 – paragraph 2 – point da (new)

Directive 2002/19/EC

Article 12 – paragraph 2 – point c

Council common position

Amendment

(da) in paragraph 2, point (c) shall be replaced by the following:

“(c) the initial investment by the facility owner, bearing in mind any public investment made and the risks involved in making the investment, including an appropriate risk-sharing among those undertakings enjoying access to these new facilities;”

Or. en

Justification

This AM restores AM 100 (Article 12, paragraph 2, point c) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 94

Council common position – amending act
Article 2 – point 8 – paragraph 2 – point e
Directive 2002/19/EC
Article 12 – paragraph 2 – point d

Council common position

(d) the need to safeguard competition in the long term, ***including through economically efficient*** infrastructure-based competition;

Amendment

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

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 95

Council common position – amending act
Article 2 – point 9 – point a
Directive 2002/19/EC
Article 13– paragraph 1

Council common position

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned may sustain prices at an excessively high level, or may apply a

Amendment

1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price

price squeeze, to the detriment of end users. To encourage investments by the operator, including in next generation networks, national regulatory authorities shall take into account the investment made by the operator, and allow him a reasonable rate of return on adequate capital employed, taking into account the risks involved.

squeeze, to the detriment of end-users. To encourage investments by the operator, including in next generation networks, national regulatory authorities shall take into account the investment made by the operator, and allow him a reasonable rate of return on adequate capital employed, taking into account the risks involved **and the appropriate sharing of risk between investors and those undertakings enjoying access to the new facilities, including differentiated short-term and long-term risk-sharing arrangements.**

Or. en

Justification

This AM restores AM 101 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 96

Council common position – amending act

Article 2 – point 9 – point aa (new)

Directive 2002/19/EC

Article 13 – paragraph 4a (new)

Council common position

Amendment

(aa) the following paragraph shall be inserted:

4a. National regulatory authorities shall ensure that access price regulation for long-term risk-sharing contracts is in line with the long-term incremental cost of an efficient operator, taking into account the operator's calculated rate of penetration of new markets and the risk premium included in access prices for short-term contracts. Risk premium shall be phased out as market penetration increases. Margin squeeze tests shall not be applied to short-term contracts when a risk premium is charged.

Or. en

Justification

This AM restores AM 102 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 97

Council common position – amending act

Article 2 – point 9 – point b

Directive 2002/19/EC

Article 13– paragraph 5

Council common position

Amendment

5. Instead of imposing obligations on cost accounting systems, national regulatory authorities may accept the use of alternative interconnection pricing methods, such as the "bill and keep" method, provided that such methods do not hinder or distort competition. *deleted*

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)). **Amendment 98**

Council common position – amending act

Article 2 – point 10

Directive 2002/19/EC

Article 13a – paragraphs 1 and 2 and introductory wording of paragraph 3

Council common position

Amendment

1. Where the national regulatory authority concludes that the appropriate obligations imposed under Articles 9 to 13 have failed to achieve effective competition and that there are important and persisting competition problems and/or market failures identified in relation to the wholesale provision of certain access products, it may, as an exceptional measure, in accordance with the provisions of the second subparagraph of Article 8(3), impose an obligation on

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, as an exceptional measure, an obligation on vertically integrated undertakings to place activities related to the wholesale provision of *fixed* access products in an independently operating business entity.

vertically integrated undertakings to place activities related to the wholesale provision of relevant access products in an independently operating business entity.

That business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating 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 proposal to the Commission that includes:

(a) evidence *justifying the conclusions of the national regulatory authority as referred to in paragraph 1;*

(b) *a reasoned assessment* that there is no or little prospect of *effective and sustainable* infrastructure-based competition within a reasonable timeframe;

(c) an analysis of the expected impact on the regulatory authority, on the undertaking, on incentives to invest in *a sector as a whole, particularly with regard to the need to ensure social and territorial cohesion*, and on other stakeholders including, in particular, the expected impact on competition and any potential entailing effects on consumers;

That business entity shall supply access products and services to all undertakings, including to other business entities within the parent company, on the same timescales, terms and conditions, including those relating 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 proposal to the Commission that includes:

(a) evidence *that the imposition and enforcement over a reasonable period, taking due account of regulatory best practice, of appropriate obligations amongst those identified in Articles 9 to 13 to achieve effective competition following a coordinated 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 and market failures identified in several of the wholesale product markets analysed;*

(b) *evidence* that there is no or little prospect of infrastructure-based competition within a reasonable timeframe;

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

(ca) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems or markets failures identified;

3. The draft measure shall include the following elements:

3. The *national regulatory authority shall include in its proposal a draft of the proposed measure, which* shall include the following elements:

Or. en

*Justification*This AM restores AM 103 (slightly modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 99

Council common position – amending act

Article 2 – point 12 – point e

Directive 2002/19/EC

Annex II – part A – point 1 – point (b)

Council common position

(b) unbundled access to local sub-loops (full and shared), including, when relevant, access to *associated facilities such as ducts and/or optical fibre* for backhaul;

Amendment

(b) unbundled access to local sub-loops (full and shared), including, when relevant, access to *network elements which are not active* for *the purpose of roll-out of backhaul networks*;

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 100

Council common position – amending act

Article 3 – point 1a (new)

Directive 2002/20/EC

Article 3 – paragraph 2

Council common position

Amendment

1a) Article 3(2) shall be replaced by the

following:

“2. The provision of electronic communications networks or the provision of electronic communications services may, without prejudice to the specific obligations referred to in Article 6(2) or rights of use referred to in Article 5, only be subject to a general authorisation. The undertaking concerned may be required to submit a notification but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use in Articles 5, 6, 6a and 7.

Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall be subject to no more than one notification per Member State concerned.”

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 101

Council common position – amending act

Article 3 – point 2

Directive 2002/20/EC

Article 5 – paragraphs 1 and 2

Council common position

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

Amendment

1. Member States shall, ***where possible, in particular where the risk of harmful interference is negligible, include the conditions for usage of*** radio frequencies ***in*** general authorisations. Member States

- avoid harmful interference,
 - ensure technical quality of service,
 - safeguard efficient use of spectrum,
- or
- fulfil other objectives of general interest as defined by Member States in conformity with Community law.

2. Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking for the provision of networks or services under the general authorisation referred to in Article 3, subject to the provisions of Articles 6, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).

Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, the rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.

When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the

may grant individual rights in order to:

- avoid harmful interference,
 - ensure technical quality of service,
 - safeguard efficient use of spectrum,
- or
- fulfil other objectives of general interest as defined by Member States in conformity with Community law.

2. Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking for the provision of networks or services under the general authorisation referred to in Article 3, subject to the provisions of Articles 6, **6a**, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).

Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, the rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). An exception to the requirement of open procedures may apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary to achieve a general interest objective as defined by Member States in conformity with Community law.

When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the

case of radio frequencies, such provision shall be in accordance with **Article 9b** of Directive 2002/21/EC (Framework Directive).

Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued **and the necessary investments**.

Any individual right to use radio frequencies that *is* granted for more than 10 years and **that may not** be transferred or leased between undertakings as allowed pursuant to Article 9b of Directive 2002/21/EC (Framework Directive) **shall be subject to a review by the competent national authority in the light of the criteria in paragraph 1, in particular upon a justified request of the holder of the right**. 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, or made transferable or leaseable between undertakings in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).

case of radio frequencies, such provision shall be in accordance with **Articles 9 and 9b** of Directive 2002/21/EC (Framework Directive).

Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned in view of the objective pursued, **taking due account of the need to allow for an appropriate period for amortisation of investment**.

Where individual rights to use radio frequencies **are** granted for ten years or more and **cannot** be transferred or leased between undertakings as allowed pursuant to Article 9b of *Directive 2002/21/EC* (Framework Directive), **the competent national authority shall ensure that the criteria to grant individual rights of use apply and are complied with for the duration of the license**. If *those* criteria are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, **subject to prior notice and after a reasonable period of time**, or **shall be** made freely transferable or leaseable between undertakings in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 102

Council common position – amending act

Article 3 – point 4a (new)

Directive 2002/20/EC

Article 6a

4a) Article 6a shall be inserted:

“Article 6a

Harmonisation measures

1. Without prejudice to Article 5(1) and (2) of this Directive and Article 9 of Directive 2002/21/EC (Framework Directive), the Commission may, pursuant to Article 8a(4a) of Directive 2002/21/EC (Framework Directive), adopt implementing measures:

(a) to identify radio frequency bands, the use of which is to be made subject to general authorisation;

(b) to harmonise procedures for the granting of general authorisations or individual rights of use for radio frequencies or numbers to undertakings providing pan-European electronic communications networks or services;

(c) to harmonise the conditions specified in Annex II relating to the granting to undertakings providing pan-European electronic communications networks or services of general authorisations or individual rights of use for radio frequencies or numbers.

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 8a(4a) of Directive 2002/21/EC (Framework Directive).

2. The measures referred to in paragraph 1 may, where appropriate, provide for the possibility for the Member States to make a reasoned request for a partial exemption and/or a temporary derogation from those measures.

The Commission shall assess the justification for the request, taking into account the specific situation in the

Member State, and may grant a partial exemption or temporary derogation or both provided this does not unduly defer the implementation of the implementing measures referred to in paragraph 1 or create undue differences in the competitive or regulatory situations between Member States.”

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)) by deleting certain harmonisation measures and by making subject the application in the future of the remaining implementation measures (following the regulatory procedure with scrutiny) to the agreement by the European Parliament and Council through the radio spectrum policy programme.

Amendment 103

Council common position – amending act

Article 3 – point 5 – point a

Directive 2002/20/EC

Article 10 – paragraph 3 – subparagraph 2

Council common position

In this regard, Member States shall empower the relevant authorities to impose ***financial penalties where appropriate.***

The measures and the reasons on which they are based shall be communicated to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measure.

Amendment

In this regard, Member States shall empower the relevant authorities to impose:

- (a) dissuasive financial penalties where appropriate, which may include periodic penalties having retroactive effect; and***
- (b) orders to cease provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance***

*with Article 16 of Directive 2002/21/EC
(Framework Directive).*

Or. en

Justification

This AM restores AM 111 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 104

Council common position – amending act

Article 3 – point 7

Directive 2002/20EC

Article 14 – paragraph 1

Council common position

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. ***Except where proposed amendments are minor and have been agreed with the holder of the rights or general authorisation***, notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.

Amendment

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. Notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 105

Council common position – amending act

Article 3 – point 9

Directive 2002/21/EC

Article 17 – paragraphs 1 and 2

Council common position

1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States shall bring general authorisations and individual rights of use already in existence on 31 December 2009 into conformity with Articles 5, 6, 7, and Annex I of this Directive within **two years** from the date of entry into force of this Directive at the latest.

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the general authorisations and individual rights of use already in existence, Member States may extend the validity of those authorisations and rights until 30 **September** 2012 at the latest, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefore.

Amendment

1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States shall bring general authorisations and individual rights of use already in existence on 31 December 2009 into conformity with Articles 5, 6, 7, and Annex I of this Directive within **eighteen months** from the date of entry into force of this Directive at the latest.

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the general authorisations and individual rights of use already in existence, Member States may extend the validity of those authorisations and rights until 30 **March** 2012 at the latest, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefore.

Or. en

Justification

This AM seeks to reach a compromise between the Council and the Parliament (Rule 62(2)(b)).

Amendment 106

Council common position – amending act Article 3a (new)

Council common position

Amendment

Article 3a **Review procedure**

1. The Commission shall periodically review the functioning of this Directive and of Directives 2002/21/EC (Framework Directive), 2002/19/EC (Access Directive) and 2002/20/EC (Authorisation Directive) and report to the European Parliament and the Council no later than three years after the date of application referred to in Article 5(1). In its report, the Commission shall assess whether, in the light of developments in the market and with regard to both competition and consumer protection there is continued need for the provisions on sector specific ex-ante regulation laid down in Articles 8 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive) or whether they should be amended or repealed. For this purpose, the Commission may request information from the national regulatory authorities and BERT, which shall be supplied without undue delay.

2. If the Commission finds that the provisions referred to in paragraph 1 need to be amended or repealed it shall submit without undue delay a proposal to the European Parliament and the Council.

Or. en

Justification

This AM restores AM 118 adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 107

Council common position – amending act

Annex – point 2 – point h

Directive 2002/21/EC

Annex – part A – point 19

Council common position

19. Transparency obligations on undertakings providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article 8 of Directive 2002/21/EC (Framework Directive), disclosure regarding traffic management policies and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.

Amendment

19. Transparency obligations on undertakings providing electronic communications services available to the public to ensure end-to-end connectivity, ***including unrestricted access to content, services and applications***, in conformity with the objectives and principles set out in Article 8 of Directive 2002/21/EC (Framework Directive), disclosure regarding traffic management policies and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.

Or. en

Justification

This AM restores AM 120 (modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 108

Council common position – amending act

Annex – point 3 – point b

Directive 2002/20/EC

Annex – part B – point 2

Council common position

2. Effective and efficient use of frequencies in conformity with Directive 2002/21/EC (Framework Directive).

Amendment

deleted

Or. en

Justification

This AM restores the position adopted by Parliament in its first reading (Rule 62(2)(a)).

Amendment 109

Council common position – amending act

Annex – point 3 – point b a (new)

Directive 2002/20EC

Annex – part B – point 7

Council common position

Amendment

(ba) Point 7 shall be replaced by the following:

7. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure. If such a commitment corresponds de facto to one or more of the obligations listed in Articles 9 to 13a of Directive 2002/19/EC (Access Directive), that commitment shall be considered as having expired by 1 January 2010 at the latest.

Or. en

Justification

This AM restores AM 123 (partly modified) adopted in first reading by Parliament on 24 September 2008, T6/0449/2008 (Rule 62(2)(a)).

Amendment 110

Council common position – amending act

Annex – point 4 a (new)

Directive 2002/21EC

Annex II

Council common position

Amendment

4a. Annex II shall be inserted:

“Conditions which may be harmonised in accordance with point (c) of Article 6a, paragraph 1:

- (a) the duration of the rights of use of the radio frequencies;***
- (b) the territorial scope of the rights;***
- (c) the possibility to transfer the right to other radio frequencies users, as well as the conditions and procedures relating thereto;***
- (d) the method of determining usage fees for the right, without prejudice to systems defined by Member States where the obligation to pay usage fees is replaced by the imposition on a non-discriminatory basis of an obligation to fulfil specific general interest objectives;***
- (e) the number of rights of use to be granted to each undertaking;***
- (f) conditions listed in Part B of Annex I.”***

Or. en

EXPLANATORY STATEMENT

The review of the regulatory framework is an opportunity to reinforce Europe's lead in high-speed fixed and wireless communications, to accelerate the development of innovative and high value-added services and to reach 100% coverage of broadband internet¹.

The difficult times we are facing call, more than ever, for regulatory reform geared to achieving the following **goals**: sustained competition, increased investment and innovation, consumer benefits and enhanced social cohesion within a consistent and well-functioning electronic communications single market.

The attainment of these goals requires that the legislative work fulfils three main criteria: economic efficiency, legal certainty and regulatory predictability, and institutional balance.

Up to now, only a few political points could be tackled in trialogues. There, the rapporteur has attempted to propose workable compromises in order to reach agreement with Council and conclude this legislation in second reading. In addition, the rapporteur announced some changes to the "co-regulation" procedure on remedies in order to answer certain doubts on its institutional balance.

In search of a compromise

Spectrum management

The second reading recommendations don't depart from what should constitute a cornerstone of a Parliament/Council agreement: Member-States remain primarily in charge of spectrum management. However attempts are made at enhancing their coordination, and, where legitimate, at allowing harmonisation measures.

First, on the radio spectrum policy programmes, the rapporteur specifies further that these shall set out the policy orientations and objectives for the strategic planning, coordination and harmonisation of the use of radio spectrum in the Community dissipating criticism that Parliament wanted to micromanage spectrum matters. Second, it moves the harmonisation implementing measures provided for in Article 9c to this Article allowing in the future - subject to the agreement by the European Parliament and Council through the radio spectrum policy programmes- to apply harmonisation measures in this field following the regulatory procedure with scrutiny. The corresponding deletion of Article 9c (radio frequency management harmonisation measures) is accepted as part of this compromise.

In parallel, the Radio Spectrum Policy Committee is restored until the Parliament gets proper guarantees on the part of the Commission that the Radio Spectrum Policy Group (RSPG) would be enhanced accordingly to fulfil the functions associated with the radio spectrum policy programmes.

¹ The European Council of 11-12 December called, as part of the European Economic Recovery Plan, for regulatory incentives for developing broadband internet, including in under-served and high cost areas where the market cannot deliver.

Regarding the references to the ITU, the relevant amendments seek to reach a compromise between the Council and the Parliament by clarifying that Member States can derogate from the principle of service neutrality in order to fulfil a requirement under the ITU Radio Regulations (e.g. in order to avoid interference problems with neighbouring countries). The consistency of measures adopted pursuant to this article and international spectrum organisations is further emphasised with a recital.

The reference to National Frequency Plans is dropped in favour of the mention of certain restrictions decided "by Member States", which in fact gives them more margin of manoeuvre.

The wording of Article 5 (Authorisation Directive) was reviewed in an attempt to strike a balance between the desirability of flexibility through general authorisations, and sheer pragmatism through individual authorisations which in practice have been the rule up to now.

"Co-regulation"

The rapporteur maintains the general philosophy of the Parliament's first reading proposal on Articles 7 and -7a (constructive process, binding outcome), while taking onboard the legal critique (in particular, potential incompatibility with the Meroni principle). This new proposal builds on the Commission's revised proposal, but requires regulatory comitology when the Commission and BERT don't agree with each other. Also some elements of practicability are enhanced (appropriate time for renotification, etc).

Key points not tackled yet and restored by the rapporteur

The Parliament's first reading text covering the remaining key points not yet discussed in trialogues have been restored. This concerns in particular NGA, functional separation, harmonisation (not linked to spectrum) and content/"net neutrality" issues.