Electronic communications: common regulatory framework for networks and services, access, interconnection and authorisation. 'Telecoms Package'

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.