

Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Electronic communications: common regulatory framework for networks and services, access, interconnection and authorisation. 'Telecoms Package' Amending Directive 2002/21/EC 2000/0184(COD) Amending Directive 2002/19/EC 2000/0186(COD) Amending Directive 2002/20/EC 2000/0188(COD) See also 2007/0248(COD) See also 2007/0249(COD)	
Subject 2.60 Competition 3.30.05 Electronic and mobile communications, personal communications	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	CODE Parliament delegation to Conciliation Committee		28/09/2009
		S&D TRAUTMANN Catherine	
	Former committee responsible		
	ITRE Industry, Research and Energy		18/12/2007
		PSE TRAUTMANN Catherine	
	ITRE Industry, Research and Energy		18/12/2007
		PSE TRAUTMANN Catherine	
	Former committee for opinion		
	ECON Economic and Monetary Affairs		15/01/2008
		PPE-DE HOPPENSTEDT Karsten Friedrich	
	IMCO Internal Market and Consumer Protection		31/01/2008
	PPE-DE ZLOTEA MARIAN		
CULT Culture and Education		08/01/2008	
	ALDE GUARDANS CAMBÓ Ignasi		
JURI Legal Affairs		19/12/2007	
	PSE MEDINA ORTEGA Manuel		
LIBE Civil Liberties, Justice and Home Affairs		31/01/2008	
	PPE-DE KAMALL Syed		
Council of the European Union	Council configuration	Meeting	Date
	Agriculture and Fisheries	2976	20/11/2009
	Transport, Telecommunications and Energy	2964	09/10/2009
	Education, Youth, Culture and Sport	2923	16/02/2009
	Transport, Telecommunications and Energy	2907	27/11/2008

Transport, Telecommunications and Energy	2877	12/06/2008
Education, Youth, Culture and Sport	2868	21/05/2008
Transport, Telecommunications and Energy	2835	29/11/2007
Commission DG	Commissioner	
Communications Networks, Content and Technology	REDING Viviane	

Key events

13/11/2007	Legislative proposal published	COM(2007)0697	Summary
29/11/2007	Debate in Council	2835	
10/12/2007	Committee referral announced in Parliament, 1st reading/single reading		
21/05/2008	Debate in Council	2868	
12/06/2008	Debate in Council	2877	Summary
07/07/2008	Vote in committee, 1st reading/single reading		Summary
22/07/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0321/2008	
02/09/2008	Debate in Parliament		
24/09/2008	Decision by Parliament, 1st reading/single reading	T6-0449/2008	Summary
06/11/2008	Modified legislative proposal published	COM(2008)0724	Summary
16/02/2009	Council position published	16496/1/2008	Summary
19/02/2009	Committee referral announced in Parliament, 2nd reading		
21/04/2009	Vote in committee, 2nd reading		Summary
23/04/2009	Committee recommendation tabled for plenary, 2nd reading	A6-0272/2009	
05/05/2009	Debate in Parliament		
06/05/2009	Results of vote in Parliament		
06/05/2009	Decision by Parliament, 2nd reading	T6-0361/2009	Summary
09/10/2009	Parliament's amendments rejected by Council		
04/11/2009	Formal meeting of Conciliation Committee		
12/11/2009	Joint text approved by Conciliation Committee co-chairs	03677/2009	
13/11/2009	Final decision by Conciliation Committee		Summary
16/11/2009	Report tabled for plenary, 3rd reading	A7-0070/2009	
20/11/2009	Decision by Council, 3rd reading		
23/11/2009	Debate in Parliament		

24/11/2009	Decision by Parliament, 3rd reading	T7-0068/2009	Summary
25/11/2009	Final act signed		
25/11/2009	End of procedure in Parliament		
18/12/2009	Final act published in Official Journal		

Technical information

Procedure reference	2007/0247(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2002/21/EC 2000/0184(COD) Amending Directive 2002/19/EC 2000/0186(COD) Amending Directive 2002/20/EC 2000/0188(COD) See also 2007/0248(COD) See also 2007/0249(COD)
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1
Stage reached in procedure	Procedure completed
Committee dossier	CODE/7/01004

Documentation gateway

Legislative proposal		COM(2007)0697	13/11/2007	EC	Summary
Document attached to the procedure		COM(2007)0696	13/11/2007	EC	Summary
Document attached to the procedure		SEC(2007)1472	13/11/2007	EC	
Document attached to the procedure		SEC(2007)1473	13/11/2007	EC	
Committee draft report		PE398.542	23/04/2008	EP	
Economic and Social Committee: opinion, report		CES0984/2008	28/05/2008	ESC	
Committee opinion	LIBE	PE404.823	02/06/2008	EP	
Committee opinion	ECON	PE404.782	05/06/2008	EP	
Committee opinion	CULT	PE404.775	11/06/2008	EP	
Committee opinion	JURI	PE404.684	20/06/2008	EP	
Committee opinion	IMCO	PE404.724	26/06/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0321/2008	22/07/2008	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0449/2008	24/09/2008	EP	Summary
Modified legislative proposal		COM(2008)0724	06/11/2008	EC	Summary
Council statement on its position		05905/2009	11/02/2009	CSL	
Council position		16496/1/2008	16/02/2009	CSL	Summary

Commission communication on Council's position	COM(2009)0078	17/02/2009	EC	Summary
Committee draft report	PE420.223	23/02/2009	EP	
Committee recommendation tabled for plenary, 2nd reading	A6-0272/2009	23/04/2009	EP	
Text adopted by Parliament, 2nd reading	T6-0361/2009	06/05/2009	EP	Summary
Commission response to text adopted in plenary	SP(2009)3616	07/07/2009		
Commission opinion on Parliament's position at 2nd reading	COM(2009)0420	29/07/2009	EC	Summary
Joint text approved by Conciliation Committee co-chairs	03677/2009	12/11/2009	CSL/EP	
Report tabled for plenary by Parliament delegation to Conciliation Committee, 3rd reading	A7-0070/2009	16/11/2009	EP	
Text adopted by Parliament, 3rd reading	T7-0068/2009	24/11/2009	EP	Summary

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Directive 2009/140](#)
[OJ L 337 18.12.2009, p. 0037](#) Summary
[Corrigendum to final act 32009L0140R\(01\)](#)
[OJ L 241 10.09.2013, p. 0008](#)

2007/0247(COD) - 13/11/2007 Legislative proposal

PURPOSE: to reform the EU's regulatory framework for electronic communications networks and services with a view to completing the internal market for electronic communications.

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTEXT: in June 2006, the Commission presented a report to the European Parliament and the Council on the functioning of the regulatory framework for electronic communications networks and services. The report noted that the framework had yielded considerable benefits, but that the internal market for electronic communications was still not complete, as many aspects continue to be regulated at national level. The current fragmentation hinders investment and is detrimental to consumers and operators. This calls for a substantial reform of the regulatory framework in order to strengthen and complete the internal market.

More specifically, the objectives of the present reform are three-fold:

1. Moving towards a more efficient management of spectrum so as to facilitate access to spectrum for operators and to foster innovation.
2. Ensuring that, where regulation remains necessary, this is more efficient and simpler both for operators and for national regulatory authorities (NRAs).
3. Making a decisive step towards more consistency in the application of EU rules in order to complete the internal market for electronic communications.

This reform proposal covers changes to the Framework (2002/21/EC), Authorisation (2002/19/EC) and Access (2002/20/EC) Directives. It is part of a package of reforms that also includes:

- a proposal concerning amendments to the 'Universal Service' Directive (2002/22/EC) and the processing of personal data and the protection of privacy in the electronic communications sector (2002/58/EC), (see [COD/2007/0248](#));

- a proposal for a Regulation creating a new European Electronic Communications Market Authority (see [COD/2007/0249](#)).

CONTENT: This legislative reform proposal aims to adjust the regulatory framework for e?communications by improving its effectiveness, reducing the administrative resources needed for implementing economic regulation (the market analysis procedure) and making access to radio frequencies simpler and more efficient.

Framework Directive: the main proposed amendments are the following:

- Reforming spectrum management: a more flexible approach is needed to exploit the economic potential and realise the societal and environmental benefits of improved spectrum usage. In order to allow more flexibility to take account of market needs, the Commission proposes making technology neutrality a binding principle, and introduces the principle of service neutrality, with the possibility for exceptions to the principle in limited cases such as meeting general interest objectives. The principle of spectrum tradability can be imposed in commonly defined. The changes also introduce a transitional phase and allow the Commission to take implementing measures via the comitology procedure to coordinate the application of the new principles for internal market purposes.
- Improving the consistency of regulation of the internal market in electronic communications. This will be achieved by a stronger role for the Commission in remedies imposed by NRAs, which will be combined with the close involvement of the new Electronic Communications Market Authority to ensure that the joint expertise of NRAs can be effectively harnessed and efficiently taken into account in the final Commission decision.
- Strengthening security and integrity, for the benefit of users of e-communications. Obligations in this field are reinforced to ensure the reliable and secure use of e-communications. The Authority will contribute to the harmonisation of appropriate technical and organisational security measures by providing expert advice to the Commission. New provisions extend the scope of integrity requirements beyond telephone networks to cover mobile and IP networks.

Authorisation Directive: the main proposed changes are as follows:

- aligning the Directive to the new policy for spectrum;
- creating an efficient procedure for firms needing rights of use to provide cross-European services; and
- ensuring a smooth transition to the introduction of spectrum trading.

Access Directive: the main proposed change is the introduction of functional separation as a remedy that can be imposed by NRAs, subject to approval by the Commission, which has to seek the advice of the new Authority to this end.

2007/0247(COD) - 12/06/2008 Debate in Council

The Council held a public exchange of views on the review of the EU regulatory framework and took note of the presidency's three progress reports on the work carried out so far in its preparatory bodies. (See also [COD/2007/0248](#) and [COD/2007/0249](#)). The Commission's telecoms reform package aims to enable citizens, wherever they live and wherever they travel in the EU, to benefit from better and cheaper communication services.

The Ministers' debate focused in particular on the proposal on better regulation, namely the consistent application of the regulatory framework in the internal market and the management of the radio spectrum in the EU. The discussions provided political guidance for further work on these proposals that will continue under the French presidency.

This Commission's proposal aims to amend the regulatory framework for electronic communications by improving its effectiveness, reducing the administrative resources needed to implement economic regulation and making access to radio frequencies simpler and more efficient.

During the discussions in the Council's bodies, delegations supported a number of objectives put forward in this proposal, such as the need to ensure consistent application in Member States of the regulatory framework for electronic communications and the need to ensure flexible and efficient use of the radio spectrum. However, they have some doubts about the proposed measures to achieve those objectives, about the proposed procedures to achieve harmonisation and about the level of detail of such harmonisation. In addition, Member States are concerned that the proposals could disturb the current balance of proportionality and subsidiarity and that a number of provisions would considerably add to the administrative burden.

The Presidency's progress report also identifies the main issues that will need to be addressed further, in particular: radio spectrum, article 7 procedures and remedies, and implementation issues.

2007/0247(COD) - 07/07/2008 Vote in committee, 1st reading/single reading

The Committee on Industry, Research and Energy adopted the report drafted by Catherine TRAUTMANN (PES, FR), at first reading of the codecision procedure, 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.

The main amendments concern the following issues:

Additional objectives of the regulatory framework:MEPs consider that amended regulatory framework should also encompass the additional aims of: i) promoting consumer protection in the electronic communications sector by providing for accurate and comprehensive information, employing every possible means to that end, for transparency in

terms of fees and charges, and for high standards in the delivery of services; ii) fully recognising the role of consumer associations in public consultations; iii) ensuring that the competent authorities are provided with the powers to thwart possible rigging and act with the necessary effectiveness to stamp out any instances of fraud involving electronic communications services.

Public policy: the activities of national regulatory authorities and of the Commission under the framework for electronic communications

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. Public intervention should be proportionate and should neither distort competition nor inhibit private investment and should increase incentives to invest and lower entry barriers. In this respect, public authorities may support the rollout of future-proof high-capacity infrastructure. In so doing, public support should be attributed through open, transparent and competitive procedures, should not favour a priori any given technology and should provide access to infrastructure on a non-discriminatory basis.

Consultation: the views of national regulatory authorities and industry stakeholders should be taken into account by the Commission when adopting measures under this Directive through the use of effective consultation to ensure transparency and proportionality. The Commission should issue detailed consultation documents, explaining the different courses of action being considered.

Towards generalised competition: the aim is to progressively reduce ex ante sector specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. It is essential that ex ante regulatory obligations should only be imposed where there is no effective and sustainable competition. Ex ante regulation should be reviewed as to the necessity of its continuation no later than three years after the date of transposition of this directive.

Under national markets: in order to ensure a proportional and adapted approach to varying competitive conditions, national regulatory authorities should be able to define markets on a sub-national basis and/or lift regulatory obligations in markets and/or geographic areas where there is effective infrastructure competition, even if they are not defined as separate markets.

Investments: MEPs also advocate appropriate incentives for investments in new high-speed networks that will support innovation in content-rich internet services and strengthen European international competitiveness. Member States should release their digital dividends as quickly as possible, allowing citizens to benefit from the deployment of new, innovative and competitive services.

Purpose of the Directive: 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.

European Body of Regulators in Telecom (BERT): MEPs introduced a new measure which ensures that the Member States ensure the establishment of the Body of Regulators in Telecom (BERT) comprised of all National Regulatory Authorities (NRAs). BERT would be set up as an association of national regulatory authorities that would not have an independent legal personality. Member States shall ensure that the goals of BERT in promoting greater regulatory coordination and coherence are actively supported by the respective national regulatory authorities. Member States shall ensure that NRAs take utmost account of common positions issued by BERT when adopting their own decisions for their home markets.

Appeal bodies: an effective regulatory framework requires also the existence of specialised appeal bodies and effective appeal mechanisms in order to prevent abuse of appeal procedures. Appeal procedures should also be entitled to consult BERT should the case have an internal market impact.

Procedure for the consistent implementation of proposed solutions: a dispute resolution procedure, rather than a veto mechanism, should be put in place to engage actively all the parties concerned, the Commission, the individual NRAs, BERT and the stakeholders in searching for constructive solutions regarding the imposition of remedies. The report proposes an alternative procedure for the consistent application of remedies. The procedure is based upon the principle that only if the Commission and BERT (acting by a simple majority) agree that the proposed remedy is not appropriate the Commission could issue a reasoned decision requesting the NRA concerned to amend the draft measure.

Coordination of radio spectrum policy in the European Union ? role of the Commission: 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. In the future, the management of frequencies should take account of cultural aspects and promote media pluralism.

Flexible management of spectrum: the draft directive, as amended, would require Member States to ensure that any technology or any service can use any frequency available for electronic communications services, in line with national frequency allocation plans and with the International Telecommunication Union's Radio Regulations. Member States may, however, provide for proportionate and non-discriminatory restrictions to the types of technologies used to avoid harmful interference, to safeguard the efficient use of radio frequencies or to fulfil a general interest objective.

Sharing of network elements and associated facilities: 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 network elements which are not active. National Regulatory Authorities shall have the powers to require that the holders of the rights referred to in the Directive share facilities or property (including physical

co-location) in order to encourage efficient investment in infrastructure and the promotion of innovation, after an appropriate period of public consultation.

Numbering: the Commission should be able to consult BERT 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, as well as the establishment of a single EU front-up call number ensuring user-friendly access to these services.

2007/0247(COD) - 24/09/2008 Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 597 votes to 55, with 29 abstentions, a legislative resolution approving, with amendments, 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.

The report had been tabled for consideration in plenary by Catherine TRAUTMANN (PES, FR) on behalf of the Committee on Industry, Research and Energy.

The main amendments ? adopted at 1st reading of the co-decision procedure ? concern the following points:

Purpose of the directive: the resolution specifies that the Directive shall establish 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.

Objectives of the regulatory framework: the primary objective of the EU regulatory framework should be to create a sustainable ecosystem for electronic communications based on supply and demand.

MEPs consider that the amended regulatory framework should also include the following objectives: (i) promoting consumer protection in the electronic communications sector by providing for accurate and comprehensive information, employing every possible means to that end, for transparency in terms of fees and charges, and for high standards in the delivery of services; (ii) fully recognising the role of consumer associations in public consultations; (iii) ensuring that the competent authorities are provided with the powers to thwart possible rigging and act with the necessary effectiveness to stamp out any instances of fraud involving electronic communications services.

The harmonisation measures, which involve adding new essential provisions to the regulatory framework, should be the subject of a legislative proposal.

Public policy: according to MEPs, the activities of national regulatory authorities and of the Commission under the framework for electronic communications 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. Public intervention should be proportionate and should neither distort competition nor inhibit private investment and should increase incentives to invest and lower entry barriers. Public support should be attributed through open, transparent and competitive procedures, should not favour a priori any given technology and should provide access to infrastructure on a non-discriminatory basis.

Towards generalised competition: the aim is to progressively reduce ex ante sector specific rules as competition in the markets develops and, ultimately, for electronic communications to be governed by competition law only. It is essential that ex ante regulatory obligations should only be imposed where there is no effective and sustainable competition. Ex ante regulation should be reviewed as to the necessity of its continuation no later than three years after the date of transposition of this directive.

Under national markets: in order to ensure a proportional and adapted approach to varying competitive conditions, national regulatory authorities should be able to define markets on a sub-national basis and/or lift regulatory obligations in markets and/or geographic areas where there is effective infrastructure competition, even if they are not defined as separate markets.

Investments: MEPs also advocate appropriate incentives for investments in new high-speed networks that will support innovation, while safeguarding competition and boosting consumer choice through regulatory predictability and consistency. Furthermore, Member States should release their digital dividends as quickly as possible, allowing citizens to benefit from the deployment of new, innovative and competitive services.

Coherent regulatory measures: 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. In order to optimise the use of radio spectrum and to avoid harmful interference 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. In future, the management of frequencies shall take into consideration cultural aspects and those related to pluralism in the media.

Spectrum action programme: a Radio Spectrum Policy Committee (RSPC), composed of high-level representatives from the competent national authorities responsible for radio spectrum policy in each Member State, shall be created in order to contribute to the fulfilment of the objectives set out in the Directive. 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.

Service neutrality: as amended by the MEPs, the draft directive provides that 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 to avoid the possibility of harmful interference, safeguard the efficient use of radio frequencies or fulfil a general interest objective.

European Body of Regulators in Telecom (BERT): MEPs introduced a new measure which ensures that the Member States ensure the establishment of the Body of Regulators in Telecom (BERT) comprised of all National Regulatory Authorities (NRAs). BERT would be set up as an association of national regulatory authorities that would not have an independent legal personality. The national regulatory authorities shall support the goals of BERT of promoting greater regulatory coordination and coherence. The NRAs shall take utmost account of common positions issued by BERT when adopting their own decisions for their home markets.

Appeal mechanisms: these must be effective and proceedings before the appeal body must not be unduly lengthy. When the dispute involves the internal market, appeal bodies must be able to consult BERT.

Consistent implementation of proposed solutions: a dispute resolution procedure must be put in place to actively engage all interested parties, the Commission, individual NRAs, BERT and the stakeholders in searching for constructive solutions regarding the imposition of remedies. MEPs call for a ?procedure for the consistent implementation of proposed solutions?. This procedure is based upon the principle that only if the Commission and BERT (acting by a simple majority) agree that the proposed remedy is not appropriate the Commission could issue a reasoned decision requesting the NRA concerned to amend the draft measure.

Consultation: the views of national regulatory authorities and industry stakeholders should be taken into account by the Commission when adopting measures under this Directive through the use of effective consultation to ensure transparency and proportionality. The Commission should issue detailed consultation documents, explaining the different courses of action being considered.

Sharing of network elements and associated facilities: national regulatory authorities should have the powers to require, after an appropriate

period of public consultation, the holders of the rights referred to in the directive 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.

Numbering: the Commission should be able to consult BERT 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, as well as the establishment of a single EU front-up call number ensuring user-friendly access to these services.

Undertakings with significant market power: by the date of the entry into force of the directive, 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.

2007/0247(COD) - 06/11/2008 Modified legislative proposal

The Commission's amended proposal adapts the original proposal on a number of points as suggested by the European Parliament.

It is recalled that the objective is to adjust the regulatory framework for e-communications, notably the Framework, Authorisation and Access Directives, by improving its effectiveness, reducing the administrative resources needed for implementing economic regulation and making access to radio frequencies simpler and more efficient. It is in line with the Commission's Better Regulation Programme, which is designed to ensure that legislative intervention remains proportionate to the political objectives pursued, and forms part of the Commission's overall strategy to strengthen and complete the internal market.

More specifically, the proposal aims to:

- move towards a more efficient management of spectrum so as to facilitate access to spectrum for operators and to foster innovation;
- ensure that, where regulation remains necessary, this is more efficient and simpler both for operators and for national regulatory authorities (NRAs);
- make a decisive step towards more consistency in the application of EU rules in order to complete the internal market for electronic communications.

On 24 September, the European Parliament adopted 164 amendments at 1st reading. In its amended proposal, the Commission accepts, in their entirety, 31 of these amendments.

It accepts, in part or subject to rewording, 37 Parliament amendments.

In particular, the Commission accepts the creation of a Body of European Telecoms Regulators and inserts new wording stressing the importance it gives to cooperation between national regulatory authorities. According to the amended proposal, 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.

The Commission also takes account of amendments concerning the procedure to promote greater regulatory coordination and coherence of proposed solutions as well as the strategic planning and coordination of radio spectrum policy in the European Community.

It should be noted that 46 amendments were rejected by the Commission.

2007/0247(COD) - 16/02/2009 Council position

In adopting its common position, the Council has, to a significant extent, endorsed the approach and aims proposed by the Commission and taken on board nearly half of Parliament's 126 amendments adopted at first reading.

The main outstanding issues concern radio spectrum, the new telecoms authority and functional separation. For each of these issues, the Commission, to a large extent supported by the Parliament, has proposed to change the (inter) institutional set-up and, consequently, the balance of power between the various actors, regulatory authorities, the EU institutions and other stakeholders.

Although the Council believes that an update of the regulatory framework for electronic communications would be beneficial for the sector, it is of the view that this could be achieved by improving the current arrangements rather than by setting up alternative mechanisms. The Council's common position therefore seeks to clarify and improve the provisions dealing, inter alia, with NRAs, the Commission and the use of comitology and the role of EU institutions with regard to radio spectrum policy-making.

Principal changes made to the Commission proposal regarding the Framework Directive (2002/21/EC):

- National regulatory authorities (NRAs): the Council agreed on a wording, which clarifies that, notwithstanding "supervision in accordance with national constitutional law", NRAs shall carry out their regulatory tasks "independently" and with "adequate financial and human resources".

- Consolidating the internal market for electronic communications: the Council does not share the approach proposed, that the Commission be granted the possibility to issue "decisions" on draft measures intended to be taken by NRAs. The Council rather believes it appropriate for the Commission to issue non-binding "opinions" on draft measures proposed by NRAs and to require NRAs to publicly justify its final decision.

- Radio spectrum policy: the Council supports the Commission's proposals, which aim to move towards a more efficient management of spectrum. However, it clarified in further detail the restrictions that may apply to the types of technology and services to be provided. As current arrangements already allow for the adoption of technical implementing measures in the area of radio spectrum, the Council deleted the Article on radio frequency management harmonisation measures.

Principal changes made to the Commission proposal regarding the Authorisation Directive (2002/20/EC):

- Harmonisation measures, common selection procedure for issuing rights and the harmonised granting of rights of use for radio frequencies and harmonised conditions for pan-European networks or pan-European electronic communications services: although the Council to a large

extent shares the Commission's objectives in this regard, it feels that some of the proposals are too far-reaching in that they would too much alter without sufficient justification the current arrangements for radio spectrum policy-making. As a consequence, the Council deleted the Articles of the proposal on harmonisation measures and the common selection procedure for issuing rights, but reinstated Article 8 so as to allow for the harmonised introduction of pan-European electronic communications services, which rely on radio spectrum availability.

Principal changes made to the Commission proposal regarding the Access Directive (2002/19/EC):

- Functional separation: the Council amended the proposed provision on functional separation so as to clarify that functional separation could be imposed by NRAs "as an exceptional measure" and subject to a decision by the Commission in order to achieve the appropriate wholesale provision of certain access products.

2007/0247(COD) - 21/04/2009 Vote in committee, 2nd reading

The Committee on Industry, Research and Energy adopted the recommendation for second reading by Catherine TRAUTMANN (PES, FR) modifying, under the second reading of the codecision procedure, the Council's common position for adopting a directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

MEPs adopted a partial compromise reached on the revision of the electronic communications framework and specific directives. The main amendments are as follows:

Restrictions on access: Parliament's negotiators have so far been unable to agree with the Council on procedures for imposing restrictions on a user's internet access. The Committee on Industry therefore reinstated by 40 votes in favour with four votes against and two abstentions, Parliament's first-reading amendment that no restriction may be imposed on the fundamental rights and freedoms of end users, without a prior ruling by the judicial authorities (notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information) save when public security is threatened. Negotiations between MEPs and the Czech Presidency to reach an agreement on this issue will continue.

However, the Committee on Industry and the Council Presidency do agree on the following points:

Purpose and scope: the compromise clarifies that the 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.

Harmonisation of the use of radio spectrum: the Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), established by Commission Decision 2002/622/EC, may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of the Directive and the Specific Directives.

These policy orientations and objectives may refer to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market and may also refer to the harmonisation of procedures for the granting of general authorisations or individual rights of use for radio frequencies, where necessary, to overcome barriers to the internal market.

Procedure for the consistent application of remedies: before taking regulatory decisions, national regulatory authorities will have to consult the Commission and the new Body of European Regulators for Electronic Communications (BEREC).

Where an intended measure aims at imposing, amending or withdrawing an obligation on an operator, the Commission may notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its compatibility with Community law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.

BEREC shall, acting by a majority of its component members, issue an opinion on the Commission's notification, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. This opinion shall be reasoned and made public. Within the aforementioned three month period, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely with the objective of identifying the most appropriate and effective measure, whilst taking due account of the views of market participants.

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, BEREC or any other national regulatory authority.

Investment: the national regulatory authorities shall promote efficient investment and innovation in new and enhanced infrastructures, including by: (i) ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings; (ii) permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring that competition in the market and the principle of non-discrimination are preserved.

Sharing of network elements and associated facilities: the compromise stipulates that Member States shall ensure that national authorities, after an appropriate period of public consultation during which all interested parties are given the opportunity to state their views, also have the power to impose obligations for the sharing of wiring inside buildings or up to the first concentration or distribution point where this is located outside the building, on the holders of the rights and/or on the owner of such wiring, where this is justified by the fact that duplication of such infrastructure would be economically inefficient or physically impracticable. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing adjusted for risk where appropriate.

Security of networks: a new recital stresses that Member States should allow for an appropriate period of public consultation before the adoption of specific measures to ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to appropriately manage risk to security of networks and services or to ensure the integrity of their networks.

Competition: for the purposes of ensuring that there is no distortion or restriction of competition in the electronic communications markets, national regulatory authorities should be able to impose remedies aimed at preventing leverage of significant market power from one market to another, closely related, market.

2007/0247(COD) - 06/05/2009 Text adopted by Parliament, 2nd reading

The European Parliament approved with amendments, under the second reading of the codecision procedure, the Council's common position for adopting a directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

The Parliament adopted a partial compromise reached with the Council on the revision of the electronic communications framework and specific directives, as part of the 'telecom package'.

The package includes the revision of the electronic communications framework, the citizens' rights [directive](#) and the establishment of a new [European body of telecom regulators](#) (BEREC). Given that MEPs could not reach a compromise with the Council on the framework directive and that all three proposals are interlinked, it is likely that the whole package will go to conciliation in the next legislature.

With regard to the common position on the revision of the electronic communications framework and specific directives, the main amendments are as follows:

Restrictions on access: the Parliament could not reach an agreement with the Council on the procedures to follow to impose restrictions on internet access for users. It reinstated by 407 votes to 57, with 171 abstentions, a first-reading amendment stipulating that no restriction may be imposed on the fundamental rights and freedoms of end users, without a prior ruling by the judicial authorities, save when public security is threatened.

The Council had rejected this amendment in first reading.

However, the Parliament and the Council do agree on the following points:

Purpose and scope: the compromise clarifies that the 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.

Strategic planning and coordination of radio spectrum policy: the Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), established by Commission Decision 2002/622/EC, may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of the Directive and the Specific Directives.

These policy orientations and objectives may refer to the availability and efficient use of radio spectrum necessary for the establishment and functioning of the internal market and may also refer to the harmonisation of procedures for the granting of general authorisations or individual rights of use for radio frequencies, where necessary, to overcome barriers to the internal market.

A new recital stresses that radio spectrum policy activities in the European Community should be without prejudice to measures taken at Community or national level, in compliance with Community law, to pursue general interest objectives, in particular with regard to content regulation and audio-visual and media policies, and the right of Member States to organise and use their radio spectrum for the purposes of public order, public security and defence.

Procedure for the consistent application of remedies: the Parliament and Council also agree that before taking regulatory decisions, national regulatory authorities will have to consult the Commission and the new Body of European Regulators for Electronic Communications (BEREC).

Where an intended measure aims at imposing, amending or withdrawing an obligation on an operator, the Commission may notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its compatibility with Community law. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.

BEREC shall, acting by a majority of its component members, issue an opinion on the Commission's notification, indicating whether it considers that the draft measure should be amended or withdrawn and, where appropriate, provide specific proposals to that end. This opinion shall be reasoned and made public.

Within the aforementioned three month period, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely with the objective of identifying the most appropriate and effective measure, whilst taking due account of the views of market participants.

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, BEREC or any other national regulatory authority.

Investment: the national regulatory authorities shall promote efficient investment and innovation in new and enhanced infrastructures, including by: (i) ensuring that any access obligation takes appropriate account of the risk incurred by the investing undertakings; (ii) permitting various cooperative arrangements between investors and parties seeking access to diversify the risk of investment, whilst ensuring that competition in the market and the principle of non-discrimination are preserved.

Transfer or lease of individual rights to use radio frequencies: according to the amended text, the Member States shall ensure that undertakings may transfer or lease to other undertakings, in accordance with conditions attached to the rights of use of radio frequencies and with national procedures, individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to the Directive.

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.

The Commission may adopt appropriate implementing measures to identify the bands for which usage rights may be transferred or leased between undertakings. These measures shall not cover frequencies which are used for broadcasting.

Co-location and sharing of network elements and associated facilities for providers of electronic communications networks: the text provides that, 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 buildings, entries to buildings, building wiring, masts, antennae, towers and other supporting constructions, ducts, conduits, manholes and cabinets.

The compromise stipulates that Member States shall ensure that national authorities, after an appropriate period of public consultation during which all interested parties are given the opportunity to state their views, also have the power to impose obligations for the sharing of wiring inside buildings or up to the first concentration or distribution point where this is located outside the building, on the holders of the rights and/or on the owner of such wiring, where this is justified by the fact that duplication of such infrastructure would be economically inefficient or physically impracticable. Such sharing or coordination arrangements may include rules for apportioning the costs of facility or property sharing adjusted for risk where appropriate.

Security of networks: a new recital stresses that Member States should allow for an appropriate period of public consultation before the adoption of specific measures to ensure that undertakings providing public communications networks or publicly available electronic communications services take appropriate technical and organisational measures to appropriately manage risk to security of networks and services or to ensure the integrity of their networks.

Competition: for the purposes of ensuring that there is no distortion or restriction of competition in the electronic communications markets, national regulatory authorities should be able to impose remedies aimed at preventing leverage of significant market power from one market to another, closely related, market.

It is made clear that the undertaking which has significant market power on the first market may be designated as having significant market power on the second market only if the links between the two markets are such as to allow the market power held in the first market to be leveraged into the second market and if the second market is susceptible to ex ante regulation in accordance with the criteria defined in the Recommendation on relevant product and service markets.

2007/0247(COD) - 29/07/2009 Commission opinion on Parliament's position at 2nd reading

At its Plenary Session of 6 May 2009, the European Parliament adopted a number of amendments negotiated with the Council to the Council's common position with a view to securing adoption in second reading. The Commission accepts the European Parliament's amendments as being in line with the overall purpose and the general characteristics of the proposal. It amends its proposal in line with the amendments voted by the European Parliament in second reading.

To recall, these amendments concern the following:

- on spectrum: the introduction of greater flexibility through service and technology neutrality albeit with a series of exceptions; the possibility of imposing service exclusivity in limited cases; the adoption of pluriannual spectrum policy programmes by the European Parliament and Council upon a proposal by the Commission assisted by the Radio Spectrum Policy Group; the power to harmonise bands where rights are to be made tradable, and exemption from the requirement to initiate a new award of rights in the case of the review of restrictions to existing rights;
- strengthening the independence of the national regulatory authorities responsible for ex ante market regulation and dispute resolution;
- further clarification of the requirements applicable to appeals against decisions of the national regulatory authorities;
- provision for the Commission, in close cooperation with BEREC, to issue recommendations with regard to the withdrawal and/or amendment of draft measures notified by national regulatory authorities relating to the imposition, amendment or withdrawal of ex ante obligations on operators;
- ensuring that national regulatory authorities take measures to promote the interests of citizens by safeguarding fundamental rights and freedoms of end-users;
- power for the Commission to adopt further harmonisation measures in the form of recommendations or binding decisions, where divergences in the implementation of remedies persist;
- strengthening the powers of national authorities to impose obligations for the sharing of facilities or property associated with electronic communications networks;
- clarification of the principles and objectives to be followed by national regulatory authorities, with particular reference to preserving incentives for investment in new network infrastructure while safeguarding competition;
- updating and modernisation of provisions in order to improve the technological neutrality of the framework;
- new provisions setting out the conditions and procedure for the imposition of functional separation by a national regulatory authority.

As regards a specific European Parliament amendment which leaves Member States to ensure that a fair balance is struck between the various fundamental rights protected by the Community legal order (in particular, the right to respect for private life, the right to protection of property, the right to an effective remedy and the right to freedom of expression and information), the Commission states that it can accept it in its amended proposal after the European Parliament's first reading but supported the European Parliament-Council compromise text afterwards as a balanced solution. The Commission could, therefore, accept the amendment, but will do its utmost to facilitate the emergence of a compromise between the co-legislators on this issue.

2007/0247(COD) - 13/11/2009 Final decision by Conciliation Committee

The co-chairs of the Conciliation Committee formally approved the joint text for a directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of

electronic communications networks and services. The proposed directive is part of a legislative package known as the telecom package. Parliament and Council reached agreement on two other legislative proposals in the package in May 2009 (see [COD/2007/0248](#) and [COD/2007/0249](#)).

The background to this conciliation dossier is as follows: at the plenary sitting of 6 May 2009, Parliament voted on the three proposals under the telecom package for which agreement had been reached with the Council at the second reading stage. However, one amendment which was not part of that overall agreement was also adopted.

This amendment required national regulatory authorities to promote the interests of the citizens of the European Union by inter alia "applying the principle that no restriction may be imposed on the fundamental rights and freedoms of end-users, without a prior ruling by the judicial authorities, notably in accordance with Article 11 of the Charter of Fundamental Rights of the European Union on freedom of expression and information, save when public security is threatened in which case the ruling may be subsequent."

The Council did not accept this amendment, on the grounds that the legal basis of the proposed instrument meant that the Member States could not be forced into a particular judicial structure, including with regard to criminal matters. The "prior ruling by the judicial authorities" would create problems for Member States which do not have such a requirement before acting against an individual (for example, in cases involving dissemination of child pornography material through the Internet). An agreement was finally reached on a compromise text to be included in Article 1 of the Framework Directive. It would therefore become an obligation for the whole regulatory framework. The text stipulated that restrictions on a user's internet access may "only be imposed if they are appropriate, proportionate and necessary within a democratic society". Such measures may be taken only "with due respect for the principle of presumption of innocence and the right to privacy" and as a result of "a prior, fair and impartial procedure" guaranteeing "the right to be heard (...) and the right to an effective and timely judicial review."

By reaching an agreement with Council on the compromise text, Parliament achieved its objective of including in the legislation provisions which had not been proposed by the Commission and which were also not included in the Council's common position, and laying down the maximum possible guarantees for internet users on the legal basis.

The European Parliament delegation to the Conciliation Committee, chaired by Alejo VIDAL-QUADRAS (EPP, ES), tabled a report recommending that Parliament approve the joint text at third reading.

2007/0247(COD) - 24/11/2009 Text adopted by Parliament, 3rd reading

The European Parliament adopted by 510 votes to 40 with 24 abstentions, a legislative resolution approving, under the third reading of the codecision procedure, the joint text approved by the Conciliation Committee for a Directive of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorization of electronic communications networks and services. For details of the agreement, see the summary dated 13/11/2009.

2007/0247(COD) - 25/11/2009 Final act

PURPOSE: to reform the EU's regulatory framework for electronic communications networks and services with a view to completing the internal market for electronic communications.

LEGISLATIVE ACT: Directive 2009/140/EC of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

CONTENT: following an agreement reached with the European Parliament at third reading, the Council adopted a directive which amends three directives forming part of the regulatory framework for e-communications networks and services, i.e. the framework, access and authorisation directives.

This Directive constitutes part of the 'Telecoms Package' which also includes the [Directive on users' rights](#) and the [creation of Body of European Regulators for Electronic Communications \(BEREC\)](#).

The new Directive enhances access to high-speed broadband services in remote regions, provides for a more flexible frequency band use, thus making it easier for operators to establish innovative technologies and services, and for the effective management of radio frequencies for electronic communications, since the latter are a public good with an important social, cultural and economic value.

The main amendments of the Directive are as follows:

Radio spectrum: the Directive introduces requirements of service and technology neutrality in granting rights of use, together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications services to the public, thereby also facilitating the achievement of general interest objectives. Member States shall cooperate with each other and with the Commission in the strategic planning, coordination and harmonisation of the use of radio spectrum in the European Community. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), may submit legislative proposals to the European Parliament and the Council for establishing multiannual radio spectrum policy programmes. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive and the Specific Directives.

National regulatory authorities: the new Directive: (i) strengthens the independence of national regulatory authorities responsible for ex-ante

market regulation or for resolution of disputes; (ii) further clarifies the requirements applicable to appeals against decisions of the national regulatory authorities; provides for the Commission, in close cooperation with BEREC, to issue recommendations with regard to the withdrawal and/or amendment of draft measures notified by national regulatory authorities relating to the imposition, amendment or withdrawal of ex ante obligations on operators.

New provisions are set out as regards the conditions and the procedure to be followed by all national regulatory authorities to impose an obligation for functional separation.

Investments: the Directive clarifies the principles and objectives to be followed by the national regulatory authorities in order to give appropriate incentives for investment in new high-speed networks that will support innovation in content-rich Internet services and strengthen the international competitiveness of the European Union.

Protection of citizens' rights: the Directive protects citizens' rights, as measures taken by Member States regarding internet access to, or use of, services and applications through electronic communications networks must be in line with the European convention for the protection of human rights and fundamental freedoms. The text stipulates that any of these measures regarding end-users' access to, or use of, services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may only be imposed if they are appropriate, proportionate and necessary within a democratic society, and their implementation shall be subject to adequate procedural safeguards, including effective judicial protection and due process.

Accordingly, these measures may only be taken with due respect for the principle of the presumption of innocence and the right to privacy. A prior, fair and impartial procedure shall be guaranteed, including the right to be heard of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency. The right to effective and timely judicial review shall be guaranteed.

Moreover, the Directive ensures that even disabled users derive maximum benefit in terms of choice, price and quality.

ENTRY INTO FORCE: 19/12/2009.

TRANSPOSITION: 25/05/2011.

APPLICATION: from 26/05/2011.