

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

2007/0247(COD) - 16/02/2009 - Council position

In adopting its common position, the Council has, to a significant extent, endorsed the approach and aims proposed by the Commission and taken on board nearly half of Parliament's 126 amendments adopted at first reading.

The main outstanding issues concern radio spectrum, the new telecoms authority and functional separation. For each of these issues, the Commission, to a large extent supported by the Parliament, has proposed to change the (inter) institutional set-up and, consequently, the balance of power between the various actors, regulatory authorities, the EU institutions and other stakeholders.

Although the Council believes that an update of the regulatory framework for electronic communications would be beneficial for the sector, it is of the view that this could be achieved by improving the current arrangements rather than by setting up alternative mechanisms. The Council's common position therefore seeks to clarify and improve the provisions dealing, inter alia, with NRAs, the Commission and the use of comitology and the role of EU institutions with regard to radio spectrum policy-making.

Principal changes made to the Commission proposal regarding the Framework Directive (2002/21/EC):

- ***National regulatory authorities (NRAs)***: the Council agreed on a wording, which clarifies that, notwithstanding "supervision in accordance with national constitutional law", NRAs shall carry out their regulatory tasks "independently" and with "adequate financial and human resources".
- ***Consolidating the internal market for electronic communications***: the Council does not share the approach proposed, that the Commission be granted the possibility to issue "decisions" on draft measures intended to be taken by NRAs. The Council rather believes it appropriate for the Commission to issue non-binding "opinions" on draft measures proposed by NRAs and to require NRAs to publicly justify its final decision.
- ***Radio spectrum policy***: the Council supports the Commission's proposals, which aim to move towards a more efficient management of spectrum. However, it clarified in further detail the restrictions that may apply to the types of technology and services to be provided. As current arrangements already allow for the adoption of technical implementing measures in the area of radio spectrum, the Council deleted the Article on radio frequency management harmonisation measures.

Principal changes made to the Commission proposal regarding the Authorisation Directive (2002/20/EC):

- ***Harmonisation measures, common selection procedure for issuing rights and the harmonised granting of rights of use for radio frequencies and harmonised conditions for pan-European networks or pan-European electronic communications services***: although the Council to a large extent shares the Commission's objectives in this regard, it feels that some of the proposals are too far-reaching in that they

would too much alter without sufficient justification the current arrangements for radio spectrum policy-making. As a consequence, the Council deleted the Articles of the proposal on harmonisation measures and the common selection procedure for issuing rights, but reinstated Article 8 so as to allow for the harmonised introduction of pan-European electronic communications services, which rely on radio spectrum availability.

Principal changes made to the Commission proposal regarding the Access Directive (2002/19/EC):

- ***Functional separation***: the Council amended the proposed provision on functional separation so as to clarify that functional separation could be imposed by NRAs "as an exceptional measure" and subject to a decision by the Commission in order to achieve the appropriate wholesale provision of certain access products.