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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.7.2009  
COM(2009) 420 final

2007/0247 (COD)

### **OPINION OF THE COMMISSION**

**pursuant to Article 251(2), third subparagraph, point (c) of the EC Treaty, on the European Parliament's amendments to the Council's Common Position regarding the Proposal for**

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

AMENDING THE PROPOSAL OF THE COMMISSION pursuant to Article 250 (2) of the EC Treaty

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### 1. BACKGROUND

#### Procedure

The Commission adopted its proposal for Directive COM(2007) 697 – 2007/0247 (COD) ('Better Regulation Directive') on 13 November 2007 and submitted it to the European Parliament and to the Council on 16 November 2007 for adoption by co-decision procedure as laid down in Article 251 of the EC Treaty.

The Economic and Social Committee gave its opinion on 29 May 2008. The Committee of the Regions adopted its opinion on 19 June 2008.

On 6 November 2008 the Commission adopted, in accordance with Article 250 of the EC Treaty, its amended proposal<sup>1</sup> incorporating in whole or in part many of the amendments voted by the European Parliament in its first reading on 24 September 2008.

The Council, in accordance with Article 251 of the EC Treaty, adopted its common position on the proposal on 16 February 2009<sup>2</sup>.

The Commission adopted its Communication on the common position of the Council on 17 February 2009<sup>3</sup>.

The European Parliament adopted its position in second reading on 6 May 2009.

### 2. OBJECTIVE OF THE COMMISSION PROPOSAL

The aim of the Commission's proposals is to adjust the regulatory framework for e-communications, as regards the Framework<sup>4</sup>, Authorisation<sup>5</sup> and Access Directives<sup>6</sup>, to

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<sup>1</sup> COM(2008) 724 final.

<sup>2</sup> OJ C103E, 5.5.2009, p 1.

<sup>3</sup> COM(2009) 78 final.

<sup>4</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ L 108, 24.4.2002).

improve their effectiveness, reduce the administrative resources needed for implementing economic regulation and make access to radio frequencies simpler and more efficient.

### 3. COMMISSION COMMENTS

#### 3.1. General

At its Plenary Session of 6 May 2009, the European Parliament adopted a number of amendments negotiated with the Council to the Council's common position with a view to securing adoption in second reading. These amendments concern essentially:

- With regard to spectrum: the introduction of greater flexibility through service and technology neutrality albeit with a series of exceptions; the possibility to impose service exclusivity in limited cases; the adoption of pluriannual spectrum policy programmes by the European Parliament and Council upon a proposal by the Commission assisted by the Radio Spectrum Policy Group; the power to harmonise bands where rights are to be made tradable, and exemption from the requirement to initiate a new award of rights in the case of the review of restrictions to existing rights.
- Strengthening the independence of the national regulatory authorities responsible for *ex ante* market regulation and dispute resolution;
- Further clarification of the requirements applicable to appeals against decisions of the national regulatory authorities;
- Provision 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;
- Ensuring that national regulatory authorities take measures to promote the interests of citizens by safeguarding fundamental rights and freedoms of end-users;
- Power for the Commission to adopt further harmonisation measures in the form of recommendations or binding decisions, where divergences in the implementation of remedies persist;
- Strengthening the powers of national authorities to impose obligations for the sharing of facilities or property associated with electronic communications networks;
- Clarification of the principles and objectives to be followed by national regulatory authorities, with particular reference to preserving incentives for investment in new network infrastructure while safeguarding competition;
- Updating and modernisation of provisions in order to improve the technological neutrality of the framework;

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<sup>5</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ L 108, 24.4.2002).

<sup>6</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (OJ L 108, 24.4.2002).

- New provisions setting out the conditions and procedure for the imposition of functional separation by a national regulatory authority.

The Commission accepts the European Parliament's amendments as being in line with the overall purpose and the general characteristics of the proposal.

Concerning Amendment 138 the Commission accepted it in its amended proposal after the European Parliament's first reading but supported the European Parliament-Council compromise text afterwards as a balanced solution. The Commission could, therefore, accept the amendment, but will do its utmost to facilitate the emergence of a compromise between the co-legislators on this issue.

### **3.2. Amended Proposal**

Pursuant to Article 250(2) of the EC Treaty, the Commission amends its Proposal in line with the amendments voted by the European Parliament at its plenary session on 6 May 2009.