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Committee on Legal Affairs

2007/0247(COD)

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OPINION

of the Committee on Legal Affairs

for the Committee on Industry, Research and Energy

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

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

Rapporteur: Manuel Medina Ortega

PA_Legam

SHORT JUSTIFICATION

The Commission proposal seeks to amend the current regulatory framework for electronic communications, consisting of the framework, authorisation and access directives, with a view to securing a genuine internal market in telecommunications. The main objectives of the proposal are to improve the effectiveness of electronic communications, ensure simpler and more efficient regulation for both operators and national regulatory authorities (NRA), and harmonise Community rules, with a view to increasing investment, innovation and consumer benefits. The main changes to the framework, authorisation and access directives concern the reform of spectrum management, the introduction of and strengthening the powers of the Commission vis-à-vis the Member States.

The rapporteur suggests the following amendments to the proposal:

A. Framework directive

- In the last paragraph of Article 6, which deals with the publication of the results of the consultation procedure by NRAs, greater confidentiality needs to be ensured for the information forwarded by undertakings.
- In Article 19(1), with regard to the harmonisation measures to be adopted by the Commission when there are divergences in the implementation by NRAs of the regulatory tasks specified in the framework directive and in the specific directives, the Commission is given the discretion to choose between a ‘decision’ and a ‘recommendation’, with the regulatory procedure with scrutiny applicable only to the former; there are therefore grounds for wondering whether this provision is appropriate since, ultimately, the extent of Parliament’s participation would depend on the choice made by the Commission.
- In Article 21(2) and (3), with regard to cross-border disputes between parties in different Member States, it should be specified that the coordination of the efforts by the national regulatory authorities to resolve the dispute could go as far as the adoption of a joint decision.

B. Authorisation directive

- In Article 10, with regard to compliance with the conditions of the general authorisation or of rights of use and the specific obligations, a new paragraph 6a should be introduced, stipulating that the Member States should always allow the penalties laid down in paragraphs 5 and 6 to be subject to judicial review, in accordance with national law.

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 directive – amending act Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) In the absence of other more specific legal bases, reference should be made to Article 95 of the EC Treaty, which provides for general measures to be adopted by codecision between Parliament and the Council to approximate the laws of the Member States which have as their object the establishment and functioning of the internal market. The article in question is also the legal basis for the legislative acts amended by this proposal which, furthermore, has an essentially horizontal scope, justifying the choice. However, the setting up of a regulatory authority at European level might require the application of Article 308 of the EC Treaty as a general clause, although under this provision the European Parliament does not enjoy power of codecision.

Amendment 2

Proposal for a directive – amending act Recital 32

Text proposed by the Commission

Amendment

(32) Reliable and secure communication of information over electronic communications networks is increasingly central to the whole economy and society in general. System complexity, technical failure or human mistake, accidents or attacks may all have consequences for the functioning and availability of the physical infrastructures that deliver important services to EU citizens, including e-Government services.
National regulatory authorities should

(32) The availability of electronic communications services is essential in cases of emergency. National regulatory authorities should therefore ensure ***that a minimum standard of network availability is maintained to support essential communications in emergency situations.*** The national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services

therefore ensure ***the integrity and security of public communications networks are maintained. The Authority should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices.*** Both the Authority and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information to be able to assess the level of security of networks or services as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should ***be required to*** take measures to ***safeguard their integrity and security*** in accordance with the assessed risks, ***taking into account the state of the art of such measures.***

as well as comprehensive and reliable data about actual security incidents that have had a significant impact on the operation of networks or services. Bearing in mind that the successful application of adequate security is not a one-off exercise but a continuous process of implementation, review and updating, the providers of electronic communications networks and services should take measures to ***ensure essential network availability*** in accordance with the assessed risks.

Justification

Regulatory intervention is justified to ensure the availability of communications networks for essential communications in case of emergency, but customer demand and market competition rather than regulatory fiat should determine the level of security provided to protect ordinary communications under normal conditions.

Amendment 3

Proposal for a directive – amending act Recital 33

Text proposed by the Commission

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

Amendment

(33) A competitive market is usually the best means of ensuring that an appropriate balance is struck between the level of security and the costs of achieving it, and between the constraints imposed by

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

security requirements and the freedom to develop innovative services. It sometimes remains necessary to agree on a common set of security requirements to protect against widespread catastrophic failure, to protect against incidents on one network having cascade effects on other network and to ensure the availability of essential services in case of emergency. In accordance with the principles of necessity and proportionality, the national regulatory authorities are strictly limited to the powers necessary to achieve these objectives. National regulatory authorities should have the power to issue binding instructions relating to the technical implementing measures adopted pursuant to the Framework Directive. In order to perform their duties, they should have the power to investigate and to impose penalties in cases of non-compliance.

Justification

Determining appropriate security measures standards often involves a trade-off between legitimate and valuable competing objectives. The appropriate balance between these objectives will vary according to the different circumstances of different classes of network user. Customer demand and market competition is usually the best means of ensuring each user of communications networks can obtain services that hold to a balance appropriate to their own situation. Regulatory intervention remains justified to ensure a minimum level of protection against catastrophe, to ensure that communications networks can provide support in cases of emergency, and to protect against 'externality' effects in cases where one provider's choices would adversely impact upon another.

Amendment 4

Proposal for a directive – amending act Recital 33 a (new)

Text proposed by the Commission

Amendment

(33a) The management of telephony networks and services has historically been characterised by a high level of international cooperation designed to ensure harmonisation of technical standards and to promote interoperability.

The Internet has achieved interoperability through open global standards for inter-network routing, while the development of services using the Internet has depended upon the freedom to create new technical standards and protocols without regulatory intervention; this freedom has enabled unprecedented innovation in the creation of information society services and other, non-commercial services, yielding enormous economic and social gains for the people of Europe. Each tradition for the development and coordination of technical standards has benefited society in its respective sphere. The national regulatory authorities should recognise the importance of innovation and diversity in Internet protocols and services, and the importance of regulatory forbearance in achieving those objectives.

Justification

NRAs should not use powers to promote harmonisation in electronic communications networks in ways that would constrain the development of innovation on the Internet.

Amendment 5

**Proposal for a directive – amending act
Recital 33 b (new)**

Text proposed by the Commission

Amendment

(33b) Protection of the security of electronic communications on the Internet is a shared responsibility, with obligations appropriate to their respective roles for hardware and software providers, providers of electronic communications networks and of electronic communications services, and for providers of information society services and providers of other services that use the Internet. These obligations are imposed by customer expectations and market demand, by national measures, by

this Directive, by the Directive on privacy and electronic communication, by Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)¹, by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data², and by other measures. This Directive does not confer powers on regulatory authorities to regulate either information society services or similar services that are not provided for remuneration. In accordance with the principle of proportionality, national regulatory authorities should not use powers conferred under this Directive to impose obligations on providers of electronic communications networks for aspects of security outside their respective roles.

¹ OJ L 178, 17.7.2000, p. 1.

² OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

Justification

The Commission's proposals fail to provide any clear evidence that regulatory intervention is necessary. It is particularly important in the area of security that any regulatory intervention is backed up with a clear impact assessment, which is clearly lacking in this case. Instead, NRAs, which only have the competence and capacity to regulate network operators are now expected to regulate a market consisting, for the most part, of industries over which the exercise no control (software providers, hardware providers, online service providers, etc).

Amendment 6

Proposal for a directive – amending act Recital 39 a (new)

Text proposed by the Commission

Amendment

(39a) The need to encourage both investment and competition should be recognised, so that consumer choice is protected and not undermined.

Justification

The Directives should make clear that competition is not to be sacrificed in the name of investment – for example through regulatory holidays.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 2

Directive 2002/21/EC

Article 2 – point s

Text proposed by the Commission

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.

(s) ‘harmful interference’ means interference which endangers the functioning of a radionavigation service or of other safety services, **which technically obstructs the joint use of frequencies** or which **may** otherwise seriously **degrade, obstruct** or repeatedly **interrupt** a radio communications service operating in accordance with the applicable **international**, Community or national regulations.

Justification

Member States should be able to provide restrictions not only where such interference has been observed but also where it is likely that harmful interference occurs. In view of the seriousness of interference problems between one-way and two-way (receive and transmit) services, it is essential to provide protection against harmful interference, in line with internationally-agreed frequency plans, and particularly the ITU Geneva Plan (GE-O6). National legal systems must have the room to secure the common usage of spectrum.

Amendment 8

Proposal for a directive – amending act

Article 1 – point 3

Directive 2002/21/EC

Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Justification

Failure of NRAs to act in a timely manner, for example in relation to market reviews, can hold back competition and innovation in the market.

Amendment 9

Proposal for a directive – amending act

Article 1 – point 4

Directive 2002/21/EC

Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the

Amendment

1. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing electronic communications networks and/or services who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body that is independent of the parties involved. This body, which may be a court, shall have the

appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

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

appropriate expertise available to it to enable it to carry out its functions. Member States shall ensure that the merits of the case are duly taken into account and that there is an effective appeal mechanism.

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

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

Justification

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

The proposed text implies that interim measures may be granted for other reasons. This is not desirable.

Amendment 10

Proposal for a directive – amending act

Article 1 – point 5

Directive 2002/21/EC

Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives.

Those undertakings shall also be required to submit information concerning future network or service developments that

Amendment

1. Member States shall ensure that undertakings providing electronic communications networks and services provide all the information, including financial information, necessary for national regulatory authorities to ensure conformity with the provisions of, or decisions made in accordance with, this Directive and the Specific Directives. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by

could have an impact on the wholesale services made available to competitors. These undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information.

the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of that task. The national regulatory authority shall give the reasons justifying its request for information. ***Undertakings shall also provide advance indication of any significant potential restriction of wholesale services that are made available to competitors. Commercial confidentiality, as provided for by national or Community law, must be respected.***

Justification

The proposed addition concerning information on future network and service development would be problematic because that kind of information would contain most likely inside information. The threshold of such requirement should be very high. In this case it is not clear what would be the purpose and the added value of requiring the operators to submit such information to authorities.

However, some advance notice of potential impact at the wholesale level is desirable. It needs to be clear that commercial confidentiality should be respected.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 6 – paragraph 4

Text proposed by the Commission

The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality.

Amendment

The results of the consultation procedure shall be made publicly available by the national regulatory authority, except in the case of confidential information in accordance with Community and national law on business confidentiality. ***In the event of unwarranted dissemination of confidential information, the national regulatory authorities shall ensure that they adopt appropriate measures as soon as possible, at the request of the undertakings concerned.***

Amendment 12

Proposal for a directive – amending act

Article 1 – point 6

Directive 2002/21/EC

Article 7 – paragraph 9

Text proposed by the Commission

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

Amendment

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

Amendment 13

Proposal for a directive – amending act

Article 1 – point 8

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 content and use any lawful applications and/or services of their choice.

Amendment

(g) applying the principle that end-users should be able to access and distribute any lawful content and use any lawful applications and/or services of their choice ***as contractually agreed between the provider and the subscriber. Nothing in that principle, nor the presence in or absence from any contract of any mention of that principle, shall have the effect of setting aside the provisions of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society¹.***

¹ OJ L 167, 22.6.2001, p. 10.

Amendment 14

Proposal for a directive – amending act

Article 1 – point 8 – subpoint e a (new)

Directive 2002/21/EC

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

Text proposed by the Commission

Amendment

(8a) In paragraph 4, the following point is added:

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

Justification

The cooperation of electronic communications services operators is essential to combat the attacks on copyright which are increasing exponentially on networks. The authority responsible at European level should be given the task of coordinating these efforts.

Amendment 15

Proposal for a directive – amending act

Article 1 – point 9

Directive 2002/21/EC

Article 9 – paragraph 3 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) ensure maximisation of radio frequencies sharing where ***the use of frequencies is subject to a general authorisation***; or

(c) ensure ***efficient use of radio frequencies, including the*** maximisation of radio frequency sharing where ***possible***; or

Justification

Spectrum sharing should be utilised where it is technically viable and efficient, taking the conflicting requirements into account.

Amendment 16

Proposal for a directive – amending act

Article 1 – point 9 a (new)

Directive 2002/21/EC

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

Text proposed by the Commission

Amendment

(9a) The following point shall be inserted:

‘(da) take account of international and regional spectrum organisations and respect internationally agreed frequency plans, or’

Justification

Europe must respect international frequency plans (e.g. the ITU Geneva Plan (GE-06)) to avoid unnecessary interference and inefficient waste of spectrum on its borders.

Amendment 17

Proposal for a directive – amending act

Article 1 – point 9 b (new)

Directive 2002/21/EC

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

Text proposed by the Commission

Amendment

(9b) The following point shall be inserted:

‘(db) safeguard efficient use of spectrum.’

Justification

Europe must respect international frequency plans (e.g. the ITU Geneva Plan (GE-06)) to avoid unnecessary interference and inefficient waste of spectrum on its borders.

Amendment 18

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 bands open to electronic communications. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.

Amendment

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 bands available to electronic communications ***as identified in their national frequency allocation tables and in the ITU Radio Regulations***. The Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of electronic communications services to be provided.

Justification

Service neutrality should respect the ITU Radio Regulations that determine which services can coexist in the different bands.

Amendment 19

Proposal for a directive – amending act

Article 1 – point 10

Directive 2002/21/EC

Article 9 c – subparagraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 20

Proposal for a directive – amending act

Article 1 – point 11

Directive 2002/21/EC

Article 10 – paragraph 4 – subparagraph 1

Text proposed by the Commission

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

Amendment

Member States shall support harmonisation in numbering within the Community where that promotes the functioning of the internal market or supports the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter. The implementing measures may grant the **European Radio Communications Office (ERO)** specific responsibilities in the application of those measures.

Justification

Tariffs in numbering should remain a competence of Member States. The Authority should not have competence in numbering and this should reside with the European Radio Communications Office (ERO).

Amendment 21

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 a – paragraph 3 – subparagraph 3

Text proposed by the Commission

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

Amendment

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

Justification

Reinforcing network and information security is one of the areas where more action at Community level is needed and where proposed amendments certainly could bring added value. The only problematic issue in this context concerns the reporting obligation which is proposed for NRAs. Reporting every three months would be too burdensome and bureaucratic. Therefore, it is proposed that reporting would take place every year instead of every 3 months.

Amendment 22

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 a – paragraph 4

Text proposed by the Commission

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

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

Amendment

4. The Commission, taking the utmost account of the opinion of the *national regulatory authorities*, may adopt appropriate technical implementing measures with a view to harmonising the measures referred to in paragraphs 1, 2, and 3, including measures defining the circumstances, format and procedures applicable to notification requirements.

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

Justification

Technical implementing measures should only be introduced where industry self-regulatory initiatives have not achieved an adequate level of security in the internal market.

Amendment 23

Proposal for a directive – amending act

Article 1 – point 14

Directive 2002/21/EC

Article 13 b

Text proposed by the Commission

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

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

(a) provide information needed to assess the security of their services and networks, including documented security policies;

and

(b) **instruct a qualified independent body to carry out a security audit and make the results thereof available to the national regulatory authority.**

3. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases of non-compliance.

4. These provisions shall be without prejudice to Article 3 of this Directive.

Amendment

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

2. Member States shall ensure, **where appropriate**, that **the relevant** national regulatory authorities have the power to require undertakings providing public communications networks or publicly available electronic communications services to provide information needed to assess the security of their services and networks, including documented security policies.

3. Member States shall ensure that **the relevant** national regulatory authorities have all the powers necessary to investigate cases of non-compliance.

4. These provisions shall be without prejudice to Article 3 of this Directive.

Justification

Many NRAs do not have competence in security issues. On the other hand, the proposed enforcement of powers of the national regulators may become an excessive compliance

burden, which could decelerate the development of new technologies. The national regulators should exercise their power over public communications networks and publicly available electronic communications services only when necessary.

Amendment 24

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – point 1

Text proposed by the Commission

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

Amendment

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

Amendment 25

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 2

Text proposed by the Commission

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

Member States shall ensure that national regulatory authorities take the utmost

Amendment

deleted

account of those recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasoning for its position.

Amendment 26

Proposal for a directive – amending act

Article 1 – point 20

Directive 2002/21/EC

Article 19 – paragraph 5

Text proposed by the Commission

Amendment

5. The Authority may on its own initiative advise the Commission on whether a measure should be adopted pursuant to paragraph 1.

deleted

Amendment 27

Proposal for a directive – amending act

Article 1 – point 22

Directive 2002/21/EC

Article 21 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

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

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

Amendment 28

Proposal for a directive – amending act

Article 1 – point 22

Directive 2002/21/EC

Article 21 – paragraph 3 – subparagraph 2

Text proposed by the Commission

They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party **seeking redress** and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, in accordance with the provisions set out in Article 8 and taking the utmost account of any recommendation issued by the Authority in accordance with Article 18 of Regulation [.../EC].

Amendment

They shall inform the parties without delay. If after four months the dispute is not resolved, if the dispute has not been brought before the courts by the party **whose rights have been violated** and if either party requests it, the national regulatory authorities shall coordinate their efforts in order to bring about a resolution of the dispute, **as far as possible through the adoption of a joint decision**, in accordance with the provisions set out in Article 8 and taking the utmost account of any recommendation issued by the Authority in accordance with Article 18 of Regulation [.../EC].

Amendment 29

Proposal for a directive – amending act

Article 2 – point 7

Directive 2002/19/EC

Article 9 – paragraph 5

Text proposed by the Commission

5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the **Authority**.

Amendment

5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4). In implementing the provisions of this paragraph, the Commission may be assisted by the **national regulatory authorities**.

Amendment 30

Proposal for a directive – amending act

Article 3 – point 1

Directive 2002/20/EC

Article 2 – paragraph 2

Text proposed by the Commission

2. The following **definition** shall also apply:

‘general authorisation’ means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.

Amendment

2. The following **definitions** shall also apply:

‘general authorisation’ means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.

‘global telecommunications services’ means managed business data and voice services for multinational companies with locations in different countries and, often, different continents. They are inherently cross-border and, within Europe, pan-European services.

Amendment 31

Proposal for a directive – amending act

Article 3 – point 2 a (new)

Directive 2002/20/EC

Article 3 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

(2a) In Article 3, the following paragraph is added:

‘3a. New global telecommunications services shall be subject to no more than a simplified notification process with specific registration of electronic communications service activity as “global telecommunications services”.’

Amendment 32

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 1 – point (a)

Text proposed by the Commission

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

Amendment

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

Amendment 33

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 for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet 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 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 for radio frequencies to the providers of radio or television broadcast content services can be shown to be essential to meet a particular obligation defined in advance by the Member State which is necessary to achieve a general interest objective **and in any case** in conformity with Community law.

Amendment 34

Proposal for a directive – amending act

Article 3 – point 3

Directive 2002/20/EC

Article 5 – paragraph 6

Text proposed by the Commission

6. **National regulatory** authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Article 9(2) of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. For such purposes, Member States may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.

Amendment

6. **The national spectrum** authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Article 9(2) of Directive 2002/21/EC (Framework Directive). They shall also ensure competition is not distorted as a result of any transfer or accumulation of radio frequencies usage rights. For such purposes, Member States may take appropriate measures such as reducing, withdrawing or forcing the sale of a right to use radio frequencies.

Justification

Many NRAs do not have competence in spectrum policy.

Amendment 35

Proposal for a directive – amending act

Article 3 – point 5

Directive 2002/20/EC

Article 6 b

Text proposed by the Commission

Article 6b

Common selection procedure for issuing rights

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

Amendment

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.

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

Justification

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

Amendment 36

Proposal for a directive – amending act

Article 3 – point 8 – letter d a (new)

Directive 2002/20/EC

Article 10 – point 6 a (new)

Text proposed by the Commission

Amendment

(da) The following paragraph is added:

‘6a. In accordance with their national laws, the Member States must ensure that the penalties laid down in paragraphs 5 and 6 are subject to judicial review.’

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 | JURI 10.12.2007 | | | |
| Rapporteur for the opinion Date appointed | Manuel Medina Ortega 19.12.2007 | | | |
| Discussed in committee | 26.2.2008 | 27.3.2008 | 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 | | | |
| Substitutes present for the final vote | Sharon Bowles, Luis de Grandes Pascual, Sajjad Karim, Georgios Papastamkos, Jacques Toubon | | | |