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

2007/0247(COD) - 25/11/2009 - Final act

PURPOSE: to reform the EU's regulatory framework for electronic communications networks and services with a view to completing the internal market for electronic communications.

LEGISLATIVE ACT:Directive 2009/140/EC of the European Parliament and of the Council amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services.

CONTENT: following an agreement reached with the European Parliament at third reading, the Council adopted a directive which amends three directives forming part of the regulatory framework for e-communications networks and services, i.e. the framework, access and authorisation directives.

This Directive constitutes part of the "Telecoms Package" which also includes the Directive on users' rights and the creation of Body of European Regulators for Electronic Communications (BEREC).

The new Directive enhances access to high-speed broadband services in remote regions, provides for a more flexible frequency band use, thus making it easier for operators to establish innovative technologies and services, and for the effective management of radio frequencies for electronic communications, since the latter are a public good with an important social, cultural and economic value.

The main amendments of the Directive are as follows:

Radio spectrum: the Directive introduces requirements of **service and technology neutrality** in granting rights of use, together with the increased possibility to transfer rights between undertakings, should increase the freedom and means to deliver electronic communications services to the public, thereby also facilitating the achievement of general interest objectives.Member States shall cooperate with each other and with the Commission in the **strategic planning**, coordination and harmonisation of the use of radio spectrum in the European Community. To this end, they shall take into consideration, inter alia, the economic, safety, health, public interest, freedom of expression, cultural, scientific, social and technical aspects of EU policies as well as the various interests of radio spectrum user communities with the aim of optimising the use of radio spectrum and avoiding harmful interference.

The Commission, taking utmost account of the opinion of the Radio Spectrum Policy Group (RSPG), may submit legislative proposals to the European Parliament and the Council for establishing **multiannual radio spectrum policy programmes**. Such programmes shall set out the policy orientations and objectives for the strategic planning and harmonisation of the use of radio spectrum in accordance with the provisions of this Directive and the Specific Directives.

National regulatory authorities: the new Directive: (i) strengthens the independence of national regulatory authorities responsible for ex-ante market regulation or for resolution of disputes; (ii) further

clarifies the requirements applicable to appeals against decisions of the national regulatory authorities; provides for the Commission, in close cooperation with BEREC, to issue recommendations with regard to the withdrawal and/or amendment of draft measures notified by national regulatory authorities relating to the imposition, amendment or withdrawal of ex ante obligations on operators.

New provisions are set out as regards the conditions and the procedure to be followed by all national regulatory authorities to impose an obligation for functional separation.

Investments: the Directive clarifies the principles and objectives to be followed by the national regulatory authorities in order to give appropriate incentives for investment in new high-speed networks that will support innovation in content-rich Internet services and strengthen the international competitiveness of the European Union.

Protection of citizens' rights: the Directive protects citizens' rights, as measures taken by Member States regarding internet access to, or use of, services and applications through electronic communications networks must be in line with the European convention for the protection of human rights and fundamental freedoms. The text stipulates that 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, including effective judicial protection and due process.

Accordingly, these measures may only be taken with due respect for the principle of the 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. The right to effective and timely judicial review shall be guaranteed.

Moreover, the Directive ensures that even disabled users derive maximum benefit in terms of choice, price and quality.

ENTRY INTO FORCE: 19/12/2009.

TRANSPOSITION: 25/05/2011.

APPLICATION: from 26/05/2011.