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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
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Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of ... 2007**

**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 services, and 2002/20/EC on the authorisation of electronic communications networks and services**

**(Text with EEA relevance)**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

#### **• Grounds for and objectives of the proposal**

To enhance investment, innovation and consumer benefits in electronic communications, Europe needs a coherent regulatory framework for the digital economy that is future-proof, market-oriented, and exploits the advantages brought by the completion of the internal market.

The present proposal is one of three reform proposals to amend the current regulatory framework. This first legislative reform proposal covers changes to the Framework<sup>1</sup>, Authorisation<sup>2</sup> and Access<sup>3</sup> Directives. A separate legislative reform proposal<sup>4</sup> covers changes to the other two directives. This is complemented by the proposal for a Regulation creating a new European Electronic Communications Market Authority<sup>5</sup>. The three legislative reform proposals are accompanied by an Impact Assessment<sup>6</sup> and a Communication setting out the main policy lines and reporting on the public consultation<sup>7</sup>. In addition, the Commission has adopted a second version of its Recommendation on relevant product and service markets, under which the number of markets susceptible to ex-ante regulation is reduced from 18 to 7.

The present 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. It is in line with the Commission's Better Regulation Programme, which is designed to ensure that legislative interventions remain 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 objectives of the present proposal 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.

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<sup>1</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ L 108, 24.4.2002.

<sup>2</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, OJ L 108, 24.4.2002.

<sup>3</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, OJ L 108, 24.4.2002.

<sup>4</sup> COM(2007) 698.

<sup>5</sup> COM(2007)699.

<sup>6</sup> SEC(2007) 1472.

<sup>7</sup> COM(2007) 696.

- **General context**

As part of the renewed Lisbon strategy for growth and jobs, the Commission proposed in June 2005 a new strategy — the i2010 Initiative: A European Information Society for growth and employment — laying down broad policy orientations to promote an open and competitive digital economy. The creation of a Single European Information Space, which is one of the main pillars of the i2010 Initiative, includes the reform of the regulatory framework as one of its key challenges. The i2010 Initiative also stresses that a more effective management of spectrum would boost innovation in ICT and help provide affordable services to European citizens.

In line with the principles of better regulation, the framework provides for a periodic review to make sure that it keeps pace with technological and market developments.

In June 2006 the Commission presented a report<sup>8</sup> 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.

This situation contrasts with technological and market developments, which are unconstrained by national borders and thus demand a common regulatory approach across the EU. 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.

- **Existing provisions in the area of the proposal**

The objective of this proposal is to amend three Directives: the Framework, the Authorisation and the Access Directives.

- **Consistency with the other policies and objectives of the Union**

The proposal to amend the Framework Directive in the area of security and integrity is designed to strengthen the resilience of current electronic communications networks and systems. It complements Framework Decision 2005/222/JHA on attacks against information systems<sup>9</sup>, which criminalises certain activities. The proposal to amend the Authorisation Directive to establish a common selection procedure will facilitate authorisation of certain pan-European satellite services, in line with one of the objectives of the European Space Policy<sup>10</sup>.

## **2. CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

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<sup>8</sup> COM(2006) 334 final.

<sup>9</sup> OJ L69, 16.03.2005, p. 67.

<sup>10</sup> Communication from the Commission to the Council and the European Parliament – European Space Policy, COM(2007) 212 final, 26.4.2007.

The Commission services launched a two-phase consultation at the end of 2005. The first phase included a call for input, which involved a public hearing with over 440 participants (held in January 2006) and around 160 submissions from stakeholders. In the call for input, stakeholders were invited to give their views on general topics relating to the regulation of electronic communications. These views were taken into account in the preparation of the Commission Communication of 29 June 2006 on the Review<sup>11</sup>, and the accompanying Staff Working Document and the Impact Assessment. The publication of these documents launched the second phase of the public consultation, which lasted until October 2006. A public workshop was held in October 2006 to allow interested parties to express their views on the consultation documents. 224 responses were received from a wide range of interested parties, both inside and outside the EU. 52 industry associations, 12 trade associations and worker's unions and 15 user's associations sent written comments, as did 18 Member States and the European Regulators Group (ERG). The Commission followed up the ERG submission with a regulatory dialogue between November 2006 and February 2007 to explore options for reducing regulatory inconsistencies and obstacles to the single market in a spirit of better regulation.

#### Summary of responses and how they have been taken into account

Proposals in the areas of spectrum management and streamlining of market reviews received broad support from the Member States and industry. A large number of the contributions submitted by industry called for a true internal market in electronic communications. Some concerns were expressed about specific aspects of possible Commission oversight over remedies without involvement of the NRAs, and with regard to changes to appeal procedures. In the area of security, the submissions showed wide support for the overall objectives, but the opinions expressed were more nuanced with respect to the proposed means for achieving these objectives. New entrant operators as well as the ERG called for the possibility to introduce functional separation. The proposal concerning the authorisation of services with a pan-European dimension received broad support. The results of the public consultation have been taken into account in the present proposal.

#### **• Collection and use of expertise**

##### Scientific/expertise domains concerned

- Study “Preparing the next steps in regulation of electronic communications — a contribution to the review of the electronic communications regulatory framework” (Hogan & Hartson, Analysys), 2006.

##### Summary of advice received and used

The study confirmed the soundness of the regulatory framework and its objectives. However, it indicated the need for some adjustments.

- The study took a broad look at some aspects of regulation, which included a survey of market players on obstacles to the internal market and an assessment of the ‘Article 7’ market analysis procedure. It made a number of recommendations for change, including ways to streamline the market review procedure and improving appeals in national courts, though none of the recommendations suggested sweeping changes to the framework. It proposed a Commission veto on remedies in cases justified by their internal market

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<sup>11</sup> See footnote 8.

dimension and the inclusion of functional separation in the list of remedies available to NRAs.

*Means used to make the expert advice publicly available*

The study is available at:

[http://ec.europa.eu/information\\_society/policy/ecomm/library/ext\\_studies/index\\_en.htm#2006](http://ec.europa.eu/information_society/policy/ecomm/library/ext_studies/index_en.htm#2006)

- **Impact assessment**

The impact assessment report of June 2006 provided an initial analysis of a set of broad policy options. This analysis was refined following the public consultation. The second impact assessment, published together with the present proposal, focuses on a more specific set of options for those proposals with the most far-reaching effects. This assessment has benefited in particular from an expert study on the policy option for efficient spectrum management.

The groups affected most by the proposed changes are businesses (incumbents and new entrants in the electronic communications sector as well as business users of electronic communications services), public administrations, citizens and European society at large, which are all users of electronic communications. In particular, the key players affected by the present proposal are NRAs, providers of electronic communications and also broadcasters. This is not a homogeneous group: its members may often have conflicting interests. The impact assessment is available at:

[http://ec.europa.eu/information\\_society/policy/ecomm/library/public\\_consult/index\\_en.htm#communication\\_review](http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/index_en.htm#communication_review)

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

The proposal aims to modernise and amend the existing Framework, Authorisation and Access Directives.

The main proposed amendments to the Framework Directive are the following:

- Reforming spectrum management, in application of the Commission's policy approach on spectrum management set out in the Communication of September 2005<sup>12</sup>. Technological development and convergence underline the importance of spectrum, but its management within the EU has not kept pace with this evolution. A more flexible approach is thus needed to exploit the economic potential and realise the societal and environmental benefits of improved spectrum usage.
- 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

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<sup>12</sup> COM(2005) 400.

imposed by NRAs, which will be combined with the close involvement of the new Electronic Communications Market Authority in the ‘Article 7’ procedure 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. This is essential in order to reinforce the trust and confidence of business and citizens using e-communications.

As regards the Authorisation Directive, the main 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.

As regards the Access Directive, the main 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.

- **Legal basis**

Article 95 EC

- **Subsidiarity principle**

The proposed action entails amendment of the existing EU regulatory framework and thus concerns an area in which the Community has already exercised its competence. The proposal therefore complies with the subsidiarity principle as set out in Article 5 of the EC Treaty. Moreover, the regulatory model for the framework is based on the principle of decentralised regulation in Member States, giving national authorities responsibility for overseeing markets according to a common set of principles and procedures.

- **Proportionality principle**

This proposal complies with the proportionality principle as it proposes a minimum level of harmonisation, leaving the definition of the implementing measures to the NRAs or to the Member States, as in the following areas:

- the simplification of the ‘Article 7 procedure’ offers a way to streamline the administrative burden for operators and NRAs — in line with the better regulation policy of the Commission — while ensuring that an efficient Community mechanism is in place for key areas where there is a need for regulatory consistency in the Internal Market;
- the measures to strengthen security and integrity do not prescribe detailed obligations at EU level, but rather grant additional enforcement powers to NRAs, the effective regulation of these issues remaining the responsibility of the Member States.

The proposed amendments do not go beyond what is necessary for achieving the aim of better regulation of the sector. They comply with the principle of proportionality set out in Article 5 of the EC Treaty.

- **Choice of instruments**

Proposed instruments: directive.

Other means would not be adequate as the object of this proposal is to amend three existing directives.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

#### **5. ADDITIONAL INFORMATION**

- **Simplification and reduction of administrative costs**

Several changes aim to cut the administrative burden for NRAs and market players:

- Increased flexibility in spectrum management tasks will facilitate administrative procedures for NRAs and spectrum use for operators and consumers. Under the proposed mechanism, regulatory restrictions (e.g. licensing conditions) will be limited to the minimum.
- Provisions are introduced that would allow some relaxation of the obligation for NRAs to notify draft measures to the Commission under Article 7 of the Framework Directive. These could include a 'short form' notification procedure for certain draft measures (e.g. those concerning stable markets, or minor changes to previously notified measures), where the NRA would only inform the Commission about its intended measure and provide a limited description of its content; and a 'notification exemption' procedure for certain categories deemed unlikely to raise competition concerns, where the NRA would no longer be obliged to notify the draft measures to the Commission.

Furthermore, it is proposed to repeal some outdated provisions, including, for example, the transitional measures to facilitate the transition between the 'old' framework of 1998 and the 2002 framework.

The proposal is included in the Commission's rolling programme for updating and simplification of the *acquis communautaire* and its Work and Legislative Programme under the reference 2007/INFSO/001.

In a parallel exercise, the number of markets potentially susceptible to ex-ante regulation will be reduced from 18 to 7 through changes to the Commission recommendation on relevant markets.



- **Repeal of existing legislation**

The adoption of the proposal will lead to the repeal of Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop<sup>13</sup>.

- **Review/revision/sunset clause**

The Directives to be amended already include a regular review clause.

- **Correlation table**

Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the EEA.

- **Detailed explanation of the proposal**

*Article 1 includes changes to the Framework Directive*

The aims of the proposed changes are as follows:

*New approach to spectrum management*

- In Article 6: this ensures that Member States also consult interested parties when considering a possible derogation to the principles of technology and service neutrality.
- In Article 8(1): this clarifies the existing wording.
- In Article 9: in order to allow more flexibility to take account of market needs, this makes technology neutrality (Article 9.3) a binding principle, and introduces the principle of service neutrality (Article 9.4), 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 bands (9b). The changes also introduce a transitional phase (Article 9.a) and allow the Commission to take implementing measures via the comitology procedure to coordinate the application of the new principles (9c) for internal market purposes.

*Consolidating the internal market and improving consistency*

- In Article 7, paragraph 4: this extends the Commission's power to oversee the remedies proposed by the NRA for undertakings with significant market power.
- In Article 7, paragraphs 5 and 7: this aims to reinforce the coordination of regulation within the internal market. The Authority is to assist the Commission with its advice.

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<sup>13</sup> OJ L 336, 30.12.2000, p. 4.

- In Articles 7(5), 7(6), 7a, 16(6), 16(7): this rationalises some procedural elements in the market review process so as to reduce the uncertainty for market players. Article 16(7) allows the Commission, assisted by the Authority, to take over a market analysis if an NRA is significantly late in performing its duties. Article 7(8) allows the Commission, assisted by the Authority, to impose specific obligations for draft measures that have been re-notified.
- Article 16(6): introduces a schedule for carrying out market analysis.
- Article 10(4): this clarifies the Commission’s powers in the field of numbering for certain services with an internal market dimension. The “116” case shows that it is necessary to grant the Commission some powers for tariffs linked to the use of specific numbers. The Authority may be granted responsibilities in the implementation in the application of measures adopted by the Commission.
- In Articles 15(4) and 16(5): for trans-national markets, the Commission will designate undertakings with significant market power and impose specific obligations, taking account of the opinion of the Authority.
- In Article 19: the existing powers of the Commission are clarified so as to ensure harmonisation or coordination at Community level in some areas. This will allow technical regulatory issues, and issues raised by changing technology, to be addressed in a timely and coordinated way rather than in a fragmented manner.
- In the new Article 21a: this improves the enforcement powers available to NRAs.

#### Improving security and network integrity

- A new chapter is added on the security and integrity of networks and services. Obligations in this field are reinforced to ensure the reliable and secure use of e-communications (Article 13a(1)). 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 (Article 13a(2)). Article 13b gives implementing powers to the NRAs in this area.

#### Independence of regulators, right of appeal

- In Article 3, paragraph 3: this strengthens the NRA’s independence by setting standards for the dismissal of the head of the NRA, limiting the possible influence of other public bodies on the NRA’s day-to-day management, and ensuring that it has its own independent budget and sufficient human resources.
- In Article 4, paragraph 1: this sets out a minimum criterion (urgent need to prevent serious and irreparable harm to the party concerned) for the suspension of an NRA measure, in line with established case law of the European Court of Justice.
- In Article 4, paragraph 3: this requires Member States to provide the Authority and the Commission with information on appeals.

- In Article 5, paragraph 1: this allows NRAs to be informed about network developments (e.g. NGN architecture) that may have an impact on services provided at wholesale level to competitors.

#### Technical adjustments to the wording of the Directive

- In Article 1, paragraph 1: this brings terminal equipment within the scope of the framework. This is in line with the changes proposed in the revised Universal Service Directive to improve eAccessibility for disabled end-users.
- In Article 2: several definitions are updated (points (d) and (e)), or clarified (points (b), (q), (r) and (s)).
- In Article 8: this updates the objectives of the NRAs, notably as regards elderly users and users with social needs. Point (g) concerns the freedom of end-users in the information society.
- In Article 10(2): this corrects an inconsistency in the current wording.
- In Article 11: this facilitates the sharing of facilities or property and the coordination of civil works. The deletion is to be seen in parallel with the deletion of Article 12(2).
- In Article 12: this enables NRAs to impose duct sharing and entry to buildings. The purpose of this amendment is to facilitate network investment in fibre, notably outside urban areas.
- In Article 14(3): this is deleted as it has proved to be unnecessary. The extension of market power from one market to another should be addressed in the market where the market power exists.
- In Article 20: this clarifies that disputes between content providers (e.g. broadcasters) and providers of electronic communications services fall within the scope of Article 20.
- In Article 21: the new Authority will issue opinions to the NRAs as to the action to be taken; the latter will have to take these into account.
- Annexes I and II of the Directive are deleted as they are not necessary.

#### Removal of outdated or obsolete provisions

- In Article 18(3): this provision has become obsolete.
- In Article 27: this concerned transitional measures for moving from the old regulatory framework of 1998 to the new 2002 framework. It is now obsolete and can be repealed.

#### *Article 2 includes changes to the Access Directive*

The aims of the proposed changes are as follows:

- In Article 5(4): this overlaps with several other provisions and is repealed.
- In Article 7: outdated provisions are repealed.

- In Article 13a: this enables an NRA to impose functional separation and sets out the circumstances, in particular the governance arrangements. Imposing functional separation requires the prior agreement of the Commission.
- In Article 13b: this concerns the case of voluntary separation.
- In Article 12(1)(f) and (j): point (f) clarifies the provisions for facility sharing; point (j) excludes discrimination at the level of IP network interconnection.

Technical adjustments have been made to the following articles: 5(2) (which is moved to Article 12(3)), 2(a), and 4(1). These also include the updating of the reference to the Directive on privacy in electronic communications (Article 8(3)) and the alignment of the text with the new Comitology Decision (Articles 6(2), (5), (14)).

### *Article 3 includes changes to the Authorisation Directive*

The aims of the proposed changes are as follows:

#### Implementation of spectrum reform

- In Article 5: this eases access to spectrum. Provisions governing spectrum assignments to broadcasters are clarified, without affecting the substance of the existing provisions. A procedure is established to ensure a smooth transition (5 years) before spectrum trading is fully implemented (Article 5(2)). Member States may take measures to stop spectrum hoarding — 5(6).
- In Articles 5(2), 6, 7(3) and the Annex: this lays down provisions to ensure more flexible use of spectrum, i.e. the implementation of technology neutrality (the freedom to use any technology in a spectrum band), service neutrality (the freedom to use spectrum to offer any service) and spectrum tradability.

#### Frequencies and numbers for cross-European services

- In Articles 6a and 6b: to facilitate access to spectrum for firms needing rights of use in all Member States (e.g. satellite service providers), the Commission, assisted by the Communications Committee, can coordinate or harmonise the conditions applicable to individual rights (Annex II), the selection procedures and the selection of the undertaking(s). The Authority will assist the Commission by issuing opinions. These Articles will replace Article 8, which has proved to be ineffective.

#### Enforcement powers of the NRAs

- In Article 10: this strengthens the enforcement powers of the NRAs so as to improve the effective implementation of the framework.

#### Improved eAccessibility for disabled end-users

- In Point A.8 of the Annex: this allows NRAs to attach specific conditions to general authorisations to ensure accessibility for users with disabilities.

#### Improved emergency communications to the public

- In Point A.11a of the Annex: this allows NRAs to attach to general authorisations conditions concerning communications from public authorities to the public in the case of imminent threats.

#### *Other issues*

- In Point A.19 of the Annex: this allows NRAs to attach to general authorisations conditions concerning copyright and intellectual property rights.

#### *Technical adjustments to the wording of the Directive*

- Technical adjustments are made in Articles 7(1), 14 and 14a and in the Annex.. References to the old e-Privacy Directive 97/66/EC are replaced by references to the new one (Directive 2002/58/EC<sup>14</sup>).

*Article 4 describes the transitional arrangements for entry into force of the amendments to the Authorisation Directive.*

*Article 5 repeals Regulation (EC) No 2887/2000 on unbundled access to the local loop*

This Regulation proved to be effective in the initial phase of market opening. Under the 2002 framework, NRAs had a duty to analyse markets before imposing regulatory measures. However, this Regulation has become unnecessary and may be repealed.

#### *Articles 6, 7 and 8*

Articles 6, 7 and 8 are standard procedural articles (transposition, review, entry into force, etc.).

*Annexes I and II include amendments to the annex of the Authorisation Directive.*

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<sup>14</sup> 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, OJ L 201, 31.7.2002, p. 37.

**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 services, and 2002/20/EC on the authorisation of electronic communications networks and services**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission<sup>15</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>16</sup>,

Having regard to the opinion of the Committee of the Regions<sup>17</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>18</sup>,

Whereas:

- (1) The functioning of the five directives comprising the existing regulatory framework for electronic communications networks and services (Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services<sup>19</sup> ('Framework Directive'), Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities<sup>20</sup> ('Access Directive'), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of the electronic communications networks and services<sup>21</sup> ('Authorisation Directive'), Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('Universal Service Directive'), and 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<sup>22</sup> ('Directive on privacy and electronic communications')) is subject to periodic review by the

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<sup>15</sup> OJ C [...], [...], p. [...].

<sup>16</sup> OJ C [...], [...], p. [...].

<sup>17</sup> OJ C [...], [...], p. [...].

<sup>18</sup> OJ C [...], [...], p. [...].

<sup>19</sup> OJ L 108, 24.4.2002, p.33.

<sup>20</sup> OJ L 108, 24.4.2002, p.7.

<sup>21</sup> OJ L 108, 24.4.2002, p.21.

<sup>22</sup> OJ L 201, 31.7.2002, p.37.

Commission, with a view in particular to determining the need for modification in the light of technological and market developments.

- (2) In that regard, the Commission presented its initial findings in its Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 29 June 2006 on the review of the EU regulatory framework for electronic communications networks and services. On the basis of these initial findings, a public consultation was held, which identified the continued lack of an internal market for electronic communications as the most important aspect needing to be addressed. In particular, regulatory fragmentation and inconsistencies between the activities of the national regulatory authorities were found to jeopardise not only the competitiveness of the sector, but also the substantial consumer benefits from cross-border competition.
- (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<sup>23</sup> 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.
- (4) In order to allow national regulatory authorities to meet the objectives set out in the Framework Directive and the Specific Directives, in particular concerning end-to-end interoperability, the scope of the Framework Directive should be extended to cover radio equipment and telecommunications terminal equipment as defined in 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<sup>24</sup> as well as consumer equipment used for digital television.
- (5) Certain definitions should be clarified or changed to take account of market and technological developments and to eliminate ambiguities identified in implementing the regulatory framework.
- (6) The independence of the national regulatory authorities should be strengthened in order to ensure a more effective application of the regulatory framework and increase their authority and the predictability of their decisions. To this end, express provision should be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. Such outside influence makes a national legislative body unsuited to act as a national regulatory authority under the regulatory framework. For that purpose rules should be laid down in advance regarding the grounds for the dismissal of the head of the national regulatory authority in order to remove any reasonable doubt as to the

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<sup>23</sup> OJ C [...], [...], p. [...].

<sup>24</sup> OJ L 91, 7.4.1999, p. 10.

neutrality of that body and its imperviousness to external factors. It is important that national regulatory authorities should have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this should be published annually.

- (7) There has been a wide divergence in the manner in which appeal bodies have applied interim measures to suspend the decisions of the national regulatory authorities. In order to achieve greater consistency of approach common standard should be applied in line with Community jurisprudence. Given the importance of appeals for the overall working of the regulatory framework, a mechanism should be set up for collecting information on appeals and decisions to suspend decisions taken by the regulatory authorities in all the Member States and for the reporting of that information to the Commission.
- (8) In order to carry out their regulatory tasks in an effective manner, the data that national regulatory authorities are to gather should include accounting data on the retail markets that are associated with wholesale markets where an operator has significant market power and as such are regulated by the national regulatory authority, and should also include data to enable the national regulatory authority to assess the possible impact of planned upgrades or changes to network topology on the development of competition or on wholesale products made available to other parties.
- (9) The national consultation provided for under Article 6 of the Framework Directive should be conducted prior to the Community consultation provided for under Article 7 of that Directive, in order to allow the views of interested parties to be reflected in the Community consultation. This would also avoid the need for a second Community consultation in the event of changes to a planned measure as a result of the national consultation.
- (10) The discretion of national regulatory authorities needs to be reconciled with the development of consistent regulatory practices and the consistent application of the regulatory framework in order to contribute effectively to the development and completion of the internal market. National regulatory authorities should therefore support the internal market activities of the Commission and those of the Authority, which should serve as the exclusive forum for cooperation between national regulatory authorities in the exercise of their responsibilities under the regulatory framework.
- (11) The Community mechanism allowing the Commission to require national regulatory authorities to withdraw planned measures concerning market definition and the designation of operators having significant market power has contributed significantly to a consistent approach in identifying the circumstances in which ex-ante regulation may be applied and the operators are subject to such regulation. However, there is no equivalent mechanism for the remedies to be applied. Monitoring of the market by the Commission and, in particular, the experience with the procedure under Article 7 of the Framework Directive, has shown that inconsistencies in the national regulatory authorities' application of remedies, even under similar market conditions, undermine the internal market in electronic communications, do not ensure a level playing field between operators established in different Member States, and prevent the realisation of consumer benefits from cross-border competition and services. The Commission should be given powers to require national regulatory authorities to withdraw draft measures on the remedies chosen by national regulatory authorities. In order to ensure



the consistent application of the regulatory framework in the Community, the Commission should consult the Authority prior to its decision.

- (12) It is important that the regulatory framework is implemented in a timely manner. When the Commission has taken a decision requiring a national regulatory authority to withdraw a planned measure, national regulatory authorities should submit a revised measure to the Commission. A deadline should be laid down for the notification of the revised measure to the Commission under Article 7 of the Framework Directive in order that market players may know the duration of the market review and in order to increase legal certainty.
- (13) Likewise, in view of the need to avoid a regulatory vacuum in a sector characterised by its fast-moving nature, if adoption of the re-notified draft measure would still create a barrier to the single market or be incompatible with Community law, the Commission, after having consulted the Authority, should be able to require the national regulatory authority concerned to impose a specific remedy within a specified time.
- (14) Having regard to the short time limits in the Community consultation mechanism, powers should be conferred on the Commission to adopt implementing measures to simplify the procedures for exchanging information between the Commission and national regulatory authorities - for example in cases concerning stable markets, or involving only minor changes to previously notified measures - or to allow for the introduction of a notification exemption in order to streamline procedures in certain cases.
- (15) In line with the objectives of the European Charter on fundamental rights and the United Nations Convention on the Rights of the Persons with Disabilities, the regulatory framework should ensure that all users, including disabled end-users, the elderly, and users with special social needs, have easy access to affordable high quality services. Declaration 22 annexed to the final Act of Amsterdam provides that the institutions of the Community shall take account of the needs of persons with a disability in drawing up measures under Article 95 of the Treaty.
- (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.
- (17) Radio frequencies should be managed so as to ensure that harmful interference is avoided. This 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.
- (18) The current spectrum management and distribution system is generally based on administrative decisions that are insufficiently flexible to cope with technological and economic evolution, in particular with the rapid development of wireless technology and the increasing demand for bandwidth. The undue fragmentation amongst national policies results in increased costs and lost market opportunities for spectrum users, and slows down innovation, to the detriment of the internal market, consumers and the economy as a whole. Moreover, the conditions for access to, and use of, radio

frequencies may vary according to the type of operator, while electronic services provided by these operators increasingly overlap, thereby creating tensions between rights holders, discrepancies in the cost of access to spectrum, and potential distortions in the functioning of the internal market.

- (19) National borders are increasingly irrelevant in determining optimal radio spectrum use. Fragmentation of the management of access to spectrum rights limits investment and innovation and does not allow operators and equipment manufacturers to realise economies of scale, thereby hindering the development of an internal market for electronic communications networks and services using radio spectrum.
- (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.
- (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.
- (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.
- (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.
- (24) As the allocation of spectrum to specific technologies or services is an exception to the principles of technology and service neutrality and reduces the freedom to choose the service provided or technology used, any proposal for such allocation should be transparent and subject to public consultation.
- (25) In the interests of flexibility and efficiency, national regulatory authorities should, in bands which will be identified on a harmonised basis, also allow spectrum users to

freely transfer or lease their usage rights to third parties, which would allow spectrum valuation by the market. In view of their power to ensure effective use of spectrum, national regulatory authorities should take action so as to ensure that trading does not lead to a distortion of competition where spectrum is left unused.

- (26) Given the effect of the exceptions on the development of the internal market for electronic communications services, the Commission 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 Decision No 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 (“Radio Spectrum Decision”)<sup>25</sup>.
- (27) For internal market purposes it may also be necessary to harmonise at Community level the identification of tradable frequency bands, the conditions for tradability or the transition to tradable rights in specific bands, a minimum format for tradable rights, requirements to ensure the central availability, accessibility, and reliability of information necessary for spectrum trading, and requirements to protect competition and to prevent spectrum hoarding. The Commission should therefore be given powers to adopt implementing measure for that harmonisation. Such implementing measures should take due account of whether individual rights of use have been granted on a commercial or non-commercial basis.
- (28) The introduction of technology and service neutrality and trading for existing spectrum usage rights may require transitional rules, including measures to ensure fair competition, as the new system may entitle certain spectrum users to start competing with spectrum users having acquired their spectrum rights under more burdensome terms and conditions. Conversely, where rights have been granted as a derogation from the general rules or according to criteria other than objective, transparent, proportionate and non-discriminatory ones with a view to achieving general interest objectives, the situation of the holders of such rights should not be improved to the detriment of their new competitors beyond what is necessary to achieve such general interest objectives. Any spectrum that has become unnecessary for the achievement of public interest objectives should be recovered and re-assigned in accordance with the Authorisation Directive.
- (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.

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<sup>25</sup> OJ L 108, 24.4.2002, p. 1.

- (30) Permits issued to undertakings providing electronic communications networks and services allowing them to gain access to public or private property are essential factors for the establishment of electronic communications networks or new network elements. Unnecessary complexity and delay in the procedures for granting rights of way may therefore represent important obstacles to the development of competition. Consequently, the acquisition of rights of way by authorised undertakings should be simplified. National regulatory authorities should be able to coordinate the acquisition of rights of way, making relevant information accessible on their websites.
- (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 and environmental cost of deploying electronic communications infrastructure for undertakings
- (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 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.
- (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.
- (34) Experience in the implementation of the regulatory framework indicates that the market into which significant market power is being leveraged is not the source of the

problem but rather the object of its effect. Therefore, the significant market power enjoyed on one market should be addressed by national regulatory authorities at source and not on adjacent markets where its effects are felt.

- (35) In the case of markets that are identified as trans-national, the market review procedure should be simplified and rendered more effective by enabling the Commission, taking into account the opinion of the Authority, to designate the undertaking(s) with significant market power and impose one or more specific obligations, thereby allowing regulatory issues with trans-national characteristics to be addressed directly at Community level.
- (36) In order to provide market players with certainty as to regulatory conditions, a time limit for market reviews is necessary. It is important to conduct a market analysis on a regular basis and within a reasonable and appropriate timeframe. The timeframe should take account of whether the particular market has previously been subject to market analysis and duly notified. Failure of a national regulatory authority to analyse a market within the time limit may jeopardise the internal market, and normal infringement proceedings may not produce their desired effect in time. The Commission should therefore be able to ask the Authority to assist in the tasks of the national regulatory authority concerned, in particular to issue an opinion including a draft measure, the analysis of the relevant market and the appropriate obligations that the Commission could then impose.
- (37) Due to the a high level of technological innovation and highly dynamic markets in the electronic communications sector there is a need to be able to adapt regulation rapidly in a coordinated and harmonised way at European level, as experience shows that divergence among the national regulatory authorities in the implementation of the regulatory framework may create a barrier to the development of the internal market.. Therefore, power should be conferred on the Commission to adopt implementing measures in areas such as the regulatory treatment of new services, numbering, naming and addressing, consumer issues including eAccessibility, and regulatory accounting measures.
- (38) One important task assigned to the Authority is to issue opinions in relation to cross-border disputes where appropriate. National regulatory authorities should therefore take account of any opinions of the Authority in such cases.
- (39) Experience in the implementation of the regulatory framework indicates that existing provisions empowering national regulatory authorities to impose fines have failed to provide an adequate incentive to comply with regulatory requirements. Adequate enforcement powers can contribute to the timely implementation of the regulatory framework and therefore foster regulatory certainty, which is an important driver for investment. The lack of effective powers in the event of non-compliance applies across the regulatory framework. The introduction of a new provision in the Framework Directive to deal with breaches of obligations under the Framework and Specific Directives should therefore ensure the application of consistent and coherent principles to enforcement and penalties for the whole regulatory framework.
- (40) The existing regulatory framework included certain provisions to facilitate the transition from the old regulatory framework of 1998 to the new 2002 framework.

This transition has been completed in all Member States and these measures should be repealed as they are now redundant.

- (41) Annex I to the Framework Directive identified the list of markets to be included in the Recommendation on relevant product and service markets which may warrant ex-ante regulation. This Annex should be repealed since its purpose of serving as a basis for drawing up the initial version of the Recommendation<sup>26</sup> has been fulfilled.
- (42) Annex II to the Framework Directive listed the criteria to be used by the national regulatory authorities when assessing joint dominance in accordance with the second subparagraph of Article 14(2) of that Directive. Since the list in Annex II is neither necessary nor exhaustive, it may be misleading for national regulatory authorities conducting market analysis. Furthermore, the concept of joint dominance also depends on the case law of the European Court of Justice. Annex II is therefore unnecessary and can be repealed.
- (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 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.
- (44) The implementation of functional separation should not prevent appropriate coordination mechanisms between the different separate business entities in order to ensure that the economic and management supervision rights of the parent company are protected.
- (45) Where a vertically integrated undertaking chooses to dispose a substantial part or all of its local access network assets to a separate legal entity under different ownership or

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Commission Recommendation of 11 February 2003 on Relevant Product and Service Markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services. C(2003) 497.

by establishing a separate business entity for dealing with access products, the national regulatory authority should assess the effect of the intended transaction on all existing regulatory obligations imposed on the vertically integrated operator in order to ensure the compatibility of any new arrangements with Directive 2002/19/EC (Access Directive) and Directive 2002/22/EC (Universal Service Directive). The national regulatory authority concerned should undertake a new analysis of the markets in which the segregated entity operates, and impose, maintain, amend or withdraw obligations accordingly. To this end, the national regulatory authority should be able to request information from the undertaking.

- (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.
- (47) The Commission has the power to adopt implementing measures with a view to adapting the conditions for access to digital television and radio services set out in Annex I to market and technological developments. This is also the case for the minimum list of items in Annex II that must be made public to meet the obligation of transparency.
- (48) Facilitating access to radio frequencies resources for market players will contribute to removing the barriers to market entry. Moreover, technological progress is reducing the risk of harmful interference in certain frequency bands and therefore reducing the need for individual rights of use. Conditions for using spectrum to provide electronic communication services should therefore normally be laid down in general authorisations unless individual rights are necessary, considering the use of the spectrum, to protect against harmful interference or to meet a specific general interest objective. Decisions on the need for individual rights should be made in a transparent and proportionate manner.
- (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 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.
- (50) In order to ensure equal treatment, no spectrum users should be exempted from the obligation to pay the normal fees or charges set for the use of the spectrum.
- (51) Considering its restrictive impact on free access to radio frequencies, the validity of an individual right of use that is not tradable should be limited in time. Where rights of use contain provision for renewing their validity, Member States should first carry out

a review, including a public consultation, taking into account market, coverage and technological developments. In view of spectrum scarcity, individual rights granted to undertakings should be regularly reviewed. In carrying out this review, Member States should balance the interests of the rights holders with the need to foster the introduction of spectrum trading as well as the more flexible use of spectrum through general authorisations where possible.

- (52) National regulatory authorities should have the power to ensure effective use of spectrum and numbers and, where spectrum or numbering resources are left unused, to take action to prevent anti-competitive hoarding, which can hinder new market entry.
- (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<sup>27</sup>, 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.
- (54) Technological and market developments have made it possible to deploy electronic communications services extending across the geographical frontiers of Member States. Article 16 of the Authorisation Directive required the Commission to review the functioning of the national authorisation systems and the development of cross-border service provision within the Community. The provisions of Article 8 of the Authorisation Directive concerning the harmonised assignment of radio frequencies have proved to be ineffective in coping with the needs of an undertaking wishing to provide services on a cross-Community basis and should therefore be amended.
- (55) While the granting of authorisations and the monitoring of compliance with usage conditions should remain the responsibility of each Member State, Member States should refrain from imposing any further conditions, criteria or procedures that would restrict, alter or delay the correct implementation of a harmonised or coordinated selection or authorisation procedure. Where justified to facilitate their implementation, such coordination or harmonisation measures could include transitional derogations or, in the case of spectrum, transitional spectrum sharing mechanisms that would exempt a Member State from the application of such measures, provided that this would not

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<sup>27</sup> OJ L 108, 24.4.2002, p. 1.



create undue differences in the competitive or regulatory situations between Member States.

- (56) National regulatory authorities should be able to take effective action to monitor and secure compliance with the terms and conditions of the general authorisation or of rights of use, including the power to impose effective financial penalties and/or administrative sanctions in the event of breaches of those terms and conditions.
- (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.
- (58) Regulation (EC) No 2887/2000 of the European Parliament and of the Council of 18 December 2000 on unbundled access to the local loop<sup>28</sup> has proved to be effective in the initial stage of market opening. The Framework Directive calls upon the Commission to monitor the transition from the regulatory framework of 1998 to the 2002 framework and to bring forward proposals to repeal that Regulation at an appropriate time. Under the 2002 framework, national regulatory authorities have a duty to analyse the market for wholesale unbundled access to metallic loops and sub-loops for the purpose of providing broadband and voice services as defined in the Recommendation on Relevant Product and Service Markets. Since all Member States have analysed this market at least once and the appropriate obligations based on the 2002 framework are in place, Regulation No 2887/2000 has become unnecessary and should therefore be repealed.
- (59) Measures necessary for the implementation of the Framework, Access and Authorisation Directives should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>29</sup>.
- (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

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<sup>28</sup> OJ L 336, 30/12/2000, p. 4.

<sup>29</sup> OJ L 184, 17.7.1999, p.23. Decision as amended by Decision 2006/512/EC (OJ L200,22.7.2006, p. 11).

with, the Commission should be able to use the urgency procedure provided for in Article 5a(6) of the above Decision,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*  
*Amendments to Directive 2002/21/EC (Framework Directive)*

Directive 2002/21/EC is amended as follows:

(1) Article 1(1) is replaced by the following:

‘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.’

(2) Article 2 is amended as follows:

(a) Point (b) is replaced by the following:

‘(b)“transnational markets” means markets covering the Community or a substantial part thereof located in more than one Member State.’

(b) Point (d) is replaced by the following:

‘(d)“public communications network” means an electronic communications network used wholly or mainly for the provision of electronic communications services available to the public which support the transfer of information between network termination points, including network elements which are not active;’

(c) Point (e) is replaced by the following:

‘(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;’

(d) Point (l) is replaced by the following:

‘(l)“Specific Directives” means Directive 2002/20/EC (Authorisation Directive), Directive 2002/19/EC (Access Directive), Directive 2002/22/EC (Universal Service Directive) and Directive 2002/58/EC of the European

Parliament and of the Council<sup>30</sup> (hereinafter referred to as "Directive 2002/58/EC (Directive on privacy and electronic communications)";

(e) The following points (q), (r), and (s) are added:

‘(q) “allocation” means the designation of a given frequency band or number range for use by one or more types of services, where appropriate, under specified conditions;

(r) “assignment” means the authorisation given by a national regulatory authority to a legal entity or natural person to use a radio frequency or radio frequency channel, or a number (or block(s) of numbers);

(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.;

(3) Article 3(3) is replaced by the following:

‘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.

Member States shall ensure that the head of a national regulatory authority or his/her replacement may be dismissed only if he no longer fulfils the conditions required for the performance of his duties laid down in advance in national law, or if he has been guilty of serious misconduct. The decision to dismiss the head of the national regulatory authority shall contain a statement of reasons and be made public at the time of dismissal.

Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the tasks assigned to them and that they have separate annual budgets. The budgets shall be made public.’

(4) Article 4 is amended as follows:

(a) Paragraph 1 is replaced by the following:

‘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

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<sup>30</sup> OJ L 201, 31.7.2002, p. 37. Directive as last amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

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.

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.’

(b) The following paragraph 3 is added:

‘3. Member States shall collect information on the subject of appeals, the number of requests for appeal, the duration of the appeal proceedings, the number of decisions to grant interim measures taken in accordance with paragraph 1 and the reasons for such decisions. Member States shall make available such information to the Commission and the European Communications Market Authority (hereinafter referred to as ‘the Authority’) on an annual basis.’

(5) Article 5(1) is replaced by the following:

‘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 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.’

(6) Articles 6 and 7 are replaced by the following:

*‘Article 6  
Consultation and transparency mechanism*

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.

National regulatory authorities shall publish their national consultation procedures.

Member States shall ensure the establishment of a single information point through which all current consultations can be accessed.

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.

*Article 7*  
*Consolidating the internal market*  
*for electronic communications*

1. In carrying out their tasks under this Directive and the Specific Directives, national regulatory authorities shall take the utmost account of the objectives set out in Article 8, including insofar as they relate to the functioning of the Internal Market.
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 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 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 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.'

(7) The following Article 7a is inserted:

*Article 7a*  
*Implementing provisions*

- '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.
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).'

(8) Article 8 is amended as follows:

(a) In paragraph 1, the second subparagraph is replaced by the following:

'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.'

(b) In paragraph 2, points (a) and (b) are replaced by the following:

'(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;

- (b) ensuring that there is no distortion or restriction of competition in the electronic communications sector, in particular for the delivery of content;'
- (c) In paragraph 3, point (d) is replaced by the following:
  - '(d) working with the Commission and the Authority so as to ensure the development of consistent regulatory practice and the consistent application of this Directive and the Specific Directives.'
- (d) In paragraph 4, point (e) is replaced by the following:
  - '(e) addressing the needs of specific social groups, in particular disabled users, elderly users and users with special social needs;'
- (e) In paragraph 4, point (g) is added:
  - '(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.'
- (9) Article 9 is replaced by the following:

#### *'Article 9*

#### *Management of radio frequencies for electronic communications services*

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 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 paragraph 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 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.

- (10) The following Articles 9a, 9b, and 9c are inserted:

*'Article 9a*

*Review of restrictions to existing rights*

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) of the Authorisation Directive.

3. After the five-year period referred to in paragraph 1, Member States shall take all appropriate measures to ensure that Article 9(3) and (4) apply to all remaining assignments and allocations of radio frequencies which existed at the date of entry into force of this Directive.
4. In applying this Article, Member States shall take appropriate measures to guarantee fair competition.

#### *Article 9b*

##### *Transfer of Individual Rights to Use radio frequencies*

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.

#### *Article 9c*

##### *Radio Frequency Management Harmonisation Measures*

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 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].

(11) Article 10 is amended as follows:

(a) Paragraph 2 is replaced by the following:

‘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’.

(b) Paragraph 4 is replaced by the following:

‘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 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).’

(12) In Article 11(1), the words ‘acts on the basis of transparent and publicly available procedures, applied without discrimination and without delay, and’ are replaced by the following:

‘acts on the basis of simple, transparent and publicly available procedures, applied without discrimination and without delay, and in any event makes its decision within four months of the application, and’

(13) Article 12 is replaced by the following:

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

(14) The following Chapter IIIa is inserted:

## **'Chapter IIIa**

### **SECURITY AND INTEGRITY OF NETWORKS AND SERVICES**

#### *Article 13a*

#### *Security and integrity*

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 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.

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).

#### *Article 13b* *Implementation and enforcement*

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.
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:
  - (a) provide information needed to assess the security of their services and networks, including documented security policies; and
  - (b) instruct a qualified independent body to carry out a security audit and make the results thereof available to the national regulatory authority.
3. Member States shall ensure that national regulatory authorities have all the powers necessary to investigate cases of non-compliance.
4. These provisions shall be without prejudice to Article 3 of this Directive.'

(15) Article 14 is amended as follows:

- (a) In the second sub-paragraph of paragraph 2, the second sentence is deleted.
- (b) Paragraph (3) is deleted.

(16) Article 15 is amended as follows:

- (a) The heading is replaced by the following:

‘Procedure for identification and definition of markets’

- (b) In paragraph 1, the first subparagraph is replaced by the following:
- ‘1. After public consultation and consultation with the Authority, the Commission shall adopt a Recommendation on Relevant Product and Service Markets (hereinafter “the Recommendation”). The Recommendation shall identify those product and service markets within the electronic communications sector the characteristics of which may be such as to justify the imposition of regulatory obligations set out in the Specific Directives, without prejudice to markets that may be defined in specific cases under competition law. The Commission shall define markets in accordance with the principles of competition law.’
- (c) Paragraph 3 is replaced by the following:
- ‘3. National regulatory authorities shall, taking the utmost account of the Recommendation and the Guidelines, define relevant markets appropriate to national circumstances, in particular relevant geographic markets within their territory, in accordance with the principles of competition law. National regulatory authorities shall follow the procedures referred to in Articles 6 and 7 before defining the markets that differ from those identified in the Recommendation.’
- (d) Paragraph 4 is replaced by the following:
- ‘4. The Commission may, taking the utmost account of the opinion of the Authority submitted in accordance with Article 7 of Regulation [.../EC], adopt a Decision identifying transnational markets.

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).’

(17) Article 16 is amended as follows:

- (a) Paragraphs 1 and 2 are replaced by the following:
- ‘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 national competition authorities.
2. Where a national regulatory authority is required under paragraphs 3 or 4, Article 17 of Directive 2002/22/EC (Universal Service Directive), or Article 8 of Directive 2002/19/EC (Access Directive) to determine whether to impose, maintain, amend or withdraw obligations on undertakings, it shall determine on the basis of its market analysis referred to in paragraph 1 of this Article whether a relevant market is effectively competitive.’

(b) Paragraphs 5 and 6 are replaced by the following:

- ‘5. In the case of transnational markets identified in the Decision referred to in Article 15(4), the Commission shall request the Authority to conduct the market analysis taking the utmost account of the Guidelines and deliver an opinion on any imposition, maintenance, amendment or withdrawal of regulatory obligations as referred to in paragraph 2 of this Article.

The Commission, taking the utmost account of the opinion of the Authority, may issue a decision designating one or more undertakings as having significant market power on that market, and imposing one or more specific obligations under Articles 9 to 13a of Directive 2002/19/EC (Access Directive) and Article 17 of Directive 2002/22/EC (Universal Service Directive). In so doing, the Commission shall pursue the policy objectives set out in Article 8.

6. Measures taken according to the provisions of paragraphs 3 and 4 of this Article shall be subject to the procedures referred to in Articles 6 and 7. National regulatory authorities shall carry out an analysis of the relevant market:

(a) within two years from a previous notification of a draft measure relating to that market;

(b) for markets not previously notified to the Commission, within one year from the adoption of a revised Recommendation on relevant markets, or;

(c) for Member States that have newly joined the Union, within one year from their accession.

- (c) The following paragraph 7 is inserted:

- ‘7. Where a national regulatory authority has not completed its analysis of a relevant market identified in the Recommendation within the time limit laid down in Article 16(6), the Commission may request the Authority to issue an opinion, including a draft measure, on the analysis of the specific market and the specific obligations to be imposed. The Authority shall carry out a public consultation on the draft measure concerned.

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.’

- (18) Article 17 is amended as follows:

- (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'.
  - (b) In Paragraph 6, the words 'acting in accordance with the procedure referred to in Article 22(3), remove them from this List of standards and/or specifications referred to in paragraph 1' are replaced by 'take the appropriate implementing measures and remove those standards and/or specifications from the list of standards and/or specifications referred to in paragraph 1'.
  - (c) The following paragraph 6a is inserted:
    - '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).'
- (19) Article 18 is amended as follows:
- (a) In paragraph 1, the following point (c) is added:
    - '(c) providers of digital TV services and equipment to cooperate in the provision of interoperable TV services for disabled end-users.'
  - (b) Paragraph 3 is deleted.
- (20) Article 19 is replaced by the following:

*'Article 19*  
*Harmonisation procedures*

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 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.'

(21) Article 20(1) is replaced by the following:

- '1. In the event of a dispute between service providers arising in connection with existing obligations imposed under this Directive or the Specific Directives where one of the parties is an undertaking providing electronic communications networks or services in a Member State, the national regulatory authority concerned shall, at the request of either party, and without prejudice to the provisions of paragraph 2, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months, except in exceptional circumstances. The Member State concerned shall require that all parties cooperate fully with the national regulatory authority.'

(22) Article 21 is replaced by the following:

*'Article 21  
Resolution of cross-border disputes*

1. In the event of a cross-border dispute arising under this Directive or the Specific Directives between parties in different Member States, where the dispute lies within the competence of national regulatory authorities from more than one Member State, the provisions set out in paragraphs 2, 3 and 4 shall be applicable.
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.

Any national regulatory authority which has competence in such a dispute may request the Authority to issue a recommendation pursuant to Article 18 of Regulation [.../EC] as to the action to be taken in accordance with the provisions of the Framework Directive and/or the specific Directives to resolve the dispute.

Where such a request has been made to the Authority, any national regulatory authority with competence in any aspect of the dispute shall await the Authority's recommendation pursuant to Article 18 of Regulation [ /EC] before taking action to resolve the dispute, without prejudice to the possibility for national regulatory authorities to take urgent measures where necessary.

Any obligations imposed on an undertaking by the national regulatory authority in resolving a dispute shall respect the provisions of this Directive or the Specific Directives and take the utmost account of the recommendation issued by the Authority in accordance with Article 18 of Regulation [.../EC].

3. Member States may make provision for the competent national regulatory authorities jointly to decline to resolve a dispute where other mechanisms, including mediation, exist and would better contribute to resolution of the dispute in a timely manner in accordance with the provisions of Article 8.

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].

4. The procedure referred to in paragraph 2 shall not preclude either party from bringing an action before the courts.'

- (23) The following Article 21a is inserted:

*'Article 21a  
Penalties*

'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.'

- (24) Article 22 is amended as follows:

- (a) Paragraph 3 is replaced by the following:
    - ‘3. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.’
  - (b) Paragraph 4 is replaced by the following:
    - ‘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.’
- (25) Article 27 is deleted.
- (26) Annexes I and II are deleted.

## *Article 2*

### **Amendments to Directive 2002/19/EC (Access Directive)**

Directive 2002/19/EC is amended as follows:

- (1) Article 2, point (a), is replaced by the following:
- ‘(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.’
- (2) Article 4(1) is replaced by the following:
- ‘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.’
- (3) Article 5 is amended as follows:

- (a) Paragraph 2 is replaced by the following:
    - ‘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).’
  - (b) Paragraphs 3 and 4 are deleted.
- (4) Article 6(2) is replaced by the following:
- ‘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).
- In preparing the provisions referred to in this paragraph, the Commission may be assisted by the European Electronic Communications Market Authority (hereinafter referred to as 'the Authority').’
- (5) Article 7 is deleted.
- (6) Article 8 is amended as follows:
- (a) In paragraph 1, "Articles 9 to 13" is replaced by "Articles 9 to 13a"
  - (b) Paragraph 3 is amended as follows:
    - (i) The first subparagraph is amended as follows:
      - In the first indent, "Articles 5(1), 5(2) and 6" is replaced by "Articles 5(1) and 6".
      - in the second indent, "Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>31</sup>" is replaced by "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 (Directive on privacy and electronic communications<sup>32</sup>)".
    - (ii) The second subparagraph is replaced by the following:
 

"The Commission shall take the utmost account of the opinion of the Authority submitted in accordance with Article 4(3)(m) of Regulation [ /EC]."

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<sup>31</sup> OJ L 24, 30.1.1998, p. 1.

<sup>32</sup> OJ L 201, 31.7.2002, p. 37. Directive as last amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

- (7) Article 9(5) is replaced by the following:
- ‘5. The Commission may adopt the necessary amendments to Annex II in order to adapt it to technological and market developments. 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). In implementing the provisions of this paragraph, the Commission may be assisted by the Authority.’
- (8) Article 12 is amended as follows:
- (a) In paragraph 1, point (f) is replaced by the following:
- ‘(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;’
- (b) In paragraph 1, the following point (j) is added:
- ‘(j) to provide access to associated services such as identity, location and presence capability.’
- (c) The following paragraph 3 is added:
- ‘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)’
- (9) The following Articles 13a and 13b are inserted:

*‘Article 13a  
Functional separation*

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 effective competition following a co-ordinated 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 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.
4. Following the Commission's decision on the draft measure taken in accordance with Article 8(3), the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive). On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).
5. An undertaking on which functional separation has been imposed may be subject to any of the obligations identified in Articles 9–13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.

*Article 13b*  
*Voluntary separation by a vertically integrated undertaking*

1. Undertakings which have been designated as having significant market power in one or several relevant markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive) shall inform the national regulatory authority in advance if they intend to transfer their local access network assets or a substantial part of them to a separate legal entity under different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, fully equivalent access products.
2. The national regulatory authority shall assess the effect of the intended transaction on existing regulatory obligations under Directive 2002/21/EC (Framework Directive).

For that purpose, the national regulatory authority shall conduct a coordinated analysis of the different markets related to the access network in accordance with the procedure set out in Article 16 of Directive 2002/21/EC (Framework Directive).

On the basis of its assessment, the national regulatory authority shall impose, maintain, amend or withdraw obligations, in accordance with Articles 6 and 7 of Directive 2002/21/EC (Framework Directive).

3. The legally and/or operationally separate business entity may be subject to any of the obligations identified in Articles 9-13 in any specific market where it has been designated as having significant market power in accordance with Article 16 of Directive 2002/21/EC (Framework Directive), or any other obligations authorised by the Commission pursuant to paragraph 3 of Article 8.

(10) Article 14 is amended as follows:

(a) Paragraph 3 is replaced by the following:

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

(b) Paragraph 4 is replaced by the following:

- ‘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.’

*Article 3*  
*Amendments to Directive 2002/20/EC (Authorisation Directive)*

Directive 2002/20/EC is amended as follows:

- (1) Article 2(2) is replaced by the following:

'2. The following definition shall also apply:

"general authorisation" means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.'

(2) In Article 3(2) 'Articles 5, 6 and 7' is replaced by

'Articles 5, 6, 6a and 7.'

(3) Article 5 is replaced by the following:

*“Article 5  
Rights of use for radio frequencies and numbers*

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 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 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 radiofrequencies, 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 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.'

(4) Article 6 is amended as follows:

(a) Paragraph 1 is replaced by the following:

- '1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio frequencies and rights of use for numbers may be subject only to the conditions listed in Annex I. Such conditions shall be non-discriminatory, proportionate and transparent and, in

the case of rights of use for radio frequencies, shall be in accordance with Article 9 of Directive 2002/21/EC (Framework Directive).'

- (b) In paragraph 2, 'Articles 16, 17, 18 and 19 of Directive 2002/22/EC (Universal Service Directive)' is replaced by 'Article 17 of Directive 2002/22/EC (Universal Service Directive)'.
  - (c) In paragraph 3, the word 'Annex' is replaced by 'Annex I'.
- (5) The following Articles 6a and 6b are inserted:

*'Article 6a  
Harmonisation measures*

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 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 [ ].

#### *Article 6b*

##### *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).'

(6) Article 7 is amended as follows:

(a) Paragraph 1 is amended as follows

(i) The introductory phrase is replaced by the following:

- '1. Where a Member State is considering whether to limit the number of rights of use to be granted for radio frequencies or whether to extend the duration of existing rights other than in accordance with the terms specified in such rights, it shall *inter alia*:'

(ii) Point (c) is replaced by the following:

'(c) publish any decision to limit the granting of rights of use or the renewal of rights of use, stating the reasons therefor;'

(c) Paragraph 3 is replaced by the following:

- '3. Where the granting of rights of use for radio frequencies needs to be limited, Member States shall grant such rights on the basis of selection criteria which

must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives of Article 8 of Directive 2002/21/EC (Framework Directive) and of the requirements of Article 9 of that Directive.'

(d) In paragraph 5 'Article 9' is replaced by 'Article 9b'.

(7) Article 8 is deleted.

(8) Article 10 is amended as follows:

(a) Paragraph 1, 2 and 3 are replaced by the following:

- '1. National regulatory authorities shall monitor and supervise compliance with the conditions of the general authorisation or of rights of use and with the specific obligations referred to in Article 6(2), in accordance with Article 11.

National regulatory authorities shall have the power to require undertakings providing electronic communications networks or services covered by the general authorisation or enjoying rights of use for radio frequencies or numbers to provide all information necessary to verify compliance with the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article 6(2), in accordance with Article 11.

2. Where a national regulatory authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or of rights of use, or with the specific obligations referred to in Article 6(2), it shall notify the undertaking of those findings and give the undertaking the opportunity to state its views, within a reasonable time limit.
3. The relevant authority shall have the power to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and shall take appropriate and proportionate measures aimed at ensuring compliance.

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.'

(b) Paragraph 4 is replaced by the following:

"4. Notwithstanding the provisions of paragraphs 2 and 3, Member States shall empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with obligations imposed under Article 11(1)(a) or (b) of this Directive or Article 9 of Directive 2002/19/EC (Access Directive) within a reasonable period stipulated by the national regulatory authority."

(c) Paragraph 5 is replaced by the following:

- ‘5. 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.’
- (d) Paragraph 6 is replaced by the following:
- ‘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 appropriate, the relevant authority may confirm the interim measures, which shall be valid for a maximum of 3 months.’
- (9) In points (a) and (b) of Article 11, paragraph 1, the word ‘Annex’ is replaced by ‘Annex I’.
- (10) Article 14 is replaced by the following:

*‘Article 14  
Amendment of rights and obligations*

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. Notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.
  2. Member States shall not restrict or withdraw rights to install facilities or rights of use for radio frequencies before expiry of the period for which they were granted except where justified and where applicable in conformity with relevant national provisions regarding compensation for withdrawal of rights.’
- (11) The following Article 14a is inserted:

*'Article 14a  
Committee*

1. The Commission shall be assisted by the Communications Committee.
  2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
  3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
  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.'
- (12) Article 15(1) is replaced by the following:
- '1. Member States shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, rights of use and rights to install facilities is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.'
- (13) In Article 17 paragraphs 1 and 2 are replaced by the following:
- '1. Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive), Member States shall bring authorisations already in existence on 31 December 2009 into conformity with Articles 5, 6, 7, and Annex I of this Directive by [31 December 2010] at the latest.
2. Where application of paragraph 1 results in a reduction of the rights or an extension of the obligations under authorisations already in existence, Member States may extend the validity of those rights and obligations till [ 30 September 2011] at the latest, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefor. '
- (14) The Annex is amended as set out in Annex I to this Directive.
- (15) A new Annex II, the text of which is set out in the Annex to this Directive, is added.

*Article 4  
Repeal*

Regulation (EC) No 2887/2000 is repealed.

*Article 5*  
***Transposition***

- (1) Member States shall adopt and publish by [...] at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [...].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

- (2) Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 6*  
***Entry into force***

This Directive shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

*Article 7*  
***Addressees***

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the European Parliament*  
*The President*  
[...]

*For the Council*  
*The President*  
[...]

## ANNEX I

The Annex to Directive 2002/20/EC (Authorisation Directive) is amended as follows:

- (1) The heading ‘Annex’ is replaced by the heading ‘Annex I’.
- (2) The first paragraph is replaced by the following heading:

‘The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations (Part A), rights to use radio frequencies (Part B) and rights to use numbers (Part C) as referred to in Article 6(1) and Article 11(1)(a), within the limits allowed under Articles 5, 6, 7, 8 and 9 of Directive 2002/21/EC (the Framework Directive).’
- (3) Part A is amended as follows:
  - (a) Point 4 is replaced by the following:

‘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).’
  - (b) Point 7 is replaced by the following:

‘7. Personal data and privacy protection specific to the electronic communications sector in conformity with Directive 2002/58/EC of the European Parliament and of the Council (Directive on privacy and electronic communications)<sup>33</sup>.’
  - (c) Point 8 is replaced by the following:

‘8. Consumer protection rules specific to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC (Universal Service Directive), and conditions on accessibility for users with disabilities in accordance with Article 7 of that Directive.’
  - (d) In points 11 and 16, ‘Directive 97/66/EC’ is replaced by ‘Directive 2002/58/EC’.
  - (e) The following point 11a is added:

‘11.a Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.’
  - (f) In point 12 the terms ‘and broadcasts to the general public’ are deleted.
  - (g) The following point 19 is added:

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<sup>33</sup> OJ L 201, 31.7.2002, p. 37.



‘19. Compliance with national measures implementing Directive 2001/29/EC of the European Parliament and of the Council<sup>34</sup> and Directive 2004/48/EC of the European Parliament and of the Council<sup>35</sup> ,

(4) Part B is amended as follows:

(a) Point 1 is replaced by the following:

‘1. Obligation to provide a service or to use a type of technology for which the rights of use for the frequency has been granted, including, where appropriate, coverage requirements.’

(b) Point 2 is deleted.

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

(d) Point 7 is replaced by the following:

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

(e) The following point 9 is added:

‘9. Obligations specific to an experimental use of radio frequencies.’

(5) In Part C, point 8 is replaced by the following:

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

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<sup>34</sup> OJ L 167, 22.6.2001, p. 10.

<sup>35</sup> OJ L 157, 30.4.2004, p. 45.

## **ANNEX II**

The following Annex II is added to Directive 2002/20/EC (Authorisation Directive):

### **'ANNEX II**

Conditions which may be harmonised in accordance with point (d) of Article 6a, paragraph 1

- (1) Conditions attached to rights of use for radio frequencies
  - (a) the duration of the rights of use of the radio frequencies;
  - (b) the territorial scope of the rights;
  - (c) the possibility to transfer the right to other radio frequencies users, as well as the conditions and procedures relating thereto;
  - (d) the method of determining usage fees for the right of use of the radio frequencies;
  - (e) the number of rights of use to be granted to each undertaking;
  - (f) conditions listed in Part B of Annex I.
- (2) Conditions attached to rights of use for numbers:
  - (g) the duration of the rights of use of the number(s) concerned;
  - (h) the territory within which they are valid;
  - (i) any specific services or uses for which the numbers are to be reserved;
  - (j) the transfer and portability of the rights of use;
  - (k) the method of determining usage fees (if any) for the rights of use for the numbers;
  - (l) conditions listed in Part C of Annex I.