

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

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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.