

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

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.