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Committee on Legal Affairs

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OPINION

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council
establishing the European Electronic Communications Market Authority
(COM(2007)0699 – C6-0428/2007 – 2007/0249(COD))

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SHORT JUSTIFICATION

A competitive and efficient telecommunications infrastructure is important to the competitiveness of the EU. With that in mind, five framework directives came into force in 2003 and a Commission Decision established the European Regulators Group (ERG) in 2002. In 2006 the Commission reported on the functioning of the directives and launched a public consultation. It was concluded that there was a lack of consistency in the application of EU rules and that regulatory fragmentation was a problem.

A new package of proposals revising the telecom framework and proposing the establishment of a European Electronic Communications Market Authority (EECMA) has now been put forward. Its remit covers a variety of functions including spectrum, rights of use of numbers, security and number portability. EECMA would replace both the ERG and the European Network and Information Security Agency (ENISA) and have an Administrative Board.

According to the Commission Decision setting up the ERG, it can adopt its rules of procedure by consensus or a two-thirds majority in the event of no consensus. According to the Commission's explanatory memorandum in connection with EECMA, in practice the approach within ERG is that it usually requires agreement of all 27 regulators.

The draughtsperson believes it would be beneficial to extend the ERG, making best use of its expertise, in particular charging it to work for regulatory convergence and establishing a definitive form of majority voting to provide greater impetus. However it is questioned whether it is necessary to create EECMA, either at all or in the form proposed, and whether absorption of the functions of ENISA and other bodies is appropriate. There is a need for the ERG or EECMA to gain a firm legal basis beyond the limited confines of the 2002 Commission decision, but the accompanying changes in structure and responsibilities are substantial and cover aspects that are being satisfactorily managed under the present arrangements. It is therefore necessary to analyse whether the Commission's approach is proportionate or extends into areas that should be left with Member States.

The main challenges are that of regulation and therefore the prime movers in the Authority, whatever form it takes, must be the regulators. It is not considered that the 'standard' Agency structure proposed by the Commission is satisfactory. In particular greater accountability to the Parliament is needed to balance the interests of the Commission and Member States. It is recommended that the entity be established under Article 95, which is already a basis for this regulation. In this context attention is drawn to the judgment of the ECJ Grand Chamber of 2 May 2006 in Case C-217/04 *UK v Parliament and Council*, in which it is stated that:

"nothing in the wording of Article 95 EC implies that the addressees of the measures adopted by the Community legislature on the basis of that provision can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonisation".

A further concern with the Commission's proposed Agency structure is the possibility of compromise of the Board of Regulators by the Administrative Board. It may be possible to dispense with the Board and just have a Director. It is important that if there is a Board or

Executive of some kind that it should be appointed independently of the Commission, given that it has to advise the Commission. Therefore it is recommended that the Parliament be involved in the appointment of the Director and any Board or Executive, not just the Member States and Commission.

It is acknowledged that there may be decisions that could be taken by the Authority, but a clear framework for those needs to be established through the process of regulatory convergence and future recommendations, all of which should be subject to Parliamentary scrutiny.

ENISA, which has not been functioning for long, is replaced in the proposal by a Chief Network Security Officer and a Permanent Stakeholder's Group. It is not clear what advantage this brings over and above taking due regard of ENISA. However it may be worthwhile to have a more general stakeholder group providing input to the Authority and the Parliament, although it is recognised that care has to be taken concerning regulatory independence.

It has also been proposed that EECMA should advise the Commission on the exercise of powers relating to designation of the spectrum, supplanting the Radio Spectrum Policy Group which is the existing spectrum policy advisor to the Commission. It is not believed that the Commission should necessarily be given such spectrum designating powers, but in any event the Authority would not be the appropriate advisory body given that many of the national regulatory authorities of which it is composed do not have spectrum responsibilities and therefore the necessary experience. Spectrum should be left with the RSPG.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) The Commission has recognised the global and trans-border nature of the global telecommunications market, noting that this market is different from telecommunications services provided on a merely national basis and that a single market for all global telecommunications services (GTS) is assumed which has to be distinguished from merely national telecommunications services.

Justification

GTS markets have bespoke contracts that are negotiated for multi-country solutions and the arrangements for such matters are not specific to any single country or geography.

Amendment 2

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

1. ***A European Electronic Communications Market Authority*** is established ***with*** the responsibilities laid down in this Regulation.

Amendment

1. ***The Body of European Regulators in Telecom (BERT)*** is established ***as the Authority having*** the responsibilities laid down in this Regulation.

Justification

It is unnecessary to create a market authority and it should be replaced by an advisory committee embedded in EU law. The judgment of the ECJ Grand Chamber of 2 May 2006 in Case C-217/04 UK v Parliament and Council indicates that Article 95 can be used as a basis for establishment of a Community body.

Amendment 3

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. The Authority shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the national regulatory authorities. It shall contribute to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-Community electronic communications ***and a high and effective level of network and information security***, through the tasks listed in Chapters II and III.

Amendment

2. The Authority shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the national regulatory authorities. It shall contribute to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-Community electronic communications, through the tasks listed in Chapters II and III.

Justification

The Authority should not have security powers which are already dealt with effectively by the European Network and Information Security Agency (ENISA).

Amendment 4

Proposal for a regulation

Article 1 – paragraph 3

Text proposed by the Commission

3. The Authority shall carry out its tasks in cooperation with the national regulatory authorities and the Commission ***in a European system for the regulation of electronic communications.***

Amendment

3. The Authority shall carry out its tasks in cooperation with the national regulatory authorities and the Commission.

Justification

Many of the regulatory responsibilities of the Authority should be removed and remain with the Member States.

Amendment 5

Proposal for a regulation

Article 3 – point a

Text proposed by the Commission

(a) issue opinions at the request of the Commission or on its own initiative and assist the Commission by providing ***it*** with additional technical support in all matters regarding electronic communications;

Amendment

(a) issue opinions at the request of the Commission ***or of the European Parliament*** or on its own initiative and assist the Commission ***and the European Parliament*** by providing ***them*** with additional technical support in all matters regarding electronic communications;

Justification

The explanatory memorandum of the Commission proposal defines the Authority to be established as "accountable to the European Parliament". A closer link between the latter and the Authority must therefore be ensured.

Amendment 6

Proposal for a regulation
Article 3 – point e

Text proposed by the Commission

Amendment

(e) provide advice and assistance to the Commission or any competent body appointed by a Member State with regard to any network and information security issue falling within the Authority's remit; ***deleted***

Justification

The Authority should not have security powers which are already dealt with effectively by the European Network and Information Security Agency (ENISA).

Amendment 7

Proposal for a regulation
Article 3 – point f

Text proposed by the Commission

Amendment

(f) take individual decisions in relation to the issuance of rights-of-use for numbers from the European Telephone Numbering Space (ETNS); ***deleted***

Justification

The European Radio communications Office (ERO) already has satisfactory arrangements in place.

Amendment 8

Proposal for a regulation
Article 3 – point g

Text proposed by the Commission

Amendment

(g) assist the Commission in the selection of undertakings to be granted rights of use of radio frequencies and numbers; ***deleted***

Justification

Rights of use of radio frequencies and numbers are already effectively managed by the Radio

Spectrum Policy Group (RSPG), the Radio Spectrum Committee (RSC) and the Communications Committee (CoCom).

Amendment 9

Proposal for a regulation

Article 3 – point h

Text proposed by the Commission

Amendment

(h) collect and redistribute usage fees for rights-of-use of radio frequencies and numbers; ***deleted***

Justification

Spectrum issues are already dealt with effectively by the Radio Spectrum Policy Group (RSPG).

Amendment 10

Proposal for a regulation

Article 3 – point i a (new)

Text proposed by the Commission

Amendment

(ia) develop common positions on pan-European issues such as global telecommunications services in order to increase regulatory consistency and promote a pan-European market and pan-European rules.

Justification

Under the current EU General Framework, a GTS provider must comply with each NRA's individual authorisation requirements in order to be able to provide a pan-European service. There are considerable variations in these national arrangements and the compliance obligations that arise under national authorisation regimes also vary significantly.

Amendment 11

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

1. At the request of the Commission, the Authority shall deliver opinions on **all** matters regarding electronic communications.

Amendment

1. At the request **of the European Parliament or** of the Commission, the Authority shall deliver opinions on matters **in paragraph 3** regarding electronic communications. **The Commission may request an opinion on other matters regarding electronic communications provided that the request is reasoned and proportionate and that notice and an opportunity for scrutiny are given to the European Parliament and to the Council at the same time as the request is made.**

Justification

The explanatory memorandum of the Commission proposal defines the Authority to be established as "accountable to the European Parliament". A closer link between the latter and the Authority must therefore be ensured. Requests for opinions from the Commission should be measured and accountable.

Amendment 12

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

2. The Authority shall **in particular** contribute to the harmonised application of the provisions of the Framework Directive and the Specific Directives by assisting the Commission in the preparation of **recommendations or** decisions to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive).

Amendment

2. The Authority shall **promote regulatory convergence and** contribute to the harmonised application of the provisions of the Framework Directive and the Specific Directives by assisting the Commission in the preparation of decisions to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive).

Justification

Regulatory convergence is imperative. Recommendations are not open to Parliamentary scrutiny and the explanatory memorandum of the Commission proposal defines the Authority

to be established as "accountable to the European Parliament". Parliamentary scrutiny must therefore be ensured.

Amendment 13

Proposal for a regulation

Article 4 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. Matters referred to in paragraph 1 shall **include**:

3. Matters referred to in paragraph 1 shall **be**:

Justification

The responsibilities of the Authority should be clearly defined.

Amendment 14

Proposal for a regulation

Article 4 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the security and integrity of public electronic communications networks and services, including issues linked to breaches of security and/or integrity, in accordance with Article 13a of Directive 2002/21/EC (Framework Directive) and Article 4 of Directive 2002/58/EC (Directive on privacy and electronic communications);

deleted

Justification

Security issues are already dealt with effectively by the European Network and Information Security Agency (ENISA).

Amendment 15

Proposal for a regulation

Article 4 – paragraph 3 – point e

Text proposed by the Commission

Amendment

(e) analyses of specific national markets in

(e) ***in cooperation with relevant national***

accordance with Article 16 of Directive 2002/21/EC (Framework Directive);

regulatory authorities, analyses of specific national markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive);

Justification

Market reviews can be conducted most effectively by national regulatory authorities so cooperation is desirable.

Amendment 16

Proposal for a regulation

Article 4 – paragraph 3 – point i

Text proposed by the Commission

Amendment

(i) numbering issues, in accordance with Article 10 of Directive 2002/21/EC (Framework Directive) and access to numbers and services in the Community, in accordance with Article 28 of Directive 2002/22/EC (Universal Service Directive); **deleted**

Justification

The competence should remain with the Member States.

Amendment 17

Proposal for a regulation

Article 4 – paragraph 3 – point o

Text proposed by the Commission

Amendment

(o) measures on radio frequencies issues in accordance with Articles 4 and 6 of Decision 676/2002/EC (the Radio Spectrum Decision); **deleted**

Justification

Spectrum issues are already dealt with effectively by the Radio Spectrum Policy Group (RSPG).

Amendment 18

Proposal for a regulation

Article 4 – paragraph 3 – point p

Text proposed by the Commission

Amendment

(p) in accordance with Articles 6a and 6b of Directive 2002/20/EC (Authorisation Directive):

deleted

(i) harmonised conditions relating to rights of use of radio frequencies or numbers;

(ii) amendment or withdrawal of rights of use issued on a coordinated or harmonised basis;

(iii) the selection of undertakings to which individual rights of use for frequencies or numbers could be granted for services with cross-border potential.

Justification

Spectrum issues are already dealt with effectively by the Radio Spectrum Policy Group (RSPG).

Amendment 19

Proposal for a regulation

Article 4 – paragraph 3 – point p a (new)

Text proposed by the Commission

Amendment

(pa) measures to ensure the development of common pan-European rules and requirements for global telecommunications services providers.

Justification

Under the current EU General Framework, a GTS provider must comply with each NRA's individual authorisation requirements in order to be able to provide a pan-European service. There are considerable variations in these national arrangements and the compliance obligations that arise under national authorisation regimes also vary significantly.

Amendment 20

Proposal for a regulation

Article 4 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. All opinions of the Authority shall be provided to the European Parliament and the Authority shall inform the European Parliament, within the regulatory procedure with scrutiny, of its final proposals.

Justification

The explanatory memorandum of the Commission proposal defines the Authority to be established as "accountable to the European Parliament". A closer link between the latter and the Authority must therefore be ensured.

Amendment 21

Proposal for a regulation

Article 6

Text proposed by the Commission

Amendment

1. If the Authority receives a request from the Commission pursuant to Article 16(7) of Directive 2002/21/EC (Framework Directive) to analyse a specific relevant market within a Member State, it shall deliver ***an*** opinion and provide the Commission with the necessary information, including the results of the public consultation and the analysis of the market. If the Authority ***finds*** that competition on that market is not effective, ***its*** opinion shall, following a public consultation, include a draft measure specifying the undertaking(s) ***it considers*** should be designated as having significant market power on that market and the appropriate obligations to be imposed.

1. If the Authority receives a request from the Commission pursuant to Article 16(7) of Directive 2002/21/EC (Framework Directive) to analyse a specific relevant market within a Member State, it shall ***conduct a market review in cooperation with the relevant national regulatory authority. They shall*** deliver a ***joint*** opinion, ***ultimately overseen by the Authority***, and provide the Commission with the necessary information, including the results of the public consultation and the analysis of the market. If the Authority ***and the national regulatory authority find*** that competition on that market is not effective, ***their*** opinion shall, following a public consultation, include a draft measure specifying the undertaking(s) ***they consider*** should be designated as having significant market power on that market and the appropriate obligations to be

2. The Authority **may, where appropriate,** consult the relevant national competition authorities before issuing its opinion to the Commission.

3. The Authority shall provide the Commission upon request with all the information available to carry out the tasks referred in paragraph 1.

imposed.

2. The Authority **shall** consult the relevant national competition authorities before issuing its opinion to the Commission.

3. The Authority **and the national regulatory authority** shall provide the Commission upon request with all the information available to carry out the tasks referred in paragraph 1.

Justification

Market reviews can be conducted most effectively with the direct engagement of the national regulatory authorities. The Authority should oversee the review and be responsible for its recommendations.

Amendment 22

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

1. The Authority shall be able to take decisions in relation to the issuance of rights of use for numbers from the European Telephone Numbering Space (ETNS) in accordance with Article 10 of Directive 2002/21/EC (Framework Directive). It shall also be responsible for the administration and development of the European Telephone Numbering Space (ETNS) on behalf of the Member States to which the prefix 3883 has been awarded.

Amendment

deleted

Justification

The European Radiocommunications Office (ERO) already has satisfactory arrangements in place.

Amendment 23

Proposal for a regulation Article 8 – paragraph 2

Text proposed by the Commission

Amendment

2. The Authority shall undertake tasks associated with the administration and management of harmonised numbering ranges in accordance with Article 10(4) of Directive 2002/21/EC (Framework Directive).

deleted

Justification

The European Radiocommunications Office (ERO) already has satisfactory arrangements in place.

Amendment 24

Proposal for a regulation Article 10 – paragraph 1

Text proposed by the Commission

Amendment

1. Upon request, the Authority shall provide advice to the Commission and **conduct studies and reviews, in particular on technical and economic aspects, regarding** the use of radio frequencies for electronic communications in the Community.

1. Upon request, the Authority shall provide advice to the Commission and **to the Radio Spectrum Policy Group (RSPG), as appropriate, in relation to matters within the Authority's scope of responsibility which affect or are affected by** the use of radio frequencies for electronic communications in the Community. **The Authority shall work in close cooperation with the RSPG as appropriate.**

Justification

The Radio Spectrum Policy Group should retain competence over spectrum but, where appropriate, the Authority should co-operate and provide assistance.

Amendment 25

Proposal for a regulation
Article 10 – paragraph 3

Text proposed by the Commission

3. **Upon request**, the Authority **shall** provide advice to the **Commission** regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.

Amendment

3. **The Commission may request** the Authority **to** provide advice to the **RSPG** regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.

Justification

The Radio Spectrum Policy Group should retain competence over spectrum but, where appropriate, the Authority should co-operate and provide assistance.

Amendment 26

Proposal for a regulation
Article 10 – paragraph 4

Text proposed by the Commission

4. The Authority shall **publish an annual report on** prospective frequencies developments in the electronic communications sector **and policies in which it shall identify the** potential needs and challenges.

Amendment

4. The Authority shall, **in conjunction with the RSPG, maintain a record of** prospective frequencies developments in the electronic communications sector. **From time to time as appropriate, or at the request of the Commission, the Authority shall provide a report on** potential needs and challenges.

Justification

The obligation to produce an annual report is too overbearing and burdensome. Reports should be produced as and when the Authority deems fit or when requested as provided for. The Radio Spectrum Policy Group (RSPG) may be better placed to fulfil this competence.

Amendment 27

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. Where an opinion of the Authority pursuant to paragraph 1 relates to the implementation of a common selection procedure for rights of use falling within the scope of Article 6b of Directive 2002/20/EC (Authorisation Directive), that opinion shall in particular: *deleted*

(a) identify the electronic communications services whose provision on a cross-border basis within the Community would benefit from the use of frequencies or numbers the rights to which are granted by means of a single procedure and under a single set of conditions;

(b) identify the numbers or numbering ranges that could be used for such services;

(c) assess the level of actual or potential demand within the Community for such services, and

(d) specify any limitation it considers appropriate on the number of rights of use to be offered under the common selection procedure and the procedures to be followed for the selection of the undertakings to whom those rights are to be granted, taking due account where applicable of the principles set out in Article 7 of Directive 2002/20/EC (Authorisation Directive).

Justification

The competence should remain with the Member States.

Amendment 28

Proposal for a regulation Article 12

Text proposed by the Commission

Amendment

Article 12

deleted

Proposal for the selection of undertakings

The Authority shall, in accordance with Article 6 b of Directive 2002/20/EC (Authorisation Directive):

(a) receive and process applications from undertakings for rights-of-use of radio frequencies and numbers and collect the administrative charges and fees imposed on undertakings pursuant to a common selection procedure;

(b) carry out the common selection procedure and propose the undertaking(s) to which individual rights of use may be granted in accordance with those provisions;

(c) deliver a report to the Commission detailing the applications received, describing its assessment of those applications, proposing the undertaking(s) most eligible to be granted individual rights of use and justifying this selection by reference to the selection criteria set out in the relevant implementing measure.

Justification

Rights of use of radio frequencies and numbers are already effectively managed by the Radio Spectrum Policy Group (RSPG), the Radio Spectrum Committee (RSC) and the Communications Committee (CoCom).

Amendment 29

Proposal for a regulation Article 13 – paragraph 1

Text proposed by the Commission

The Authority shall, at the request of the Commission, deliver an opinion to the Commission on the withdrawal of rights of use issued under the common procedures provided for Article 6b of Directive 2002/20/EC (Authorisation Directive).

Amendment

The Authority shall, at the request of the Commission **or the RSPG**, deliver an opinion to the Commission **and the RSPG** on the withdrawal of rights of use issued under the common procedures provided for Article 6b of Directive 2002/20/EC (Authorisation Directive).

Justification

The Authority should play a co-ordinating role on spectrum management working with both the Commission and the Radio Spectrum Policy Group (RSPG).

Amendment 30

Proposal for a regulation Article 14

Text proposed by the Commission

In addition to the tasks referred to in Article 4(3)(b) and Article 19(4) and (5), the Authority shall contribute to the development of a culture of network and information security, in particular by:

(a) facilitating cooperation between the Commission and the Member States in the development of common methodologies to prevent, address and respond to network and information security issues;

(b) advising the Commission on research in the area of network and information security as well as on the effective use of risk prevention technologies and promoting risk assessment activities, interoperable risk management solutions and studies on prevention management solutions within public and private sector

Amendment

The Authority shall, ***where appropriate, liaise with the European Network and Information Security Agency (ENISA). At the request of the Commission and ENISA, the Authority shall deliver an opinion to the Commission and ENISA on security issues.***

organisations and

(c) contributing to Community efforts to cooperate with third countries and, where appropriate, with international organisations to promote a common global approach to network and information security issues.

Justification

While it is desirable to have input from the Authority, security matters are already dealt with effectively by ENISA and the competence should remain with them.

Amendment 31

Proposal for a regulation Article 15

Text proposed by the Commission

Amendment

The Authority may, on its own initiative, deliver an opinion to the Commission on the matters referred to in *articles* 4(2), 7(1), 8 (3), 10(1), 12, 14, 21 and 22.

The Authority may, on its own initiative, deliver an opinion to ***the European Parliament and*** the Commission, ***in particular*** on the matters referred to in *Articles* 4(2), 7(1), 8(3), 10(1), 14, 21 and 22 ***and also any other matters that it deems relevant.***

Justification

The explanatory memorandum of the Commission proposal defines the Authority to be established as "accountable to the European Parliament". A closer link between the latter and the Authority must therefore be ensured. Other amendments delete Article 12 because rights of use of radio frequencies and numbers are already effectively managed by the Radio Spectrum Policy Group (RSPG), the Radio Spectrum Committee (RSC) and the Communications Committee (CoCom).

Amendment 32

Proposal for a regulation Article 16

Text proposed by the Commission

Amendment

Article 16

deleted

Collection of administrative charges for

services provided by the Authority

1. The Commission shall set the administrative charges imposed on undertakings for services provided by the Authority in accordance with the procedure referred in Article 54(2) and on the basis of an opinion of the Authority.

The Authority shall collect these administrative charges.

2. The administrative charges shall be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

3. The administrative charges referred to in paragraph 1 may cover:

(a) the administrative costs incurred by the Authority in the management of the selection procedure in accordance with Article 12;

(b) the processing of appeals in accordance with Article 34;

(c) the administrative costs incurred by the Authority in the administration of the European Telephone Numbering Space in accordance with Article 8. All charges shall be expressed and be payable in Euro.

4. The amount of the administrative charges shall be fixed at such a level as to ensure that the revenue from these charges is in principle sufficient to cover the full cost of the services delivered.

5. The Authority shall publish a yearly overview of its administrative costs and charges. In the light of any difference between the total sum of the charges and the total administrative costs, it shall deliver an opinion to the Commission indicating appropriate adjustments to be made to charges.

Justification

The competence should be left with the Member States.

Amendment 33

Proposal for a regulation

Article 17

Text proposed by the Commission

Amendment

Article 17

deleted

Collection and redistribution of usage fees for rights of use of radio frequencies and numbers and of administrative charges under a common selection procedure

1. Where usage fees for rights of use of radio frequencies or numbers issued under a common selection procedure are imposed on undertakings in accordance with Article 6b of Directive 2002/20/EC (Authorisation Directive), the Authority shall be responsible for collecting and redistributing such usage fees.

Usage fees shall be redistributed, upon their receipt by the Authority, among the relevant Member States and the Authority in accordance with the time-limit and the ratio to be set by the Commission pursuant to Article 6b of Directive 2002/20/EC (Authorisation Directive).

If the time-limit and the ratio are not set up by the Commission, usage fees shall be redistributed on the basis of the population of each Member State required to issue rights-of-use in the last completed year prior to the launch of the selection procedure.

2. The Authority shall be responsible for collecting and redistributing the administrative charges imposed following a common selection procedure for rights of use for frequencies or numbers on the selected undertakings to cover the administrative costs of national regulatory authorities in monitoring compliance with

the common conditions.

These administrative charges referred to in the first subparagraph shall be redistributed upon their receipt by the Authority to the relevant national regulatory authorities in accordance with the values provided by the national regulatory authorities.

Justification

Spectrum issues are already dealt with effectively by the Radio Spectrum Policy Group (RSPG).

Amendment 34

Proposal for a regulation Article 19 – paragraph 1

Text proposed by the Commission

1. The Authority shall, taking account of the Community's electronic communications policy, promote the exchange of information both between the Member States, and between the Member States, national regulatory authorities and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services, ***including network and information security.***

Amendment

1. The Authority shall, taking account of the Community's electronic communications policy, promote the exchange of information both between the Member States, and between the Member States, national regulatory authorities, ***the European Parliament*** and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services.

Justification

The Authority should not have security powers which are already dealt with effectively by the European Network and Information Security Agency (ENISA).

Amendment 35

Proposal for a regulation

Article 19 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) providing a report on the differences in regulatory practices and proposals for achieving convergence between those practices. Where the Authority considers that binding rules on regulatory practice are required, it shall make appropriate recommendations to the Commission, including for their enforcement. The Authority may be given powers of enforcement.

Justification

Regulatory convergence is imperative, together with a mechanism for its enforcement should that be necessary.

Amendment 36

Proposal for a regulation

Article 19 – paragraph 4

Text proposed by the Commission

Amendment

4. The Authority shall collect appropriate information, in particular in accordance with Article 13a of Directive 2002/21/EC (Framework Directive), to analyse current and emerging risks. It shall in particular, analyse at European level, those risks which could produce an impact on the resilience and the availability of electronic communications networks and on the authenticity, integrity and confidentiality of the information accessed and transmitted through them, and provide the results of the analysis to the Member States and the Commission.

deleted

Justification

Security matters are already dealt with effectively by the European Network and Information

Security Agency (ENISA).

Amendment 37

Proposal for a regulation Article 19 – paragraph 5

Text proposed by the Commission

Amendment

5. The Authority shall contribute to awareness raising and the availability of timely, objective and comprehensive information, including on network and information security issues, for all users by, inter alia, promoting exchanges of current best practices, including on methods of alerting users, and seeking synergy between public and private sector initiatives.

deleted

Justification

Security matters are already dealt with effectively by the European Network and Information Security Agency (ENISA).

Amendment 38

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

Amendment

2. The Authority shall be responsible for the management and publication of a database on pricing of voice and data services for mobile customers when roaming within the Community including where appropriate, the specific costs related to roaming calls made and received in the outermost regions of the Community. It shall monitor developments in such prices and publish an annual report.

deleted

Justification

Intervention in mobile and data roaming was only intended as a market correcting measure

and was not meant to be permanent. Ongoing monitoring is within the power of the Commission, and could be requested but should not be written into regulation.

Amendment 39

Proposal for a regulation Article 23

Text proposed by the Commission

Amendment

The Authority may take on specific additional tasks at the request of the Commission.

The Authority may take on specific additional tasks at the request of the Commission ***or of the European Parliament in all matters concerning electronic communications.***

Justification

The explanatory memorandum of the Commission proposal defines the Authority to be established as "accountable to the European Parliament". A closer link between the latter and the Authority must therefore be ensured.

Amendment 40

Proposal for a regulation Article 24 – point a

Text proposed by the Commission

Amendment

(a) an Administrative Board

deleted

Justification

The Administrative Board may jeopardise the independence of the regulators, is an unnecessary layer of bureaucracy and should be removed.

Amendment 41

Proposal for a regulation Article 24 – point d

Text proposed by the Commission

Amendment

(d) a Chief Network Security Officer

deleted

Justification

The Authority should not have power over security and this makes the Chief Network Security Officer redundant.

Amendment 42

Proposal for a regulation
Article 24 – point f

Text proposed by the Commission

Amendment

(f) a Board of Appeal.

deleted

Justification

The Authority should not have power over right of use numbers and this makes the Board of Appeal redundant.

Amendment 43

Proposal for a regulation
Article 25

Text proposed by the Commission

Amendment

Article 25

deleted

Administrative Board

1. The Administrative Board shall be composed of twelve members. Six shall be appointed by the Commission and six by the Council. The members of the Administrative Board shall be appointed in such a way as to secure the highest standards of competence and independence, and a broad range of relevant expertise. The term of office shall be five years, renewable once.

2. The Administrative Board shall appoint its Chairperson and its Vice-Chairperson from among its members. The Vice-Chairperson shall automatically replace the Chairperson if the latter is not in a position to perform his/her duties. The terms of office of the Chairperson and of the Vice-Chairperson shall be two and a

half years and shall be renewable. In any event, however, the term of office of the Chairperson and that of the Vice-Chairperson shall expire the moment they cease to be members of the Administrative Board.

3. Meetings of the Administrative Board shall be convened by its Chairperson. The Director of the Authority shall participate in the deliberations unless the Administrative Board decides otherwise. The Administrative Board shall meet at least twice a year in ordinary session. It shall also meet at the initiative of its Chairperson, at the request of the Commission or at the request of at least a third of its members. The Administrative Board may invite any person with potentially relevant opinions to attend its meetings in the capacity of an observer. The members of the Administrative Board may, subject to the rules of procedure, be assisted by advisers or by experts. The Administrative Board's secretarial services shall be provided by the Authority.

4. Decisions of the Administrative Board shall be adopted on the basis of a two-thirds majority of the members present.

5. Each member shall have one vote. The rules of procedure shall set out in greater detail the arrangements governing voting, especially the conditions whereby one member can act on behalf of another and also, where appropriate, the rules governing quorums.

Justification

The Administrative Board may jeopardise the independence of the regulators, is an unnecessary layer of bureaucracy and should be removed.

Amendment 44

Proposal for a regulation Article 26

Text proposed by the Commission

1. The Administrative Board shall, after having consulted the Board of Regulators, appoint the Director in accordance with Article 29(2).

2. The Administrative Board shall, after consulting the Director, appoint a Chief Network Security Officer in accordance with Article 31(2).

3. The Administrative Board shall appoint the members of the Board of Regulators in accordance with Article 27(1).

4. The Administrative Board shall appoint the members of the Board of Appeal in accordance with Article 33(1).

5. The Administrative Board shall adopt, before 30 September each year, after consulting the Commission and after the approval of the Board of Regulators in accordance with Article 28(3), the work programme of the Authority for the coming year and shall transmit it to the European Parliament, the Council and the Commission. The work programme shall be adopted without prejudice to the annual budgetary procedure.

6. The Administrative Board shall exercise its budgetary powers in accordance with Articles 36 to 38.

7. The Administrative Board shall decide, after having obtained the agreement of the Commission, whether to accept any legacies, donations or grants from other Community sources.

8. The Administrative Board shall exercise disciplinary authority over the Director and the Chief Network Security Officer.

Amendment

By agreement between the European Parliament and the Council, and after consultation with the Commission, the Director shall be appointed in accordance with Article 29(2).

9. The Administrative Board shall, where necessary, draw up the Authority's staff policy pursuant to Article 49(2).

10. The Administrative Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 47.

11. The Administrative Board shall adopt the annual report on the activities of the Authority and shall transmit it to the European Parliament, the Council, the Commission, the European and Social Committee and the Court of Auditors by 15 June at the latest. As provided for in Article 28(4), this report shall *contain an independent section approved by the Board of Regulators* concerning the regulatory activities of the Authority during the year considered.

12. The Administrative Board shall adopt its rules of procedure.

13. The Administrative Board shall deliver an opinion to the Commission on the administrative charges which the Authority may levy from undertakings in carrying out its tasks as referred to in Article 16.

The **Board of Regulators** shall adopt the annual report on the activities of the Authority and shall transmit it to the European Parliament, the Council, the Commission, the European *Economic* and Social Committee and the Court of Auditors by 15 June at the latest. As provided for in Article 28(4), this report shall **include a** section concerning the regulatory activities of the Authority during the year considered. **The European Parliament may request a representative of the Board of Regulators to address it on relevant issues relating to its regulatory activities.**

Justification

The Administrative Board may jeopardise the independence of the regulators, is an unnecessary layer of bureaucracy and should be removed. With the Board of Regulators as the governing body of the Authority, it should be held accountable for the Authority's performance.

Amendment 45

Proposal for a regulation Article 27 – paragraph 4

Text proposed by the Commission

4. The Board of Regulators shall act by a

Amendment

4. The Board of Regulators shall act by a

simple majority of its members. Each member or alternate other than the Director and the representative of the Commission shall have one vote.

qualified majority of *two-thirds of* its members. Each member or alternate other than the representative of the Commission shall have one vote.

Justification

There is no reason to rule out the right to vote of the Director. A qualified majority is required to ensure that measured decisions are taken.

Amendment 46

**Proposal for a regulation
Article 27 – paragraph 5**

Text proposed by the Commission

5. The Board of Regulators shall adopt its rules of procedure.

Amendment

5. The Board of Regulators shall adopt its rules of procedure ***by a qualified majority of two-thirds of its members.***

Justification

A qualified majority is required to ensure that measured decisions are taken.

Amendment 47

**Proposal for a regulation
Article 27 – paragraph 6**

Text proposed by the Commission

6. When carrying out the tasks conferred upon it by this Regulation, the Board of Regulators shall act independently and shall not seek or take instructions from any government of a Member State or from any public or private interest.

Amendment

6. When carrying out the tasks conferred upon it by this Regulation, the Board of Regulators shall act independently and shall not seek or take instructions from any government of a Member State or from any public or private interest, ***and shall remain independent of the Commission.***

Justification

Independence from the Commission must be ensured.

Amendment 48

Proposal for a regulation

Article 29 – paragraph 1

Text proposed by the Commission

1. The Authority shall be managed by its Director, who shall act independently in the performance of his/her functions. Without prejudice to the respective powers of the Commission, **the Administrative Board** and the Board of Regulators, the Director shall not seek or accept any instruction from any government or from any body.

Amendment

1. The Authority shall be managed by its Director, who shall act independently in the performance of his/her functions. Without prejudice to the respective powers of **the European Parliament, the Council,** the Commission and the Board of Regulators, the Director shall not seek or accept any instruction from any government or from any body.

Justification

The Administrative Board should be removed while the powers of the Council and Parliament should be recognised.

Amendment 49

Proposal for a regulation

Article 29 – paragraph 2

Text proposed by the Commission

2. **After consulting** the Board of Regulators, the Director shall be appointed **by the Administrative Board**, on the basis of merit, skills and experience relevant for electronic communications networks and services, **from a list of at least two candidates proposed by the Commission.** **Before appointment, the candidate selected by the Administrative Board** may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.

Amendment

2. **By agreement between the European Parliament and the Council, and after consultation with the Commission** and the Board of Regulators, the Director shall be appointed on the basis of merit, skills and experience relevant for electronic communications networks and services. **Candidates** may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.

Justification

As the Commission has ultimate responsibility for telecoms policy and the advisory functions of the Authority need to be independent, it is necessary to ensure the Commission does not have power of appointment.

Amendment 50

Proposal for a regulation

Article 29 – paragraph 4 – subparagraphs 1 and 2

Text proposed by the Commission

4. After consulting the Board of Regulators, the **Administrative Board**, acting on a proposal from the Commission, may extend the term of office of the Director once for not more than three years, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of the Authority.

The Administrative Board shall inform the European Parliament about its intention to extend the Director's term of office. Within a month before the extension of his/her term of office, the Director may be invited to make a statement before the competent committee of the Parliament and answer questions put *before* its members.

Amendment

4. After consulting the Board of Regulators, the **European Parliament and the Council**, acting on a proposal from the Commission, may extend the term of office of the Director once for not more than three years, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of the Authority.

Within a month before the extension of his/her term of office, the Director may be invited to make a statement before the competent committee of the Parliament and answer questions put *by* its members.

Justification

As the Commission has ultimate responsibility for telecoms policy and the advisory functions of the Authority need to be independent, it is necessary to ensure the Commission does not have power of appointment.

Amendment 51

Proposal for a regulation

Article 29 – paragraph 5

Text proposed by the Commission

5. The Director may be removed from office only upon a decision **by the Administrative Board**, after consulting the Board of Regulators. **The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members.**

Amendment

5. The Director may be removed from office only upon a decision **of the European Parliament and of the Council**, after consulting **the Commission and** the Board of Regulators.

Justification

The Administrative Board should be removed while the powers of the Council and Parliament should be recognised.

Amendment 52

Proposal for a regulation

Article 30 – paragraphs 2 to 5

Text proposed by the Commission

Amendment

2. The Director shall prepare the work of the Administrative Board. He/she shall participate, without having the right to vote, in the work of the Administrative Board.

3. The Director shall adopt the opinions, recommendations and decisions referred to in Articles 4 to 23, subject to the assent of the Board of Regulators.

4. Each year the Director shall prepare a draft work programme of the Authority for the following year, and submit it to the Board of Regulators and to the Commission before 30 June of that year.

He/she shall present the work programme before 1 September for adoption by the Administrative Board.

5. The Director shall be responsible for implementing the annual work programme of the Authority, under the guidance of the Board of Regulators ***and of the Chief Network Security Officer as appropriate, and under the administrative control of the Administrative Board.***

3. The Director shall adopt the opinions, recommendations and decisions referred to in Articles 4 to 23, subject to the assent of the Board of Regulators.

4.. Each year the Director shall prepare a draft work programme of the Authority for the following year, and submit it to the Board of Regulators and to the Commission before 30 June of that year.

5. The Director shall be responsible for implementing the annual work programme of the Authority, under the guidance of the Board of Regulators.

Justification

Involvement of the Administrative Board and the Chief Network Security Officer should be removed.

Amendment 53

Proposal for a regulation

Article 31

Text proposed by the Commission

Amendment

Article 31

deleted

The Chief Network Security Officer

- 1. The Chief Network Security Officer shall be responsible for coordinating the Authority's tasks relating to network and information security. The Chief Network Security Officer shall work under the responsibility of, and report to, the Director. He/she will prepare the draft annual work programme for these activities.*
- 2. The Chief Network Security Officer shall be appointed for a period of five years by the Administrative Board, on the basis of merit, skills and experience relevant for dealing with network and information security issues, from a list of at least two candidates proposed by the Commission.*
- 3. The Chief Network Security Officer may be removed from office only upon a decision by the Administrative Board, after consulting the Director. The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members.*
- 4. After consulting the Director, the Administrative Board, acting on a proposal from the Commission, may extend the term of office of the Chief Network Security Officer once for not more than three years only in those cases where it can be justified by the duties and requirements of the Authority.*

Justification

Security matters are already dealt with effectively by the European Network and Information Security Agency (ENISA).

Amendment 54

Proposal for a regulation Article 32

Text proposed by the Commission

1. The **Chief Network Security Officer** shall establish a Permanent Stakeholders' Group composed of experts representing the relevant stakeholders, in particular from the information and communications technologies industry, consumer groups **and academic experts in network and information security**. He shall, **in consultation with the Director**, determine the procedures regarding in particular the number, the composition, the appointment of the members, and the operation of the Group.
2. The Group shall be chaired by the **Chief Network Security Officer**. The term of office of its members shall be two-and-a-half years. Members of the Group may not be members of **the Administrative Board or** the Board of Regulators.
3. Representatives of the Commission shall be entitled to be present in the meetings and participate in the work of the Group.
4. The Group may advise **the Chief Network Security Officer** in the performance of his/her duties under this Regulation, in drawing up a proposal for the relevant parts of the Authority's work programme, as well as in ensuring communication with stakeholders on all issues related to the work programme.

Amendment

1. The **Director** shall establish a Permanent Stakeholders' Group composed of experts representing the relevant stakeholders, in particular from the information and communications technologies industry **and** consumer groups. He shall determine the procedures regarding in particular the number, the composition, the appointment of the members, and the operation of the Group. **The Group shall report to the European Parliament, the Commission and the Board of Regulators.**
2. The Group shall be chaired by the **Director**. The term of office of its members shall be two-and-a-half years. Members of the Group may not be members of the Board of Regulators.
3. Representatives of the Commission shall be entitled to be present in the meetings and participate in the work of the Group.
4. The Group may advise the **Director** in the performance of his/her duties under this Regulation, in drawing up a proposal for the relevant parts of the Authority's work programme, as well as in ensuring communication with stakeholders on all issues related to the work programme.

Justification

Security matters are already dealt with effectively by the European Network and Information Security Agency (ENISA) and the position of Chief Network Security Officer should not exist. A Stakeholders Group of general applicability is desirable. However, it may need to take measures to ensure it does not jeopardise the independence of the NRAs.

Amendment 55

Proposal for a regulation Article 33

Text proposed by the Commission

Amendment

Article 33

deleted

Board of Appeal

1. The Board of Appeal shall be composed of six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the electronic communications sector. The Board of Appeal designates its Chairperson.

2. The members of the Board of Appeal shall be appointed by the Administrative Board, on a proposal from the Commission, following a call for expression of interest, after consultation of the Board of Regulators.

3. The term of office of the members of the Board of Appeal shall be five years. This term shall be renewable. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They may not perform any other duties in the Authority, in its Administrative Board or in its Board of Regulators. A member of the Board of Appeal may not be removed during his/her term of office, unless he/she has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to this effect.

4. Members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.

If, for one of the reasons mentioned in the first subparagraph or for any other reason, a member of a Board of Appeal considers that a fellow member should not take part in any appeal proceedings, the member shall inform the Board of Appeal accordingly. A member of the Board of Appeal may be objected to by any party to the appeal proceedings on any of the grounds mentioned in the first subparagraph, or if suspected of partiality. An objection cannot be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step.

5. The Board of Appeal shall decide as to the action to be taken in the cases specified in paragraph 4 without the participation of the member concerned. For the purposes of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate, unless the alternate finds himself in a similar situation. Should this be the case, the Chairperson shall designate a replacement from among the available alternates.

Justification

The Authority should not have power over the right of use numbers and this makes the Board of Appeal redundant.

Amendment 56

Proposal for a regulation Article 34

Text proposed by the Commission

Amendment

Article 34

deleted

Appeals

1. The Board of Appeal shall be responsible for deciding on appeals against decisions or measures taken by

the Authority in areas covered by Article 8(1).

2. The decisions of the Board of Appeal shall be adopted on the basis of a qualified majority of at least four out of its six members. The Board of Appeal shall be convened when necessary.

3. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.

4. The appeal, together with the statement of grounds thereof, shall be filed in writing at the Authority within two months of the notification of the decision or measure to the undertaking concerned, or, in the absence thereof, of the day on which the Authority has made public its measure or decision. The Board of Appeal shall decide upon the appeal within two months after the appeal has been lodged.

5. If the appeal is admissible, the Board of Appeal shall examine whether it is well founded. It shall invite the parties as often as necessary to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make an oral presentation.

6. The Board of Appeal may, within the terms of this Article, exercise any power which lies within the competence of the Authority or it may remit the case to the competent body of the Authority. The latter shall be bound by the decision of the Board of Appeal.

7. The Board of Appeal shall adopt its rules of procedure.

Justification

The Authority should not have power over right of use numbers and this makes the Board of

Appeal redundant.

Amendment 57

Proposal for a regulation Article 35

Text proposed by the Commission

Amendment

Article 35

deleted

Actions before the Court of First Instance and the Court of Justice

1. An action may be brought before the Court of First Instance or the Court of Justice in accordance with Article 230 of the Treaty, contesting a decision taken by the Board of Appeal or, in cases where no right of appeal lies before the Board, by the Authority.

2. Should the Authority fail to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with Article 232 of the Treaty.

3. The Authority shall be required to take the necessary measures to comply with the judgment of the Court of First Instance or the Court of Justice.

Justification

If the relevant amendments are carried then rights of use of numbers will not be an Authority competence and there will be no need for a Board of Appeal. If they are not carried, then these procedures should remain.

Amendment 58

Proposal for a regulation Article 36 – paragraph 1

Text proposed by the Commission

Amendment

1. The revenues of the Authority shall consist of:

(a) charges for services provided by the

*1. The revenues of the Authority shall **be as follows:***

*(a) **one-third of its annual funding shall***

Authority;

be paid directly in the form of a Community subsidy, under the appropriate heading of the EC budget as stipulated by the budgetary authority, in accordance with point 47 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management¹;

(b) a proportion of usage fees paid by applicants in accordance with the provisions of Article 17;

(b) two-thirds of its annual income shall be a direct contribution from the national regulatory authorities (NRAs). Member States shall be required to ensure that the NRAs are equipped with the adequate financial and human resources to complete the tasks assigned to them by BERT, and enabling the proper funding of the latter. Member States shall specify the budget line which NRAs must from this point on use to provide resources for BERT from their annual budgets. The budgets shall be made public.

(c) a subsidy from the Community, entered in the general budget of the European Communities (Commission Section);

(d) any legacies, donations or grants as mentioned in Article 26(7).

(e) any voluntary contribution from the Member States or from their regulatory authorities.

¹ OJ C 139, 14.6.2006, p. 1.

Justification

The Authority should not have the power to collect fees. In order to ensure effective independence from the Commission, the Authority should be mostly funded by the Member States.

Amendment 59

Proposal for a regulation Article 36 – paragraph 2

Text proposed by the Commission

2. The expenditure of the Authority shall cover staff, administrative, infrastructure and operational expenses.

Amendment

2. The expenditure of the Authority shall cover staff, administrative, infrastructure and operational expenses ***including those connected with the establishment of an independent secretariat.***

Justification

The Authority should have a secretariat that covers the full administrative needs of its operation.

Amendment 60

Proposal for a regulation Article 37 – paragraph 1

Text proposed by the Commission

1. By 15 February of each year at the latest, the Director shall draw up a preliminary draft budget covering the operational expenditure and the work programme anticipated for the following financial year, and shall forward it to the ***Administrative Board*** together with a list of provisional posts. Each year the ***Administrative Board*** shall, on the basis of the draft prepared by the Director, make an estimate of revenue and expenditure of the Authority for the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the ***Administrative Board*** to the Commission by 31 March at the latest. ***Prior to the adoption of the estimate, the draft prepared by the Director shall be transmitted to the Regulatory Board, which may deliver an opinion on the draft.***

Amendment

1. By 15 February of each year at the latest, the Director shall draw up a preliminary draft budget covering the operational expenditure and the work programme anticipated for the following financial year, and shall forward it to the ***Board of Regulators*** together with a list of provisional posts. Each year the ***Board of Regulators*** shall, on the basis of the draft prepared by the Director, make an estimate of revenue and expenditure of the Authority for the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the ***Board of Regulators*** to the Commission by 31 March at the latest.

Justification

The Board of Regulators should be given greater power over the budget to ensure effective independence from the Commission.

Amendment 61

Proposal for a regulation
Article 37 – paragraph 5

Text proposed by the Commission

5. The budget of the Authority shall be drawn up by the **Administrative Board**. It shall become final after the final adoption of the general budget of the European Communities. Where necessary, it shall be adjusted accordingly.

Amendment

5. The budget of the Authority shall be drawn up by the **Board of Regulators**. It shall become final after the final adoption of the general budget of the European Communities. Where necessary, it shall be adjusted accordingly.

Justification

The Board of Regulators should be given greater power over the budget to ensure effective independence from the Commission.

Amendment 62

Proposal for a regulation
Article 37 – paragraph 6

Text proposed by the Commission

6. The **Administrative Board** shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budget authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify the Authority of its intention to issue such an opinion. Failing a reply, the Authority may proceed with the planned operation.

Amendment

6. The **Board of Regulators** shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budget authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify the Authority of its intention to issue such an opinion. Failing a reply, the Authority may proceed with the planned operation.

Justification

The Board of Regulators should be given greater power over the budget to ensure effective independence from the Commission.

Amendment 63

**Proposal for a regulation
Article 38 – paragraph 4**

Text proposed by the Commission

4. After receiving the observations of the Court of Auditor's on the provisional accounts of the Authority, in accordance with Article 129 of Council Regulation (EC, Euratom) No 1605/2002, the Director, acting on his/her own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the ***Administrative Board***.

Amendment

4. After receiving the observations of the Court of Auditor's on the provisional accounts of the Authority, in accordance with Article 129 of Council Regulation (EC, Euratom) No 1605/2002, the Director, acting on his/her own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the ***Board of Regulators***.

Justification

The Board of Regulators should be given greater power over the budget and reporting thereon, thus allowing a greater degree of independence from the Commission.

Amendment 64

**Proposal for a regulation
Article 38 – paragraph 5**

Text proposed by the Commission

5. The ***Administrative Board*** shall deliver an opinion on final accounts of the Authority.

Amendment

5. The ***Board of Regulators*** shall deliver an opinion on final accounts of the Authority.

Justification

The Board of Regulators should be given greater power over the budget and reporting thereon, thus allowing a greater degree of independence from the Commission.

Amendment 65

Proposal for a regulation Article 38 – paragraph 6

Text proposed by the Commission

6. The Director shall transmit these final accounts, accompanied by the opinion of the **Administrative Board**, no later than 1 July following the completion of the financial year, to the European Parliament, the Council, the Commission and the Court of Auditors.

Amendment

6. The Director shall transmit these final accounts, accompanied by the opinion of the **Board of Regulators**, no later than 1 July following the completion of the financial year, to the European Parliament, the Council, the Commission and the Court of Auditors.

Justification

The Board of Regulators should be given greater power over the budget and reporting thereon, thus allowing a greater degree of independence from the Commission.

Amendment 66

Proposal for a regulation Article 38 – paragraph 8

Text proposed by the Commission

8. The Director shall send the Court of Auditors a reply to the latter's observations by 15 October at the latest. He/she shall also send this reply to the **Administrative Board**, the European Parliament and the Commission.

Amendment

8. The Director shall send the Court of Auditors a reply to the latter's observations by 15 October at the latest. He/she shall also send this reply to the **Board of Regulators**, the European Parliament and the Commission.

Justification

The Board of Regulators should be given greater power over the budget and reporting thereon, thus allowing a greater degree of independence from the Commission.

Amendment 67

Proposal for a regulation Article 39

Text proposed by the Commission

Financial rules applicable to the Authority shall be drawn up by the **Administrative**

Amendment

Financial rules applicable to the Authority shall be drawn up by the **Director** after

Board after consultation with the Commission. Those rules may deviate from Commission Regulation (EC, Euratom) No 2343/2002 if the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

consultation with **the Board of Regulators and** the Commission. Those rules may deviate from Commission Regulation (EC, Euratom) No 2343/2002 if the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

Justification

The Director and Board of Regulators should be given greater power over the Authority's financial rules, thus allowing a greater degree of independence from the Commission.

Amendment 68

Proposal for a regulation

Article 41 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Where necessary, the confidentiality of information provided pursuant to paragraphs 1 and 2 shall be guaranteed. Article 46 shall apply.

Justification

Confidentiality of information must be ensured where necessary.

Amendment 69

Proposal for a regulation

Article 44

Text proposed by the Commission

Amendment

The Authority's staff, including the Director, **the Chief Network Security Officer** and officials seconded by Member States on a temporary basis, shall make a declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing.

The Authority's staff, including the Director and officials seconded by Member States on a temporary basis, shall make a declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing.

Justification

Security matters are already dealt with effectively by ENISA and the position of Chief Network Security Officer should not exist.

Amendment 70

Proposal for a regulation
Article 46 – paragraph 2

Text proposed by the Commission

2. Members of the *Authority's Boards*, the Director, external experts, and members of the staff of the Authority including officials seconded by Member States on a temporary basis are subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

Amendment

2. Members of the *Board of Regulators*, the Director, external experts, and members of the staff of the Authority including officials seconded by Member States on a temporary basis are subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.

Justification

Involvement of the Administrative Board should be removed.

Amendment 71

Proposal for a regulation
Article 47 – paragraph 2

Text proposed by the Commission

2. The *Administrative Board* shall adopt practical measures for applying Regulation (EC) No 1049/2001 within six months from the date of the effective start of operations of the Authority.

Amendment

2. The *Board of Regulators* shall adopt practical measures for applying Regulation (EC) No 1049/2001 within six months from the date of the effective start of operations of the Authority.

Justification

Involvement of the Administrative Board should be removed.

Amendment 72

Proposal for a regulation Article 49 – paragraph 2

Text proposed by the Commission

2. The **Administrative Board**, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations of officials of the European Communities.

Amendment

2. The **Board of Regulators**, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations of officials of the European Communities.

Justification

Involvement of the Administrative Board should be removed.

Amendment 73

Proposal for a regulation Article 49 – paragraph 4

Text proposed by the Commission

4. The **Administrative Board** may adopt provisions to allow national experts from Member States to be employed on secondment at the Authority.

Amendment

4. The **Board of Regulators** may adopt provisions to allow national experts from Member States to be employed on secondment at the Authority.

Justification

Involvement of the Administrative Board should be removed.

Amendment 74

Proposal for a regulation Article 55

Text proposed by the Commission

Within **five years** from the effective start of operations and every **five years** thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and of the procedures laid down in this Regulation. The evaluation shall cover the

Amendment

Within **three years** from the effective start of operations and every **three years** thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and of the procedures laid down in this Regulation. The evaluation shall cover the

results achieved by the Authority and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation shall take into account the views of stakeholders, at both Community and national level. The report and any accompanying proposals shall be forwarded to the European Parliament and to the Council.

results achieved by the Authority and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation shall take into account the views of stakeholders, at both Community and national level. The report and any accompanying proposals shall be forwarded to the European Parliament and to the Council.

Every six years the European Parliament, the Commission and the Council, taking due account of the general reports, shall evaluate whether the Authority has achieved its objectives for regulatory convergence and whether the market can operate without its regulatory oversight. If there is agreement, the Authority will either cease to exist or be given a further six-year mandate.

Justification

This is a fast moving area of technology and it is desirable to scrutinise more than once in every mandate. It is desirable to link the renewing of the Authority's mandate to the general reports which evaluate its performance.

Amendment 75

Proposal for a regulation

Article 56

Text proposed by the Commission

Amendment

Article 56

deleted

Transitional provisions

1. The Authority shall, on 14 March 2011, assume responsibility for all activities undertaken by the European Network and Information Security Agency prior to that date and which fall within the scope of this Regulation.

2. The ownership interest in any moveable property held by the European Network and Information Security Agency at the date referred to in paragraph 1 above

shall be transferred to the Authority with effect from that date.

Justification

Security matters are already dealt with effectively by ENISA and should not fall under the remit of the Authority.

PROCEDURE

Title	European Electronic Communications Market Authority		
References	COM(2007)0699 – C6-0428/2007 – 2007/0249(COD)		
Committee responsible	ITRE		
Opinion by Date announced in plenary	JURI 10.12.2007		
Drafts(wo)man Date appointed	Sharon Bowles 21.1.2008		
Discussed in committee	26.2.2008	8.4.2008	28.5.2008
Date adopted	29.5.2008		
Result of final vote	+: 20	-: 0	0: 0
Members present for the final vote	Carlo Casini, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Neena Gill, Piiia-Noora Kauppi, Katalin Lévai, Antonio Masip Hidalgo, Manuel Medina Ortega, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina, Tadeusz Zwiefka		
Substitute(s) present for the final vote	Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Jacques Toubon		