

Brussels, 5 November 2009

## **Agreement on EU Telecoms Reform paves way for stronger consumer rights, an open internet, a single European telecoms market and high-speed internet connections for all citizens**

*Late last night (at 0:45), the European Parliament and the Council of Ministers reached an agreement on the EU Telecoms Reform, after intense negotiations brokered by the European Commission. The reform, proposed by the Commission in November 2007 ([IP/07/1677](#)), substantially strengthens competition and consumer rights on Europe's telecoms markets, facilitates high-speed internet broadband connections to all Europeans and establishes a European Body of Telecoms Regulators to complete the single market for telecoms networks and services. Following the endorsement of the reform package by an overwhelming majority of the European Parliament in May this year ([MEMO/09/219](#)), only one subparagraph had remained controversial between Parliament and Council: the degree to which access to the internet should, and could, be protected by EU law, as well as the procedural and judicial safeguards for internet users. After further talks, in a conciliation committee made up of representatives of the 27 Member States and an equal number of representatives from Parliament, the negotiators of Parliament, Council and Commission agreed last night – by unanimity – on a new internet freedom provision (see Annex 1) that will substantially strengthen the rights of internet users. The new internet freedom provision will be accompanied by new measures to reinforce the neutral character of the internet in Europe. Following final votes in Parliament and Council in November, these reforms could come into force in early 2010. EU countries will then have 18 months to incorporate the new provisions into their national legislation.*

Viviane Reding, the EU Telecoms Commissioner who had been an active party to the final talks, welcomed the agreement found between Parliament and Council: "It is very good news for Europe's citizens that negotiators of the Parliament and Council last night reached agreement on a new internet freedom provision to be included in the telecoms reform package. This internet freedom provision is unprecedented across the globe and a strong signal that the EU takes fundamental rights very seriously, in particular when it comes to the Information Society. The agreement on the new internet freedom provision, which has the unanimous support of all negotiators, now paves the way for a swift entry into force of this telecoms reform. The reform will substantially enhance consumer rights and consumer choice in Europe's telecoms markets, and add new guarantees to ensure the openness and neutrality of the internet. It will boost competition and investment in telecoms markets, and open up airwaves for new mobile services, allowing internet broadband for all Europeans.

*I would like to thank the European Parliament and their chief negotiators as well as the Council of Ministers and the Swedish presidency for their efforts. Jointly, they have made sure that Europe's telecoms market will become more competitive and more consumer-friendly for telecoms operators and their customers."*

The following are the **12 most prominent reforms** of the telecoms package, as now agreed:

**1. A right of European consumers to change, in 1 working day, fixed or mobile operator while keeping their old phone number.** Currently in the EU it takes on average 8.5 days for a mobile number and 7.5 days for a fixed number to be changed, with some customers facing a two to three week wait ([MEMO/09/126](#)). In the future, consumers will be able to do this in 1 working day. In addition, under the new rules, the maximum initial duration of a contract signed by a consumer with an operator will be no longer than 24 months. Operators must also offer consumers the possibility of agreeing to a contract with a maximum duration of 12 months.

**2. Better consumer information:** Under the new telecoms rules, consumers will receive better information ensuring they understand what services they subscribe to and, in particular, what they can or cannot do with those communications services. Consumer contracts must specify, among other things, information on the minimum service quality levels, as well as on compensation and refunds if these levels are not met, subscriber's options to be listed in telephone directories and clear information on the qualifying criteria for promotional offers.

**3. Protecting citizens' rights relating to internet access by a new internet freedom provision (full text: see Annex 1):** Following the strong request of the European Parliament, and after long negotiations on this point, the new telecoms rules now explicitly state that any measures taken by Member States regarding access to or use of services and applications through telecoms networks must respect the fundamental rights and freedoms of citizens, as they are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and in general principles of EU law. Such measures must also be appropriate, proportionate and necessary within a democratic society. In particular, they must respect the presumption of innocence and the right to privacy. With regard to any measures of Member States taken on their Internet access (e.g. to fight child pornography or other illegal activities), citizens in the EU are entitled to a prior fair and impartial procedure, including the right to be heard, and they have a right to an effective and timely judicial review.

Commissioner Reding said on this matter: *"The new internet freedom provision represents a great victory for the rights and freedoms of European citizens. The debate between Parliament and Council has also clearly shown that we need find new, more modern and more effective ways in Europe to protect intellectual property and artistic creation. The promotion of legal offers, including across borders, should become a priority for policy-makers. 'Three-strikes-laws', which could cut off Internet access without a prior fair and impartial procedure or without effective and timely judicial review, will certainly not become part of European law."*

**4. New guarantees for an open and more "neutral" net:** The new telecoms rules will ensure that European consumers have an ever greater choice of competing broadband service providers. Internet service providers have powerful tools at their disposal that allow them to differentiate between the various data transmissions on the internet, such as voice or 'peer-to-peer' communication. Even though traffic management may allow premium high-quality services (such as IPTV) to develop and can help ensure secure communications, the same techniques may also be used to degrade the quality of other services to unacceptably low levels or to strengthen dominant positions on the market. That is why, under the new EU rules, national telecoms authorities will have the powers to set minimum quality levels for network transmission services so as to promote "net neutrality" and "net freedoms" for European citizens. In addition, thanks to new transparency requirements, consumers must be informed – before signing a contract – about the nature of the service to which they are subscribing, including traffic management techniques and their impact on service quality, as well as any other limitations (such as bandwidth caps or available connection speed).

The Commission also made a commitment last night to keep the neutrality of the internet under close scrutiny and to use its existing powers as well as new instruments available under the reform package to report regularly on the state of play in net neutrality to the European Parliament and the Council of Ministers. *"Under the reformed rules, the Commission will be Europe's first line of defence when it comes to net neutrality"*, said EU Telecoms Commissioner Viviane Reding.

**5. Consumer protection against personal data breaches and spam:** European citizens' privacy is a priority of the new telecoms rules. Names, email addresses and bank account information of the customers of telecoms and internet service providers, and especially the data about every phone call and internet session, need to be kept safe from accidentally or deliberately ending up in the wrong hands ([IP/09/571](#)). Operators must respond to the responsibility that comes with processing and storing this information. Therefore, the new rules introduce mandatory notifications for personal data breaches – the first law of its kind in Europe. This means that communications providers will be obliged to inform the authorities and their customers about security breaches affecting their personal data. This will increase the incentives for better protection of personal data by providers of communications networks and services.

In addition, the rules concerning privacy and data protection are strengthened, e.g. on the use of "cookies" and similar devices. Internet users will be better informed about cookies and about what happens to their personal data, and they will find it easier to exercise control over their personal information in practice. Furthermore, internet service providers will also gain the right to protect their business and their customers through legal action against spammers.

**6. Better access to emergency services, 112:** The new telecoms rules will ensure that European citizens gain better access to emergency services by extending the access requirements from traditional telephony to new technologies, strengthening operators' obligation to pass information about caller location to emergency authorities, and by improving general awareness of the European emergency number '112'.

In addition, provisions on access to telecoms services for Europeans with disabilities have been strengthened so that they can benefit from the same usability of services as other citizens, but by different means. For the first time, the EU's telecoms rules will include a provision on the availability of terminal equipment offering the requisite services and functions for users with disabilities.

**7. National telecoms regulators will gain greater independence:** The new telecoms rules reinforce national telecoms regulators' independence by eliminating political interference in their day-to-day duties and by adding protection against arbitrary dismissal for the heads of national regulators.

**8. A new European Telecoms Authority that will help ensure fair competition and more consistency of regulation on the telecoms markets.** The reform creates a very important tool for making a single European telecoms market a reality: the new European Telecoms Authority "BEREC" (Body of European Regulators for Electronic Communications) that will replace the loose cooperation behind closed doors that exists today in the "European Regulators Group" with a more transparent and more efficient approach. BEREC decisions will be taken, as a rule, by majority of the heads of the 27 national telecoms regulators: by a simple majority when BEREC gives opinions in the context of the Commission's analysis of remedies notified by national regulators, and by a two thirds majority in other cases. Such BEREC decisions will be prepared by an independent supranational Office with expert staff. BEREC will also advise, support and complement the independent work of national telecoms regulators, especially when it comes to regulatory decisions with a cross-border relevance. A decision on the seat of BEREC still needs to be taken by the Governments of the 27 Member States.

**9. A new Commission say on the competition remedies for the telecoms markets:** The new EU telecoms rules will give the Commission the power to oversee regulatory remedies proposed by national regulators (e.g. on the conditions of access to the network of a dominant operator; or on fixed or mobile termination rates). The objective is to avoid inconsistent regulation that could distort competition in the single telecoms market. When the Commission, in close cooperation with BEREC, considers that a draft remedy notified by a national regulator would create a barrier to the single market, the Commission may issue a recommendation that requires the national regulator to amend or withdraw its planned remedy. The new rules also enable the Commission to adopt further harmonisation measures in the form of recommendations or (binding) decisions, if divergences in the implementation of remedies persist across the EU in the longer term.

**10. Functional separation as a means to overcome competition problems:** National telecoms regulators will gain the additional tool of being able to oblige telecoms operators to separate communication networks from their service branches, as a last-resort remedy. This new remedy has been advocated since 2007 by the European Commission and by the 27 national regulators. Functional separation can rapidly improve competition in markets while maintaining incentives for investment in new networks. Functional separation has been implemented in the UK since January 2006 where it triggered a surge in broadband connections (from 100.000 unbundled lines in December 2005 to 5.5 million 3 years later). The new EU rules on functional separation will add legal certainty for countries currently moving towards different forms of separation (Poland, Italy), while ensuring overall consistency for the benefit of the single market, effective competition and consumer choice.

**11. Accelerating broadband access for all Europeans:** Currently, in rural areas of the EU only an average of 70% of the population can have access to a broadband network connection ([IP/09/343](#)). The reform will help in overcoming this "digital divide" by better managing radio spectrum and by making it effectively available for wireless broadband services in regions where building a new fibre infrastructure is too costly; and by allowing Member States to expand universal service provisions beyond narrow-band internet access.

The reform in particular puts a much stronger emphasis on technology and service flexibility in spectrum use, making it easier for operators to introduce innovative technologies and services. This increased flexibility will bring important economic gains and has the potential to generate an estimated additional 0.1% of GDP per annum. In particular, it will allow the "digital dividend", the radio spectrum freed as a result of the switchover from analogue to digital TV, to work for the economic recovery as also stressed in the Commission's recent Communication on transforming the digital dividend into social benefits and economic growth ([IP/09/1595](#)).

A further important reform proposed by the Commission in parallel to the negotiations on the telecoms reform package was already adopted by Parliament and Council on 16 October 2009 ([IP/09/1545](#)): the modernisation of the GSM Directive, which will allow operators to introduce new services, starting with 3G and extending later to other new technologies, to operate in the GSM band which was previously reserved exclusively for GSM services. This should lead to industry savings estimated at € 1.6 billion in capital costs for a single Europe-wide network, and enable faster roll-out of full 3G coverage. The reformed GSM Directive will boost the take up of 3G in the EU, from the existing 3G customer base which was estimated at over 90 million in December 2008. 3G penetration rates are currently the highest in Italy, Austria, Sweden and the UK where they exceed 20% of the total subscribers.

**12. Encouraging competition and investment in next generation access networks:** The new rules bring legal certainty for investment in next generation access (NGA) networks. These networks, based on new optical fibre and wireless network technologies, are replacing less efficient traditional copper-wire networks and will allow high-speed internet connections. The reform of the telecoms rules reaffirms the importance of competition in this new sector while at the same time preserving incentives to invest by taking into account the risks involved in allowing access to NGA networks and allowing for various cooperative arrangements between investors and access-seeking operators. In this way, the new rules will also ensure telecoms operators receive a fair return on their investments. On the basis of the new rules, the Commission plans to issue a recommendation for the regulation of access to NGA networks in the first half of 2010, taking into account the results of public consultations in 2008 and 2009 ([IP/08/1370](#) and [IP/09/909](#)). The rules governing the sharing of network elements, such as ducts or in-building wiring, between operators are also updated by the reform. Besides improving competition and services for businesses and consumers, this will also help lower the overall financial costs for operators of deploying NGA networks.

## **Background**

The EU telecoms reform package comprises 5 different EU Directives (Framework Directive, Access Directive, Authorisation Directive, Universal Service Directive and the e-Privacy Directive) and a new Regulation setting up the European Body of Telecoms Regulators BEREC. It has been accompanied by a Directive to reform the GSM Directive of 1987 to free airwaves for 3G and other mobile services ([IP/09/1545](#)).

The reform is being adopted through the codecision procedure, which means that it has to be approved both by Members of the European Parliament (by majority) and national governments in the Council of Ministers (by qualified majority). The procedure starts with Commission proposals, which the European Parliament and Council then discuss and amend. If the Council does not approve all the amendments of the European Parliament adopted in the second phase of the process, a conciliation committee is set up to find a compromise. The conciliation committee is made up of 27 members of the Council or their representatives and an equal number of representatives from Parliament, who make up the European Parliament delegation.

**Next steps:**

- Vote of the new internet freedom provision agreed between Parliament and Council in a plenary session of the European Parliament and in the Council of Ministers within the next 6 weeks (expected for end November);
- Entry into force of the whole telecoms reform package with its publication in the EU's Official Journal (by early 2010);
- Establishment of the European Body of Telecoms Regulators BEREC (spring 2010);
- Transposition of the telecoms reform package into national legislation in the 27 EU Member States (by May 2011).

## **Annex 1**

### **The new Internet Freedom Provision**

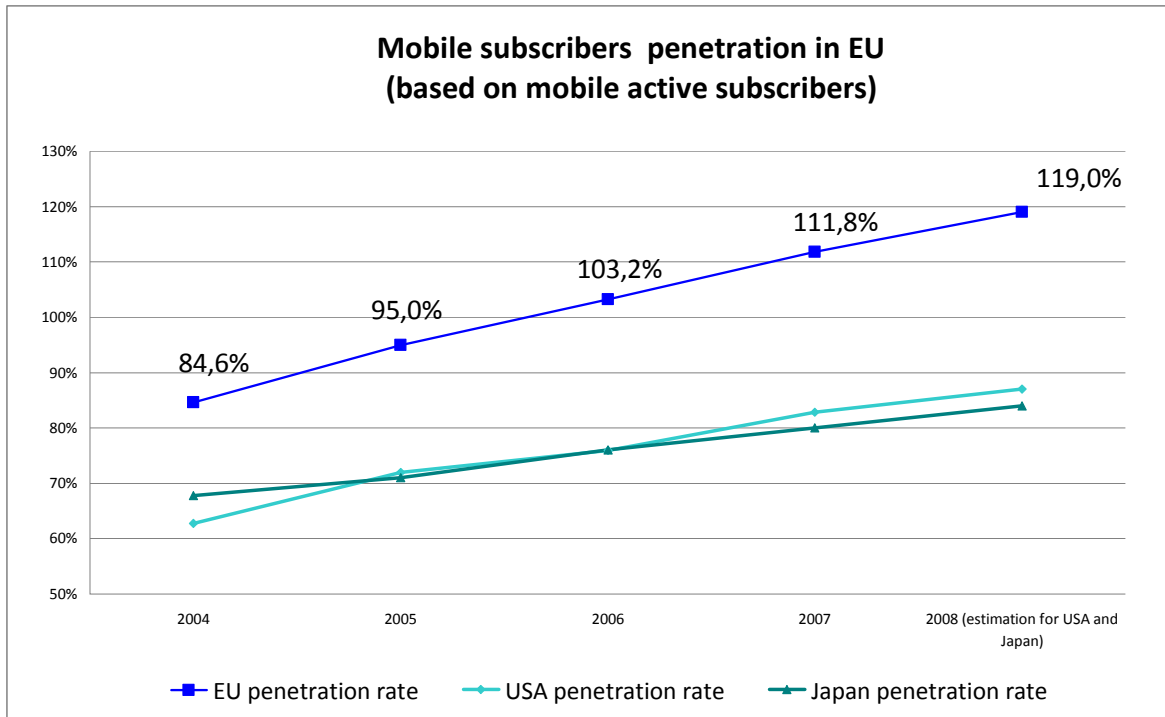
#### Article 1(3)a of the new Framework Directive

“Measures taken by Member States regarding end-users’ access to or use of services and applications through electronic communications networks shall respect **the fundamental rights and freedoms of natural persons, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law.**

Any of these measures regarding end-users’ access to or use of services and applications through electronic communications networks liable to restrict those fundamental rights or freedoms may **only** be imposed if they are **appropriate, proportionate and necessary within a democratic society**, and their implementation shall be subject **to adequate procedural safeguards** in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms and general principles of Community law, including **effective judicial protection and due process**. Accordingly, these measures may **only** be taken with due respect for the **principle of presumption of innocence and the right to privacy. A prior fair and impartial procedure shall be guaranteed**, including **the right to be heard** of the person or persons concerned, subject to the need for appropriate conditions and procedural arrangements in duly substantiated cases of urgency in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. **The right to an effective and timely judicial review shall be guaranteed.**”

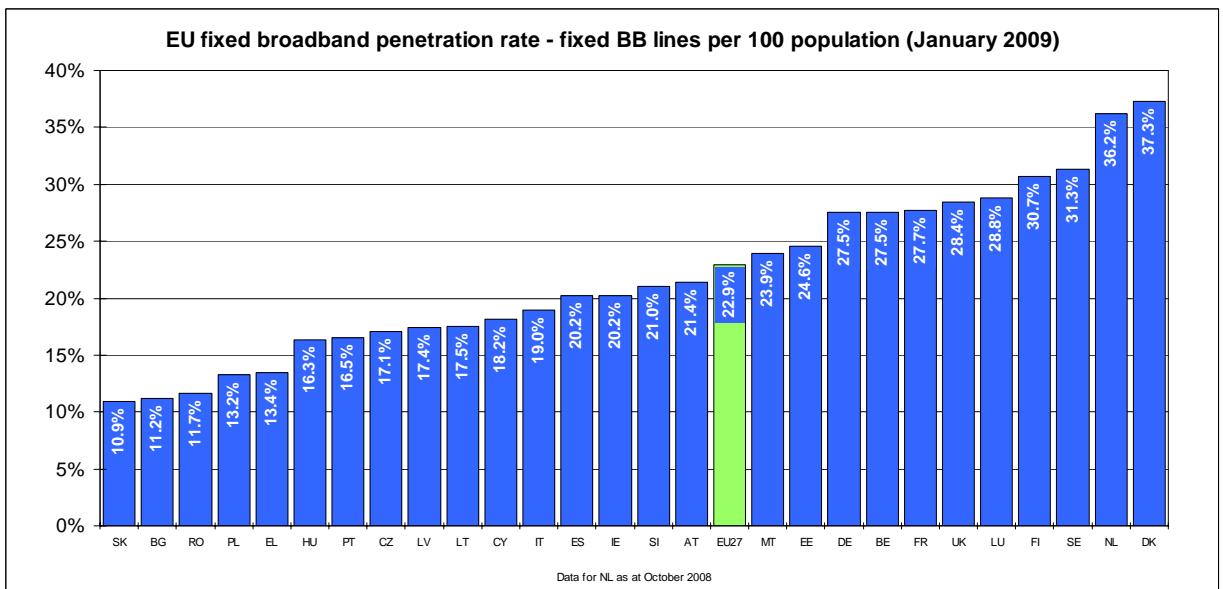
## Annex 2

### Mobile phone penetration in the EU



### Status of broadband take-up in the EU

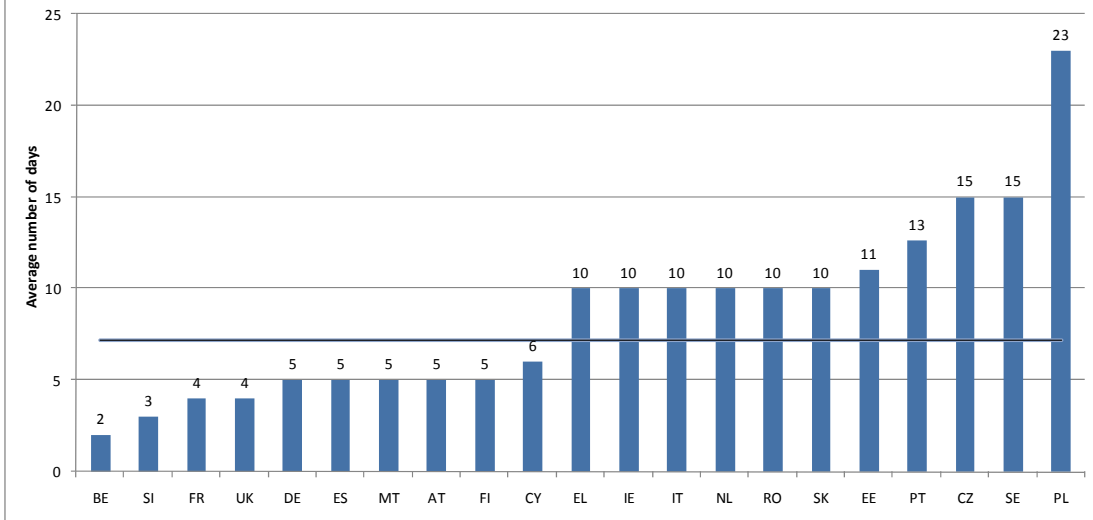
(Broadband means an always-on internet connection with a bandwidth capacity of at least 144 kilobits per second)



### Fixed number portability – days required to port a number

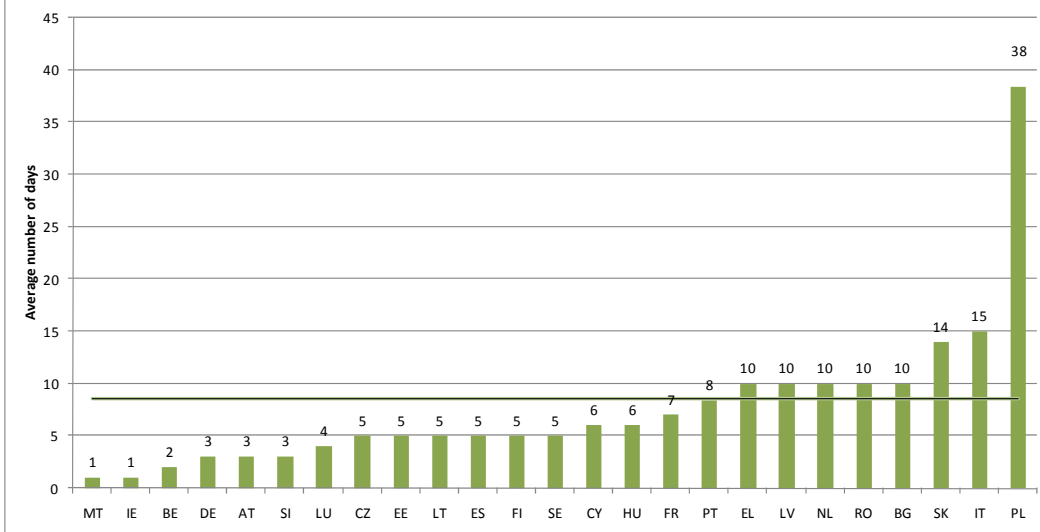


**Time taken in number of days for fixed number portability. October 2008**  
(european average: 7.5 days)

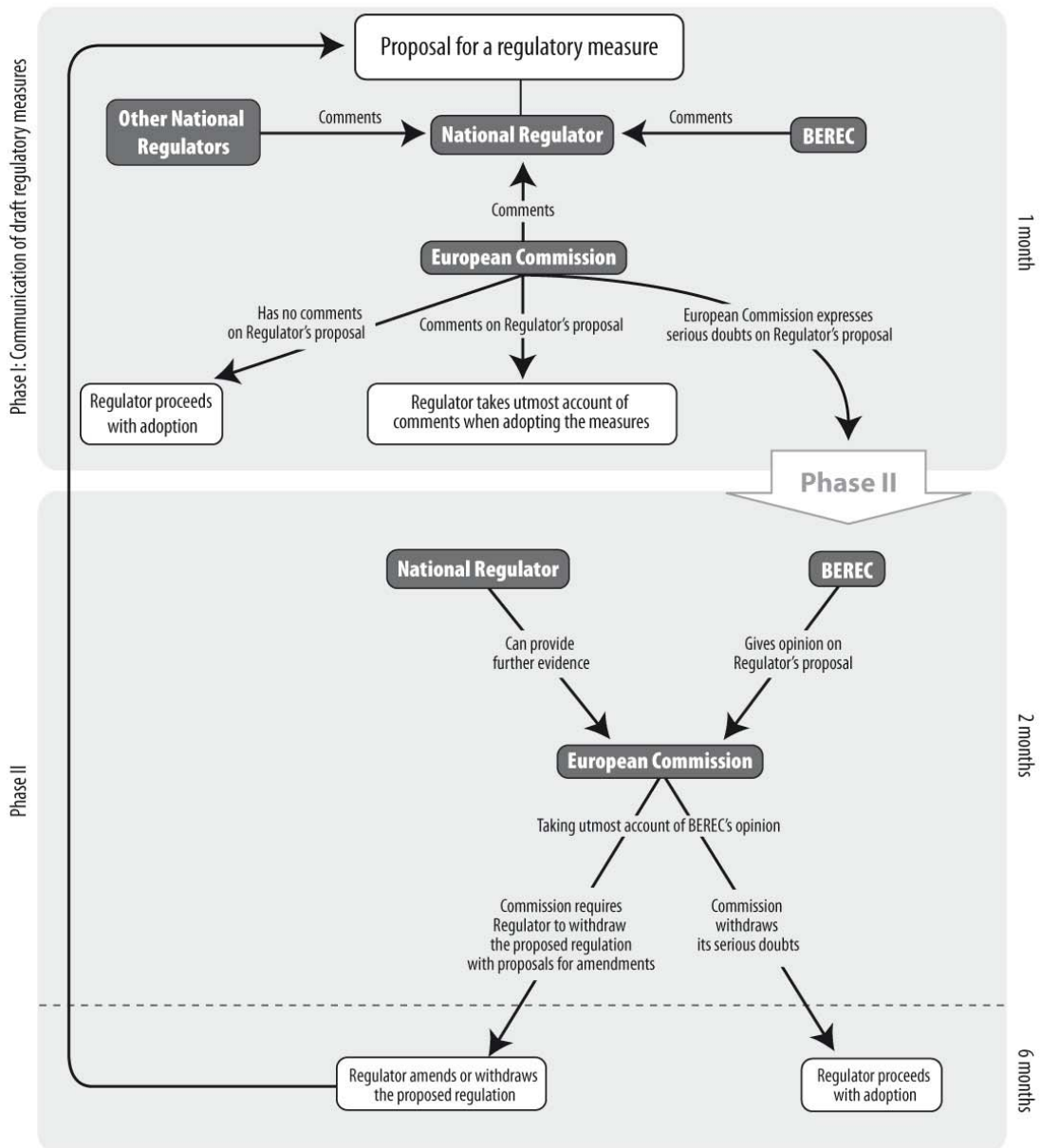


**Mobile number portability – days required to port number**

**Time taken in number of days for mobile number portability. October 2008**  
(european average: 8.5 days)

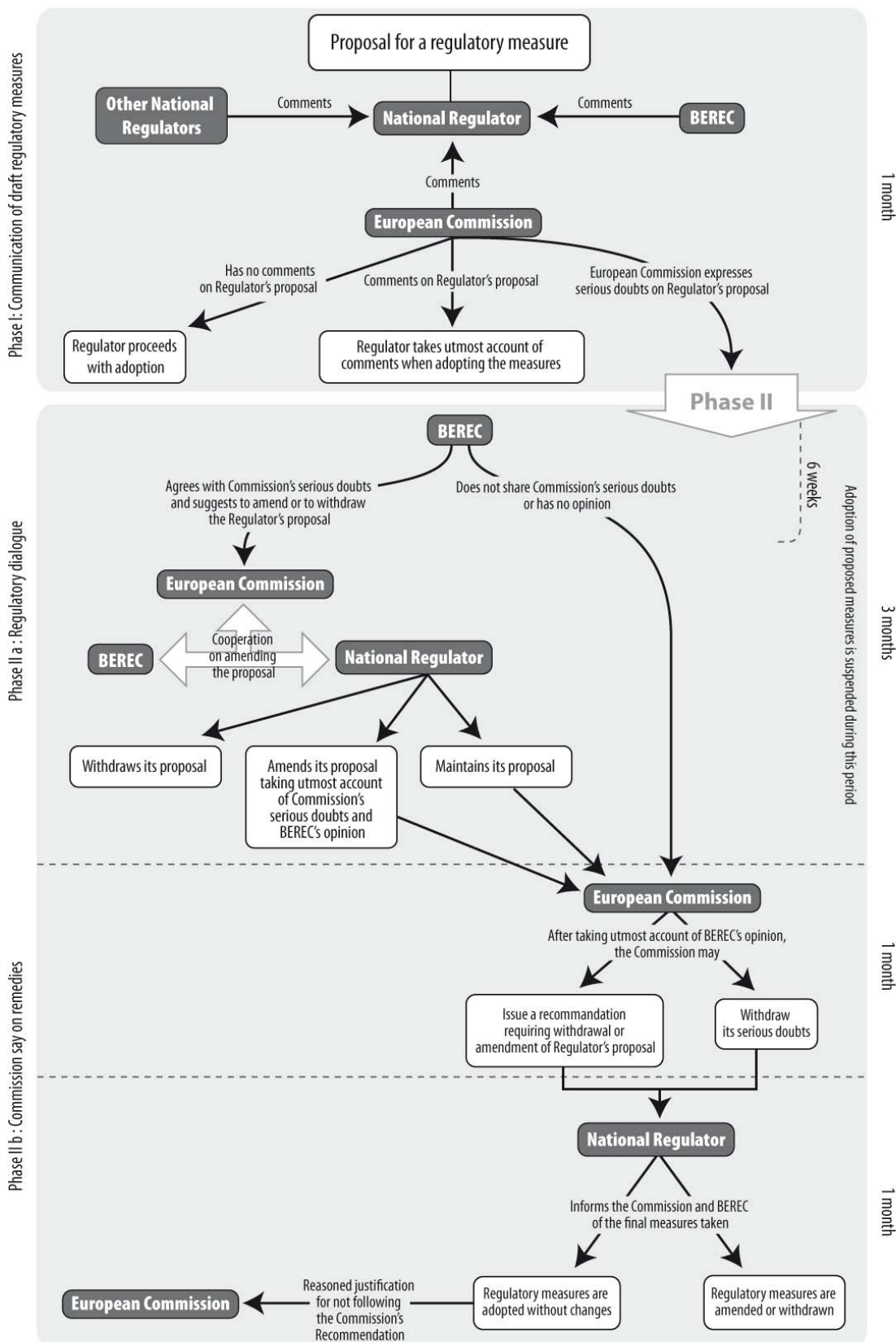


**The new Single Market Procedure for assessing market definitions and significant market power findings proposed by national telecoms regulators**  
**(Article 7 of the Framework Directive 2009)**



\* BEREC - Body of European Regulators for Electronic Communications

## The new Single Market Procedure for assessing regulatory remedies proposed by national telecoms regulators (Article 7a of the Framework Directive 2009)



\* BEREC - Body of European Regulators for Electronic Communications