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Committee on Culture and Education

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OPINION

of the Committee on Culture and Education

for the Committee on Industry, Research and Energy

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

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SHORT JUSTIFICATION

With the "AMVS Directive" the EU delivered a strong message intended to ensure the optimal conditions of competitiveness and legal certainty for Europe's ICT and its media industries and services, as well as respect for cultural and linguistic diversity. The current review of the "telecom package" needs to be read and amended with the same spirit and political intentions. The best possible balance needs to be found among the needs of all current and future users of electronic networks, their legitimate business interests and general interest public policy concerns, as well as the rights and interests of consumers.

Radio frequencies are a scarce public resource that has an important public and market value, but also that they are essential to the fulfilment of some general interest public policy objectives. Thus, spectrum needs to be managed not only efficiently and effectively, but also with due attention to the public interest from an economic, social or cultural perspective. In this context some restrictions to the principles of service neutrality, and its impact in the transfer of individual rights to use radio frequencies should be imposed. The role of Member States in this public policy decisions needs to be respected.

The importance to protect electronic communications services providers and in particular AVMS providers against harmful interference cannot be underestimated. This requires some small changes in the text, to properly put in context European spectrum regulation with other internationally binding decisions and instruments which cannot be ignored.

Finally, a proposal is made to underline the indispensable role of NRA in the protection and the promotion of lawful content over electronic communications networks and services.

AMENDMENTS

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

Amendment 1

Proposal for a directive – amending act Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Under Directive 2007/65/EC, the so-called "Audiovisual media services Directive", a revision was carried out with the intention of ensuring optimal conditions of competitiveness and legal certainty for information technologies and media industries and services in the EU, 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 whole European audiovisual sector.

Amendment 2

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

Text proposed by the Commission

Amendment

(3a) The views of national regulatory authorities, industry stakeholders and audiovisual media services providers should be taken into account by the Commission when making decisions under this Directive through the use of effective consultation to ensure transparency and proportionality. The Commission should issue detailed consultation documents, explaining the different courses of action being considered, and interested stakeholders should be given a reasonable time in which to respond. Having considered the responses, the Commission should give reasons for the resulting decision in a statement following the consultation, including a description of how the views of those responding have been taken into account.

Justification

It is essential that the views of NRAs, industry stakeholders and audiovisual media services providers are taken into account in decisions at Community level, which decisions must be transparent and proportionate to the result to be achieved.

Amendment 3

Proposal for a directive – amending act Recital 16

Text proposed by the Commission

(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 and ***that*** obstacles to its efficient use ***are*** gradually withdrawn.

Amendment

(16) Radio frequencies ***are the property of Member States. They*** should be considered a scarce public resource that has an important public and ***economic*** value, ***and which is essential for the fulfilment of certain general interest public policy objectives. Spectrum should therefore be managed*** efficiently and effectively, ***with due attention being paid to the public interest*** from an economic, social, ***cultural*** and environmental perspective, and obstacles to its efficient use ***should be*** gradually withdrawn.

Amendment 4

Proposal for a directive – amending act Recital 17

Text proposed by the Commission

(17) Radio frequencies should be managed so as to ensure that harmful interference is avoided. The basic concept of harmful interference should therefore be properly defined to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

Amendment

(17) Radio frequencies should be managed so as to ensure that harmful interference is avoided. The basic concept of harmful interference should therefore be properly defined ***by taking account of existing internationally agreed frequency plans*** to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

Justification

Interference problems are one of the main reasons for the existence of national and international frequency plans. As frequencies cross borders beyond the EU, internationally binding agreements to avoid interference must be respected.

Amendment 5

Proposal for a directive – amending act
Recital 20

Text proposed by the Commission

(20) Flexibility in spectrum management and access to spectrum should be increased through technology- and service-neutral authorisations to let spectrum users choose the best technologies and services to apply in **a** frequency **band** (hereinafter referred to as the ‘principles of technology and service neutrality’). The administrative determination of technologies and services **should become the exception and should be clearly justified and subject to regular periodic review.**

Amendment

(20) Flexibility in spectrum management and access to spectrum should be increased through technology- and service-neutral authorisations to let spectrum users 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 International Telecommunication Union (ITU) Radio Regulations*** (hereinafter referred to as the ‘principles of technology and service neutrality’). The administrative determination of technologies and services should ***apply when general interest objectives are at stake.***

Justification

Necessary to ensure legal consistency with the definition of service neutrality proposed under Article 9 paragraph 4 subparagraph 1 of the Framework Directive.

Amendment 6

Proposal for a directive – amending act
Recital 21

Text proposed by the Commission

(21) ***Exceptions to*** the principle of technology neutrality should be ***limited*** and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, or to ensure the protection of public health by limiting public exposure to electromagnetic fields, or to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, or ***where strictly necessary*** to comply with ***an exception to the principle of service neutrality.***

Amendment

(21) ***Restrictions on*** the principle of technology neutrality should be ***appropriate*** and justified by the need to avoid harmful interference, for example by imposing emission masks and power levels, or to ensure the protection of public health by limiting public exposure to electromagnetic fields, or to ensure proper sharing of spectrum, in particular where its use is only subject to general authorisations, or to comply with ***a general interest objective in conformity with Community law.***

Justification

Ensure coherency with the text of the directive which – for technology neutrality - refers to “restrictions” and not “exceptions”. Restrictions should not be limited to exception to the principle of service neutrality but needs to comply with general interest objectives.

Amendment 7

Proposal for a directive – amending act Recital 22

Text proposed by the Commission

(22) Spectrum users should ***also*** be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. ***It should be possible for exceptions to the principle of service neutrality which require*** the provision of a specific service to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of inefficient use of spectrum to be permitted where necessary and proportionate. Those objectives ***should*** include the promotion of cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law. ***Except where necessary to protect safety of life, exceptions should not result in exclusive use for certain services, but rather grant priority so that other services or technologies may coexist in the same band insofar as possible. In order that the holder of the authorisation may choose freely the most efficient means to carry the content of services provided over radio frequencies, the content should not be regulated in the authorisation to use radio frequencies.***

Amendment

(22) Spectrum users should be able to freely choose the services they wish to offer over the spectrum subject to transitional measures to cope with previously acquired rights. ***On the other hand, spectrum use may also be explicitly assigned to*** the provision of a specific service ***or through a specific technology*** to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion, or the avoidance of inefficient use of spectrum. Those objectives include the promotion of ***cultural and media policy objectives such as*** cultural and linguistic diversity and media pluralism as defined in national legislation in conformity with Community law.

Amendment 8

Proposal for a directive – amending act
Recital 23

Text proposed by the Commission

(23) It lies within the competence of the Member States to define the scope and nature of any ***exception regarding*** the promotion of cultural and linguistic diversity and media pluralism in accordance with their *own* national law.

Amendment

(23) It lies within the competence of the Member States to define the scope and nature of any ***assignment of radio frequencies to ensure*** the promotion of ***cultural and media policy objectives such as*** cultural and linguistic diversity and media pluralism in accordance with their national law, ***internationally agreed radio frequency plans and general principles of Community law.***

Justification

Necessary to ensure legal consistency in wording with amendment proposed under Article 9 (4) of the Framework Directive. This amendment complements the rapporteur's amendment 6.

Amendment 9

Proposal for a directive – amending act
Recital 24

Text proposed by the Commission

(24) ***As the allocation of spectrum to specific technologies or services is an exception to the principles of technology and service neutrality and reduces the freedom to choose the service provided or technology used, any proposal for such allocation should be transparent and subject to public consultation.***

Amendment

deleted

Justification

Legal consistency with proposal for amendment to Article 6.1.

Amendment 10

**Proposal for a directive – amending act
Recital 47 a (new)**

Text proposed by the Commission

Amendment

(47a) Where it is necessary to adopt harmonisation measures for the implementation of the Community's electronic communications and spectrum policy which go beyond technical implementing measures, the Commission should submit a legislative proposal to the European Parliament and the Council.

Amendment 11

**Proposal for a directive – amending act
Recital 49**

Text proposed by the Commission

Amendment

(49) The introduction of the requirements of service and technology neutrality in assignment and allocation decisions, together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications and audiovisual media services to the public, thereby also facilitating the achievement of general interest objectives. ***Therefore***, certain general interest obligations imposed on broadcasters for the delivery of audiovisual media services ***could be increasingly met without the need to grant individual rights to use spectrum. The*** use of specific criteria ***to assign spectrum to broadcasters would be justified only where this is*** essential to meet a ***particular*** general interest objective set out in national law. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.

(49) The introduction of the requirements of service and technology neutrality in assignment and allocation decisions, together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications and audiovisual media services to the public, thereby also facilitating the achievement of general interest objectives. ***However***, certain general interest obligations imposed on broadcasters for the delivery of audiovisual media services ***may require the*** use of specific criteria ***in the assignation of spectrum, when it appears to be*** essential to meet a ***specific*** general interest objective set out in national law. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.

Justification

Recital 49 is not consistent with Recital 23 or with Article 5(2) of the Authorisation Directive.

It is important to recognize the need to take into account cultural and media policy objectives, as set out by national law. The original formulation is also more restrictive than Article 5(2) of the Authorisation Directive as regards the granting of individual rights of use for broadcasting services.

Amendment 12

Proposal for a directive – amending act Recital 50

Text proposed by the Commission

Amendment

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

(50) Any total or partial exemption from the obligation to pay the fees or charges set for the use of the spectrum *must be objective and transparent and based on the existence of other general interest obligations set out in national law.*

Justification

It must remain possible for Member States to maintain or introduce systems where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives. Such systems are commonplace with regard to terrestrial broadcasting frequencies where they serve media pluralism objectives.

Amendment 13

Proposal for a directive – amending act Recital 59

Text proposed by the Commission

Amendment

(59) Measures necessary for the implementation of the Framework, Access and Authorisation Directives should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

(59) Measures necessary for the implementation of the Framework, Access and Authorisation Directives should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission. *Such implementing measures should not interfere with cultural and media policy objectives as defined by the Member States in accordance with those Directives.*

Justification

The proposed safeguard is essential with regard to extended implementing powers conferred

to the European Commission, in particular those in Articles 9c and 19 of the Framework Directive, article 6 of the Access Directive and Article 6a of the Authorisation Directive.

Amendment 14

Proposal for a directive – amending act Recital 60

Text proposed by the Commission

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

Amendment

(60) In particular, power should be conferred on the Commission to adopt implementing measures in relation to the notifications under Article 7 of the Framework Directive; the harmonisation in the **field** of numbering as well as in matters related to security of networks and services; the identification of trans-national markets; the implementation of the standards; the harmonised application of the provisions of the regulatory framework. Since those measures are of general scope and are designed to supplement these Directives by the addition of new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. **Taking into account that the application of the regulatory procedure with scrutiny within the usual deadlines could, in certain exceptional situations, impede the timely adoption of implementing measures, the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of those measures.**

Justification

Necessary to ensure legal consistency with amendments proposed for a new article 8a of the

Framework Directive and amendments proposed under Article 6a of the Authorisation Directive.) Harmonisation measures which add new essential proposals to the regulatory framework must be dealt with under a legislative proposal. Only non-essential elements may be subject to the Comitology Procedure. On imperative and justified grounds of urgency the European Parliament, the Council and the Commission should act speedily in order to ensure the timely adoption of Comitology.

Amendment 15

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

Text proposed by the Commission

Amendment

(60a) Activities pursued under this Directive should take account of the work of international and regional organisations dealing with radio spectrum management, such as the International Telecommunication Union (ITU) and the European Conference of Postal and Telecommunications Administrations (CEPT), to ensure the efficient management and harmonisation of use of spectrum across the Community. The Member States and the Commission should recognise the content of international agreements entered into by the Member States pursuant to the ITU Radio Regulations in the implementation of this Directive.

Justification

Europe is not an island. The importance of the ITU in establishing internationally binding regulations for the efficient use of spectrum and orbit usage based on efficient, rational and cost-effective utilisation cannot be ignored. The binding nature of the ITU rules (on EU and non-EU member states of the ITU) and the compatibility of the Directive with them must be expressly addressed.

Amendment 16

Proposal for a directive – amending act Article 1 – point 2 – point e Directive 2002/21/EC Article 2 – point s

Text proposed by the Commission

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable Community or national regulations.

Amendment

(s) “harmful interference” means interference which endangers the functioning of a radionavigation service or of other safety services or which otherwise seriously degrades, obstructs or repeatedly interrupts a radio communications service operating in accordance with the applicable Community or national regulations ***and in accordance with internationally agreed frequency plans.***

Justification

In view of the seriousness of interference problems between broadcasting and two-way (receive and transmit) services, it is essential for digital broadcasting services to be afforded protection against harmful interference, in line with internationally-agreed frequency plans, and particularly the ITU Geneva Plan (GE-O6). The definition of harmful interference should be amended accordingly.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 6 – paragraph 1

Text proposed by the Commission

Except in cases falling within Articles 7 (10), 20 or 21 and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives which have a significant impact on the relevant market, ***or where they intend to provide for restrictions in accordance with Article 9 (3) and 9 (4),*** they give interested parties the opportunity to comment on the draft measure within a reasonable period.

Amendment

Except in cases falling within Articles 7 (10), 20 or 21 and unless otherwise provided in the implementing measures adopted pursuant to Article 9c, Member States shall ensure that, where regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives which have a significant impact on the relevant market, they give interested parties the opportunity to comment on the draft measure within a reasonable period.

Justification

It is proposed that both the economic and the public value of the spectrum is considered in a balanced way to manage it efficiently. The assignment of a part of the spectrum to fulfil general interest objectives does therefore not constitute a restriction or exception from the proposed principle of service neutrality but complements it. It is therefore not justified to impose additional consultation procedures.

Amendment 18

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 4 –point c

Text proposed by the Commission

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

Amendment

(c) imposing, amending or withdrawing an obligation on an operator in application of Article 16 in conjunction with **paragraphs 1(a), 2, 3 and 4 of Article 5** and **Articles 9** to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive),

Justification

The measures under paragraph 5 (1) b of the Directive 2002/19 (Access Directive) aim at maintaining media pluralism and cultural diversity in the field of digital television and thus clearly fall within the competence of Member States.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 8 – point e

Directive 2002/21/EC

Article 8 – paragraph 4 – point g

Text proposed by the Commission

(g) applying the principle that end-users should be able to access **and distribute** any lawful applications and/or services of their choice.

Amendment

(g) applying the principle that end-users should be able to access any lawful applications and/or services of their choice.

Justification

The mention to distribution is confusing as far as it may be interpreted as if the Directive

provision creates a new right for the users to publicly communicate legal content, right which according to the law of intellectual property belongs exclusively to rights owner or a third party authorised by him.

Amendment 20

Proposal for a directive – amending act

Article 1 – point 8 - point e

Directive 2002/21/EC

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

Text proposed by the Commission

Amendment

(ga) ensuring the cooperation of undertakings providing electronic communications networks and services with the sectors concerned for the purposes of the protection and the promotion of lawful content over electronic communications networks and services.

Amendment 21

Proposal for a directive – amending act

Article 1 – point 8 a (new)

Directive 2002/21/EC

Article 8 a (new)

Text proposed by the Commission

Amendment

(8a) The following Article is inserted:

"Article 8a

Coordination of radio spectrum policies in the Community

1. Member States shall cooperate with each other and the Commission in the strategic planning and harmonisation of the use of radio frequencies in the Community. They shall ensure coherence of spectrum policy approaches with other national or EU policies, such as media policy.

2. Member States shall ensure the coordination of policy approaches and,

where appropriate, harmonised conditions with regard to the availability and efficient use of spectrum necessary for the establishment and functioning of the internal market and in accordance with economic, political, cultural, health and social considerations linked to the use of radio spectrum.

3. Member States shall ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio frequencies in the Community.

4. Member States shall ensure the effective coordination of Community interests in international organisations where radio spectrum use affects Community policies.

5. A Radio Spectrum Policy Committee (the "RSPC") is hereby created in order to contribute to the fulfilment of the objectives set out in paragraphs 1 to 4. 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 one high-level representative from each national regulatory authority responsible for radio spectrum policy and/or for media regulation in each Member State. The Commission shall be a non-voting member.

6. At the request of the European Parliament, the Council or the Commission or on its own initiative, the RSPC, acting by a qualified majority, shall adopt opinions. Each Member State shall have one vote and the Commission shall not vote.

7. The Commission, taking the utmost account of the opinion of the RSPC, shall formulate every three years common policy objectives and issue non-binding guidelines for the development of Community spectrum policy.

8. The Commission may, taking the

utmost account of the opinion of the RSPC, propose legislative measures to fulfil common policy objectives as referred to in paragraph 7.

9. Whenever necessary for ensuring the effective coordination of Community interests in international organisations, the Commission may, with the agreement of the RSPC, propose to the European Parliament and the Council a negotiating mandate.

10. The RSPC shall submit an annual activity report to the European Parliament and to the Council."

Amendment 22

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 1

Text proposed by the Commission

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

Amendment

1. *Given 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 the allocation and assignment of such radio frequencies by national regulatory authorities are based on objective, transparent, non-discriminatory and proportionate criteria.

Justification

There is no doubt that radio spectrum is a scarce resource. Both its economic and public value should be considered accordingly and in a balanced way to manage it efficiently.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – point d

Text proposed by the Commission

(d) ***comply with a restriction*** in accordance with paragraph 4 *below*.

Amendment

(d) ***fulfil a general interest objective*** in accordance with paragraph 4.

Justification

Necessary to ensure coherence in vocabulary with suggested amendments in Article 9.4 Framework Directive.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

4. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of electronic communications services may be provided in the radio frequency band ***available to electronic communication services as identified in their national frequency allocation tables and in the International Telecommunication Union (ITU) Regulations***. The Member States may, however, provide for proportionate and non-discriminatory ***measures for*** the types of electronic communications services to be provided.

Amendment 25

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 26

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 4 – subparagraph 3

Text proposed by the Commission

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

Amendment

A **measure** which prohibits the provision of 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 to avoid harmful interference**.

Amendment 27

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5

Text proposed by the Commission

5. Member States shall regularly review the necessity of the **restrictions** referred to in

Amendment

5. Member States shall regularly review the necessity of the **general interest objectives**

paragraphs 3 and 4.

referred to in paragraphs 3 and 4.

Amendment 28

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. It shall lie within the competence of the Member States to define the scope, nature and duration of measures intended for the promotion of cultural and media policy objectives such as cultural and linguistic diversity and media pluralism in accordance with their national law.

Justification

Guardans amendment 16: the word ” restrictions” is changed to “measures” to ensure coherence in vocabulary with suggested amendments in Article 9.4 Framework Directive.

Amendment 29

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 a – paragraph 2

Text proposed by the Commission

Amendment

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

2. Where the right holder mentioned in paragraph 1 is a provider of radio or television broadcast content services, and the right to use radio frequencies has been granted for the fulfilment of a specific general interest objective, ***including the provision of radio or broadcasting services, the right to use*** the part of the radio frequencies which is necessary for the fulfilment of such objective ***shall remain unchanged until its expiry***. The part of the radio frequencies which ***might become*** unnecessary for the fulfilment of that objective shall be subject to a new assignment procedure in conformity with ***Article 9(3) and (4) of this Directive and***

of the Authorisation Directive.

Article 7(2) of **Directive 2002/20/EC** (the Authorisation Directive).

Amendment 30

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 b – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 31

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 - introductory wording

Text proposed by the Commission

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

Amendment

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

Amendment 32

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) harmonise the rules relating to the availability and efficient use of radio frequencies in accordance with Article 9;

Justification

Legal consistency should be ensured with Article 8a (new) and the definition of service and technology neutrality in Article 9 of this Directive. Also, legal consistency needs to be ensured with the Radio Spectrum Decision (676/2002/Commission), in particular with regards to the scope of the article which concerns technical implementation measures and general interest objectives (new (d) which corresponds to Article 1 para.4 of the Spectrum decision).

Amendment 33

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point -aa (new)

Text proposed by the Commission

Amendment

(-aa) ensure the coordinated and timely provision of information concerning the allocation, availability and use of radio frequencies;

Justification

It is important for achieving consistency and coherence that all harmonisation measures in the field of spectrum management are grouped together and not distributed along two different legal frameworks (Framework Directive and Radio Spectrum Decision).

Amendment 34

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

(a) **identify** the bands for which usage rights may be directly transferred or leased between undertakings, ***without prejudice to Article 9b(1), excluding radio frequencies intended by Member States to be used for broadcasting services;***

Amendment 35

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1 – point d

Text proposed by the Commission

Amendment

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

deleted

Justification

Legal consistency should be ensured with Article 8a (new) and the definition of service and technology neutrality in Article 9 of this Directive. Also, legal consistency needs to be ensured with the Radio Spectrum Decision (676/2002/Commission), in particular with regards to the scope of the article which concerns technical implementation measures and general interest objectives (new (d) which corresponds to Article 1 para.4 of the Spectrum decision).

Amendment 36

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 1a (new)

These implementing measures shall be without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular general interest objectives relating to content regulation and audio-visual policy.

Amendment 37

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – paragraph 2

Text proposed by the Commission

Amendment

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

Those 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). In the implementation of the provisions ***of points (a) to (c)*** of this paragraph, the Commission ***may*** be assisted by the ***RSPC***.

Justification

Legal consistency should be ensured with Article 8a (new) and the definition of service and technology neutrality in Article 9 of this Directive. Also, legal consistency needs to be ensured with the Radio Spectrum Decision (676/2002/Commission), in particular with regards to the scope of the article which concerns technical implementation measures and general interest objectives (new (d) which corresponds to Article 1 para.4 of the Spectrum decision).

Amendment 38

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9c a (new)

Text proposed by the Commission

Amendment

Article 9c a

The relationship between this Directive and international agreements and organisations

- 1. The Commission shall monitor developments regarding radio spectrum in third countries and in international organisations, including the ITU, which may have implications for the implementation of this Directive.***
- 2. Member States shall inform the Commission of any difficulties created, de jure or de facto, by existing international agreements, or agreements with third countries or international organisations, including the ITU, in relation to the implementation of this Directive.***
- 3. The Commission shall report regularly on the results of the application of paragraphs 1 and 2 to the Parliament and the Council and may, where appropriate, propose measures with the aim of ensuring the implementation of the principles and objectives of this Directive. When necessary, common policy objectives shall be agreed to ensure coordination among Member States.***
- 4. Measures taken pursuant to this Article shall be without prejudice to the rights and obligations of the Community and the Member States under relevant international agreements.***

Justification

Europe is not an island. The binding nature of the ITU rules (on EU and non-EU member

states of the ITU) and the compatibility of the Directive with them must be expressly addressed. To ensure efficient spectrum use it is essential that operators comply with and can rely on the filing and coordination procedures under the internationally binding rules and procedures of the ITU in order to ensure that a network or system can be successfully coordinated and brought into use.

Amendment 39

Proposal for a directive – amending act

Article 1 – point 11 - point b

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 2

Text proposed by the Commission

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).

On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).

Amendment

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).

Justification

The urgency procedure is not justified for the adoption of this type of measures.

Amendment 40

Proposal for a directive – amending act

Article 2 – point 3 - point a

Directive 2002/19/EC

Article 5 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Those procedures shall not apply to paragraph 1(b) of this Article.

Justification

The measures under paragraph 5 (1) b of the Directive 2002/19 (Access Directive) aim at maintaining media pluralism and cultural diversity in the field of digital television and thus clearly fall within the competence of Member States.

Amendment 41

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 - introductory wording

Text proposed by the Commission

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

Amendment

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

Justification

Although general authorisations might be a viable solution in the long term when technology to prevent interference problems develops, granting individual licences should continue to be the normal procedure for assigning spectrum.

Amendment 42

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/21/EC

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) avoid ***a serious*** risk of harmful interference; or

Amendment

(a) avoid ***the*** risk of harmful interference; or

Justification

Any risk of “harmful interference” is a “serious risk”.

Amendment 43

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Without prejudice to specific criteria defined ***in advance*** 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, such rights of use shall be granted through 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). ***The procedures shall also be open, except in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services can be shown to be essential for fulfilling a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.***

Amendment

Without prejudice to specific criteria ***and procedures*** defined by Member States to grant rights of use of radio frequencies to providers of ***broadcast*** radio or television content services with a view to pursuing general interest objectives in conformity with Community law, such rights of use shall be granted through 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).

Justification

The proposal corresponds to the directive which is currently into force and which has proved to be functional and efficient.

Amendment 44

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 2 – subparagraph 5

Text proposed by the Commission

Any individual right to use radio frequencies that is granted for ten years or more and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive shall, every ***five*** years and for the first time ***five*** years after its issuance, be subject to a

Amendment

Any individual right to use radio frequencies that is granted for ten years or more and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive shall, every ***ten*** years and for the first time ***ten*** years after its issuance, be subject to a

review in the light of the criteria in paragraph 1. If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice of not more than **five** years from the conclusion of the review, or shall be made freely transferable or leasable between undertakings.

review in the light of the criteria in paragraph 1. If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, subject to prior notice of not more than **ten** years from the conclusion of the review, or shall be made freely transferable or leasable between undertakings. ***In taking such a decision, due account shall be taken of the need to allow for an appropriate period for amortization of investment.***

Justification

For many new platforms and services, investment will need to be amortized over a period exceeding ten or, at any rate, five years. It is not uncommon to have to sustain substantial losses during the first couple of years of operation. It would be disproportionate to introduce a rigid requirement for national regulatory authorities to conduct a formal review of all broadcast spectrum licenses every five years.

Amendment 45

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 - introductory wording

Text proposed by the Commission

1. In order to achieve the objectives set out in Article 1, and without prejudice to **Article 5(2)** of this Directive, the Commission may adopt implementing measures:

Amendment

1. In order to achieve the objectives set out in Article 1, and without prejudice to **Article 5(1) and (2)** of this Directive **and Articles 8a and 9 of Directive 2002/21/EC (Framework Directive)**, the Commission may adopt implementing measures:

Amendment 46

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) to identify radio frequency bands the use of which is to be made subject to general authorisations ***or individual rights of use for radio frequencies***;

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

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 47

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

deleted

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 48

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) to harmonise the conditions specified in Annex II relating to general authorisations or individual rights of use for radio frequencies or numbers;

deleted

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the

adoption of these measures.

Amendment 49

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point e

Text proposed by the Commission

Amendment

***(e) to provide for the amendment or
withdrawal of authorisations or rights of
use and the procedures relating to point
(d);*** ***deleted***

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 50

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6a – paragraph 1 – point f

Text proposed by the Commission

Amendment

***(f) to lay down procedures for the
selection of undertakings to which
individual rights of use for radio
frequencies or numbers shall be granted
by the national regulatory authorities,
where appropriate in accordance with the
provisions of Article 6b.*** ***deleted***

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 51

Proposal for a directive – amending act
Article 3 – point 5
Directive 2002/20/EC
Article 6a – paragraph 1 – subparagraph 2

Text proposed by the Commission

The measures listed in ***points (a) to (d) and (f)***, 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 14a(3).
On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14a(4).

Amendment

The measures listed in ***the first subparagraph***, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14a(3).

Justification

All implementing measures under Article 6a (harmonisation) should be adopted according to the regulatory procedure with scrutiny. The urgency procedure is not justified for the adoption of these measures.

Amendment 52

Proposal for a directive – amending act
Article 3 – point 5
Directive 2002/20/EC
Article 6b - paragraph 1

Text proposed by the Commission

Amendment

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

deleted

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

ensure the optimal use of spectrum or numbering resources. The selection procedure shall be open, transparent, non-discriminatory and objective.

Justification

EU-wide selection procedures for the issuing of rights should be subject to specific legislative proposals not Comitology.

Amendment 53

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6b – paragraph 2

Text proposed by the Commission

Amendment

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

Justification

EU-wide selection procedures for the issuing of rights should be subject to specific legislative proposals not Comitology.

Amendment 54

Proposal for a directive – amending act

Article 3 – point 11

Directive 2002/20/EC

Article 14a – paragraph 4

Text proposed by the Commission

Amendment

4. Where reference is made to this paragraph, Article 5a(1), (2), (4) and (6) and Article 7 of Decision 1999/468/EC ***deleted***

shall apply, having regard to the provisions of Article 8 thereof.

Amendment 55

Proposal for a directive – amending act

Article 3 - point 15

Directive 2002/20/EC

Annex II

Text proposed by the Commission

Amendment

(15) A new Annex II, the text of which is set out in the Annex to this Directive, is added.

deleted

Amendment 56

Proposal for a directive – amending act

Annex II

Directive 2002/20/EC

Annex II – point 1 – point d

Text proposed by the Commission

Amendment

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

(d) the method of determining usage fees for the right of use of the radio frequencies, ***without prejudice to systems defined by Member States where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives;***

Justification

It must remain possible for Member States to maintain or introduce systems where the obligation to pay usage fees is replaced by an obligation to fulfil specific general interest objectives. Such systems are commonplace with regard to terrestrial broadcasting frequencies where they serve of media pluralism objectives.

PROCEDURE

Title	Electronic communications networks and services						
References	COM(2007)0697 – C6-0427/2007 – 2007/0247(COD)						
Committee responsible	ITRE						
Opinion by Date announced in plenary	CULT 10.12.2007						
Drafts(wo)man Date appointed	Ignasi Guardans Cambó 8.1.2008						
Discussed in committee	6.5.2008						
Date adopted	3.6.2008						
Result of final vote	<table> <tr> <td>+: </td><td>32</td></tr> <tr> <td>–: </td><td>1</td></tr> <tr> <td>0: </td><td>1</td></tr> </table>	+:	32	–:	1	0:	1
+:	32						
–:	1						
0:	1						
Members present for the final vote	Maria Badia i Cutchet, Katerina Batzeli, Ivo Belet, Guy Bono, Nicodim Bulzesc, Marielle De Sarnez, Věra Flasarová, Milan Gaľa, Claire Gibault, Vasco Graça Moura, Lissy Gröner, Christopher Heaton-Harris, Luis Herrero-Tejedor, Ruth Hieronymi, Mikel Irujo Amezaga, Ramona Nicole Mănescu, Manolis Mavrommatis, Marianne Mikko, Ljudmila Novak, Doris Pack, Zdzisław Zbigniew Podkański, Christa Prets, Pál Schmitt, Helga Trüpel, Thomas Wise						
Substitute(s) present for the final vote	Rolf Berend, Victor Boştinaru, Ignasi Guardans Cambó, Gyula Hegyi, Elisabeth Morin, Nina Škottová, Ewa Tomaszewska, Cornelis Visser						
Substitute(s) under Rule 178(2) present for the final vote	Carlo Fatuzzo, Bilyana Ilieva Raeva						