

## **P6\_TA-PROV(2008)0449**

### **Electronic communications networks and services \*\*\*I**

**European Parliament legislative resolution of 24 September 2008 on the proposal for a directive of the European Parliament and of the Council amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services, Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and Directive 2002/20/EC on the authorisation of electronic communications networks and services (COM(2007)0697 – C6-0427/2007 – 2007/0247(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0697),
  - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0427/2007),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Internal Market and Consumer Protection, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs (A6-0321/2008),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

#### **Amendment 1**

**Proposal for a directive – amending act**

**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) Under Directive 2007/65/EC ("the 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 European Union, as well as respect for cultural and linguistic diversity. In this context, a fair and balanced regulatory framework for electronic communications networks and services constitutes an essential pillar of the EU audiovisual sector.*

## **Amendment 2**

### **Proposal for a directive – amending act Recital 3**

*Text proposed by the Commission*

(3) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. ***This is complemented through the establishment by Regulation [...]/.../EC of [date] of the European Parliament and of the Council of a European Electronic Communications Market Authority (hereinafter referred to as "the Authority")***. The reform also includes the definition of an efficient spectrum management strategy in order to achieve a Single European Information Space and the reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.

*Amendment*

(3) The EU regulatory framework for electronic communications networks and services should therefore be reformed in order to complete the internal market for electronic communications by strengthening the Community mechanism for regulating operators with significant market power in the key markets. The reform also includes the definition of an efficient ***and coordinated*** spectrum management strategy in order to achieve a Single European Information Space and the reinforcement of provisions for users with disabilities in order to obtain an inclusive information society.

## **Amendment 3**

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

*Text proposed by the Commission*

*Amendment*

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

**Amendment 4**

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

*Text proposed by the Commission*

*Amendment*

***(3b) A further objective of the EU regulatory framework for electronic communications networks and services is to progressively reduce ex-ante sector specific-rules as competition in markets in electronic communications develops and, ultimately, for electronic communications to be governed by competition law only. While electronic communications markets have shown strong competitive dynamics in recent years, it is essential that ex-ante regulatory obligations only be imposed where there is no effective and sustainable competition. The necessity of the continuation of ex-ante regulation should be reviewed no later than three years from the date of transposition of this Directive.***

## **Amendment 5**

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

*Text proposed by the Commission*

*Amendment*

***(3c) In order to ensure a proportionate and suitable approach to varying competitive conditions, national regulatory authorities should be able to define markets on a sub-national basis and to lift regulatory obligations in markets or geographic areas where there is effective infrastructure competition. This should apply even where geographic areas are not defined as separate markets.***

## **Amendment 6**

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

*Text proposed by the Commission*

*Amendment*

***(3d) In order to achieve the goals of the Lisbon Agenda it is necessary to give appropriate incentives for investment in high-speed networks that support innovation in content-rich internet services and strengthen the international competitiveness of the European Union. Such networks have enormous potential to deliver benefits to consumers and businesses across the European Union. It is therefore vital to promote sustainable investment in the development of such networks, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency.***

## **Amendment 7**

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

*Text proposed by the Commission*

*Amendment*

***(3e) In its Communication of 20 March 2006 entitled “Bridging the Broadband Gap”, the Commission acknowledged that there is a territorial divide in the European Union regarding access to high-speed broadband services. Despite the general increase in broadband connectivity, access in various regions is limited on account of high costs resulting from low population densities and remoteness. Commercial incentives to invest in broadband deployment in these areas often turn out to be insufficient. However, technological innovation reduces deployment costs. In order to ensure investment in new technologies in underdeveloped regions, electronic communications regulation should be consistent with other policies, such as state aid policy, structural funds or the aims of wider industrial policy.***

**Amendment 8**

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

*Text proposed by the Commission*

*Amendment*

***(3f) Investment in research and development is of vital importance for the development of next generation fibre optics networks and for achieving flexible and efficient radio access, which enhances competition and innovation in applications and services for the benefit of consumers. The challenge is to deliver the next generation of ubiquitous and converged network and service infrastructures for electronic communications, information technology***

*and media.*

## **Amendment 9**

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

*Text proposed by the Commission*

*Amendment*

***(3g) Public policy should play a role in complementing the effective functioning of electronic communications markets, addressing both the supply and demand sides so as to stimulate a virtuous circle where development of better content and services follows from infrastructure deployment, and vice versa. Public intervention should be proportionate, should neither distort competition nor inhibit private investment, should increase incentives to invest and should lower entry barriers. In this respect, public authorities may support the roll-out of future-proof high-capacity infrastructure. In so doing, public support should be given by means of open, transparent and competitive procedures, should not favour any given technology a priori and should provide access to infrastructure on a non-discriminatory basis.***

## **Amendment 10**

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

*Text proposed by the Commission*

*Amendment*

***(3h) The EU regulatory framework for electronic communications networks and services should also promote consumer protection in the electronic communications sector by providing for accurate and comprehensive information by all possible means, by providing for transparency in fees and charges and by providing for high standards in the***

*delivery of services. It should also fully recognise the role of consumer associations in public consultations and ensure that the competent authorities are provided with the powers necessary to prevent bid-rigging and act with the necessary effectiveness to stamp out any instances of fraud.*

#### **Amendment 11**

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

*Text proposed by the Commission*

*Amendment*

*(3i) The views of national regulatory authorities and industry stakeholders should be taken into account by the Commission when adopting measures pursuant to this Directive through the use of effective consultation ensuring transparency and proportionality. The Commission should issue detailed consultation documents which explain the different courses of action being considered, and stakeholders should be given a reasonable time in which to respond. Following the consultation, and after having considered the responses, the Commission should give reasons for the decision it takes in a statement which should include a description of how the views of respondents were taken into account.*

#### **Amendment 12**

##### **Proposal for a directive – amending act Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*(4a) Without prejudice to Directive 1999/5/CE of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications*

*terminal equipment and the mutual recognition of their conformity<sup>1</sup>, it is necessary to clarify the application of aspects of terminal equipment which concern access for disabled end-users so as to ensure interoperability between terminal equipment and electronic communications networks and services.*

<sup>1</sup> *OJ L 91, 7.4.1999, p. 10*

### **Amendment 13**

#### **Proposal for a directive – amending act Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

*(5a) The activities of national regulatory authorities and of the Commission in the context of the EU regulatory framework for electronic communications networks and services contribute to the fulfilment of broader public policy objectives in the areas of culture, employment, the environment, social cohesion, regional development and town and country planning.*

### **Amendment 14/rev**

#### **Proposal for a directive – amending act Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

*(11a) National electronic communications markets will continue to differ within the European Union. It is therefore essential that national regulatory authorities and the Body of European Regulators in Telecom ("BERT") possess the powers and knowledge necessary to build a competitive EU ecosystem in electronic communications markets and services while at the same time understanding national and regional differences and*

***complying with the principle of subsidiarity.***

*(This amendment applies throughout the text. Adopting it will necessitate corresponding changes throughout.)*

## **Amendment 15**

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

## **Amendment 16**

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

*Text proposed by the Commission*

*Amendment*

***(16a) Although spectrum management remains the competence of the Member States, only coordination and, where appropriate, harmonisation at Community level can ensure that spectrum users derive the full benefits of the internal market and that EU interests can be effectively defended world-wide.***

## **Amendment 17**

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

*Text proposed by the Commission*

*Amendment*

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

## **Amendment 18**

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

*Text proposed by the Commission*

*Amendment*

***(16c) In order to contribute to the fulfilment of the objectives laid down in Article 8a of Directive 2002/21/EC (Framework Directive), a spectrum summit should be convened in 2010, driven by Member States and including the European Parliament, the Commission and all stakeholders. The summit should in particular contribute to ensuring greater consistency in EU spectrum policies, providing guidance regarding the switchover from analogue to digital terrestrial television, and freeing spectrum for new electronic communications services once the digital switchover has taken place.***

## Amendment 19

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

*Text proposed by the Commission*

*Amendment*

***(16d) The switchover from analogue to digital terrestrial television should, as a result of the superior transmission efficiency of digital technology, free up a significant amount of spectrum in the European Union, the so-called "digital dividend". Member States should release their digital dividends as quickly as possible, allowing citizens to benefit from the deployment of new, innovative and competitive services. To this end, obstacles existing at national level for the efficient allocation or reallocation of the digital dividend should be removed, and a more coherent and integrated approach to the allocation of the digital dividend in the Community should be pursued.***

## Amendment 20

### Proposal for a directive – amending act Recital 17

*Text proposed by the Commission*

*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 to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

(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 reference to existing internationally agreed frequency plans*** to ensure that regulatory intervention is limited to the extent necessary to prevent such interference.

## Amendment 21

**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 for electronic communications services as identified in national frequency allocation plans and the ITU Radio Regulations** (the ‘principles of technology and service neutrality’). The administrative determination of technologies and services should **apply whenever general interest objectives are at stake**.

**Amendment 22**

**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, to ensure the protection of public health by limiting public exposure to electromagnetic fields, 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**.

**Amendment 23**

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

*Text proposed by the Commission*

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

*Amendment*

(22) Spectrum users should also be able to freely choose the services they wish to offer over the spectrum subject to transitional measures *designed to deal* with previously acquired rights ***and the provisions of national frequency allocation plans and the ITU Radio Regulations***. *Exceptions* to the principle of service neutrality which require the provision of a specific service ***in order to take account of national public policy considerations or*** to meet clearly defined general interest objectives such as safety of life, the need to promote social, regional and territorial cohesion or ***the efficient use of radio frequencies and the effective management of*** spectrum *should be permitted where necessary*. Those objectives should include the promotion of ***national audiovisual and media policies***, 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, ***or to ensure that these objectives are fulfilled***, 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 24**

**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 exception regarding the promotion of cultural and linguistic diversity, ***national audiovisual and media policies*** and media pluralism in accordance with their own national law.

**Amendment 25**

**Proposal for a directive – amending act  
Recital 26**

*Text proposed by the Commission*

***(26) Given the effect of the exceptions on the development of the internal market for electronic communications services, the EC should be able to harmonise the scope and nature of any exceptions to the principles of technology and service neutrality other than those aimed at ensuring the promotion of cultural and linguistic diversity and media pluralism, having regard to harmonised technical conditions for the availability and efficient use of radio frequencies under the Decision 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community ("the Radio Spectrum Decision").***

*Amendment*

***deleted***

**Amendment 26**

**Proposal for a directive – amending act  
Recital 29**

*Text proposed by the Commission*

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be **given the power to grant the Authority specific responsibilities in the area of numbering**. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism.

*Amendment*

(29) In order to promote the functioning of the internal market, and to support the development of cross-border services, the Commission should be **able to consult BERT regarding numbering**. Furthermore, to allow citizens of the Member States, including travellers and disabled users, to be able to reach certain services by using the same recognisable numbers at similar prices in all Member States, the powers of the Commission to adopt technical implementing measures should also cover, where necessary, the applicable tariff principle or mechanism, **as well as the establishment of a single EU front-up call number ensuring user-friendly access to those services**.

**Amendment 27**

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

*Text proposed by the Commission*

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in **an** environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of ducts, masts, and antennas, **the** entry into buildings and **a** better coordination of civil works. Improving facility sharing can significantly improve competition and lower the overall financial

*Amendment*

(31) It is necessary to strengthen the powers of the Member States vis-à-vis holders of rights of way to ensure the entry or roll out of new network in **a fair, efficient and** environmentally responsible way and independently of any obligation on an operator with significant market power to grant access to its electronic communications network. National regulatory authorities should be able to impose, on a case-by-case basis, the sharing of **network elements and associated facilities such as** ducts, masts and antennas, entry into buildings and better coordination of civil works. Improving facility sharing can significantly

and environmental cost of deploying electronic communications infrastructure *for undertakings*.

improve competition and lower the overall financial and environmental cost *for undertakings* of deploying electronic communications infrastructure, ***in particular new fibre optic access networks. National regulatory authorities should be able to impose on operators with significant market power obligations to provide a reference offer for granting fair and non-discriminatory access to their ducts.***

## Amendment 28

### Proposal for a directive – amending act Recital 32

#### *Text proposed by the Commission*

(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 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

#### *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 therefore ensure the integrity and security of public communications networks are maintained. ***The European Network and Information Security Agency ("ENISA")<sup>1</sup>*** should contribute to the enhanced level of security of electronic communications by, among other things, providing expertise and advice, and promoting the exchange of best practices. Both ***ENISA*** and the national regulatory authorities should have the necessary means to perform their duties, including powers to obtain sufficient information 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

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.

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.

---

<sup>1</sup> *Established under Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 (OJ L 77, 13.3.2004, p. 1).*

## **Amendment 29**

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

#### *Text proposed by the Commission*

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

#### *Amendment*

(33) Where there is a need to agree on a common set of security requirements, power should be conferred on the Commission to adopt technical implementing measures to achieve an adequate level of security of electronic communications networks and services in the internal market. **ENISA** 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.

## **Amendment 30**

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

*Text proposed by the Commission*

*Amendment*

***(39a) Both investment and competition should be encouraged in order to safeguard consumer choice.***

**Amendment 31**

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

*Text proposed by the Commission*

*Amendment*

(43) The purpose of functional separation, whereby the vertically integrated operator is required to establish operationally separate business entities, is to ensure the provision of fully equivalent access products to all downstream operators, including the vertically integrated operator's own downstream divisions. Functional separation *has* the capacity to improve competition in several relevant markets by significantly reducing the incentive for discrimination and by making it easier for compliance with non-discrimination obligations to be verified and enforced. ***In exceptional cases, it may be justified as a remedy where there has been persistent failure to achieve effective non-discrimination in several of the markets concerned, and where there is little or no prospect of infrastructure competition within a reasonable timeframe after recourse to one or more remedies previously considered to be appropriate. However, it is very important to ensure that its imposition preserves the incentives of the concerned undertaking to invest in its network and that it does not entail any potential negative effects on consumer welfare. Its imposition requires a coordinated analysis of different relevant markets related to the access***

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

*network, in accordance with the market analysis procedure set out in Article 16 of the Framework Directive. When performing the market analysis and designing the details of this remedy, national regulatory authorities should pay particular attention to the products to be managed by the separate business entities, taking into account the extent of network roll-out and the degree of technological progress, which may affect the substitutability of fixed and wireless services.* In order to avoid distortions of competition in the internal market, proposals for functional separation should be approved in advance by the Commission.

#### **Amendment 32**

##### **Proposal for a directive – amending act Recital 44 a (new)**

*Text proposed by the Commission*

*Amendment*

***(44a) Continuing integration of the internal market in electronic communications networks and services requires better coordination in the application of the ex-ante regulation provided for by the EU regulatory framework for electronic communications networks and services .***

#### **Amendment 33**

##### **Proposal for a directive – amending act Recital 46**

*Text proposed by the Commission*

*Amendment*

(46) While it is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to achieve goals such as end-to-end connectivity or

(46) While it is appropriate in some circumstances for a national regulatory authority to impose obligations on operators that do not have significant market power in order to achieve goals such as end-to-end connectivity or

interoperability of services, it is however necessary to ensure that such obligations are imposed in conformity with the regulatory framework and in particular its notification procedures.

interoperability of services, ***or in order to promote efficiency and sustainable competition and to ensure the maximum benefit for end-users***, it is however necessary to ensure that such obligations are imposed in conformity with the regulatory framework and in particular its notification procedures.

#### Amendment 34

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

*Text proposed by the Commission*

*Amendment*

***(47a) The Commission should submit a proposal to the European Parliament and to the Council for the adoption of those harmonisation measures for the implementation of Community electronic communications policy which go beyond technical implementing measures.***

#### Amendment 35

##### 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***

(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 ***for*** spectrum ***allocation*** where this ***appears*** essential ***in order*** to meet a ***specific*** general interest

*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.

### Amendment 36

#### Proposal for a directive – amending act Recital 50

*Text proposed by the Commission*

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

### Amendment 37

#### Proposal for a directive – amending act Recital 53

*Text proposed by the Commission*

(53) Removing legal and administrative barriers to a general authorisation or rights of use for spectrum or numbers with European implications should favour technology and service development and contribute to improving competition. While the coordination of technical conditions for the availability and efficient use of radio frequencies is organised pursuant to the Radio Spectrum Decision, it may also be necessary, in order to achieve internal market objectives, to coordinate or harmonise the selection procedures and conditions applicable to rights and authorisations in certain bands, to rights of use for numbers and to general authorisations. This applies in particular to electronic communications services that by

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.

*Amendment*

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

*Amendment*

(53) Removing legal and administrative barriers to a general authorisation or rights of use for spectrum or numbers with European implications should favour technology and service development and contribute to improving competition. While the coordination of technical conditions for the availability and efficient use of radio frequencies is organised pursuant to the Radio Spectrum Decision, it may also be necessary, in order to achieve internal market objectives, to coordinate or harmonise the selection procedures and conditions applicable to rights and authorisations in certain bands, to rights of use for numbers and to general authorisations. This applies in particular to electronic communications services that by

their nature have an internal market dimension or cross-border potential, such as satellite services, the development of which would be hampered by discrepancies in spectrum assignment between Member States. The Commission, assisted by the Communications Committee and taking the utmost account of the opinion of *the Authority*, should therefore be able to adopt technical implementing measures to achieve such objectives. Implementing measures adopted by the Commission may require Member States to make available rights of use for spectrum and/or numbers throughout their territory and where necessary withdraw any other existing national rights of use. In such cases, Member States should not grant any new right of use for the relevant spectrum band or number range under national procedures.

their nature have an internal market dimension or cross-border potential, such as satellite services, the development of which would be hampered by discrepancies in spectrum assignment between Member States *or between the European Union and third countries, taking into account the decisions of the ITU and the CEPT*. The Commission, assisted by the Communications Committee and taking the utmost account of the opinion of *BERT*, should therefore be able to adopt technical implementing measures to achieve such objectives. Implementing measures adopted by the Commission may require Member States to make available rights of use for spectrum and/or numbers throughout their territory and where necessary withdraw any other existing national rights of use. In such cases, Member States should not grant any new right of use for the relevant spectrum band or number range under national procedures.

## **Amendment 38**

### **Proposal for a directive – amending act Recital 57**

#### *Text proposed by the Commission*

(57) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities to communicate with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.

#### *Amendment*

(57) The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities *and emergency services to communicate between themselves and* with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified

by the experimental nature of such rights.

## Amendment 39

### 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, the Commission *should be empowered* 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. ***Given that the conduct of the regulatory procedure with scrutiny within the normal time-limits 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.***

## Amendment 40

### Proposal for a directive – amending act

#### Article 1 – point 1

Directive 2002/21/EC

Article 1 – paragraph 1

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 41

### Proposal for a directive – amending act

#### Article 1 – point 2 – point c

Directive 2002/21/EC

Article 2 – point e

#### *Text proposed by the Commission*

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

#### *Amendment*

(e) "associated facilities" means those facilities associated with an electronic communications network and/or an electronic communications service which enable and/or support the provision of services via that network and/or service or have the potential to do so, and include number or address translation systems, conditional access systems and electronic programme guides, as well as physical infrastructure such as ***entries to buildings, building wiring, towers and other supporting constructions, ducts, conduits, masts, antennae, manholes and*** cabinets

*and all other network elements which are not active;*

## **Amendment 42**

### **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 radiocommunications 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 radiocommunications service operating in accordance with the applicable **international**, Community or national regulations.

## **Amendment 43**

### **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.

#### **Amendment 44**

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

##### **Article 1 – point 3 a (new)**

Directive 2002/21/EC

Article 3 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) In Article 3, the following paragraph shall be added:***

***"3a. Member States shall ensure that the goals of BERT of promoting greater regulatory coordination and coherence are actively supported by the national regulatory authorities.***

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

#### **Amendment 45**

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

##### **Article 1 – point 3 b (new)**

Directive 2002/21/EC

Article 3 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***(3b) In Article 3, the following paragraph shall be added:***

***"3b. Member States shall ensure that national regulatory authorities take utmost account of common positions issued by BERT when adopting their own decisions for their home markets."***

## Amendment 46

### Proposal for a directive – amending act

#### Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

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.

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

## Amendment 47

### Proposal for a directive – amending act

#### Article 1 – point 4 – point a

Directive 2002/21/EC

Article 4 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

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.

#### *Amendment*

Pending the outcome of any appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted. Interim measures may be granted, ***in accordance with the relevant national legislation***, 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.

#### **Amendment 48**

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

##### **Article 1 – point 4 – point a a (new)**

Directive 2002/21/EC

Article 4 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) the following paragraph shall be added:***

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

#### **Amendment 49**

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

##### **Article 1 - point 5**

Directive 2002/21/EC

Article 5 – paragraph 1

*Text proposed by the Commission*

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

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 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 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.

information *and shall comply with Community and national law on business confidentiality.*

## **Amendment 50**

### **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 national 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 national regulatory authorities intend to take measures in accordance with this Directive or the Specific Directives or where they intend to provide for restrictions in accordance with Article 9(3) and 9(4) *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.

## **Amendment 51**

### **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 52**

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

#### **Article 1 - point 6**

Directive 2002/21/EC

Article 7 – paragraphs 2 to 10

#### *Text proposed by the Commission*

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

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

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

(b) would affect trade between Member States,

it shall make the draft measure accessible to the Commission, *the Authority*, and the national regulatory authorities in other Member States, together with the reasoning

#### *Amendment*

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

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

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

(b) would affect trade between Member States,

it shall make the draft measure accessible to the Commission, ***BERT*** and the national regulatory authorities in other Member States, ***at the same time***, together with the

on which the measure is based, in accordance with Article 5(3), and inform the Commission and other national regulatory authorities thereof. National regulatory authorities and the Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

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

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

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

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

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

5. Within the two month period referred to in paragraph 4, the Commission may take a decision requiring the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of *the Authority* submitted in accordance with Article 5 of Regulation [.../EC] before

reasoning on which the measure is based, in accordance with Article 5(3), and inform the Commission, **BERT** and other national regulatory authorities thereof. National regulatory authorities, **BERT** and the Commission may make comments to the national regulatory authority concerned only within one month. The one-month period may not be extended.

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

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

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

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

5. Within the two month period referred to in paragraph 4, the Commission may take a decision requiring the national regulatory authority concerned to withdraw the draft measure. The Commission shall take the utmost account of the opinion of **BERT** submitted in accordance with Article 5 of Regulation [.../EC] before issuing a

issuing a decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

6. Within three months of the Commission issuing a decision in accordance with paragraph 5 requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

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

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

***In so doing, the Commission shall pursue the same policy objectives as set out for***

decision. The decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted together with specific proposals for amending the draft measure.

6. Within three months of the Commission issuing a decision in accordance with paragraph 5 requiring the national regulatory authority to withdraw a draft measure, the national regulatory authority shall amend or withdraw the draft measure. If the draft measure is amended, the national regulatory authority shall undertake a public consultation in accordance with the procedures referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with the provisions of paragraph 3.

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

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

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

10. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 3 and 4, in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission, the other national regulatory authorities, and *the Authority*. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

10. In exceptional circumstances, where a national regulatory authority considers that there is an urgent need to act, by way of derogation from the procedure set out in paragraphs 3 and 4, in order to safeguard competition and protect the interests of users, it may immediately adopt proportionate and provisional measures. It shall, without delay, communicate those measures, with full reasons, to the Commission, the other national regulatory authorities and *BERT*. A decision by the national regulatory authority to render such measures permanent or extend the time for which they are applicable shall be subject to the provisions of paragraphs 3 and 4.

## **Amendment 53/rev**

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

#### **Article 1 – point 6 a (new)**

Directive 2002/21/EC

Article –7 a (new)

*Text proposed by the Commission*

*Amendment*

*(6a) the following Article shall be inserted:*

*"Article -7a*

*Procedure for the consistent application of remedies*

***1. Where a national regulatory authority intends to adopt a measure to impose, amend or withdraw an obligation on an operator in application of Article 16 in conjunction with Articles 5 and 9 to 13a of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive) the Commission and the national regulatory authorities of the other Member States shall have a period of one month from the date of notification of the draft measure in which to make comments to the national regulatory authority concerned .***

***2. If the draft measure concerns the imposition, amendment or withdrawal of an obligation other than the obligation laid down in Article 13a of Directive 2002/19/EC (Access Directive), the Commission may, within the same period, notify the national regulatory authority concerned and BERT of the reasons why it considers that the draft measure would create a barrier to the single market or why it has serious doubts as to its compatibility with Community law. In such case, the draft measure shall not be adopted for a further two months following the Commission's notification.***

***In the absence of such notification, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission or by any other national regulatory authority.***

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

*ensure the development of consistent regulatory practice.*

*Within the same two-month period, BERT shall, acting by an absolute majority, adopt an opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure should be amended and providing specific proposals to that end. This opinion shall be reasoned and made public.*

*If BERT has confirmed the appropriateness and effectiveness of the draft measure, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission and BERT. The national regulatory authority shall make public how it has taken these comments into account.*

*If BERT has indicated that the draft measure should be amended, the Commission may, taking utmost account of the opinion of BERT, adopt a decision requiring the national regulatory authority concerned to amend the draft measure and providing reasons and specific proposals to that end.*

*4. If the draft measure concerns the imposition, amendment or withdrawal of the obligation laid down in Article 13a of Directive 2002/19/EC (Access Directive), the draft measure shall not be adopted for a further two-month period starting at the end of the one-month period referred to in paragraph 1.*

*Within the two-month period referred to in the first subparagraph, the Commission, BERT and the national regulatory authority concerned shall cooperate closely with the objective of determining whether the proposed draft measure complies with the provisions of Article 13a of Directive 2002/19/EC*

*(Access Directive), and, in particular, whether it is the most appropriate and effective measure. To that end, due account shall be taken of the views of market participants and of the need to ensure the development of consistent regulatory practice. At the reasoned request of BERT or the Commission, this two-month period shall be extended by up to a further two months.*

*Within the maximum period set out in the second subparagraph, BERT shall, acting by an absolute majority, adopt an opinion confirming the appropriateness and effectiveness of the draft measure or indicating that the draft measure should not be adopted. This opinion shall be reasoned and made public.*

*Only if the Commission and BERT have confirmed the appropriateness and effectiveness of the draft measure, the national regulatory authority concerned may adopt the draft measure, taking utmost account of any comments made by the Commission and BERT. The national regulatory authority shall make public how it has taken these comments into account.*

*5. Within three months of the adoption by the Commission in accordance with the fourth subparagraph of paragraph 3 of a reasoned decision requiring a national regulatory authority to amend the draft measure, the national regulatory authority concerned shall amend or withdraw the draft measure. If the draft measure is to be amended, the national regulatory authority shall undertake a public consultation in accordance with the consultation and transparency procedure referred to in Article 6, and re-notify the amended draft measure to the Commission in accordance with Article 7.*

*6. The national regulatory authority may withdraw the proposed draft measure at*

*any stage of the procedure."*

#### **Amendment 54**

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

##### **Article 1 – point 7**

Directive 2002/21/EC

Article 7a - paragraph 1

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

1. The Commission may lay down ***implementing provisions*** in relation to Article 7 that define the form, content and level of details to be given in the notifications required in accordance with Article 7(3), the circumstances in which notifications would not be required, and the calculation of the time limits.

##### *Amendment*

1. The Commission, ***taking utmost account of the opinion of BERT***, may lay down ***recommendations and/or guidelines*** in relation to Article 7 that define the form, content and level of details to be given in the notifications required in accordance with Article 7(3), the circumstances in which notifications would not be required, and the calculation of the time limits.

#### **Amendment 55**

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

##### **Article 1 – point 7**

Directive 2002/21/EC

Article 7a - paragraph 2

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

***2. The measures referred to in paragraph 1, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).***

##### *Amendment*

***deleted***

## Amendment 56

### Proposal for a directive – amending act

#### Article 1 – point 8 – point a

Directive 2002/21/EC

Article 8 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 57

### Proposal for a directive – amending act

#### Article 1 – point 8 – point b

Directive 2002/21/EC

Article 8 – paragraph 2 – point a

#### *Text proposed by the Commission*

(a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality;

#### *Amendment*

(a) ensuring that users, including disabled users, elderly users, and users with special social needs derive maximum benefit in terms of choice, price, and quality, ***and that providers are compensated for any additional net cost that they can show that they incurred as a result of the imposition of such public service obligations;***

## Amendment 58

### Proposal for a directive – amending act

#### Article 1 – point 8 – point b

Directive 2002/21/EC

Article 8 – paragraph 2 – point b

*Text proposed by the Commission*

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

*Amendment*

(b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of ***and access to content and services across all networks***;

#### **Amendment 59**

**Proposal for a directive – amending act**

**Article 1 - point 8 - point b a (new)**

Directive 2002/21/EC

Article 8 - paragraph 2 - point c

*Text proposed by the Commission*

*Amendment*

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

***"(c) encouraging and facilitating efficient market-driven investment in infrastructure, and promoting innovation; and"***

#### **Amendment 60**

**Proposal for a directive – amending act**

**Article 1 -- point 8 – point b b (new)**

Directive 2002/21/EC

Article 8 – paragraph 3 – point c

*Text proposed by the Commission*

*Amendment*

***(bb) in paragraph 3, point (c) shall be deleted.***

#### **Amendment 61**

**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 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 ***and for this purpose contributing to the promotion of lawful content in accordance with Article 33 of Directive 2002/22/EC (Universal Service Directive).***

### **Amendment 138**

**Proposal for a directive – amending act**

**Article 1 - point 8 - point e a (new)**

Directive 2002/21/EC

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

*Text proposed by the Commission*

*Amendment*

***(ea) In paragraph 4, point (ga) is added:***

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

### **Amendment 62**

**Proposal for a directive – amending act**

**Article 1 – point 8 – point e b (new)**

Directive 2002/21/EC

Article 8 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(eb) the following paragraph shall be added:***

*"4a. The national regulatory authorities shall, in pursuit of the policy objectives referred to in paragraphs 2, 3 and 4, apply objective, transparent, non-discriminatory and proportionate regulatory principles by, inter alia:*

*(a) promoting regulatory predictability through the continuity of remedies over several market reviews as appropriate;*

*(b) ensuring that, in similar circumstances, there is no discrimination in the treatment of undertakings providing electronic communications networks and services;*

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

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

*(e) taking due account of the variety of conditions relating to competition and consumers that exist in the different geographic areas within a Member State;*

*(f) imposing ex-ante regulatory obligations only where there is no effective and sustainable competition, and relaxing or lifting such obligations as soon as that condition is fulfilled."*

**Amendment 63/rev**

**Proposal for a directive – amending act**

**Article 1 – point 8 a (new)**

Directive 2002/21/EC

Articles 8 a and 8 b (new)

***(8a) the following Articles shall be inserted:***

***"Article 8a***

***Radio Spectrum Policy Committee***

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

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

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

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

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

***Article 8b***

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

***1. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European Union. To this end, they shall take into consideration, inter alia, economic, safety, health, public***

*interest, freedom of expression, cultural, scientific, social and technical aspects of the EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and of avoiding harmful interference*

*2. Radio spectrum policy activities in the European Union shall be without prejudice to:*

*(a) measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular with regard to content regulation and audio-visual and media policies;*

*(b) the provisions of Directive 1999/5/EC\*<sup>†</sup>; and*

*(c) the right of Member States to organise and use their radio spectrum for the purposes of public order, public security and defence.*

*3. Member States shall ensure the coordination of radio spectrum policy approaches in the European Union and, where appropriate, harmonised conditions with regard to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market in EU policy areas such as electronic communications, transport and research and development.*

*4. The Commission, taking due account of the opinion of the RSPC, may submit a legislative proposal for establishing a radio spectrum action programme with regard to the strategic planning and harmonisation of the use of radio spectrum in the European Union or other legislative measures with the aim of optimising the use of radio spectrum and of avoiding harmful interference.*

---

***5. Member States shall ensure the effective coordination of the interests of the European Union in international organisations competent in radio spectrum matters. Whenever necessary for ensuring such effective coordination, the Commission, taking due account of the opinion of the RSPC, may propose to the European Parliament and the Council common policy objectives, including, if necessary, a negotiation mandate.***

***\* Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ L 91, 7.4.1999, p. 10)."***

## **Amendment 64/rev**

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

#### **Article 1 – point 9**

Directive 2002/21/EC

Article 9

#### *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.

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use

#### *Amendment*

***1. Taking due account of the fact that radio frequencies are a public good that has an important social, cultural and economic value, Member States shall ensure the effective management of radio frequencies for electronic *communications* services in their territory in accordance with **Articles 8 and 8b**. 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. ***In so doing, they shall act in accordance with international agreements and may take public policy considerations into account.******

2. Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use

thereof and in accordance with Decision No 676/2002/EC (Radio Spectrum Decision).

3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall ensure that all types of **radio network or wireless access** technology may be used in the radio frequency bands **open to** electronic communications services.

Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of **radio network or wireless access** technology used where this is necessary to:

- (a) avoid harmful interference,
- (b) protect public health against electromagnetic fields,
- (c) ensure maximisation of radio frequencies sharing **where the use of frequencies is subject to a general authorisation, or**
- (d) **comply with a restriction** in accordance with paragraph 4 *below*.

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

thereof **and in pursuit of benefits for the consumer such as economies of scale and interoperability of services. In so doing, they shall act** in accordance with **Articles 8b and 9c of this Directive and** Decision No 676/2002/EC (Radio Spectrum Decision).

3. Unless otherwise provided in the second subparagraph or in the measures adopted pursuant to Article 9c, Member States shall, ensure that all types of technology **used for electronic communications services** may be used in the radio frequency bands **available for** electronic communications services **in accordance with the ITU Radio Regulations**.

Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of technology used **for electronic communications services** where this is necessary to:

- (a) avoid **the possibility of** harmful interference,
- (b) protect public health against electromagnetic fields,
- (ba) ensure technical quality of service,**
- (c) ensure maximisation of radio frequency sharing,
- (ca) safeguard the efficient use of radio frequencies,**
- (d) **fulfil a general interest objective** in accordance with paragraph 4.

4. Unless otherwise provided in the second subparagraph, Member States shall ensure that all types of electronic communications services may be provided in the radio

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.

**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.

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.

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

6. Paragraphs 3 and 4 shall apply to allocation and assignment of radio frequencies *after 31 December 2009*.

frequency bands *available for* electronic communications *services in accordance with their national frequency allocation plans and with 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.

**Measures** that require *an electronic communications* service to be provided in a specific band *available for electronic communications services* shall be justified in order to ensure the fulfilment of a general interest objective *as 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 the promotion of *cultural and media policy objectives such as* cultural and linguistic diversity and media pluralism.

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.

5. Member States shall regularly review the necessity of the restrictions *and measures* referred to in paragraphs 3 and 4 *and shall make the results of these reviews public*.

6. Paragraphs 3 and 4 shall apply to *the* allocation and assignment of radio frequencies *from ...*\*

---

\* *The date of transposition of this Directive.*

## Amendment 65

### Proposal for a directive – amending act

#### Article 1 – point 10

Directive 2002/21/EC

Article 9a – paragraphs 1 and 2

#### *Text proposed by the Commission*

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

Before adopting its decision the competent national **regulatory** authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and allow him a reasonable time limit to withdraw his application.

If the right holder withdraws his application, the right shall remain unchanged until its expiry or till the end of the 5 year period, whichever is the earlier date.

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)

#### *Amendment*

1. For a period of five years starting on ...\*, Member States **may** ensure that holders of rights to use radio frequencies which were granted before that date **and which will remain valid for a period of not less than five years after that date** may submit an application to the competent national authority for a reassessment of the restrictions to their rights in accordance with Article 9(3) and (4).

Before adopting its decision the competent national authority shall notify the right holder of its reassessment of the restrictions, indicating the extent of the right after reassessment, and allow him a reasonable time limit to withdraw his application.

If the right holder withdraws his application, the right shall remain unchanged until its expiry or till the end of the 5 year period, whichever is the earlier date.

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 delivery of broadcasting services, the right to use** the part of the radio frequencies which is necessary for the fulfilment of *that* objective **shall remain unchanged**. The part of the radio frequencies which becomes unnecessary for the fulfilment of that objective shall be subject to a new assignment procedure in **accordance** with **Article 9(3) and (4) of this Directive and**

of the Authorisation Directive.

Article 7(2) of the Authorisation Directive.

---

**\* *The date of transposition of this Directive.***

## **Amendment 66**

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

#### **Article 1 – point 10**

Directive 2002/21/EC

Article 9b

#### *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.***

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

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies is notified to the national ***regulatory*** authority responsible for ***spectrum assignment*** and is made public. Where radio frequency use has been harmonised through the application of the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.

#### *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 national frequency allocation plans.***

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

2. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies, ***as well as the effective transfer thereof,*** is notified to the ***competent*** national authority responsible for ***granting individual rights to use radio frequencies,*** and ***that it*** is made public. Where radio frequency use has been harmonised through the application of ***Article 9c and*** the Radio Spectrum Decision or other Community measures, any such transfer shall comply with such harmonised use.

## Amendment 67/rev

### Proposal for a directive – amending act

#### Article 1 – point 10

Directive 2002/21/EC

Article 9c

#### *Text proposed by the Commission*

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

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

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

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

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

These measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure

#### *Amendment*

In order to contribute to the development of the internal market, for the achievement of the principles of *Articles 8b, 9, 9a and 9b*, the Commission may adopt appropriate *technical* implement measures to:

*(–a) apply the radio spectrum action programme established pursuant to Article 8b(4);*

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

(b) harmonise the conditions attached to such rights;

(d) *identify the bands to which* the principle of *service* neutrality *applies*.

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].***

with scrutiny referred to in Article 22(3).

#### **Amendment 68**

**Proposal for a directive – amending act**  
**Article 1 – point 11 – point a**  
Directive 2002/21/EC  
Article 10 – paragraph 2

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

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

##### *Amendment*

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

#### **Amendment 69**

**Proposal for a directive – amending act**  
**Article 1 – point 11 – point b**  
Directive 2002/21/EC  
Article 10 – paragraph 4

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

4. 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

##### *Amendment*

4. Member States shall support harmonisation ***of specific numbers or numbering ranges*** within the Community where that promotes the functioning of the internal market or supports the development of pan-European services.

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.

*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 70

### Proposal for a directive – amending act

#### Article 1 – point 13

Directive 2002/21/EC

Article 12

*Text proposed by the Commission*

#### *Article 12*

*Co-location and **facility** sharing for providers of electronic communications networks*

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

The Commission may take appropriate technical implementing measures on this matter which may include *ensuring cross-border access to national numbering used for essential services such as directory enquiries*. The implementing measures may grant *BERT* specific responsibilities in the application of those measures.

*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).*

*Amendment*

#### *Article 12*

*Co-location and sharing of **network elements and associated facilities** for providers of electronic communications networks*

1. Where an undertaking providing electronic communications networks has the right under national legislation to install facilities on, over or under public or private property, or may take advantage of a procedure for the expropriation or use of property, national regulatory authorities shall, *taking full account of the principle of proportionality*, be able to impose the sharing of such facilities or property, including entries to buildings, *building wiring*, masts, antennae, *towers and other supporting constructions*, ducts, *conduits*, manholes and cabinets *and all other*

2. Member States may require that the holders of the rights referred to in paragraph 1 share facilities or property (including physical co-location) or take measures to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town and country planning objectives only after an appropriate period of public consultation, during which all interested parties *shall be* given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.

*network elements which are not active.*

2. Member States may require that the holders of the rights referred to in paragraph 1 share facilities or property (including physical co-location) or take measures to facilitate the coordination of public works in order to protect the environment, public health, public security or to meet town and country planning objectives only after an appropriate period of public consultation during which all interested parties *are* given an opportunity to express their views. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing.

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

***2b. Member States shall ensure that national regulatory authorities establish a detailed inventory of the nature, availability and geographical location of the facilities referred to in paragraph 1 based on information provided by the holders of the rights referred to in that paragraph, and that they make that inventory available to interested parties.***

***2c. Member States shall ensure that the competent authorities establish appropriate coordination procedures, in***

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

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

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

## **Amendment 71**

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

#### **Article 1 – point 14**

Directive 2002/21/EC

Article 13a

#### *Text proposed by the Commission*

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to safeguard the security of their networks or services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent *or* minimise the impact of security incidents on users and on interconnected networks.

2. Member States shall ensure that undertakings providing public communications networks take *all necessary* steps to ensure the integrity of

#### *Amendment*

1. Member States shall ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to safeguard the security of their networks or services. Having regard to the state of the art, these measures shall ensure a level of security appropriate to the risk presented. In particular, measures shall be taken to prevent *and* minimise the impact of security incidents on users and on interconnected networks.

2. Member States shall ensure that undertakings providing public communications networks take *appropriate* steps to ensure the integrity of their

their networks so as to ensure the continuity of supply of services provided over those networks.

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

Where appropriate, the national **regulatory** authority concerned shall inform the national **regulatory** authorities in other Member States **and the Authority**. Where disclosure of the breach is in the public interest, the national **regulatory** authority may inform the public.

**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.

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*.

networks so as to ensure the continuity of supply of services provided over those networks. ***The competent national authorities shall consult with electronic communications services providers prior to adopting specific measures for the security and integrity of electronic communications networks.***

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

Where appropriate, the **competent** national authority concerned shall inform the **competent** national authorities in other Member States **and ENISA**. Where disclosure of the breach is in the public interest, the **competent** national authority may inform the public.

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

4. The Commission, taking the utmost account of the opinion of **ENISA**, 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 *notifications*. ***The adoption of such technical implementing measures shall not prevent Member States from adopting additional requirements in order to pursue the objectives set out in paragraphs 1 and 2.***

***Technical implementing measures relating to notifications shall comply with the provisions of Directive 2002/58/EC of***

*the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector* \*.

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).

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).

---

\* *OJ L 201, 31.7.2002, p. 37.*

## **Amendment 72**

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

#### **Article 1 – point 14**

Directive 2002/21/EC

Article 13b – paragraph 1

#### *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.

#### *Amendment*

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

## **Amendment 73/rev**

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

#### **Article 1 – point 14**

Directive 2002/21/EC

Article 13b – paragraph 2 – introductory wording

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 74**

**Proposal for a directive – amending act**

**Article 1 – point 14**

Directive 2002/21/EC

Article 13b – paragraph 2 – point a

*Text proposed by the Commission*

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

*Amendment*

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

**Amendment 75**

**Proposal for a directive – amending act**

**Article 1 – point 14**

Directive 2002/21/EC

Article 13b – paragraph 3

*Text proposed by the Commission*

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

*Amendment*

3. Member States shall ensure that **the competent** national authorities have all the powers necessary to investigate cases of non-compliance **and their effects on the security and integrity of the networks**.

**Amendment 76**

**Proposal for a directive – amending act**

**Article 1 – point 15 – point a**

Directive 2002/21/EC

Article 14 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***(a) In the second subparagraph of paragraph 2, the second sentence is deleted.***

***deleted***

#### **Amendment 77**

**Proposal for a directive – amending act**

**Article 1 – point 15 – point b**

Directive 2002/21/EC

Article 14 – paragraph 3

*Text proposed by the Commission*

*Amendment*

***(b) Paragraph (3) is deleted.***

***(b) paragraph 3 is replaced by the following:***

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

#### **Amendment 78**

**Proposal for a directive – amending act**

**Article 1 – point 16 – point b a (new)**

Directive 2002/21/EC

Article 15 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(ba) the following paragraph shall be inserted:***

***"2a. By...\*, the Commission shall publish guidelines for national regulatory authorities as regards decisions aimed at imposing, amending or withdrawing obligations on undertakings with significant market power."***

---

***\* The date of the entry into force of Directive 2008/.../EC [of the European Parliament and of the Council of ... amending Directive 2002/21/EC].***

## **Amendment 79**

**Proposal for a directive – amending act**  
**Article 1 – point 16 – point d**  
Directive 2002/21/EC  
Article 15 – paragraph 4 – subparagraph 2

### *Text proposed by the Commission*

This Decision, 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 80**

**Proposal for a directive – amending act**  
**Article 1 – point 17 – point a**  
Directive 2002/21/EC  
Article 16 – paragraph 1

### *Text proposed by the Commission*

1. National regulatory authorities shall carry out an analysis of the relevant markets listed in the Recommendation, taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate, in collaboration with the

### *Amendment*

This Decision, 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).

### *Amendment*

1. National regulatory authorities shall carry out an analysis of the relevant markets, ***taking account of the markets*** listed in the Recommendation ***and*** taking the utmost account of the Guidelines. Member States shall ensure that this analysis is carried out, where appropriate,

national competition authorities.

in collaboration with the national competition authorities.

## **Amendment 81**

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

#### **Article 1 – point 17 – point c**

Directive 2002/21/EC

Article 16 – paragraph 7 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

*The Commission, taking the utmost account of the opinion of the Authority issued in accordance with Article 6 of Regulation [.../EC], may adopt a decision requiring the national regulatory authority to designate certain undertakings as having significant market power and to impose specific obligations under Articles 8, 9 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive) on those undertakings so designated. In so doing, the Commission shall pursue the same policy objectives as set out for national regulatory authorities in Article 8.*

*deleted*

## **Amendment 82**

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

#### **Article 1 – point 18 – point a**

Directive 2002/21/EC

Article 17 – paragraph 1

*Text proposed by the Commission*

*Amendment*

(a) *In paragraph 1, in the second sentence, the words 'acting in accordance with the procedure referred to in Article 22(2)' are replaced by 'may take appropriate implementing measures and'*

(a) *in paragraph 1, in the first sentence the term 'Article 22(2)' shall be replaced by the term 'Article 22(3)' and in the second sentence the words 'acting in accordance with the procedure referred to in Article 22(2)' shall be replaced by the words 'may take appropriate implementing measures and'*

## Amendment 83

### Proposal for a directive – amending act

#### Article 1 – point 18 – point a a (new)

Directive 2002/21/EC

Article 17 – paragraph 2 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

*(aa) in paragraph 2, subparagraph 3 shall be replaced by the following:*

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

## Amendment 84

### Proposal for a directive – amending act

#### Article 1 – point 18 – point c

Directive 2002/21/EC

Article 17 – paragraph 6a

*Text proposed by the Commission*

*Amendment*

6a. The implementing measures designed to amend non-essential elements of this Directive by supplementing it ***referred to in paragraphs 4 and 6*** shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 22(4).***

6a. The implementing measures ***referred to in paragraphs 1, 4 and 6***, 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).

## Amendment 85

### Proposal for a directive – amending act

#### Article 1 – point 20

Directive 2002/21/EC

Article 19

#### *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.*

***2. Where the Commission issues a recommendation pursuant to paragraph 1, it shall act in accordance with the procedure referred to in Article 22(2). Member States shall ensure that national regulatory authorities take the utmost account of those recommendations in carrying out their tasks. Where a national regulatory authority chooses not to follow a recommendation, it shall inform the Commission, giving the reasoning for its position.***

3. The decision *mentioned* in paragraph 1 designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 22(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article***

#### *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 **creates** a barrier to the internal market, *it may, taking the utmost account of the opinion of **BERT**, 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.*

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

22(4).

4. Measures adopted pursuant to paragraph 1 may include the identification of a harmonised or coordinated approach *for dealing* with the following issues:

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

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

(c) *Consumer* issues, including *accessibility* to electronic communications services and equipment by disabled end-users;

(d) *Regulatory* accounting.

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

## Amendment 86

### 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*

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.

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

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

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

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

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

#### *Amendment*

2. Any party may refer the dispute to the national regulatory authorities concerned. The competent national regulatory authorities shall coordinate their efforts ***within BERT*** in order to bring about a resolution of the dispute, ***as far as possible through the adoption of a joint decision***,

in accordance with the objectives set out in Article 8. ***Any obligations imposed on undertakings by the national regulatory authorities as part of the resolution of a dispute shall comply with the provisions of this Directive and the Specific Directives.***

## **Amendment 87**

### **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 ***BERT*** in accordance with Article 18 of Regulation [.../EC].

## **Amendment 88**

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

#### **Article 1 - point 23**

Directive 2002/21/EC

Article 21a

#### *Text proposed by the Commission*

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and

#### *Amendment*

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and the Specific Directives and

shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time-limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

shall take all measures necessary to ensure that they are implemented. The penalties provided for must be **appropriate**, effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the [time-limit for implementation of the amending act] at the latest and shall notify it without delay of any subsequent amendment affecting them.

## **Amendment 89**

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

#### **Article 1 – point 24 – point -a (new)**

Directive 2002/21/EC

Article 22 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(-a) the following paragraph shall be inserted:***

***"1a. By way of derogation from paragraph 1, for the adoption of measures pursuant to Article 9c, the Commission shall be assisted by the Radio Spectrum Committee established under Article 3(1) of Decision 676/2002/EC."***

## **Amendment 90**

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

#### **Article 1 – point 26**

Directive 2002/21/EC

Annexes I and II

*Text proposed by the Commission*

*Amendment*

***(26) Annexes I and II are deleted.***

***(26) Annex I shall be deleted and Annex II shall be replaced by the following:***

**"ANNEX II**

**Criteria to be used by national**

**regulatory authorities in making an assessment of joint dominance in accordance with Article 14(2), second subparagraph**

**Two or more undertakings can be found to be in a joint dominant position within the meaning of Article 14 if, even in the absence of structural or other links between them, they operate in a market *which is characterised by a lack of effective competition and in which no single undertaking has significant market power*. Without prejudice to the case law of the Court of Justice on joint dominance, this is likely to be the case where the market *is concentrated and exhibits a number of appropriate characteristics of which the following may be the most relevant in the context of electronic communications*:**

[...]

**- low elasticity of demand**

[...]

**- similar market shares**

[...]

**- high *legal or economic* barriers to entry**

**- *vertical integration with collective refusal to supply***

**- lack of countervailing buyer power**

**- lack of potential competition**

[...]

**The above is not an exhaustive list, nor are the criteria cumulative. Rather, the list is intended to illustrate only the sorts of evidence that could be used to support assertions concerning the existence of joint dominance."**

## Amendment 91

### Proposal for a directive – amending act

#### Article 2 – point 1

Directive 2002/19/EC

Article 2 – point a

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## Amendment 92

### Proposal for a directive – amending act

#### Article 2 – point 1 a (new)

Directive 2002/19/EC

Article 2 – point e

*Text proposed by the Commission*

*Amendment*

*(1a) Article 2(e) shall be replaced by the following:*

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

### **Amendment 93**

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

#### **Article 2 – point 2**

Directive 2002/19/EC

Article 4 – paragraph 1

*Text proposed by the Commission*

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.

*Amendment*

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

## Amendment 94

### Proposal for a directive – amending act

#### Article 2 – point 2

Directive 2002/19/EC

Article 4 – paragraph 1

#### *Text proposed by the Commission*

1. Operators of public communications networks shall have a right and, when requested by other undertakings so authorised in accordance with Article 4 of Directive 2002/20/EC (Authorisation Directive), an obligation to negotiate interconnection with each other for the purpose of providing publicly available electronic communications services, in order to ensure provision and interoperability of services throughout the Community. Operators shall offer access and interconnection to other undertakings on terms and conditions consistent with obligations imposed by the national regulatory authority pursuant to Articles 5, 6, 7 and 8.'

#### *Amendment*

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

## Amendment 95

### Proposal for a directive – amending act

#### Article 2 – point 3 - point a

Directive 2002/19/EC

Article 5

#### *Text proposed by the Commission*

(a) ***Paragraph 2*** is replaced by the following:

#### *Amendment*

(a) ***Paragraphs 1 and 2 are*** replaced by the following:

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

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

**In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article 8, national regulatory authorities shall be able to impose:**

**(a) to the extent that is necessary to ensure end-to-end connectivity *or fair and reasonable access to third-party services such as directory services*, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case *or to make their services interoperable including through mechanisms for paying back to service providers sums invoiced to end-users, on fair, transparent and reasonable terms.***

**(b) to the extent that is necessary to ensure accessibility for end-users to digital radio and television broadcasting services specified by the Member State, obligations on operators to provide access to the other facilities referred to in Annex I, Part II on fair, reasonable and non-discriminatory terms.**

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

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

***When assessing the proportionality of the***

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

## **Amendment 96**

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

#### **Article 2 – point 4**

Directive 2002/19/EC

Article 6 – paragraph 2 – subparagraph 1

#### *Text proposed by the Commission*

2. In the light of market and technological developments, the Commission may adopt implementing measures to amend Annex I. The measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). ***On imperative grounds of urgency, the Commission may use the urgency procedure referred to in Article 14(4).***

#### *Amendment*

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

## **Amendment 97**

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

#### **Article 2 – point 6 – point a a (new)**

Directive 2002/19/EC

Article 8 – paragraph 2

#### *Text proposed by the Commission*

#### *Amendment*

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

**"2. Where an operator is designated as having significant market power on a specific market as a result of a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), national regulatory authorities shall, as**

*appropriate, impose the obligations set out in Articles 9 to 13 of this Directive in accordance with the procedure laid down in Article -7a of Directive 2002/21/EC (Framework Directive)."*

#### **Amendment 98**

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

##### **Article 2 – point 6 a (new)**

Directive 2002/19/EC

Article 9 – paragraph 1

*Text proposed by the Commission*

*Amendment*

*(6a) Article 9(1) shall be replaced by the following:*

**"1. National regulatory authorities may, in accordance with the provisions of Article 8, impose obligations for transparency in relation to interconnection and/or access, requiring operators to make public specified information, such as accounting information, technical specifications, network characteristics, *restrictions on access to services and applications, traffic management policies, terms and conditions for supply and use, and prices.*"**

#### **Amendment 99**

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

##### **Article 2 – point 6 b (new)**

Directive 2002/19/EC

Article 9 – paragraph 4

*Text proposed by the Commission*

*Amendment*

*(6b) Article 9(4) shall be replaced by the following:*

**"4. Notwithstanding paragraph 3, where an operator *has been found, in accordance with Article 14 of Directive 2002/21/EC (Framework Directive), to***

*have significant market power in a relevant market relating to local access at a fixed location, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex II."*

## **Amendment 100**

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

#### **Article 2 – point 8**

Directive 2002/19/EC

Article 12

*Text proposed by the Commission*

*Amendment*

**1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations on operators to meet reasonable requests for access to, and use of, specific network elements and associated facilities, inter alia in situations where the national regulatory authority considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.**

**Operators *shall* be required inter alia:**

- (a) to give third parties access to specified network elements and/or facilities, including unbundled access to the local loop;**
- (b) to negotiate in good faith with undertakings requesting access;**
- (c) not to withdraw access to facilities already granted;**
- (d) to provide specified services on a wholesale basis for resale by third parties;**
- (e) to grant open access to technical interfaces, protocols or other key**

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, antennae *or* masts, manholes *and street* cabinets;

(j) to provide access to associated services such as identity, location and presence capability.

**technologies that are indispensable for the interoperability of services or virtual network services;**

(f) to provide co-location or other forms of facility sharing, including the sharing of ducts, buildings or entry to buildings, antennae *towers and other supporting constructions*, masts, manholes, cabinets *and other network elements which are not active*;

*(fa) to provide third parties with a reference offer for the granting of access to ducts;*

**(g) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;**

**(h) to provide access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;**

**(i) to interconnect networks or network facilities;**

(j) to provide access to associated services such as identity, location and presence capability.

**National regulatory authorities may attach to those obligations conditions covering fairness, reasonableness and timeliness.**

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

**(a) the technical and economic viability of using or installing competing facilities, in the light of the rate of**

**market development, taking into account the nature and type of interconnection and access involved, including the viability of other upstream access products such as access to ducts;**

**(b) the feasibility of providing the access proposed, in relation to the capacity available;**

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

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

**(e) where appropriate, any relevant intellectual property rights;**

**(f) the provision of pan-European services.**

3. When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with *Article 17(1)* of Directive 2002/21/EC (Framework Directive).’

3. When imposing obligations on an operator to provide access in accordance with the provisions of this Article, national regulatory authorities may lay down technical or operational conditions to be met by the provider and/or beneficiaries of such access where necessary to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be in compliance with the standards and specifications laid down in accordance with *Article 17* of Directive 2002/21/EC (Framework Directive).’

## **Amendment 101**

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

#### **Article 2 – point 8 a (new)**

Directive 2002/19/EC

Article 13 – paragraph 1

*Text proposed by the Commission*

*Amendment*

*(8a) Article 13(1) shall be replaced by the following:*

**"1. A national regulatory authority may, in accordance with the provisions of Article 8, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of interconnection and/or access, in situations where a market analysis indicates that a lack of effective competition means that the operator concerned might sustain prices at an excessively high level, or apply a price squeeze, to the detriment of end-users. National regulatory authorities shall take into account the investment made by the operator and allow him a reasonable rate of return on adequate capital employed *and, without prejudice to Article 19(d) of Directive 2000/21/EC (Framework Directive), take into account the risks involved and the appropriate sharing of risk between investors and those undertakings enjoying access to the new facilities, including differentiated short-term and long-term risk-sharing arrangements.*"**

## **Amendment 102**

**Proposal for a directive – amending act**

**Article 2 – point 8 b (new)**

Directive 2002/19/EC

Article 13 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

*(8b) in Article 13, the following paragraph shall be added:*

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

### **Amendment 103**

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

#### **Article 2 – point 9**

Directive 2002/19/EC

Article 13a – paragraphs 1 to 3

#### *Text proposed by the Commission*

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

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

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

(a) evidence that the imposition of appropriate obligations amongst those identified in *Articles 9-13* to achieve

#### *Amendment*

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

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

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

(a) evidence that the imposition **and enforcement over a reasonable period, taking due account of regulatory best**

effective competition following a coordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting **competition problems/market failures** identified in several of **these** product markets;

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

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

3. The draft measure shall include the following elements:

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

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

(c) the governance arrangements to ensure

**practice**, of appropriate obligations amongst those identified in *Articles 9 to 13* to achieve effective competition following a coordinated analysis of the relevant markets in accordance with the market analysis procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive) has failed and would fail on a persistent basis to achieve effective competition and that there are important and persisting **competition problems and market failures** identified in several of **the wholesale** product markets **analysed**;

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

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

**(ba) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems/market failures identified;**

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

(a) the precise nature and level of separation;

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

(c) the governance arrangements to ensure

the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

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

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

the independence of the staff employed by the separate business entity, and the corresponding incentive structure;

(d) rules for ensuring compliance with the obligations;

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

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

#### **Amendment 104**

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

##### **Article 2 – point 10 – point b**

Directive 2002/19/EC

Article 14 – paragraph 4

*Text proposed by the Commission*

***4. Where reference is made to this paragraph, Article 5a (1), (2), (4) and (6), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.***

*Amendment*

***deleted***

#### **Amendment 105**

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

##### **Article 2 – point 10 a (new)**

Directive 2002/19/EC

Annex II

***(10a) Annex II shall be replaced by the following:***

##### **Annex II**

**"Minimum list of items to be included in a reference offer for *wholesale network infrastructure* access, including *shared or fully unbundled access at a fixed location*, to be published by [...] operators *with***

*significant market power (SMP)*

**For the purposes of this Annex the following definitions apply:**

**(a) "local sub-loop" means a partial local loop connecting the network termination point to a concentration point or a specified intermediate access point in the fixed public *electronic communications* network;**

**(b) "unbundled access to the local loop" means full unbundled access to the local loop and shared access to the local loop; it does not entail a change in ownership of the local loop;**

**(c) "full unbundled access to the local loop" means the provision to a beneficiary of access to the local loop or local sub-loop of the *SMP* operator allowing the use of the full *capacity of the network infrastructure*;**

**(d) "shared access to the local loop" means the provision to a beneficiary of access to the local loop or local sub-loop of the *SMP* operator allowing the use of a *specified part of the capacity of the network infrastructure such as part of the frequency or an equivalent*;**

**A. Conditions for unbundled access**

**1. Network elements to which access is offered covering in particular the following elements *together with appropriate associated facilities*:**

**(a) *unbundled access to local loops and local sub-loops*;**

**(b) *shared access at appropriate points in the network permitting equivalent functionality to unbundled access in circumstances where such access is not technically or economically feasible*;**

**(ba) *duct access enabling installation of access and backhaul networks*;**

**2. Information concerning the locations of physical access sites *including street cabinets and distribution frames*, availability of local loops *and sub-loops*, ducts *and backhaul* in specific parts of the access network *and availability within ducts*;**

**3. Technical conditions related to access and use of local loops *and sub-loops and ducts*, including the technical characteristics of the twisted pair, optical fibre or an equivalent, and of the cable distributors, ducts and associated facilities;**

**4. Ordering and provisioning procedures, usage restrictions.**

**B. Co-location services**

**1. Information on the SMP operator's existing relevant sites or equipment locations and planned updates thereto.**

*(Reminder of the Annex unchanged)*

**Amendment 106**

**Proposal for a directive – amending act**

**Article 3 – point 2 a (new)**

Directive 2002/20/EC

Article 3 – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) in Article 3(2), the following subparagraph shall be added:***

***"Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall be treated in the same way in all Member States and shall be subject to no more than one simplified notification per Member State concerned."***

## Amendment 107

### Proposal for a directive – amending act

#### Article 3 – point 3

Directive 2002/20/EC

Article 5

#### *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:

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

(b) fulfil other objectives of general interest.

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

Without prejudice to specific criteria ***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

#### *Amendment*

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

(a) avoid ***the possibility*** of harmful interference;

***(aa) ensure the technical quality of services;***

***(ab) ensure the efficient use of spectrum;***

(b) fulfil other objectives of general interest ***defined in national legislation in accordance with Community law; or***

***(ba) comply with a measure adopted pursuant to Article 6a.***

2. Member States shall grant ***individual rights of use***, upon request, to any undertaking, subject to the provisions of Articles 6, 6a, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).

Without prejudice to specific criteria ***and procedures adopted*** by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity

with Community law, 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.

When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provisions shall be in accordance with **Article 9b** of Directive 2002/21/EC (Framework Directive).

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

**Any individual right** to use radio frequencies **that is** granted for ten years or more and **that may not** be transferred or leased between undertakings *as allowed by Article 9b of the Framework Directive shall, every five years and for the first time five years after its issuance, be subject to a review in the light of the criteria in paragraph 1*. If *the criteria to grant individual rights of use* are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio

with Community law, such rights of use shall be granted through **open**, objective, transparent, non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). The procedures **may, exceptionally, not be** open 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 **and justified** in advance by the Member State which is necessary to achieve a general interest objective in conformity with Community law.

When granting rights of use, Member States shall specify whether those rights can be transferred by the holder of the rights, and under which conditions. In the case of radio frequencies, such provisions shall be in accordance with **Articles 9 and 9b** of Directive 2002/21/EC (Framework Directive).

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

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

frequencies, subject to prior notice *of not more than five years from the conclusion of the review*, or shall be made freely transferable or leaseable between undertakings.

3. Decisions on rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for electronic communications within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to three weeks.

With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

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

prior notice *and after a reasonable period of time*, or shall be made freely transferable or leaseable between undertakings.

3. Decisions on *the granting of* rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated for electronic communications *services* within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to *a further* three weeks.

With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

6. *Competent national* authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with *Articles 8(2) and 9(2)* of Directive 2002/21/EC (Framework Directive). They

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.**

shall also ensure competition is not distorted as a result of any transfer or accumulation of *rights of usage of* radio frequencies.

## Amendment 108/rev

### Proposal for a directive – amending act

#### Article 3 – point 5

Directive 2002/20/EC

Article 6a

#### *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:

(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*;

(b) to identify the numbering ranges to be harmonised at Community level

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

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

**(e) to provide for the amendment or withdrawal of authorisations or rights of**

#### *Amendment*

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

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

(b) to identify the numbering ranges to be harmonised at Community level;

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

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

*use and the procedures relating to point (d);*

*(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.*

*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).*

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

The Commission shall assess the justification for the request, taking into account the specific situation in the Member State, and may grant a partial exemption or temporary derogation or both provided this does not unduly defer the implementation of the implementing measures referred to in paragraph 1 or create undue differences in the competitive or regulatory situations between Member States.

*3. In implementing the provisions of this Article, the Commission may be assisted by the European Electronic Communications Market Authority (hereinafter referred to as 'the Authority'). The Commission shall take the utmost account of the opinion of the Authority, if any, submitted in accordance with Article 11 of Regulation [ ].*

*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 14a(3).*

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

The Commission shall assess the justification for the request, taking into account the specific situation in the Member State, and may grant a partial exemption or temporary derogation or both provided this does not unduly defer the implementation of the implementing measures referred to in paragraph 1 or create undue differences in the competitive or regulatory situations between Member States.

## **Amendment 109**

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

#### **Article 3 – point 5**

Directive 2002/20/EC

Article 6b

*Text proposed by the Commission*

*Amendment*

#### **Article 6b**

*deleted*

#### ***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 [...].***

***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).***

## Amendment 110

### Proposal for a directive – amending act

#### Article 3 – point 7

Directive 2002/20/EC

Article 8

*Text proposed by the Commission*

*Amendment*

**(7) Article 8 is deleted.**

**deleted**

## Amendment 111

### Proposal for a directive – amending act

#### Article 3 – point 8 – point a

Directive 2002/20/EC

Article 10 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

In this regard, Member States shall empower the relevant authorities to impose financial penalties where appropriate. ***The measures and the reasons on which they are based shall be communicated to the undertaking concerned without delay and shall stipulate a reasonable period for the undertaking to comply with the measure.***

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

***(a) dissuasive financial penalties where appropriate, which may include periodic penalties having retroactive effect; and***

***(b) orders to cease provision of a service or bundle of services which, if continued, would result in significant harm to competition, pending compliance with access obligations imposed following a market analysis carried out in accordance with Article 16 of Directive 2002/21/EC (Framework Directive).***

## Amendment 112

### Proposal for a directive – amending act

#### Article 3 – point 8 – point c

Directive 2002/20/EC

Article 10 – paragraph 5

*Text proposed by the Commission*

In cases of serious **and** repeated breaches of the conditions of the general authorisation or of the rights of use, or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

*Amendment*

In cases of serious **or** repeated breaches of the conditions of the general authorisation or of the rights of use, or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.

**Amendment 113**

**Proposal for a directive – amending act**

**Article 3 – point 8 – point d**

Directive 2002/20/EC

Article 10 – paragraph 6

*Text proposed by the Commission*

6. *Irrespective of* the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation *rights of use* or specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where

*Amendment*

6. *Notwithstanding* the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation or *of the* specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services **or other users of radio spectrum**, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose

appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months.

any remedies. Where appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months.

#### **Amendment 114**

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

##### **Article 3 – point 8 – point d a (new)**

Directive 2002/20/EC

Article 10 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(da) the following paragraph shall be inserted:***

***"6a. In accordance with their national law, Member States shall ensure that measures taken by the national authorities pursuant to paragraphs 5 and 6 are subject to judicial review."***

#### **Amendment 115**

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

##### **Article 3 – point 9 a (new)**

Directive 2002/20/EC

Article 11 – paragraph 1 – subparagraph 1 – point f a (new)

*Text proposed by the Commission*

*Amendment*

***(9a) in the first subparagraph of Article 11(1), the following point shall be added:***

***"(fa) encouraging the efficient use and ensuring the effective management of radio frequencies."***

#### **Amendment 116**

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

**deleted**

#### **Amendment 117/rev**

**Proposal for a directive – amending act**

**Article 3 – point 11 a (new)**

Directive 2002/20/EC

Article 14a – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**(11a) in Article 14a the following paragraph shall be added:**

**"1a. By way of derogation from paragraph 1, for the adoption of measures pursuant to Article 6a (1), points (a), (c) and (d), the Commission shall be assisted by the Radio Spectrum Committee established under Article 3(1) of Decision 676/2002/EC."**

#### **Amendment 118**

**Proposal for a directive – amending act**

**Article 3 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 3a Review procedure**

**1. The Commission shall periodically review the functioning of this Directive and of Directives 2002/21/EC (Framework Directive), 2002/19/EC (Access Directive) and 2002/20/EC (Authorisation Directive) and report to the European Parliament and to the Council**

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

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

## **Amendment 119**

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

#### **Annex I – point 3 – point a**

Directive 2002/20/EC

Annex I – part A – point 4

*Text proposed by the Commission*

4. Accessibility of numbers from the national numbering *plan* to end-users, numbers from ETNS and UIFN, and conditions in conformity with Directive 2002/22/EC (Universal Service Directive).

*Amendment*

4. Accessibility of numbers from the national numbering *plans of Member States* to end users, numbers from ETNS and UIFN, and conditions in conformity with Directive 2002/22/EC (Universal Service Directive).

## **Amendment 120**

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

#### **Annex I – point 3 – point g**

Directive 2002/20/EC

Annex I – part A – point 19

*Text proposed by the Commission*

*Amendment*

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

*deleted*

#### **Amendment 121**

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

*Text proposed by the Commission*

*Amendment*

*(ga) the following point shall be added:*

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

#### **Amendment 122**

**Proposal for a directive – amending act  
Annex I – point 4 – point c  
Directive 2002/20/EC  
Annex I – part B – point 4**

*Text proposed by the Commission*

*Amendment*

***(c) In point 4 the terms ‘subject to any changes in the national frequency plan’ are deleted.***

*deleted*

## Amendment 123

### Proposal for a directive – amending act

#### Annex I – point 4 – point d

Directive 2002/20/EC

Annex I – part B – point 7

#### *Text proposed by the Commission*

7. Voluntary commitments which the undertaking obtaining the *usage* right has made in the course of a competitive or comparative selection procedure.

#### *Amendment*

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

## Amendment 124

### Proposal for a directive – amending act

#### Annex I – point 4 a (new)

Directive 2002/20/EC

Annex I – part C – point 1

#### *Text proposed by the Commission*

#### *Amendment*

***(4a) in Part C, point 1 shall be replaced by the following:***

***"1. Designations of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply to specific number ranges for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC (Framework Directive)."***

## Amendment 125

**Proposal for a directive – amending act**

**Annex II**

Directive 2002/20/EC

Annex II – point 1 – point d

*Text proposed by the Commission*

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

*Amendment*

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