



**COUNCIL OF
THE EUROPEAN UNION**

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ADDENDUM TO "I/A" ITEM NOTE

from: General Secretariat of the Council
to: COREPER/COUNCIL

Subject : 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 services, and 2002/20/EC on the authorisation of electronic communications networks and services **[first reading]**

- Adoption (**cp+s**)
 - (a) of the common position
 - (b) of the statement of the Council's reasons
- Statement by the Swedish and United Kingdom delegations
- Statement by the Netherlands delegation
- Statement by the Commission

STATEMENT BY THE SWEDISH AND UK GOVERNMENTS

ON THE BETTER REGULATION DIRECTIVE, REVIEW OF THE ELECTRONIC FRAMEWORK

"The Swedish and United Kingdom Ministers abstained on the Council vote held on 27 November 2008 on the Better Regulation Directive, to enable the review of the Electronic Communications Framework to progress to second reading. We have responded positively to the recent letter from the European Parliament rapporteurs and Committee chairs,

asking all Ministers to enable them to start discussions with the Presidency and the Commission. We will continue to work closely with the French and Czech Republic Presidencies.

However, both Governments continue to have considerable concerns regarding the current Council texts, and will be seeking improvements in the following areas:

For spectrum management by Member States to follow principles of service and technology neutrality, and not to be constrained by giving legal precedence to the ITU (International Telecommunications Union) Radio Regulations in European law (Framework Directive Article 9);

Spectrum Trading, to include flexibility on the dual notification process enabling Member States discretion when imposing notification requirements on market participants in line commitments to reduce regulatory burdens (Framework Directive Article 9b);

General Authorisation of Spectrum, where we have concerns that the current text has made it harder (not easier as in the Commission's proposal) for Member States to issue general authorisations in preference to individual licenses where this is more efficient (Authorisation Directive Article 5);

Regulatory principles for NGA investment which reflect the need for a return on investment, but are guided by competition principles and provide fair access obligations (Framework Directive Articles 8 and 13, and Access Directive);

Functional Separation is maintained as a remedy which can be introduced in national markets where Member States conclude this is the most appropriate solution, without either inappropriate barriers or lengthy delays restricting its application (Access Directive Article 13a).

In addition, we continue to believe that it is important that the following two issues are further developed to strengthen the internal market and harmonise implementation of the regulatory framework:

Independent National Regulatory Authorities (NRAs), distanced from the day to day pressure of politics as well as market operators. We wish for parity with the Energy text which the European Parliament, Commission and all Member States have already agreed (Framework Directive Article 3);

Extending the Commission power of veto to include market remedies, based upon expert advice from the advisory body, culminating with a Commission Decision (legally binding) rather than a Commission opinion. Also for NRAs to be obliged to comply with this advice or explain publicly why they are deviating from this advice (Framework Directive Article 7)."

Explanation of vote by the Netherlands

The Netherlands has great difficulty with the central role of the European Commission in the regulation of telecoms markets. The national regulators should have more latitude to take account of specific market circumstances and not be able to be overruled by the Commission in doing so.

The Netherlands maintains a preference for a regulatory committee procedure for drawing up the list of relevant markets (Framework Directive Article 15).

The Netherlands also attaches great importance to good cooperation with other Member States and recognises the importance of reaching a political agreement. Taking all these factors into consideration, the Netherlands is abstaining from the vote.

COMMISSION STATEMENT

"The Commission takes note of the Common Positions adopted by the Council amending the Commission's proposals on the review of the EU Regulatory Framework for Electronic Communications Networks and Services (the proposals for a Better Regulation Directive, a Citizens' Rights Directive and a Regulation establishing the European Electronic Communications Market Authority).

The Commission notes in particular that the Council's Common Positions depart substantially from the positions taken by the Commission as well as the European Parliament, notably as regards the internal market mechanisms, in particular for ensuring consistent regulatory remedies, the additional remedy of functional separation, spectrum policy, and the establishment of a regulatory body. As regards the regulatory body, the Commission has particular concerns that the Council's position raises institutional questions which constitute a substantial barrier to a satisfactory settlement.

The Commission also notes that the Council's Common Positions diverge from the positions of the Commission and European Parliament on a number of supplementary issues falling under both proposals for Directives amending the regulatory framework. Nonetheless, the Commission is of the view that the divergences that exist in relation to the proposed Citizens' Rights Directive are not of the same magnitude as those relating to the proposed Better Regulation Directive and to the proposed Regulation setting up a regulatory body.

In this context the Commission wishes to reaffirm its position as set out in its amended proposals COM (2008) 720, 723 and 724 which represents a substantial step towards a converged position of the three institutions."

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