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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,  
COM(2007)699 rev 2

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the European Electronic Communications Market Authority**

**(presented by the Commission)**

## **EXPLANATORY MEMORANDUM**

### **1. GROUNDS FOR AND OBJECTIVES OF THE PROPOSAL. GENERAL CONTEXT**

The development of an effective telecommunications single market is a matter of highest political priority in the EU. ICTs, and with it the Telecommunications sector, account for quarter of Europe's total growth. In the age of technological progress, cross-border business activities and growing consumer demand for electronic communications services regardless of geographic location, achieving a true internal market in telecoms becomes essential for Europe's competitiveness. Without a competitive and efficient telecommunications infrastructure, there is little chance to develop pan-European services.

The full opening of national telecoms markets to competition in 1998 served to stimulate investment and innovation by both new entrants and incumbents, and this has yielded very tangible advantages to Europe's citizens in the form of more choice, lower prices, better quality and a growing range of new fixed and mobile services.

These benefits were achieved through an EU regulatory framework designed to meet the three objectives of promoting competition, consolidating the internal market for electronic communications and benefiting consumers and users. The framework comprises five Directives that entered into force in July 2003.

In keeping with the principle of better regulation, the current framework requires the Commission to report regularly on its functioning. The first report, in June 2006<sup>1</sup>, set out proposals for changes to the framework and, at the same time, launched a four months public consultation. This extensive and comprehensive review process brought to light a number of important problems that remain to be solved, in particular the lack of consistency in the application of EU rules and the regulatory fragmentation of the internal market. Indeed, despite the significant progress on the harmonisation of regulation in electronic communications, the inconsistent regulatory approaches by 27 national regulatory authorities – which vary significantly in terms of competences, independence and financial and human resources – stand in the way of technological developments and are increasingly felt by businesses as obstacles to the delivery of trans-national or pan-European services. Moreover, Europe's citizens should not have to pay excessive prices because costs for firms operating in several Member States remain artificially high.

To assist in overcoming these obstacles, the Commission is proposing a new independent Authority working in close cooperation with the national regulatory authorities (NRAs) and the Commission. The new Authority, accountable to the European Parliament, will include a board of regulators comprising the heads of the national regulatory authorities of all EU Member States and will replace the European Regulators Group (ERG)<sup>2</sup>. It will provide expert advice to the Commission, notably to prepare regulatory decisions under the so-called 'Article 7' procedure, and to further the internal market by improving consistency in the application of EU rules, and will act as a centre of expertise for electronic communication

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<sup>1</sup> COM(2006) 334.

<sup>2</sup> The ERG was established by Commission Decision 2002/627/EC of 29 July 2002, as amended by Commission Decision 2004/641/EC of 14 September 2004. When the Regulation establishing the European Electronic Communications Market Authority enters into force and the Authority becomes fully operational, the Commission will abrogate the ERG Decision.

networks and services at EU level. The new Authority would also take over the functions of the European Network Security Agency (ENISA), thereby overcoming many of the problems that have been identified in the operation of ENISA<sup>3</sup>.

The present proposal complements two other proposals to amend the Directives composing the current regulatory framework for electronic communications<sup>4</sup>. The three proposals are accompanied by an Impact Assessment<sup>5</sup>.

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

This Regulation complements the five Directives comprising the EU regulatory package for electronic communications. Proposed changes to the Framework Directive streamline the market analysis procedure but this simplification needs to be complemented by the establishment of a specialised and independent expert body assisting the Commission in assessing the technological complexities of future markets. The proposed changes to the Authorisation Directive set up new procedures for the harmonisation of conditions for rights of use at EU level and for selecting providers of cross-border services, where appropriate. The new Authority will be the vehicle for implementing these procedures. Changes to the Universal Service Directive will facilitate access to and use of e-communications, including emergency services, by disabled users. The Authority will act as a focal point for treating these issues at EU level.

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

The objectives of the proposed Regulation are in line with the renewed Lisbon Strategy for promoting growth and jobs through greater competitiveness, with the Commission's associated i2010 initiative and its objective of creating a single European Information Space, and with the Commission's strategy to strengthen the internal market. This proposal aims to improve the functioning of the internal market in electronic communications.

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

- **Consultation of interested parties**

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

The Commission services launched a two-phase consultation on the review of the regulatory framework which started at the end of 2005. The publication of a Communication in June 2006 launched the second public consultation, which lasted four months and ended on 27 October 2006. 224 responses were received from a wide range of interested parties, both inside and outside the EU.

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

The major concerns expressed in the public consultation were as follows: i) Considerable differences exist in the way the framework is implemented at national level. The

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<sup>3</sup> Communication from the Commission to the European Parliament and the Council on the evaluation of the European Network and Information Security Agency (ENISA). COM/2007/285 final.

<sup>4</sup> COM(2007) 697, COM(2007) 698.

<sup>5</sup> SEC (2007) 1472.

fragmentation of the internal market into different regulatory systems hinders investments, which would benefit greatly from common and predictable regulation across the EU. Many parties pointed out that the widely diverging application of rules prevent the full benefits of the internal market from being achieved; ii) the current approach for selecting and authorising operators for certain types of cross-border service is not compatible with the exploitation of economies of scale needed for the development of new services. For genuine cross-Community services in particular, there is a case for establishing a more coordinated system for the authorisation of rights-of-use for frequencies and numbers. The importance of enhancing EU competitiveness and achieving economies of scale for cross-Community services was also pointed out in the response of the ERG to Commissioner Reding. iii) Better use should be made of the potential expertise present in the ERG. However, in order to avoid a "lowest common denominator", approach, institutional reform of the ERG, to allow it to contribute better to consistency and harmonisation, where appropriate, is considered essential.

- **Collection and use of expertise**

The Commission has drawn upon the results of various studies from external contractors in the preparation of this and the related proposals.

These studies are described in the associated Impact Assessment, and cover both economic modelling and research on stakeholder views.

The studies are available at:

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

- **Impact assessment**

The impact assessment examines a range of options to achieve the objective of finding the best regulatory model for delivering a single market in e-communications through consistent and effective regulation while respecting the principles of subsidiarity and proportionality.

The report contains an assessment of the main impacts of three policy options, which consider different institutional arrangements with different balances of powers between national authorities and the EU.

The cost-benefit analysis of the proposed Authority shows that under a conservative scenario, it can be estimated that in the policy areas where the Authority would be active, it has the potential of bringing total economic benefits far exceeding its budgetary costs by a factor of around 10-30 times (i.e. the order of magnitude of the benefits would be around €250 – 800 million). The benefits can amount to between €550 and €1400 million if the more optimistic scenarios for the growth of pan-European markets are realised.

A major source of such benefit is the reduction in the regulatory risk which would be achieved through the contribution of the Authority. Even a marginal reduction in the regulatory risk (of around 10%) across Europe, will be reflected in lower cost of capital for the industry. In addition, the Authority's involvement will speed up the process of assigning frequencies for pan-European services; if implementation of major projects of this type can be brought forward by just one year, the economic benefits can be in the range of several hundred million euros.

The Impact Assessment report 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. AN INDEPENDENT MECHANISM FOR NATIONAL REGULATORS TO COOPERATE AND TAKE DECISIONS: THE EUROPEAN ELECTRONIC COMMUNICATIONS MARKET AUTHORITY**

#### **3.1. The experience of ERG needs to develop into a formal cooperation structure**

Although the internal market for e-communications has developed in recent years there are still: i) considerable inconsistencies in the implementation of the European regulatory framework at national level leading to a fragmentation of European markets and the deterrence of investment; ii) no efficient mechanisms for the coordination of selecting and authorising services that have an inherent cross-border character such as mobile services and IP based services.

The independent advisory group "European Regulators Group" (ERG) was set up by the Commission in 2004 as a means of facilitating consultation, coordination and cooperation amongst national regulatory authorities and between these authorities and the Commission. Recently, in the past year, the ERG has provided Opinions to the Commission on Functional Separation and Regulatory Principles of Next Generation Access, and undertaken a number of public consultations on proposed ERG common positions (e.g. wholesale unbundled access, voice over IP and bitstream access). However, all ERG common approaches are factually based on consensus, making such common approaches difficult and slow to achieve. They are indeed impossible to achieve where there are substantial differences of opinion or interest between different regulators. The loose cooperation that results has not allowed its documents to go beyond rather general statements in a number of important and controversial issues.

The present approach within ERG, which in practice usually requires reaching the agreement among all 27 regulators, is further complicated by the presence of a parallel body which operationally overlaps to the ERG – the Independent Regulators Group (IRG). The IRG is made-up of the EU27 Member States and seven other European countries, and while it influences Community regulatory approaches it has neither any obligation to implement Community Law nor any duty to report to the Commission.<sup>6</sup> That the current structure is not producing sufficient results, therefore, stems from a sub-optimal organisation not only as regards the speed and efficiency of achieving consistent EU approaches, but also as regards accountability and transparency.

The Commission has evaluated the different options for organising the required tasks, including whether the Commission would be able to pursue these tasks itself. Harmonising at a central level would require a specialist expertise of each of the 27 national markets. In practice, only a body emanating from the national regulators would have the detailed local knowledge necessary to achieving success on these issues. Moreover, the NRAs are in many cases already substantial bodies in their own right; it is inconceivable therefore that the

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<sup>6</sup> The IRG is composed of the 27 EU NRAs plus the NRAs of seven other European countries: Croatia, Iceland, Lichtenstein, the Former Yugoslavian Republic of Macedonia, Norway, Switzerland and Turkey.

Commission could have the scale of resources and expertise needed to replace the national regulators.

The option of an enhanced ERG, with voting rights in order to take majority decisions, has also been examined. Notwithstanding the difficulties of implementing a commonly acceptable system of votes, such a body would not be in a position to issue decisions that were binding on its members. Under the current Treaty, such a role can only be undertaken by the Commission. Moreover, there are serious institutional constraints on the extension of the ERG to achieve the level of competence needed to carry out such an enhanced role. Any extension of the ERG would require a significant enhancement of its existing resources to allow it to carry out its work as the current system of rotating presidencies of the ERG has reached its limits (establishment of an executive director, reinforcement of its secretariat, formal rules of procedure for taking decisions, etc). The resources for such an enhancement of the ERG's role cannot be drawn from outside resources as the Commission must be sure that its opinions and advice are transparent, accountable and independent. For example, an enhanced ERG could not be a legitimate advisory body to the Commission if it was based on resources provided to it through the IRG. In fact, the ERG can only enhance its advisory role to the Commission in the way needed if it becomes a Community body, subject to the same rules of administration and budget that apply to all community bodies (staff regulation, financial regulation, reporting requirements to Parliament, etc).

The Commission has therefore concluded that the tasks required could be best fulfilled by a separate entity which is independent and outside the Commission and which reinforces the powers of the NRAs by taking over the functions of the ERG and giving them a robust and transparent foundation in Community law. This body would provide opinions and advice to the Commission regarding a range of substantive decisions of European interest, albeit that it would also take individual decisions on the administration of the European telephone numbering space.

The proposed tasks would complement, and not duplicate, at European level the regulatory tasks performed by the national regulators. The Authority will provide the means for establishing an effective partnership between the Commission and the National Regulators on issues where European consistency is needed such as: market definitions, analysis and remedies; harmonisation of radio spectrum usage; definition of trans-national markets; quality of service. At the same time it will provide a cost effective platform for addressing pan-European issues that reach beyond those that are within the purview even of an enhanced ERG, such as network and information security; implementation of the '112 emergency call number'; administration of the European Telephony Numbering Space.

The proposed Authority would form the cornerstone of a robust and unitary framework within which national regulators will be able to cooperate in way that is consistent with the principles defined by the Commission in the draft inter-institutional agreement on the operating framework for the European regulatory agencies<sup>7</sup>.

### **3.2 Main tasks of the new Authority**

The Authority would complement at European level the regulatory tasks performed at national level by the regulatory authorities by:

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<sup>7</sup> COM(2005) 59.

- Providing a framework for national regulators to cooperate. It is proposed to improve the handling of cross-border aspects of e-communications market regulation and network integrity. The Authority will provide procedures for cooperation between national regulators, in particular as regards the exchange of information, provision of advice and technical support. The Authority would have powers to mediate and resolve cross-border disputes between NRAs. This framework will also promote cooperation between EU national regulators and third countries.
- Regulatory oversight of market definition, analysis and the implementation of remedies. The Authority would in general have an advisory role vis-à-vis the Commission as regards market regulation issues and could issue non-binding guidelines to promote good practices among the national regulators. Draft measures of NRAs would be subject to opinions as concern their potential impact on single market and compatibility with Community law, where necessary proposals for modifications would be included in the opinion. These opinions will be delivered to the Commission on a fast-track basis on the basis of a simple majority vote amongst its members.
- Definition of trans-national markets: the Authority provides for an efficient and proportional mechanism to respond to growing cross-border markets stemming from rising mobility, increased penetration of internet-based services (e.g. VoIP), satellite-based services and convergence between fixed and mobile services. The Authority will also be responsible for monitoring the development of roaming services, both voice and data.
- Advice on radio frequency harmonisation: the Authority would increase the speed and effectiveness of radio spectrum policy through on-going analysis and reporting, the identification of the potential and means for development of new services, maintenance of a register of spectrum use across the EU, advice on common procedures for granting authorisations, technical support in the selection of applications for spectrum licences, advice on withdrawal of rights of use in the case of failure to conform to licence conditions.
- Decision powers on numbering administration and advice on number portability. The Authority would be charged with the administration and development of the European Telephony Numbering Space (ETNS), i.e. numbers using a single EU-wide prefix (3883) that can be assigned to organisations wishing to establish one-stop, pan-European call-centres. In addition, the Authority would work with NRAs and Member States on European aspects of numbering and number portability, inter alia by reporting on the development of the European Emergency Number 112, the identification of numbering ranges for cross-border services, the identification of the potential and means for development of new services, and providing advice on common procedures for granting authorisations.
- Network and information security. The Authority will subsume the tasks of the existing European Network and Information Security Agency). In so doing it will reinforce the coherence between obligations to ensure network integrity that today fall on NRAs and the responsibility to create a culture of network and information security that is today the remit of ENISA.
- General informational and advisory functions. The Authority would have a role to provide an annual report on the development of the electronics communications sector (offer and penetration of new services, development of competition, review of national regulatory



situation, remedies applied, information on appeals procedures, etc.). In addition it would monitor and report on interoperability and e-accessibility in Europe, with the ability to issue recommendations on measures to be taken at national level to better meet, in particular, the needs of disabled or elderly citizens.

### 3.3 Legal elements of the **proposal**

- **Legal basis**

Article 95 EC

- **Subsidiarity principle**

The objective of the proposed action cannot be sufficiently achieved by Member States alone.

- In the present regulatory framework, the authorisation of services is handled at Member State level and considerable discretion is given to the 27 NRAs, with a limited oversight and coordination role for the Commission. This means that the internal market is still a patchwork of 27 different regulatory systems. This hinders the development of cross-border services and operators are confronted with different or diverging operating conditions in similar circumstances. In practice, several regulatory issues dealt with by national regulators are common across the EU (e.g. regulatory treatment of new services, aspects of regulatory accounting, numbering issues, the functioning of equipment and services for disabled users travelling in the EU, etc)<sup>8</sup>. For these areas, in order to promote economies of scale and a competitive internal market, it is of pivotal importance to develop a common EU practice and expertise to further consistency and, where appropriate, harmonisation. This requirement can be effectively and efficiently addressed only by improving the current institutional model and the balance between the responsibilities assigned to Member States, NRAs, and the Commission. This can be achieved only by action at Community level.
- The development of cross-border service provision within the Community is one of the objectives of the Review, as provided for by the Authorisation Directive<sup>9</sup>. The extensive public consultation highlighted the urgent need to make it easier for operators to offer cross-Community services, by removing some of the important obstacles inherent in the current approach<sup>10</sup>. There are a number of cross-border services that cannot be regulated in a consistent way or addressed with a view to achieving economies of scale by the action of individual Member States.

By improving the consistency of regulation in the internal market and reducing the costs of firms operating across multiple countries, action at Community level would be clearly beneficial by reason of its scale and would produce positive effects compared to action taken at the level of Member States. The objectives of the proposed action can thus be better achieved at Community level.

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<sup>8</sup> In contrast, regulatory decisions in other areas (e.g. issuance of rights of way) are highly dependent on local conditions.

<sup>9</sup> Article 16.

<sup>10</sup> This point was also raised in the Communication from the Commission to the Council and the European Parliament – European Space Policy, COM(2007) 212 final, 26 April 2007.

- **Proportionality principle**

The proposal complies with the proportionality principle as the Authority will have an advisory role in helping the Commission to implement policy in the field of electronic communications.

- The creation of the Authority will integrate the cooperation among NRAs (currently within the ERG) within the Community system. There is clearly a need to improve the arrangements so that certain tasks currently carried out by the ERG – which is essentially a consultative forum of national regulators without the institutional capability to arrive at common decisions – are performed by a single specialised body at EU level, acting within the Community's institutional structure. In performing its tasks the Authority will provide the Commission with technical expertise and help in preparing regulatory decisions to further the internal market, which will be enhanced by the proposed incorporation of the work of ENISA on network and information security.
- The Authority's Board of Regulators will comprise the heads of the NRAs and will work in the Community interest. The proposed system will allow the Commission to benefit from the joint expertise of the national regulators – which have a closer knowledge of national markets and circumstances – and reinforce cooperation between the Commission and the national regulators. The system complements the powers of NRAs for the implementation of the regulatory framework at national level.
- Rights of use for frequencies and numbers used for the provision of cross-Community services will continue to be granted at national level, under a commonly agreed approach, to be applied only to certain services with cross-Community characteristics (e.g. satellite services). Cross-Community services would also continue to be authorised at national level, under a commonly agreed approach. However, the granting of rights of use for frequencies and numbers for the provision of nationally-based services are not concerned by this proposal and will remain under the responsibility of the NRAs.

This means that while improving coordination in some key areas with a Community dimension, the role of the Authority will not go beyond what is necessary to achieve the objective sought.

Due to the fact that the proposed instrument will apply directly within the Community by virtue of its status as a Regulation, the financial and administrative burden falling upon the Community, national governments, and economic operators will be minimised and be proportionate to the objective of the proposal.

- **Choice of instruments**

Proposed instruments: Regulation of the European Parliament and the Council.

A Regulation having direct application is the appropriate instrument for creating an Authority of the type proposed.

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

It is estimated that the Authority will expand up to a permanent staff of 134 FTE once fully established. This includes taking over the tasks and resources of ENISA in 2011. The annual

budget is estimated at 10 million Euros in the first year, rising to 28 million Euros from year 3 onwards. In addition to the Community contribution, the Authority may collect fees and charges for some services. Income received by the Authority for the services provided will contribute to financing its activity<sup>11</sup>.

Against these costs should be set the savings achieved by incorporating ENISA into the proposed Authority. The current annual budget of ENISA is around 8million euros.

## **5. ADDITIONAL INFORMATION**

### **• Simplification**

The proposal forms part of a new system to make the existing regulatory process simpler and more efficient for both administrations and market players. The Authority will improve the decision-making process and facilitate cooperation between the Commission and the NRAs, on the basis of common objectives and procedures. The establishment of the Authority will be accompanied by a relaxation of the present system of automatic notification under 'Article 7' procedure, which will pave the way for a substantial reduction in the procedural burden on the industry, the NRAs and the Commission, where the Commission will intervene in serious cases only. The Authority will have an important role to play in assessing the technical complexities of such cases, and in ensuring solutions and consistent outcomes in the internal market.

The current system for granting rights of use for frequencies or numbers, with different legal and procedural requirements in every Member State where services are offered, can be extremely complex and burdensome for undertakings wishing to provide services on a cross-Community basis. Meeting requirements that are different in every Member State (for example, the duration of the rights-of-use and the conditions attached) complicates the planning of, investment in and ultimately the deployment of services with a European footprint. Such a wide variation in the procedures to obtain rights-of-use discourages market entry and impedes the functioning of the internal market. This argues in favour of a more coordinated approach to selecting undertakings for the issuance of national rights-of-use for frequencies and numbers.

The proposal is included in the Commission's rolling programme for up-dating and simplification of the *acquis communautaire*.

### **• Review/revision/sunset clause**

The proposal includes a review clause.

### **• European Economic Area (EEA)**

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

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<sup>11</sup> Based on recent (2006) auctions carried out in the UK and in Germany, it can be tentatively estimated that the value of a spectrum slot suitable for electronic communications services across the EU could be in the range of 35-60 million euros. If the Authority was granted 1% of this value, this would represent a contribution of between 0.35-0.60 million euros. Several such 'slots' can be envisaged.

## 6. DETAILED EXPLANATION OF THE PROPOSAL

### Chapter I (Subject-matter, scope, definitions and tasks)

Articles 1 and 2: provide the scope of application of the regulation, which is to improve the functioning of the internal market for electronic communications by establishing a European Electronic Communications Market Authority, and establish it.

Article 3: specifies its functions such as delivering opinions on its own initiative or at the request of the Commission, and assist the Commission in providing technical advice, undertaking studies, collecting information and reports, etc.

### Chapter II: Tasks of the Authority relating to strengthening the internal market

Article 4: provides the matters addressed by the Authority to foster the harmonised application of the regulatory framework.

Article 5: regulates the consultation of the Authority in relation to the definition and analysis of national markets and remedies. The Authority will be required to give an opinion within a specified timeframe in cases where the Commission expressed "serious doubts" about a draft measure notified under Article 7 of the Framework Directive.

Article 6: where an NRA failed to analyse a market within the required timeframe, the Commission could ask the Authority to provide advice and assistance in relation to that specific national market.

Article 7: the Authority will undertake the analysis of trans-national markets following identification of a trans-national market by the Commission, in accordance with the provisions of Article 15(4) of the Framework Directive.

Article 8: concerns the Authority's tasks in the field of numbering which include the administration and development of ETNS, the management of harmonised numbering ranges (e.g. handling the requests for reservation of '116' numbers, pursuant to Commission Decision 2007/116/EC), and delivering an opinion, on request, on obligations regarding the porting of numbers.

Article 9: the Authority will assist the Commission by carrying out an annual review of measures taken at national level to increase the awareness of the single European emergency number '112'. On request of the Commission, it will issue an opinion on technical issues related to the implementation of '112'.

Article 10: the Authority will assist the Commission on issues relating to technical and economic aspects regarding radio frequencies used for the provision of electronic communications services.

Article 11: the Authority will assist in the identification of the services with cross-Community which would benefit from a common selection procedure. For a service to qualify as a cross-Community service, it will need to fulfil certain conditions. For example, there should be demand for the services in more than one Member State and the services concerned, by the nature of the characteristics, crosses national borders and as such are susceptible to EU or regional rather than national regulation.

Article 12: sets out the provisions for the identification of undertakings for right of use to be used for the provision of cross-Community services. The Authority will carry out the selection procedure and deliver an opinion proposing the undertaking(s) to which rights of use could be granted.

Article 13: the Authority will play a role on the withdrawal of rights of use issued following a common selection procedure.

Article 14: the Authority will contribute to the development of a culture of network and information security by carrying out certain activities previously undertaken by ENISA.

Article 15: lists the cases where the Authority can act on its own initiative.

### Chapter III: Complementary tasks of the Authority

Articles 16 and 17: the Authority will impose administrative charges for some of the services provided to offset the costs of administration. In case of a common selection procedure, it will also collect administrative charges and usage fees for rights-of-use of radio frequencies on behalf of Member States, which it will then redistribute to the Member States.

Article 18: on request from a NRA, the Authority will issue recommendations to the NRAs as the measures to be taken by the NRAs in case of cross-border issues.

Articles 19 to 21: the Authority will play a role in the dissemination and exchange of information between the Member States, the NRAs and the Commission. It could be involved in studying technical development within the Community. It will publish an annual report on developments in the electronic communications sector, in which it will identify remaining barriers to completion of the single market. It will play a role in the collection of information as in the management and publication of the frequencies information registry (the Annex sets out the information to be included in the registry) and of the mobile roaming database.

Article 22: the Authority will assist the Commission on e-Accessibility issues and publish an annual report on measures to be taken to improve accessibility of electronic communications networks and equipment by disabled end-users.

### Chapter IV: Organisation of the Authority

Article 24: the organisational structure of the Authority will include four bodies: an Administrative Board, a Board of Regulators, a Director, a Chief Network Security Officer, a Permanent Stakeholders' Group, and a Board of Appeal.

Articles 25 and 26: The Administrative Board will be responsible for the appointment of the Director and Chief Network Security Officer, adoption of the Authority's annual work programme and budget, the approval of the general report on the Authority's activities, and the adoption of the financial rules applicable to the Authority. The Authority will regularly give an account of its activities to the European Parliament.

Articles 27 and 28: the Board of Regulators will comprise one member per Member State who would be the Head of the independent national regulatory authority with responsibility for the day-to-day application of the regulatory framework in the Member State, and the Director. The Commission may participate, but without a right to vote, in Board meetings. The Board of Regulators will be responsible for technical decision-making of the Authority in areas such

as the identification of potential rights holders, the opinions under Article 7 cases, etc. Opinions and decisions should be taken by simple majority.

Articles 29 and 30: the Director, will be fully responsible for tasks assigned to the Authority and be the Authority's legal representative. The Director will also be responsible for the preparation and implementation of the budget, the preparation of the draft work programme, and for personnel matters<sup>12</sup>.

Article 31: The Chief Network Security Officer will be responsible for the coordination of the Authority's tasks and the preparation of an annual work programme in the area of network and information security. He/she will report to the Director and be supported by a Permanent Stakeholders' Group (Article 32).

Articles 33 and 34: set out the Board of Appeal to ensure that parties affected by decisions of the Authority in the field of numbering enjoy the necessary remedies.

Articles 36 – 53 cover standard operational and administrative matters, including, budget, access to documents and transparency, legal status of the Authority, staff, participation of third countries, etc.

Article 55: concerns the Commission's evaluation of the results of the Authority in relation to its mandate and objective, to be issued after five years from the effective start of operation of the Authority. The report and any accompanying proposal will be transmitted to the Council and the European Parliament.

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<sup>12</sup> Concerning the appointment of the Director, see the Guidelines for the appointment of heads of Community agencies (SEC(2005) 625).

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing the European Electronic Communications Market Authority**

**(Text with EEA relevance)**

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>13</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>14</sup>,

Having regard to the opinion of the Committee of the Regions<sup>15</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>16</sup>,

Whereas:

- (1) 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 (Framework Directive)<sup>17</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 (Access Directive)<sup>18</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 (Authorisation Directive)<sup>19</sup>, 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)<sup>20</sup> 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 (Directive on privacy and electronic communications)<sup>21</sup> (hereinafter together referred to as "the Framework Directive and

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<sup>13</sup> OJ C [...], [...], p. [...].

<sup>14</sup> OJ C [...], [...], p. [...].

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

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

<sup>17</sup> OJ L 108, 24.4.2002, p. 33.

<sup>18</sup> OJ L 108, 24.4.2002, p. 7.

<sup>19</sup> OJ L 108, 24.4.2002, p. 21.

<sup>20</sup> OJ L 108, 24.4.2002, p. 51.

<sup>21</sup> OJ L 201, 31.7.2002, p. 37. Directive as amended by Directive 2006/24/EC (OJ L 105, 13.4.2006, p. 54).

the Specific Directives") aim to create an internal market for electronic communications within the Community while ensuring a high level of investment, innovation and consumer protection through enhanced competition.

- (2) The 2002 regulatory framework for electronic communications establishes a system of regulation undertaken by national regulatory authorities and provides for those authorities to co-operate with each other and with the Commission in order to ensure the development of consistent regulatory practice and the consistent application across the Community of the regulatory framework.
- (3) Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency<sup>22</sup> (hereinafter "ENISA Regulation") established the European Network and Information Security Agency (ENISA) in 2004 for a period of five years, with the goal of ensuring a high and effective level of network and information security within the Community, in order to develop a culture of network and information security for the benefit of the citizens, consumers, enterprises and public sector organisations of the European Union, thus contributing to the smooth functioning of the internal market.
- (4) National regulatory authorities exercise considerable discretion in implementing the regulatory framework reflecting their expert knowledge of local market conditions, but this discretion has to be reconciled with the need to ensure the development of coherent regulatory practice and the consistent application of the regulatory framework in order to contribute effectively to the development and completion of the internal market.
- (5) In view of this need to apply the relevant rules consistently in all Member States, the Commission established the European Regulators Group (ERG) by Commission Decision 2002/627/EC<sup>23</sup> to advise and assist the Commission in consolidating the internal market and, more generally, to provide an interface between national regulatory authorities and the Commission.
- (6) The ERG has made a positive contribution by assisting moves towards consistent regulatory practice, in as far as this has proved possible. By its nature, however, the ERG is a loose grouping relying essentially on voluntary cooperation whose existing institutional status does not reflect the important responsibilities exercised by the national regulatory authorities in implementing the regulatory framework.
- (7) A more substantial institutional basis for the establishment of a body bringing together the expertise and experience of the national regulatory authorities, together with a clearly defined set of competencies, is therefore called for, taking account of the need for this body to exercise real authority in the eyes of its members and the sector being regulated through the quality of its output.
- (8) The need to enhance the mechanisms for ensuring consistent regulatory practice in order to complete the internal market in electronic communications and services has been underlined by the findings of the Commission's reports on the implementation of

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<sup>22</sup> OJ L 77, 13.3.2004, p. 1.

<sup>23</sup> OJ L 200, 30.7.2002, p.38.



the 2002 regulatory framework<sup>24</sup> and by the public consultation on the Communication of the Commission of 29 June 2006 to the Council, the European Parliament the European Economic and Social Committee and the Committee of the Regions on the Review of the EU Regulatory Framework for electronic communications networks and services<sup>25</sup>. These identified the continuing lack of an internal market for electronic communications as the most important issue that needed to be addressed by the reform of the regulatory framework. Regulatory fragmentation and inconsistencies resulting from the loosely coordinated activities of the national regulatory authorities risk jeopardising the competitiveness of the sector as well as the substantial consumer benefits resulting from cross-border competition and trans-national and even cross-Community services.

- (9) In particular, delays in carrying out market analyses pursuant to Directive 2002/21/EC (Framework Directive), divergent approaches by national regulatory authorities towards the imposition of obligations designed to remedy a lack of effective competition found by the market analysis, the heterogeneous conditions attached to rights of use, the varying selection procedures for cross-Community services, different numbers within the Community for cross-Community services, and problems faced by national regulatory authorities in dealing with cross-border disputes lead to inefficient solutions and create obstacles to the internal market.
- (10) The Commission Communication to the European Parliament and Council of 1 June 2007 "On the evaluation of the European Network and Information Security Agency (ENISA)"<sup>26</sup> presented an appraisal of an external expert report<sup>27</sup> evaluating the performance of the Agency since its establishment and the recommendations of the ENISA Management Board regarding the ENISA Regulation and launched a public consultation. The key findings of that expert report confirmed the validity of the policy behind the creation of ENISA and its original goals, and in particular its contribution to achieving a truly internal market in electronic communications.
- (11) At the same time, a number of problems were identified, including in particular issues relating to its organisational structure, the skills mix and the size of its operational staff, and logistical difficulties. The key functions of ENISA should evolve so as to form a core component of the Authority, which on the basis of a clearer identification of objectives and tasks, should ensure that those objectives and tasks can be fulfilled in a more efficient, focused and cost effective manner, consistent with the principles of better regulation, by a single authority with competence over matters falling within the EU regulatory framework for electronic communications networks and services.
- (12) This calls for the establishment of a new Community body, the European Electronic Communications Market Authority (hereinafter the "Authority"). The Authority would make an effective contribution to furthering the completion of the internal market through the assistance it provides to the Commission and the national regulatory authorities. It would operate as a point of reference and would establish confidence by virtue of its independence, the quality of the advice it delivers and the information it

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<sup>24</sup> COM(2006) 68 final and COM(2007) 155 final.

<sup>25</sup> COM(2006) 334 final.

<sup>26</sup> COM(2007) 285 final

<sup>27</sup> "Evaluation of the European Network and Information Security Agency", Final Report by the Experts Panel, IDC EMEA, 8.1.2007

disseminates, the transparency of its procedures and methods of operation, and its diligence in performing the tasks assigned to it.

- (13) The Authority should, through the pooling of expertise, reinforce the capacities of the national regulatory authorities without replacing their existing functions or duplicating work already being undertaken, for the further benefit of assisting the Commission in the execution of its responsibilities.
- (14) The Authority should replace the ERG and serve as the exclusive forum for cooperation between national regulatory authorities in the exercise of the full range of their responsibilities under the regulatory framework.
- (15) The Authority should be established within the Community's existing institutional structure and balance of powers. It should be independent in relation to technical matters and have legal, administrative and financial autonomy. To that end, it is necessary and appropriate that it should be a Community body having legal personality and exercising the tasks conferred on it by this Regulation.
- (16) The Authority should build on national and Community efforts and therefore perform its tasks in full cooperation with the national regulatory authorities and the Commission, and be open to contacts with industry, consumer groups and other relevant stakeholders
- (17) This Regulation and the Authority which it establishes should form an integral part of the Community regulatory framework for electronic communications. In this regard, the Authority has, in particular, an important role to play in the mechanisms envisaged for consolidating the internal market for electronic communications and for carrying out market analyses in certain circumstances.
- (18) The Authority should accordingly advise the Commission and the national regulatory authorities in accordance with the Community regulatory framework for electronic communications and thereby assist in its effective implementation.
- (19) The Authority should assist the Commission concerning any extension of the Community obligations for number portability. Such extension could concern in particular the scope of the information to be ported or the types of network (i.e. fixed or mobile) between which numbers and information are to be ported. Changes in this obligation should take into account prices to users and the switching costs for undertakings, as well as the experiences in Member States.
- (20) The Authority should assist the Commission by undertaking an annual review of the measures taken the Member States informing the citizens about the existence and use of the single European emergency call number "112". The Authority's annual review would identify best practices and remaining bottlenecks and would contribute to improve the level of protection and security of citizens travelling in the European Union.
- (21) In the context of pursuing the aims of Decision 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>28</sup>, the Commission may seek the independent expert advice of the Authority relating to the use of the radio frequencies in the Community. This advice could involve specific technical investigations, as well as economic or social impact assessment and analysis relating to frequencies policy measures. It could also include matters relating to the implementation of Article 4 of Decision 676/2002/EC, where the Authority may be asked to provide advice to the Commission on the results obtained under Commission mandates to the European Conference of Postal and Telecommunications Administrations (CEPT).

- (22) While technological and market developments have increased the potential for the deployment of electronic communications services beyond the geographical boundaries of individual Member States, there is a risk that the existence of differing legal and regulatory conditions for the deployment of those services under national laws will increasingly hold back the provision of such cross-border services. The Authority should therefore play a key role in the establishment of harmonised conditions for the authorisation of those services, whether with regard to general authorisations, rights of use for radio frequencies or rights of use for numbers, and in advising the Commission on the details of the measures to be taken under Directive 2002/21/EC (Framework Directive) to achieve such harmonised conditions.
- (23) The Authority should in particular assess the need for a single selection procedure at Community level for rights of use subject to harmonised conditions, advise the Commission on the terms and criteria to be applied in such a selection procedure and receive and assess applications from undertakings for such rights of use. The Authority should also have the task of advising the Commission as to the withdrawal of such rights of use, where appropriate.
- (24) The Authority should act as a centre of expertise at European level on network and information security issues, providing guidance and advice to the European Parliament, the Commission or competent bodies appointed by the Member States. The security and resilience of communication networks and information systems remain a prime concern for society and a key element in the EU regulatory framework for electronic communications networks and service. The smooth functioning of the internal market risks being undermined by a heterogeneous application of the security-related provisions laid down in the Framework Directive and the Specific Directives. The opinion of the Authority providing technical advice at the request of the Commission and the Member States should facilitate the consistent application of those directives at national level.
- (25) Administrative charges may be imposed on providers of electronic communications for managing the authorisation system and for the granting of rights of use. In addition to administrative charges, usage fees may be levied for the use of frequencies and numbers. In the interest of reducing the administrative burden on undertakings, in case of a common selection procedure the Authority should collect and redistribute to the Member States the administrative charges and usage fees.

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<sup>28</sup> OJ L 108, 24.4.2002, p.1.

- (26) Where disputes with a cross-border nature arise between undertakings in respect of rights or obligations under the regulatory framework for electronic communications, the Authority should be able to investigate the background to the dispute and advise the national regulatory authorities concerned as to the measures it considers are most appropriate for them to take to resolve it in accordance with the provisions of the regulatory framework.
- (27) The Authority should contribute to the development of best regulatory practice and consistency in the application of regulation in the electronic communications sector by fostering the exchange of information between national authorities and making appropriate information available to the public in an easily accessible manner. The Authority should have the possibility to address economic and technical matters and to access the most updated information available in order to be able to respond to the economic and technical challenges posed by the developing information society, for example in areas like network and information security and radio frequency identification devices.
- (28) To be able to perform its tasks as set out in this Regulation and to understand better the challenges in the electronic communications field, including current and emerging risks in the network and information security field, the Authority needs to be able to analyse current and emerging developments. For that purpose the Authority may collect appropriate information, in particular concerning breaches of security and integrity that had a significant impact on the operation of network or services provided by national regulatory authorities in accordance with Article 13a(3) of Directive 2002/21/EC (Framework Directive), as well as through questionnaires.
- (29) As a focal point for the sharing and exchange of information on matters relating to the regulation of electronic communications services across the Community, and in the interests of promoting transparency and reducing administrative burdens for providers and users of those services, the Authority should maintain and make accessible a register containing information on the use of frequencies within the Community, on the basis of standardised information provided on a regular basis by each Member State. In order to improve the transparency of retail prices for making and receiving regulated roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, the Authority should ensure that up-to-date information on the application of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC<sup>29</sup> is made available to interested parties and publish the results of such monitoring on an annual basis.
- (30) The Authority should also be able to commission studies necessary for the accomplishment of its tasks, while ensuring that the links established by it with the Commission and the Member States prevent duplication of effort.
- (31) The Commission should be able to request the Authority to undertake any additional specific task within its general remit which may be considered to contribute to meeting the objectives of the Community regulatory framework for electronic communications.

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<sup>29</sup> OJ L 171, 29.6.2007, p.32.

- (32) The structure of the Authority should be suitable for the tasks it is to perform. Experience with similar Community authorities provides some guidance in this respect, but the structure should be adapted to meet the specific needs of the Community system for the regulation of electronic communications. In particular, the specific role of the national regulatory authorities and their independent nature needs to be fully addressed.
- (33) The Authority should have the necessary powers to perform the regulatory functions in an efficient and above all independent manner. Reflecting the situation on a national level, the Board of Regulators should therefore act independently from any market interest and shall not seek or take instructions from any government or other public or private entity.
- (34) The smooth functioning of the Authority requires that its Director be appointed on the grounds of merit and documented administrative and managerial skills, as well as competence and experience relevant to electronic communications networks, services and markets and that he/she performs his/her duties with complete independence and flexibility as to the organisation of the internal functioning of the Authority. The Director should ensure the efficient execution of the Authority's tasks in an independent manner.
- (35) In order to ensure that the tasks of the Authority are carried out effectively, its Director should be entrusted with the necessary powers to adopt all opinions, subject to the assent of the Board of Regulators, and to ensure that the Authority works in accordance with the general principles laid down to this end.
- (36) It is necessary to ensure that parties affected by decisions of the Authority have recourse to the necessary remedies. An appropriate appeal mechanism should be set up so that decisions of the Authority can be subject to appeal to a specialised Board of Appeal, whose decisions, in turn, should be open to action before the Court of Justice.
- (37) In addition to its operating principles based on independence and transparency, the Authority should be an organisation open to contacts with industry, consumers and other interested stakeholders. The Authority should enhance cooperation between different actors operating in the field of network and information security, *inter alia*, by organising, on a regular basis, consultation with industry, research centres, as well as other stakeholders concerned and by establishing a network of contacts for Community bodies, public sector bodies appointed by the Member States, private sector and consumer bodies.
- (38) The Authority's procedures should therefore ensure that the Authority has access to specialist expertise and experience in the electronic communications sector, particularly in areas of technical complexity and rapid change such as network and information security.
- (39) In order to ensure that the necessary degree of expertise and experience are brought to bear in the performance of the tasks of the Authority related to network and information security, a Chief Network Security Officer should be appointed. A Permanent Stakeholders' Group should be established in order to provide advice to the Chief Network Security Officer, encourage the sharing of experience and best

practices in these matters and maintain regular dialogue with the private sector, consumer organisations and other stakeholders.

- (40) In order to guarantee the full autonomy and independence of the Authority, it should receive an autonomous budget. The Community budgetary procedure remains applicable as for any subsidies chargeable to the general budget of the European Union are concerned. Moreover, the Court of Auditors should undertake the auditing of accounts in accordance with Article 91 of Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>30</sup>.
- (41) The Authority should where appropriate consult interested parties and provide them with an opportunity to comment on draft measures within a reasonable period.
- (42) The Commission should be able to impose financial penalties on undertakings that do not provide the information that is necessary for the Authority to achieve its tasks effectively. Also, Member States should ensure that they have an appropriate framework for imposing on undertakings effective, proportionate and dissuasive penalties for non-compliance with obligations arising from this Regulation.
- (43) Within its scope, in pursuing its objectives and in the performance of its tasks, the Authority should comply in particular with the provisions applicable to the Community institutions regarding the treatment of sensitive documents. Where relevant, it is appropriate to ensure a coherent and secure information exchange in the framework of this Regulation.
- (44) The Authority should apply the relevant Community legislation concerning public access to documents as set out in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>31</sup> and the protection of individuals with regard to the processing of personal data as set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>32</sup>.
- (45) Participation of third countries in the work of the Authority should be possible in accordance with appropriate agreements to be concluded by the Community.
- (46) The smooth transition should be ensured for the ongoing activities of the ENISA falling within the remit of the Authority.

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<sup>30</sup> OJ L 357, 31.12.2002, p.72.

<sup>31</sup> OJ L 145, 31.5.2001, p.43.

<sup>32</sup> OJ L 8, 12.1.2001, p.1.

- (47) The measures necessary for the implementation of this Regulation 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>33</sup>.
- (48) In particular power should be conferred on the Commission to adapt the information specified in the Annex to this Regulation to technical or market developments. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (49) Since the objectives of the proposed action, namely the better functioning of the internal market for electronic communications networks and services and the development of cross-Community electronic communications, cannot be sufficiently achieved by the Member States in view of the Europe-wide scope of this Regulation, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAVE ADOPTED THIS REGULATION:

## **CHAPTER I**

### **SUBJECT-MATTER, SCOPE, DEFINITIONS AND TASKS**

#### *Article 1*

#### *Subject-matter and scope*

1. A European Electronic Communications Market Authority is established with the responsibilities laid down in this Regulation.
2. The Authority shall act within the scope of the Framework Directive and the Specific Directives and draw upon expertise available in the national regulatory authorities. It shall contribute to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-Community electronic communications and a high and effective level of network and information security, through the tasks listed in Chapters II and III.
3. The Authority shall carry out its tasks in cooperation with the national regulatory authorities and the Commission in a European system for the regulation of electronic communications.

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<sup>33</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.07.2006, p.11).

4. In all its activities, and in particular in the drawing up of its opinions, the Authority shall pursue the same objectives as those addressed to the national regulatory authorities by Article 8 of Directive 2002/21/EC (Framework Directive).
5. The objectives and the tasks of the Authority shall be without prejudice to the competencies of the Member States regarding network and information security which fall outside the scope of the EC Treaty, in particular, those covered by Titles V and VI of the Treaty on European Union. In any case, the objectives and the tasks of the Authority shall be without prejudice to activities concerning public security, defence, activities of the State in areas of criminal law and State security, including the economic well-being of the State when the issues relate to State security matters.

## *Article 2*

### *Definitions*

For the purposes of this Regulation, the definitions set out in Article 2 of Directive 2002/21/EC Article 2 of Directive 2002/19/EC, Article 2 of Directive 2002/20/EC Article 2 of Directive 2002/22/EC, Article 2 of Directive 2002/58/EC and Article 2 of Decision No 676/2002/EC (the Radio Spectrum Decision) shall apply.

## *Article 3*

### *Functions of the Authority*

The Authority shall, in the furtherance of its tasks under this Regulation:

- (a) issue opinions at the request of the Commission or on its own initiative and assist the Commission by providing it with additional technical support in all matters regarding electronic communications;
- (b) assist the Community, its Member States and the national regulatory authorities in the relations, discussions and exchanges with third parties;
- (c) provide advice for market players and national regulatory authorities on regulatory issues;
- (d) exchange, disseminate and collect information and undertake studies in areas relevant to its activities;
- (e) provide advice and assistance to the Commission or any competent body appointed by a Member State with regard to any network and information security issue falling within the Authority's remit;
- (f) take individual decisions in relation to the issuance of rights-of-use for numbers from the European Telephone Numbering Space (ETNS);
- (g) assist the Commission in the selection of undertakings to be granted rights of use of radio frequencies and numbers;



- (h) collect and redistribute usage fees for rights-of-use of radio frequencies and numbers;
- (i) issue recommendations to the national regulatory authorities on cross-border disputes and on e-Accessibility matters.

## **CHAPTER II**

### **TASKS OF THE AUTHORITY RELATING TO STRENGTHENING THE INTERNAL MARKET**

#### *Article 4*

#### *Role of the Authority in the application of the regulatory framework*

1. At the request of the Commission, the Authority shall deliver opinions on all matters regarding electronic communications.
2. The Authority shall in particular contribute to the harmonised application of the provisions of the Framework Directive and the Specific Directives by assisting the Commission in the preparation of recommendations or decisions to be adopted by the Commission in accordance with Article 19 of Directive 2002/21/EC (Framework Directive).
3. Matters referred to in paragraph 1 shall include:
  - (a) draft measures of national regulatory authorities concerning market definition, designation of undertakings with significant market power and imposition of remedies, in accordance with Article 7 of Directive 2002/21/EC (Framework Directive);
  - (b) the security and integrity of public electronic communications networks and services, including issues linked to breaches of security and/or integrity, in accordance with Article 13a of Directive 2002/21/EC (Framework Directive) and Article 4 of Directive 2002/58/EC (Directive on privacy and electronic communications);
  - (c) identification of trans-national markets, in accordance with Article 15 of Directive 2002/21/EC (Framework Directive);
  - (d) standardisation issues in accordance with Article 17 of Directive 2002/21/EC (Framework Directive);
  - (e) analyses of specific national markets in accordance with Article 16 of Directive 2002/21/EC (Framework Directive);
  - (f) transparency and information for end-users, in accordance with Article 21 of Directive 2002/22/EC (Universal Service Directive);

- (g) quality of service, in accordance with Article 22 of Directive 2002/22/EC (Universal Service Directive);
- (h) effective implementation of the emergency call number '112', in accordance with Article 26 of Directive 2002/22/EC (Universal Service Directive);
- (i) numbering issues, in accordance with Article 10 of Directive 2002/21/EC (Framework Directive) and access to numbers and services in the Community, in accordance with Article 28 of Directive 2002/22/EC (Universal Service Directive);
- (j) number portability, in accordance with Article 30 of Directive 2002/22/EC (Universal Service Directive);
- (k) the improvement of disabled end-users' access to electronic communication services and equipment, in accordance with Article 33 of Directive 2002/22/EC (Universal Service Directive);
- (l) measures of national regulatory authorities taken in accordance with Articles 5, and 8(3) of Directive 2002/19/EC (Access Directive);
- (m) transparency measures for the implementation of unbundling of the local loop, in accordance with Article 9 of Directive 2002/19/EC (Access Directive);
- (n) conditions for access to digital television and radio services, in accordance with Article 6 of Directive 2002/19/EC (Access Directive), and interoperability of interactive digital television services in accordance with Article 18 of Directive 2002/21/EC (Framework Directive);
- (o) measures on radio frequencies issues in accordance with Articles 4 and 6 of Decision 676/2002/EC (the Radio Spectrum Decision);
- (p) in accordance with Articles 6a and 6b of Directive 2002/20/EC (Authorisation Directive) :
  - (i) harmonised conditions relating to rights of use of radio frequencies or numbers;
  - (ii) amendment or withdrawal of rights of use issued on a coordinated or harmonised basis;
  - (iii) the selection of undertakings to which individual rights of use for frequencies or numbers could be granted for services with cross-border potential.

4. In addition, the Authority shall undertake the specific tasks set out in Articles 5 to 23.

*Article 5*  
*Consultation of the Authority on the definition and analysis of national markets, and on remedies*

1. The Commission shall inform the Authority when it acts in accordance with Article 7(4) and (8) of Directive 2002/21/EC (Framework Directive).
2. The Authority shall deliver an opinion to the Commission on the draft measure concerned within 4 weeks of being so informed. The opinion shall include a detailed and objective analysis of whether the draft measure constitutes a barrier to the single market and its compatibility with Community law, in particular with the objectives referred to in Article 8 of Directive 2002/21/EC (Framework Directive). Where appropriate the Authority shall indicate what changes should be made to the draft measure so as to ensure that these objectives are most effectively met.
3. The Authority shall provide the Commission upon request with all the information available to carry out the tasks referred in paragraph 2.

*Article 6*  
*Reviews of national markets by the Authority*

1. If the Authority receives a request from the Commission pursuant to Article 16(7) of Directive 2002/21/EC (Framework Directive) to analyse a specific relevant market within a Member State, it shall deliver an opinion and provide the Commission with the necessary information, including the results of the public consultation and the analysis of the market. If the Authority finds that competition on that market is not effective, its opinion shall, following a public consultation, include a draft measure specifying the undertaking(s) it considers should be designated as having significant market power on that market and the appropriate obligations to be imposed.
2. The Authority may, where appropriate, consult the relevant national competition authorities before issuing its opinion to the Commission.
3. The Authority shall provide the Commission upon request with all the information available to carry out the tasks referred in paragraph 1.

*Article 7*  
*Definition and analysis of trans-national markets*

1. Upon request, the Authority shall deliver an opinion to the Commission on the appropriate definition of trans-national markets.
2. Where the Commission has identified a trans-national market in accordance with Article 15(4) of Directive 2002/21/EC (Framework Directive), the Authority shall undertake the market analysis in cooperation with the national regulatory authorities in accordance with Article 16(5) of that Directive and deliver an opinion to the Commission thereon.
3. Where the Authority concludes that the relevant trans-national market is not effectively competitive, the opinion to the Commission shall include a draft measure

specifying the undertaking(s) it considers should be designated as having significant market power on that market and the appropriate obligations to be imposed.

4. Prior to delivering its opinion under paragraphs 1 or 3, the Authority shall consult with national regulatory authorities and the national competition authorities and conduct a public consultation in accordance with Article 42 of this Regulation.
5. The Authority shall provide the Commission upon request with all the information available to carry out the tasks referred in paragraphs 1 to 4.

#### *Article 8*

##### *Harmonisation of numbering and number portability*

1. The Authority shall be able to take decisions in relation to the issuance of rights of use for numbers from the European Telephone Numbering Space (ETNS) in accordance with Article 10 of Directive 2002/21/EC (Framework Directive). It shall also be responsible for the administration and development of the European Telephone Numbering Space (ETNS) on behalf of the Member States to which the prefix 3883 has been awarded.
2. The Authority shall undertake tasks associated with the administration and management of harmonised numbering ranges in accordance with Article 10(4) of Directive 2002/21/EC (Framework Directive).
3. The Authority shall work with the national regulatory authorities on issues related to fraud or the misuse of numbering resources within the Community, in particular for cross-border services. It may issue an opinion on action that could be taken at Community or national level to address fraud and misuse and other consumer concerns about numbering.
4. The Authority shall, at the request of the Commission, deliver an opinion to the Commission on the scope of, and technical parameters for, obligations regarding the porting of numbers or subscriber identifiers and associated information between networks and the appropriateness of extending such obligations at Community level.

#### *Article 9*

##### *Implementation of the European Emergency Number 112*

1. The Authority shall undertake an annual review of measures taken by Member States to inform citizens about the existence and use of the single European emergency call number "112", based on the information received pursuant to Article 26(4) of Directive 2002/22/EC (Universal Service Directive). The results of this review shall be included in the annual report referred to in Article 21(2).
2. The Authority shall at the request of the Commission, deliver an opinion to the Commission on the technical issues related to the implementation of the European emergency call number 112 in accordance with Article 26 of Directive 2002/22/EC (Universal Service Directive).

3. Prior to delivering its opinion under paragraph 2, the Authority shall consult with competent national authorities and conduct a public consultation in accordance with Article 42.

#### *Article 10*

##### *Advice on radio frequencies issues in relation to electronic communications*

1. Upon request, the Authority shall provide advice to the Commission and conduct studies and reviews, in particular on technical and economic aspects, regarding the use of radio frequencies for electronic communications in the Community.
2. The activities referred to in paragraph 1 may be undertaken on matters relating to the implementation of Decision 676/2002/EC (Radio Spectrum Decision) and shall be without prejudice to the division of tasks under Article 4 of that Decision.
3. Upon request, the Authority shall provide advice to the Commission regarding the drawing up of common policy objectives referred to in Article 6(3) of Decision 676/2002/EC (Radio Spectrum Decision), when these fall within the electronic communications sector.
4. The Authority shall publish an annual report on prospective frequencies developments in the electronic communications sector and policies in which it shall identify the potential needs and challenges.

#### *Article 11*

##### *Harmonisation of conditions and procedures relating to general authorisations and rights of use*

1. The Authority shall, at the request of the Commission, provide the Commission with an opinion on the scope and content of any of the implementation measures provided for in Article 6a of Directive 2002/20/EC (Authorisation Directive). This may include in particular the Authority's assessment of the benefits that may accrue for the single market in electronic communications networks and services from the implementing measures adopted by the Commission pursuant to Article 6a of Directive 2002/20/EC (Authorisation Directive) and the identification of the services with cross-Community potential which would benefit from those measures.
2. Where an opinion of the Authority pursuant to paragraph 1 relates to the implementation of a common selection procedure for rights of use falling within the scope of Article 6b of Directive 2002/20/EC (Authorisation Directive), that opinion shall in particular:
  - (a) identify the electronic communications services whose provision on a cross-border basis within the Community would benefit from the use of frequencies or numbers the rights to which are granted by means of a single procedure and under a single set of conditions;
  - (b) identify the numbers or numbering ranges that could be used for such services;

- (c) assess the level of actual or potential demand within the Community for such services, and
  - (d) specify any limitation it considers appropriate on the number of rights of use to be offered under the common selection procedure and the procedures to be followed for the selection of the undertakings to whom those rights are to be granted, taking due account where applicable of the principles set out in Article 7 of Directive 2002/20/EC (Authorisation Directive).
3. If the Commission so requests, the Authority shall explain or supplement any opinion issued pursuant to paragraph 1 within the time period specified in that request.

*Article 12*  
*Proposal for the selection of undertakings*

The Authority shall, in accordance with Article 6 b of Directive 2002/20/EC (Authorisation Directive):

- (a) receive and process applications from undertakings for rights-of-use of radio frequencies and numbers and collect the administrative charges and fees imposed on undertakings pursuant to a common selection procedure;
- (b) carry out the common selection procedure and propose the undertaking(s) to which individual rights of use may be granted in accordance with those provisions;
- (c) deliver a report to the Commission detailing the applications received, describing its assessment of those applications, proposing the undertaking(s) most eligible to be granted individual rights of use and justifying this selection by reference to the selection criteria set out in the relevant implementing measure.

*Article 13*  
*Withdrawal of rights of use of radio frequencies and numbers issued under common procedures*

The Authority shall, at the request of the Commission, deliver an opinion to the Commission on the withdrawal of rights of use issued under the common procedures provided for Article 6b of Directive 2002/20/EC (Authorisation Directive).

This opinion shall examine whether there have been serious and repeated breaches of the conditions attached to the rights of use.

*Article 14*  
*Network and information security*

In addition to the tasks referred to in Article 4(3)(b) and Article 19(4) and (5), the Authority shall contribute to the development of a culture of network and information security, in particular by:

- (a) facilitating cooperation between the Commission and the Member States in the development of common methodologies to prevent, address and respond to network and information security issues;
- (b) advising the Commission on research in the area of network and information security as well as on the effective use of risk prevention technologies and promoting risk assessment activities, interoperable risk management solutions and studies on prevention management solutions within public and private sector organisations and
- (c) contributing to Community efforts to cooperate with third countries and, where appropriate, with international organisations to promote a common global approach to network and information security issues.

*Article 15*  
*Own initiative*

The Authority may, on its own initiative, deliver an opinion to the Commission on the matters referred to in articles 4(2), 7(1), 8 (3), 10(1), 12, 14, 21 and 22.

## **CHAPTER III**

### **COMPLEMENTARY TASKS OF THE AUTHORITY**

*Article 16*  
*Collection of administrative charges for services provided by the Authority*

1. The Commission shall set the administrative charges imposed on undertakings for services provided by the Authority in accordance with the procedure referred in Article 54(2) and on the basis of an opinion of the Authority. The Authority shall collect these administrative charges.
2. The administrative charges shall be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.
3. The administrative charges referred to in paragraph 1 may cover:
  - (a) the administrative costs incurred by the Authority in the management of the selection procedure in accordance with Article 12;
  - (b) the processing of appeals in accordance with Article 34;

- (c) the administrative costs incurred by the Authority in the administration of the European Telephone Numbering Space in accordance with Article 8.

All charges shall be expressed and be payable in Euro.

- 4. The amount of the administrative charges shall be fixed at such a level as to ensure that the revenue from these charges is in principle sufficient to cover the full cost of the services delivered.
- 5. The Authority shall publish a yearly overview of its administrative costs and charges. In the light of any difference between the total sum of the charges and the total administrative costs, it shall deliver an opinion to the Commission indicating appropriate adjustments to be made to charges.

#### *Article 17*

##### *Collection and redistribution of usage fees for rights of use of radio frequencies and numbers and of administrative charges under a common selection procedure*

- 1. Where usage fees for rights of use of radio frequencies or numbers issued under a common selection procedure are imposed on undertakings in accordance with Article 6b of Directive 2002/20/EC (Authorisation Directive), the Authority shall be responsible for collecting and redistributing such usage fees.

Usage fees shall be redistributed, upon their receipt by the Authority, among the relevant Member States and the Authority in accordance with the time-limit and the ratio to be set by the Commission pursuant to Article 6b of Directive 2002/20/EC (Authorisation Directive).

If the time-limit and the ratio are not set up by the Commission, usage fees shall be redistributed on the basis of the population of each Member State required to issue rights-of-use in the last completed year prior to the launch of the selection procedure.

- 2. The Authority shall be responsible for collecting and redistributing the administrative charges imposed following a common selection procedure for rights of use for frequencies or numbers on the selected undertakings to cover the administrative costs of national regulatory authorities in monitoring compliance with the common conditions.

These administrative charges referred to in the first subparagraph shall be redistributed upon their receipt by the Authority to the relevant national regulatory authorities in accordance with the values provided by the national regulatory authorities.

#### *Article 18*

##### *Cross-border disputes*

- 1. If the Authority receives a request from a national regulatory authority pursuant to Article 21 of Directive 2002/21/EC (Framework Directive) for a recommendation as



to the resolution of a dispute it shall inform all parties to the dispute and all national regulatory authorities concerned.

2. The Authority shall investigate the reasons for the dispute and request appropriate information from the parties and the national regulatory authorities concerned.
3. The Authority shall issue its recommendation within three months of the request except in exceptional circumstances. The recommendation shall identify any measures that the Authority considers appropriate to be taken by the national regulatory authorities concerned in accordance with the provisions of the Framework Directive and/or the Specific Directives.
4. The Authority may decline to issue a recommendation where it considers that other mechanisms would better contribute to the resolution of the dispute in a timely manner in accordance with the provisions of Article 8 of Directive 2002/21/EC (Framework Directive). In such cases it shall inform the parties and the national regulatory authorities concerned without delay.

If after four months the dispute is not resolved, or if the parties have not had recourse to any other mechanism, the authority shall act in accordance with paragraphs 2 and 3 at the request of any national regulatory authority.

#### *Article 19*

##### *Exchange, dissemination and collection of information*

1. The Authority shall, taking account of the Community's electronic communications policy, promote the exchange of information both between the Member States, and between the Member States, national regulatory authorities and the Commission on the situation and development of regulatory activities regarding electronic communications networks and services, including network and information security.
2. The Authority shall encourage the exchange of information and promote best regulatory practice and technical development within the Community and beyond, in particular by:
  - (a) undertaking the collection, processing and publication of information relating to the technical characteristics, quality and pricing of electronic communications services, and relating to electronic communications markets in the Community,
  - (b) commissioning or conducting studies on electronic communications networks and services and the regulation and protection thereof, and
  - (c) organising or promoting training on all matters regarding electronic communications.
3. The Authority shall make such information available to the public in an easily accessible form.
4. The Authority shall collect appropriate information, in particular in accordance with Article 13a of Directive 2002/21/EC (Framework Directive), to analyse current and

emerging risks. It shall in particular, analyse at European level, those risks which could produce an impact on the resilience and the availability of electronic communications networks and on the authenticity, integrity and confidentiality of the information accessed and transmitted through them, and provide the results of the analysis to the Member States and the Commission.

5. The Authority shall contribute to awareness raising and the availability of timely, objective and comprehensive information, including on network and information security issues, for all users by, inter alia, promoting exchanges of current best practices, including on methods of alerting users, and seeking synergy between public and private sector initiatives.

## Article 20

### *Management of the spectrum information register and of the mobile roaming database*

1. A registry in the form of a common access point for the provision of information on the use of spectrum in each Member State shall be made available to the public to ensure the harmonised availability of information on the use of radio frequencies in the Community. The information on the use of radio frequencies shall be provided by Member States on a regular basis and in accordance with a request to this effect from the Authority. The Authority shall be responsible for the management and publication of the registry. The registry shall include the information specified in the Annex to this Regulation, as well as any other information the Authority may consider appropriate. The Commission may adopt implementing measures to adapt the Annex to technical or market developments. Those measures designed to amend non-essential elements of this Regulation shall be adopted in accordance with the procedure referred to in Article 54(3).
2. The Authority shall be responsible for the management and publication of a database on pricing of voice and data services for mobile customers when roaming within the Community including where appropriate, the specific costs related to roaming calls made and received in the outermost regions of the Community. It shall monitor developments in such prices and publish an annual report.

## Article 21

### *Monitoring and reporting on the electronic communications sector*

1. The Authority shall monitor developments in the electronic communications market, and in particular the retail prices of products and services most commonly used by consumers.
2. The Authority shall publish an annual report on developments in the electronic communications sector, including consumer issues, in which it shall identify remaining barriers to the completion of the single market for electronic communications. The report shall also include an overview and analysis of the information on national appeal procedures provided by the Member States pursuant to Article 4(3) of Directive 2002/21/EC (Framework Directive), and of the extent to which the out-of-court dispute settlement procedures referred to in Article 34 of Directive 2002/22/EC (Universal service Directive) are used in Member States.

3. The Authority may deliver to the Commission, in conjunction with the publication of the annual report, an opinion on the measures that could be taken to overcome the problems identified in assessing the issues referred to in paragraph 1.
4. The Authority shall periodically publish a report on the interoperability of digital interactive television services as referred to in Article 18 of Directive 2002/21/EC (Framework Directive).

#### *Article 22* *Electronic Accessibility*

1. The Authority shall, at the request of the Commission advise the Commission and Member States on improving the interoperability of, access to, and use of electronic communications services and terminal equipment, and in particular cross-border interoperability issues. It shall establish a group consisting of representatives from Member States, associations of undertakings in the electronic communications industry, associations of end-users and associations representing disabled end-users. The group shall also look at the particular needs of disabled end-users and the elderly.
2. The Authority shall publish an annual report on the measures taken to improve accessibility to electronic communications services and equipment by disabled end-users, based on information provided by the Member States and information received by the Authority pursuant to Article 33(3) of Directive 2002/22/EC (Universal Service Directive). The report shall identify measures that could be taken at Community or at national level to improve accessibility. Where appropriate, the Authority may issue recommendations on measures that could be taken at national level.

#### *Article 23* *Additional tasks*

The Authority may take on specific additional tasks at the request of the Commission.

## **CHAPTER IV**

### **ORGANISATION OF THE AUTHORITY**

#### *Article 24* *Bodies of the Authority*

The Authority shall comprise:

- (a) an Administrative Board
- (b) a Board of Regulators

- (c) a Director
- (d) a Chief Network Security Officer
- (e) a Permanent Stakeholders' Group
- (f) a Board of Appeal.

*Article 25*  
*Administrative Board*

1. The Administrative Board shall be composed of twelve members. Six shall be appointed by the Commission and six by the Council. The members of the Administrative Board shall be appointed in such a way as to secure the highest standards of competence and independence, and a broad range of relevant expertise. The term of office shall be five years, renewable once.
2. The Administrative Board shall appoint its Chairperson and its Vice-Chairperson from among its members. The Vice-Chairperson shall automatically replace the Chairperson if the latter is not in a position to perform his/her duties. The terms of office of the Chairperson and of the Vice-Chairperson shall be two and a half years and shall be renewable. In any event, however, the term of office of the Chairperson and that of the Vice-Chairperson shall expire the moment they cease to be members of the Administrative Board.
3. Meetings of the Administrative Board shall be convened by its Chairperson. The Director of the Authority shall participate in the deliberations unless the Administrative Board decides otherwise. The Administrative Board shall meet at least twice a year in ordinary session. It shall also meet at the initiative of its Chairperson, at the request of the Commission or at the request of at least a third of its members. The Administrative Board may invite any person with potentially relevant opinions to attend its meetings in the capacity of an observer. The members of the Administrative Board may, subject to the rules of procedure, be assisted by advisers or by experts. The Administrative Board's secretarial services shall be provided by the Authority.
4. Decisions of the Administrative Board shall be adopted on the basis of a two-thirds majority of the members present.
5. Each member shall have one vote. The rules of procedure shall set out in greater detail the arrangements governing voting, especially the conditions whereby one member can act on behalf of another and also, where appropriate, the rules governing quorums.

*Article 26*  
*Tasks of the Administrative Board*

1. The Administrative Board shall, after having consulted the Board of Regulators, appoint the Director in accordance with Article 29(2).

2. The Administrative Board shall, after consulting the Director, appoint a Chief Network Security Officer in accordance with Article 31(2).
3. The Administrative Board shall appoint the members of the Board of Regulators in accordance with Article 27(1).
4. The Administrative Board shall appoint the members of the Board of Appeal in accordance with Article 33(1).
5. The Administrative Board shall adopt, before 30 September each year, after consulting the Commission and after the approval of the Board of Regulators in accordance with Article 28(3), the work programme of the Authority for the coming year and shall transmit it to the European Parliament, the Council and the Commission. The work programme shall be adopted without prejudice to the annual budgetary procedure.
6. The Administrative Board shall exercise its budgetary powers in accordance with Articles 36 to 38.
7. The Administrative Board shall decide, after having obtained the agreement of the Commission, whether to accept any legacies, donations or grants from other Community sources.
8. The Administrative Board shall exercise disciplinary authority over the Director and the Chief Network Security Officer.
9. The Administrative Board shall, where necessary, draw up the Authority's staff policy pursuant to Article 49(2).
10. The Administrative Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 47.
11. The Administrative Board shall adopt the annual report on the activities of the Authority and shall transmit it to the European Parliament, the Council, the Commission, the European and Social Committee and the Court of Auditors by 15 June at the latest. As provided for in Article 28 (4), this report shall contain an independent section approved by the Board of Regulators concerning the regulatory activities of the Authority during the year considered.
12. The Administrative Board shall adopt its rules of procedure.
13. The Administrative Board shall deliver an opinion to the Commission on the administrative charges which the Authority may levy from undertakings in carrying out its tasks as referred to in Article 16.

*Article 27*  
*The Board of Regulators*

1. The Board of Regulators shall be composed of one member per Member State who shall be the Head of the independent national regulatory authority with responsibility for day-to-day application of the regulatory framework in the Member State, the

Director and one non-voting representative of the Commission. The national regulatory authorities shall nominate one alternate per Member State.

2. The Director shall be the Chairperson of the Board of Regulators.
3. The Board of Regulators shall elect a Vice-Chairperson from among its members. The Vice-Chairperson shall replace the Chairperson if the latter is not in a position to perform his or her duties. The term of office of the Vice-Chairperson shall be two and a half years and shall be renewable. In any event, however, the term of office of the Vice-chairperson shall expire the moment he/she ceases to be members of the Board of Regulators.
4. The Board of Regulators shall act by a simple majority of its members. Each member or alternate other than the Director and the representative of the Commission shall have one vote.
5. The Board of Regulators shall adopt its rules of procedure.
6. When carrying out the tasks conferred upon it by this Regulation, the Board of Regulators shall act independently and shall not seek or take instructions from any government of a Member State or from any public or private interest.
7. The Board of Regulators' secretarial services shall be provided by the Authority.

#### *Article 28*

##### *Tasks of the Board of Regulators*

1. The Board of Regulators shall provide an opinion to the Director before the adoption of the opinions, recommendations and decisions referred to in Articles 4 to 23 within its field of competence. In addition, the Board of Regulators shall provide guidance to the Director in the execution of the Director's tasks.
2. The Board of Regulators shall deliver an opinion on the candidate to be appointed as Director in accordance with Article 26(1) and Article 29(2). The Board shall reach this decision on the basis of a majority of three quarters of its members. The Director shall not participate in the preparation of, or vote on, such opinions.
3. The Board of Regulators shall, in accordance with Article 26(5) and Article 30(4) and in line with the draft budget established according to Article 37 approve the work programme of the Authority for the coming year concerning its activities.
4. The Board of Regulators shall approve the independent section on regulatory activities of the annual report provided for in Article 26(11) and Article 30(9).

#### *Article 29*

##### *The Director*

1. The Authority shall be managed by its Director, who shall act independently in the performance of his/her functions. Without prejudice to the respective powers of the Commission, the Administrative Board and the Board of Regulators, the Director shall not seek or accept any instruction from any government or from any body.

2. After consulting the Board of Regulators, the Director shall be appointed by the Administrative Board, on the basis of merit, skills and experience relevant for electronic communications networks and services, from a list of at least two candidates proposed by the Commission. Before appointment, the candidate selected by the Administrative Board may be invited to make a statement before the competent committee of the European Parliament and answer questions put by its members.
3. The Director's term of office shall be five years. In the course of the nine months preceding the end of this period, the Commission shall undertake an evaluation. In the evaluation, the Commission shall assess in particular :
  - (a) the performance of the Director;
  - (b) the Authority's duties and requirements in the coming years.
4. After consulting the Board of Regulators, the Administrative Board, acting on a proposal from the Commission, may extend the term of office of the Director once for not more than three years, taking into account the evaluation report and only in those cases where it can be justified by the duties and requirements of the Authority.

The Administrative Board shall inform the European Parliament about its intention to extend the Director's term of office. Within a month before the extension of his/her term of office, the Director may be invited to make a statement before the competent committee of the Parliament and answer questions put before its members.

If the term of office is not extended, the Director shall remain in office until the appointment of his/her successor.
5. The Director may be removed from office only upon a decision by the Administrative Board, after consulting the Board of Regulators. The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members.
6. The European Parliament and the Council may call upon the Director to submit a report on the performance of his duties.

*Article 30*  
*Tasks of the Director*

1. The Director shall be responsible for representing the Authority and shall be in charge of its management.
2. The Director shall prepare the work of the Administrative Board. He/she shall participate, without having the right to vote, in the work of the Administrative Board.
3. The Director shall adopt the opinions, recommendations and decisions referred to in Articles 4 to 23, subject to the assent of the Board of Regulators.
4. Each year the Director shall prepare a draft work programme of the Authority for the following year, and submit it to the Board of Regulators and to the Commission before 30 June of that year.

He/she shall present the work programme before 1 September for adoption by the Administrative Board.

5. The Director shall be responsible for implementing the annual work programme of the Authority, under the guidance of the Board of Regulators and of the Chief Network Security Officer as appropriate, and under the administrative control of the Administrative Board.
6. The Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority in accordance with this Regulation.
7. The Director shall make an estimate of the revenue and expenditure of the Authority pursuant to Article 37 and shall implement the budget of the Authority pursuant to Article 38.
8. Each year the Director shall prepare the draft annual report on the activities of the Authority with a section on the regulatory activities of the Authority and a section on financial and administrative matters.
9. With regard to the staff of the Authority, the Director shall exercise the powers provided for in Article 49(3).

#### *Article 31* *The Chief Network Security Officer*

1. The Chief Network Security Officer shall be responsible for coordinating the Authority's tasks relating to network and information security. The Chief Network Security Officer shall work under the responsibility of, and report to, the Director. He/she will prepare the draft annual work programme for these activities.
2. The Chief Network Security Officer shall be appointed for a period of five years by the Administrative Board, on the basis of merit, skills and experience relevant for dealing with network and information security issues, from a list of at least two candidates proposed by the Commission.
3. The Chief Network Security Officer may be removed from office only upon a decision by the Administrative Board, after consulting the Director. The Administrative Board shall reach this decision on the basis of a majority of three quarters of its members.
4. After consulting the Director, the Administrative Board, acting on a proposal from the Commission, may extend the term of office of the Chief Network Security Officer once for not more than three years only in those cases where it can be justified by the duties and requirements of the Authority.



*Article 32*  
*Permanent Stakeholders' Group*

1. The Chief Network Security Officer shall establish a Permanent Stakeholders' Group composed of experts representing the relevant stakeholders, in particular from the information and communications technologies industry, consumer groups and academic experts in network and information security. He shall, in consultation with the Director, determine the procedures regarding in particular the number, the composition, the appointment of the members, and the operation of the Group.
2. The Group shall be chaired by the Chief Network Security Officer. The term of office of its members shall be two-and-a-half years. Members of the Group may not be members of the Administrative Board or the Board of Regulators.
3. Representatives of the Commission shall be entitled to be present in the meetings and participate in the work of the Group.
4. The Group may advise the Chief Network Security Officer in the performance of his/her duties under this Regulation, in drawing up a proposal for the relevant parts of the Authority's work programme, as well as in ensuring communication with stakeholders on all issues related to the work programme.

*Article 33*  
*Board of Appeal*

1. The Board of Appeal shall be composed of six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the electronic communications sector. The Board of Appeal designates its Chairperson.
2. The members of the Board of Appeal shall be appointed by the Administrative Board, on a proposal from the Commission, following a call for expression of interest, after consultation of the Board of Regulators.
3. The term of office of the members of the Board of Appeal shall be five years. This term shall be renewable. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They may not perform any other duties in the Authority, in its Administrative Board or in its Board of Regulators. A member of the Board of Appeal may not be removed during his/her term of office, unless he/she has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to this effect.
4. Members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.

If, for one of the reasons mentioned in the first subparagraph or for any other reason, a member of a Board of Appeal considers that a fellow member should not take part

in any appeal proceedings, the member shall inform the Board of Appeal accordingly. A member of the Board of Appeal may be objected to by any party to the appeal proceedings on any of the grounds mentioned in the first subparagraph, or if suspected of partiality. An objection cannot be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has taken a procedural step.

5. The Board of Appeal shall decide as to the action to be taken in the cases specified in paragraph 4 without the participation of the member concerned. For the purposes of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate, unless the alternate finds himself in a similar situation. Should this be the case, the Chairperson shall designate a replacement from among the available alternates.

#### *Article 34* *Appeals*

1. The Board of Appeal shall be responsible for deciding on appeals against decisions or measures taken by the Authority in areas covered by Article 8(1).
2. The decisions of the Board of Appeal shall be adopted on the basis of a qualified majority of at least four out of its six members. The Board of Appeal shall be convened when necessary.
3. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.
4. The appeal, together with the statement of grounds thereof, shall be filed in writing at the Authority within two months of the notification of the decision or measure to the undertaking concerned, or, in the absence thereof, of the day on which the Authority has made public its measure or decision. The Board of Appeal shall decide upon the appeal within two months after the appeal has been lodged.
5. If the appeal is admissible, the Board of Appeal shall examine whether it is well founded. It shall invite the parties as often as necessary to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make an oral presentation.
6. The Board of Appeal may, within the terms of this Article, exercise any power which lies within the competence of the Authority or it may remit the case to the competent body of the Authority. The latter shall be bound by the decision of the Board of Appeal.
7. The Board of Appeal shall adopt its rules of procedure.

*Article 35*  
*Actions before the Court of First Instance and the Court of Justice*

1. An action may be brought before the Court of First Instance or the Court of Justice in accordance with Article 230 of the Treaty, contesting a decision taken by the Board of Appeal or, in cases where no right of appeal lies before the Board, by the Authority.
2. Should the Authority fail to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with Article 232 of the Treaty.
3. The Authority shall be required to take the necessary measures to comply with the judgment of the Court of First Instance or the Court of Justice.

## **CHAPTER V**

### **FINANCIAL REQUIREMENTS**

*Article 36*  
*Budget of the Authority*

1. The revenues of the Authority shall consist of:
  - (a) charges for services provided by the Authority;
  - (b) a proportion of usage fees paid by applicants in accordance with the provisions of Article 17;
  - (c) a subsidy from the Community, entered in the general budget of the European Communities (Commission Section);
  - (d) any legacies, donations or grants as mentioned in Article 26(7).
  - (e) any voluntary contribution from the Member States or from their regulatory authorities.
2. The expenditure of the Authority shall cover staff, administrative, infrastructure and operational expenses.
3. Revenue and expenditure shall be in balance.
4. All Authority revenue and expenditure shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

*Article 37*  
*Establishment of the budget*

1. By 15 February of each year at the latest, the Director shall draw up a preliminary draft budget covering the operational expenditure and the work programme anticipated for the following financial year, and shall forward it to the Administrative Board together with a list of provisional posts. Each year the Administrative Board shall, on the basis of the draft prepared by the Director, make an estimate of revenue and expenditure of the Authority for the following financial year. This estimate, including a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 March at the latest. Prior to the adoption of the estimate, the draft prepared by the Director shall be transmitted to the Regulatory Board, which may deliver an opinion on the draft.
2. The estimate shall be transmitted by the Commission to the European Parliament and to the Council (hereinafter referred to as the budgetary authority) together with the preliminary draft general budget of the European Communities.
3. On the basis of the estimates, the Commission shall enter in the preliminary draft general budget of the European Communities the forecasts it considers necessary in respect of the establishment plan and the amount of the grant to be charged to the general budget, in accordance with Article 272 of the Treaty.
4. The budgetary authority shall adopt the establishment plan for the Authority.
5. The budget of the Authority shall be drawn up by the Administrative Board. It shall become final after the final adoption of the general budget of the European Communities. Where necessary, it shall be adjusted accordingly.
6. The Administrative Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budget authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify the Authority of its intention to issue such an opinion. Failing a reply, the Authority may proceed with the planned operation.

*Article 38*  
*Implementation and control of the budget*

1. The Director shall act as authorising officer and shall implement the Authority's budget.
2. By 1 March at the latest following the completion of each financial year, the Authority's accounting officer shall forward to the Commission's accounting officer and the Court of Auditors the provisional accounts accompanied by the report on budgetary and financial management over the financial year. The Authority accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest. The Commission's accounting officer shall then consolidate the provisional

accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002.

3. By 31 March at the latest following the completion of each financial year, the Commission's accounting officer shall forward the provisional accounts of the Authority accompanied by the report on the budgetary and financial management over the financial year to the Court of Auditors. The report on budgetary and financial management over the financial year shall also be forwarded to the European Parliament and the Council.
4. After receiving the observations of the Court of Auditor's on the provisional accounts of the Authority, in accordance with Article 129 of Council Regulation (EC, Euratom) No 1605/2002, the Director, acting on his/her own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the Administrative Board.
5. The Administrative Board shall deliver an opinion on final accounts of the Authority.
6. The Director shall transmit these final accounts, accompanied by the opinion of the Administrative Board, no later than 1 July following the completion of the financial year, to the European Parliament, the Council, the Commission and the Court of Auditors.
7. The final accounts shall be published.
8. The Director shall send the Court of Auditors a reply to the latter's observations by 15 October at the latest. He/she shall also send this reply to the Administrative Board, the European Parliament and the Commission.
9. The Director shall submit to the European Parliament, at the latter's request, and as provided for in Article 146(3) of Regulation (EC, Euratom) No 1605/2002, any information necessary for the smooth running of the discharge procedure for the financial year in question.
10. The European Parliament following a recommendation from the Council acting by a qualified majority, shall, before 15 May of year N+2 grant a discharge to the Director for the implementation of the budget for the financial year N.

#### *Article 39* *Financial rules*

Financial rules applicable to the Authority shall be drawn up by the Administrative Board after consultation with the Commission. Those rules may deviate from Commission Regulation (EC, Euratom) No 2343/2002 if the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

*Article 40*  
*Anti- fraud measures*

1. For the purpose of combating fraud, corruption and other illegal acts, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>34</sup> shall apply without any restriction.
2. The Authority shall accede to the Inter-institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)<sup>35</sup> and shall immediately adopt appropriate provisions for all staff of the Authority.
3. The funding decisions and the agreements and implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks among the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

## **CHAPTER VI**

### **GENERAL PROVISIONS**

*Article 41*  
*Provision of information to the Authority*

1. Undertakings providing electronic communications networks and services shall provide all the information, including financial information, requested by the Authority in order to perform its tasks as set out in this Regulation. The undertakings shall provide that information promptly on request and to the timescales and level of detail required by the Authority. The Authority shall give the reasons justifying its request for information.
2. National regulatory authorities shall provide the Authority with the information necessary for it to carry out its tasks under this Regulation. Where the information provided refers to information previously provided by undertakings at the request of the national regulatory authority, those undertakings shall be informed thereof.

*Article 42*  
*Consultation*

Except in cases falling within Article 20 or Article 21, the Authority shall, when it intends to take measures in accordance with the provisions described in this Regulation, consult where appropriate interested parties and give them the opportunity to comment on the draft measure

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<sup>34</sup> OJ L 136, 31.5.1999, p. 1.  
<sup>35</sup> OJ L 136, 31.5.1999, p. 15.

within a reasonable period. The results of the consultation procedure shall be made publicly available by the Authority, except in the case of confidential information.

#### *Article 43*

##### *Supervision, enforcement and penalties*

1. The Commission may impose financial penalties on undertakings if they fail to provide information referred to in Article 41. Penalties shall be effective, proportionate and dissuasive.
2. The national regulatory authorities in co-operation with the Authority shall be responsible for verifying compliance by undertakings with obligations arising from the provisions described in this Regulation.
3. When penalties are imposed under this Article, the Authority shall publish the names of the undertakings involved and the amounts of and reasons for the financial penalties imposed.
4. The Court of Justice shall have unlimited jurisdiction within the meaning of Article 229 of the Treaty over the review of final decisions whereby a penalty is imposed under this Article.

#### *Article 44*

##### *Declaration of interests*

The Authority's staff, including the Director, the Chief Network Security Officer and officials seconded by Member States on a temporary basis, shall make a declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing.

#### *Article 45*

##### *Transparency*

1. The Authority shall carry out its activities with a high level of transparency.
2. The Authority shall ensure that the public and any interested parties are given objective, reliable and easily accessible information, in particular with regard to the results of its work, where appropriate. It shall also make public the declarations of interests made by the Director and by officials seconded by Member States on a temporary basis, as well as the declarations of interest made by experts.
3. The Board of Regulators, acting on a proposal from the Director, may authorise interested parties to observe the proceedings of some of the Authority's activities.
4. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the transparency rules referred to in paragraphs 1 and 2.

*Article 46*  
*Confidentiality*

1. The Authority shall not divulge to third parties information that it processes or receives for which confidential treatment has been requested.
2. Members of the Authority's Boards, the Director, external experts, and members of the staff of the Authority including officials seconded by Member States on a temporary basis are subject to the requirements of confidentiality pursuant to Article 287 of the Treaty, even after their duties have ceased.
3. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.
4. Without prejudice to Article 47 the Authority shall take appropriate measures, in accordance with Decision 2001/844/EC, ECSC, Euratom,<sup>36</sup> to protect information subject to the requirement of confidentiality to which it has access or which is communicated to it by Member States or national regulatory authorities. Member States shall take equivalent measures in accordance with relevant national legislation. Due account shall be given to the gravity of the potential prejudice to the essential interests of the Community or of one or more of its Member States. Each Member State and the Commission shall respect the relevant security classification given by the originator of a document.

*Article 47*  
*Access to documents*

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Authority.
2. The Administrative Board shall adopt practical measures for applying Regulation (EC) No 1049/2001 within six months from the date of the effective start of operations of the Authority.
3. Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice in accordance with the conditions laid down in Articles 195 and 230 of the Treaty respectively.

*Article 48*  
*Legal status*

1. The Authority shall be a body of the Community with legal personality.
2. In each of the Member States the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may in particular, acquire and dispose of movable and immovable property and be a party to legal proceedings.

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<sup>36</sup> OJ L 317, 3.12.2001, p. 1.



3. The Authority shall be represented by its Director.
4. The seat of the Authority shall be located in [...]. Until its premises are ready, it will be hosted on Commission premises.

#### *Article 49*

##### *Staff*

1. The Staff Regulations of Officials of the European Communities, the Conditions of employment of other servants of the European Communities and the rules adopted jointly by the European Community institutions for the purpose of applying these staff regulations and conditions of employment shall apply to the staff of the Authority, including the Director and the Chief Network Security Officer.
2. The Administrative Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in article 110 of the Staff Regulations of officials of the European Communities.
3. In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations of officials of the European Communities and on the authority entitled to conclude contracts by the Conditions of Employment of other servants of the European Communities.
4. The Administrative Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Authority.

#### *Article 50*

##### *Privileges and immunities*

The Protocol on Privileges and Immunities of the European Communities shall apply to the Authority and its staff.

#### *Article 51*

##### *Liability of the Authority*

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or its staff in the performance of their duties. The Court of Justice shall have jurisdiction in any dispute over the remedying of such damage.
2. The personal financial and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

#### *Article 52*

##### *Protection of personal data*

When processing data relating to individuals, the Authority shall be subject to the provisions of Regulation (EC) No 45/2001.

*Article 53*  
*Participation of third countries*

The Authority shall be open to the participation by European countries which have concluded agreements with the Community, whereby the countries concerned have adopted and are applying Community legislation in the field covered by this Regulation. In accordance with the relevant provisions of these agreements, arrangements shall be made which shall specify the detailed rules for participation by these countries in the work of the Authority, in particular the nature and extent of such participation. These arrangements shall include, in particular provisions on financial contributions and staff. They may provide for representation, without vote, on the Board of Regulators.

*Article 54*  
*Communications Committee*

1. In implementing the provisions of this Regulation, the Commission shall be assisted by the Communications Committee, set up by Article 22 of Directive 2002/21/EC (Framework Directive).
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.

*Article 55*  
*Evaluation*

Within five years from the effective start of operations and every five years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and of the procedures laid down in this Regulation. The evaluation shall cover the results achieved by the Authority and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation shall take into account the views of stakeholders, at both Community and national level. The report and any accompanying proposals shall be forwarded to the European Parliament and to the Council.

*Article 56*  
*Transitional provisions*

1. The Authority shall, on 14 March 2011, assume responsibility for all activities undertaken by the European Network and Information Security Agency prior to that date and which fall within the scope of this Regulation.
2. The ownership interest in any moveable property held by the European Network and Information Security Agency at the date referred to in paragraph 1 above shall be transferred to the Authority with effect from that date.

*Article 57*  
*Entry into force*

This Regulation shall enter into force on [31 December 2009].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

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

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

## **ANNEX**

### **INFORMATION ON RIGHTS OF USE TO BE INCLUDED IN THE REGISTRY**

(referred to in Article 20)

Information on Rights of Use may be limited to frequency bands that are used for the provision of electronic communications services and which are tradable in accordance with Article 9(3) of Directive 2002/21/EC (Framework Directive) or are granted through competitive or comparative selection procedures pursuant to Directive 2002/20/EC (Authorisation Directive).

For relevant frequency bands Member States shall provide the following information, in accordance with the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>37</sup> and Community and national rules on business confidentiality:

1. the identity of the radio frequency right holder;
2. the expiry date of the right or the expected duration;
3. the geographic extent of the right stating as a minimum whether the right is local (i.e. one station), regional or nation-wide;
4. an indication of whether or not the right is tradable.

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<sup>37</sup> OJ L 281, 23.11.1995, p.31.

## LEGISLATIVE FINANCIAL STATEMENT

**1. NAME OF THE PROPOSAL:**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL ESTABLISHING THE EUROPEAN ELECTRONIC  
COMMUNICATIONS MARKET AUTHORITY**

**2. ABM / ABB FRAMEWORK**

**Policy area: Information Society**

**Activity: Electronic Communications Policy**

**3. BUDGET LINES**

**3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:**

New budget lines will be proposed for administrative and operational expenditure:

09.02.04.01 EECMA Administrative Expenditure

09.02.04.02 EECMA Operational Expenditure

**3.2. Duration of the action and of the financial impact:**

2010 - 2015

**3.3. Budgetary characteristics:**

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
09.02.04.01	Noncomp.	Diff	YES	NO	NO	No 1a
09.02.04.02	Noncomp.	Diff	YES	NO	NO	No 1a

## 4. SUMMARY OF RESOURCES

### 4.1. Financial Resources

#### 4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2010	2011	2012	2013	Total
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#### Operational expenditure<sup>38</sup>

Commitment Appropriations (CA)	8.1.	a	4,570	8,221	10,590	10,590	33,971
Payment Appropriations (PA)		b	4,570	8,221	10,590	10,590	33,971

#### Administrative expenditure

Human resources and associated expenditure (NDA)	8.2.4.	d	3,509	10,827	12,410	12,410	39,156
Administrative costs, other than human resources and associated costs	8.2.5.	e	2,085	4,050	4,500	4,500	15,135
<b>Total</b>			<b>5,594</b>	<b>14,877</b>	<b>16,910</b>	<b>16,910</b>	<b>54,291</b>

#### Total indicative financial cost of intervention

<b>TOTAL CA including cost of Human Resources</b>		a+ c+ d+ e	<b>10,164</b>	<b>23,098</b>	<b>27,500</b>	<b>27,500</b>	<b>88,262</b>
<b>TOTAL PA including cost of Human Resources</b>		b+ c+ d+ e	<b>10,164</b>	<b>23,098</b>	<b>27,500</b>	<b>27,500</b>	<b>88,262</b>

#### 4.1.2. Compatibility with Financial Programming

- ☐ Proposal is compatible with existing financial programming.
- ☒ Proposal will entail reprogramming of the relevant heading in the financial perspective.
- ☐ Proposal may require application of the provisions of the Inter-institutional Agreement<sup>39</sup> (i.e. flexibility instrument or revision of the financial perspective).

<sup>38</sup>

Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

<sup>39</sup>

See points 19 and 24 of the Interinstitutional agreement.

#### 4.1.3. Financial impact on Revenue

- ☒ Proposal has no financial implications on revenue
- ☐ Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

Budget line	Revenue	Prior to action 2009	Situation following action			
			2010	2011	2012	2013
	a) Revenue in absolute terms		-	-	-	-
	b) Change in revenue	$\Delta$	-	-	-	-

#### 4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	2010	2011	2012	2013
Total number of human resources	38	113	135	135

## 5. CHARACTERISTICS AND OBJECTIVES

### 5.1. Need to be met in the short or long term

The Authority shall, acting within the scope of the Framework Directive and the Specific Directives, contribute to the better functioning of the internal market for electronic communications networks and services, including in particular the development of cross-Community electronic communications and a high and effective level of network and information security. The Authority will act as a centre of expertise for electronic communication networks and services at EU level, drawing upon the experience of the national regulatory authorities. It will take over the functions of the European Network Security Agency (ENISA).

### 5.2. Added-value of Community involvement and coherence of the proposal with other financial instruments and possible synergy

Consistent application of the regulatory framework for electronic communications will improve competition and contribute to competitiveness.

The development of trans-national services can be hampered by the need to comply with different national conditions. Community level procedures will reduce this obstacle and also reduce the administrative burden for enterprises.

The integration of the functions currently allocated to ENISA in a bigger entity will create synergies with respect to administrative and horizontal tasks and increase the resources available for operational tasks in the domain of network and information security.

### 5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

For activities related to the definition and analysis of national and trans-national markets, an appropriate indicator is the number of relevant opinions submitted to the Commission.

As regards the definition of conditions and procedures for the use of frequencies or numbering resources, the number of such procedures and the subsequent selection procedures will indicate the extent to which the expected result of a simplification for trans-national services has been achieved.

For the other tasks of the Authority (cross-border disputes, frequencies information register, information exchange), the effectiveness of the measures will be directly visible through the use and performance of these services.

### 5.4. Method of Implementation (indicative)

☒ ***Centralised Management***

☐ directly by the Commission

☐ indirectly by delegation to:

☐ executive Agencies

☒ bodies set up by the Communities as referred to in Article 185 of the Financial Regulation

☐ national public-sector bodies/bodies with a public-service mission

☐ ***Shared or decentralised management***

☐ with Member states

☐ with Third countries

☐ ***Joint management with international organisations (please specify)***



## **6. MONITORING AND EVALUATION**

### **6.1. Monitoring system**

Each year, the work of the Authority will be monitored and evaluated in the annual general report (for the previous year) and the work programme (for the following year). These two documents are adopted by the Authority's Administrative Board and sent to the European Parliament, the Council, the Commission, the Court of Auditors and the Member States.

### **6.2. Evaluation**

#### *6.2.1. Ex-ante evaluation*

The Commission's impact assessment accompanying this proposal covers the *ex ante* evaluation concerning the needs / problems, the objectives, the policy options (including the risks associated with them) and the economic and social impacts and monitoring arrangements associated with the European Electronic Communications Authority. Furthermore, Annex III of the impact assessment provides cost-benefit analysis for the Authority.<sup>40</sup>

The cost-benefit analysis found that under a conservative scenario, it can be estimated that in the policy areas where the Authority would be active, it has the potential of bringing total economic benefits exceeding its budgetary costs by a factor of around 10-30 times (i.e. the order of magnitude of the benefits would be around €250 – 800 million). The benefits can amount to between €550 and €1400 million if the more optimistic scenarios for the growth of pan-European markets are realised.

A major source of such benefit is the reduction in the regulatory risk which would be achieved through the contribution of the Authority. Even a marginal reduction in the regulatory risk (of around 10%) across Europe, will be reflected in lower cost of capital for the industry. In addition, the Authority's involvement will speed up the process of assigning frequencies for pan-European services; if implementation of major projects of this type can be brought forward by just one year, the economic benefits can be in the range of several hundred millions euros.

There are other important qualitative considerations supporting the establishment of the Authority that cannot be adequately quantified or monetised in a cost-benefit analysis. In the long run, enabling competition between different new technological platforms is likely to be one of most important economic benefits associated with the Authority.

The Authority could also substantially contribute to reduce the regulatory risks of R&D projects, which is likely to increase the tendency to invest in R&D and thereby contribute to bridge the gap between actual and socially desirable level of investments in a market-efficient way.

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<sup>40</sup>

SEC(2007)III.

Most of the above benefits are not replicable by the current - or strengthened - coordination between the Member States (that was analysed as an alternative option in the impact assessment) based on the loose co-ordination structure of the European Regulators Group (ERG). ERG's peer-review without any veto power cannot be considered equally credible mechanism to reduce the risk for regulatory error across Europe or to decrease perceived market uncertainty related to regulatory discretion factors.

Therefore, even by applying conservative scenarios on the potential benefits and related costs, the establishment of the Authority is cost-effective and fully justifiable from the EU budgetary perspective.

#### *6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)*

The Commission conducted an intermediate evaluation of ENISA and published the report of this external evaluation and a Communication<sup>41</sup> with its own appreciation of the results and the recommendations given by ENISA's Management Board.

The evaluation recommended extending ENISA's mandate beyond its current duration of 2009. Regarding organisational matters, it was recommended to increase in particular the number of operational staff, so that a critical mass can be achieved.

This recommendation can be realized with the integration of ENISA's tasks into a bigger entity. The combined entity will benefit of economies of scale for administrative tasks, so that the relative share of resources for these tasks is considerably lower than in ENISA's current organisational set-up.

Additional synergies can be created through the combination of horizontal operational tasks, such as those related collection and dissemination of information, cooperation and networking, in a single organisational function serving the Authority as a whole.

#### *6.2.3. Terms and frequency of future evaluation*

The Authority, in line with its founding Regulation will have to produce every year a general report on its activities for the previous year which will be forwarded to the Member States, the European Parliament, the Council and the Commission. This report will present all specific actions undertaken by the Authority and will provide indications for the evaluation of the actions undertaken under the proposed revision of the Regulation.

An independent external evaluation of the implementation of the proposed regulation is to be carried out within five years from the effective start of the Authority's operations. After this initial evaluation of the start-up phase the activities of the Authorities will be evaluated at least every five years.

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<sup>41</sup> Communication On the evaluation of the European Network and Information Security Agency (ENISA), COM(2007) 285 of 1 June 2007.

## **7. ANTI-FRAUD MEASURES**

In order to combat fraud, corruption and other unlawful activities, the provisions of Regulation (EC) No 1073/1999 will apply without restriction to the Authority, which will also accede to the Inter-Institutional Agreement of 25 May 1999 concerning internal investigations by OLAF. It will issue, without delay, the appropriate provisions to its staff.

## 8. DETAILS OF RESOURCES

It is estimated that the Authority will expand up to a permanent staff of 134 FTE once fully established. This includes taking over the tasks and resources of ENISA in 2011. The annual budget is estimated at 10 million Euros in the first year, rising to 28 million Euros from year 3 onwards.

### 8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

	2010	2011	2012	2013	TOTAL
<b>OPERATIONAL OBJECTIVE 1: Strengthening the Internal market</b>					
Definition, Analysis, Review, number portability, European numbering, cross-border disputes, network and information security	2,200	3,025	3,575	3,575	12,375
Sub-total Objective 1	2,200	3,025	3,575	3,575	12,375
<b>OPERATIONAL OBJECTIVE 2: Harmonisation of Rights of Use</b>					
Conditions and procedures for rights of use, Selection of undertakings, Administrative procedures	1,100	1,650	2,475	2,475	7,700
Sub-total Objective 2	1,100	1,650	2,475	2,475	7,700
<b>OPERATIONAL OBJECTIVE 3: Dissemination of best practices and information</b>					
<b>Action 1:</b> Public Information Systems: Frequencies Information, Roaming Database etc.	0,280	0,420	0,525	0,525	1,750
<b>Action 2:</b> Information exchange, reports, etc	0,990	1,210	1,595	1,595	5,390
Sub-total Objective 3	1,270	1,630	2,120	2,120	7,140
<b>OPERATIONAL OBJECTIVE 4: Technical advice on Network and Information Security</b>					
Technical analysis and advice	0	1,916	2,420	2,420	6,756
<b>Sub-total objective 4:</b>	0	1,916	2,420	2,420	6,756
<b>TOTAL COST</b>	<b>4,570</b>	<b>8,221</b>	<b>10,590</b>	<b>10,590</b>	<b>33,971</b>

The operational expenditure will be covered by a Community subsidy to the Authority's budget.

## 8.2. Administrative Expenditure of the Authority

The administrative expenditure will be covered from the budget of the Authority, which will be financed by a Community subsidy to the Authority's budget.

### 8.2.1. Number and type of human resources

The table shows the staff allocated to the Authority. In addition, one additional AD post is required for the Commission's IAS.

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)			
		2010	2011	2012	2013
Officials or temporary staff	AD	12	43	45	45
	AST	7	23	24	24
External Staff		18	46	65	65
<b>TOTAL</b>		<b>37</b>	<b>112</b>	<b>134</b>	<b>134</b>

### 8.2.2. Description of tasks deriving from the action

The allocation of staff to the tasks of the Authority, when it is fully operational, is shown in the table below. (The table does not include the additional AD post allocated to the Commission's Internal Audit Service.)

		AD	AST	END	Contractual	Total
Administration and Management	Director	1	1	-	1	3
	Board of Regulators, Liaison with MS and Commission, Programming	3	1	-	3	7
	Administration and Support	7	6	-	12	25
	<b>Total Adm. &amp; Management</b>	<b>11</b>	<b>8</b>	<b>0</b>	<b>16</b>	<b>35</b>
Operations	Market Analysis	9	4	6	6	25
	Harmonisation	5	3	4	3	15
	Network and Information Security	14	6	10	10	40
	Information and Communication, Best practices	6	3	5	5	19
	<b>Total Operations</b>	<b>34</b>	<b>16</b>	<b>25</b>	<b>24</b>	<b>99</b>
<b>Total</b>		<b>45</b>	<b>24</b>	<b>25</b>	<b>40</b>	<b>134</b>

### 8.2.3. Sources of human resources (statutory)

- ☒ 44 Posts currently allocated to ENISA will be transferred to the Authority when ENISA is integrated into the Authority in March 2011..
- ☐ Posts pre-allocated within the APS/PDB exercise for year n
- ☒ Posts to be requested in the APS/PDB procedures

One additional AD post will be requested in the Commission for the IAS.

- ☐ Posts to be redeployed using existing resources within the managing service (internal redeployment)
- ☐ Posts required for year n although not foreseen in the APS/PDB exercise for the year in question

### 8.2.4. Financial cost of human resources and associated costs

EUR million (to 3 decimal places)

Type of human resources	Year n	Year n+1	Year n+2	Year n+3
Officials and temporary staff	2,340	7,839	8,190	8,190
External Staff (END, contract staff, etc.)	1,169	2,988	4,220	4,220
<b>Total cost of Human Resources and associated costs</b>	3,509	10,827	12,410	12,410

The average annual costs are assumed to be Euro 117.000 for statutory staff, Euro 68.000 for ENDs and EUR 63.000 for other employees.

The cost includes the staff of the Authority and the additional post in the IAS.

### 8.2.5. Other administrative expenditure

The table below shows a breakdown of the administrative expenditure, which will be covered by a Community subsidy to the Authority's budget. EUR million (to 3 decimal places).

	Year n	Year n+1	Year n+2	Year n+3	TOTAL
Infrastructure (Buildings and related expenses), equipment, consumables, communication, IT, etc.	1,100	2,200	2,450	2,450	8,200
Missions and Meetings	0,485	0,750	0,850	0,850	2,935
Administrative services (translation, studies, consulting, etc.)	0,500	1,100	1,200	1,200	4,000
<b>Total Other Management Expenditure</b>	<b>2,085</b>	<b>4,050</b>	<b>4,500</b>	<b>4,500</b>	<b>15,135</b>

### Community contribution

Article 15(2) of the Regulation envisages the possibility for the Authority to receive a share of the usage fees for rights of use for frequencies and numbers.

The distribution of fees is to be defined in a separate instrument and cannot be determined at this time. For the calculation of the Community contribution to the Authority, possible revenues from this source are not taken into account.

## 8.3. Administrative Expenditure of the Commission

One additional AD post will be allocated to the Commission's Internal Audit Service.

The other Commission tasks related to monitoring and management of the Authority will not require additional posts and expenditure beyond the resources already allocated for these tasks with respect to ENISA and those currently used for coordination with the ERG. The responsible DG may temporarily add additional staff or budget by redistribution of existing resources.