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REPORT

from : COREPER

to : COUNCIL

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No. prev. doc. 14826/08 TELECOM 167 MI 404 COMPET 422 CONSOM 160 CODEC 1450

Subject : Review of the EU regulatory framework for electronic communications networks and services:

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

- Political agreement

I. INTRODUCTION

1. The European Commission adopted a proposal for a Better Regulation Directive on 13 November 2007. This proposal forms part of the so-called *review package* of the EU regulatory framework for electronic communications, comprising two proposals for amending Directives (the so-called Better Regulation Directive amending the current Framework, Authorisation and Access Directives and the so-called Citizen's Rights Directive amending the Universal Service and Privacy Directives) and a proposal for a Regulation (establishing a European Electronic Communications Market Authority).

2. With its proposal for a Better Regulation Directive, the Commission aims to adjust the regulatory framework for electronic communications by improving its effectiveness, reducing the administrative resources needed for implementing economic regulation (the market analysis procedure) and making access to radio frequencies simpler and more efficient.
3. A first examination of the proposal by the Working Party on Telecommunications and the Information Society took place under the Slovenian Presidency. On 12 June 2008, the Council held a public exchange of views on the review of the EU regulatory framework for electronic communications networks and services and took note of the presidency's progress reports on the work carried out so far in its preparatory bodies.
4. During the current French Presidency, the proposal was examined in further detail, both on the basis of a Presidency compromise text put together under the Slovenian Presidency and in relation to the European Parliament amendments adopted in its First Reading opinion on 24 September 2008.
5. The Commission adopted its amended proposal, following the first reading of the European Parliament, on 6 November 2008 (doc. 15424/08).
6. The European Economic and Social Committee (EESC) adopted its Opinion on 29 May 2008 and the Committee of the Regions (CoR) on 19 June 2008.

II. OUTCOME OF THE COREPER PROCEEDINGS

1. The text of the Presidency compromise proposal concerning the Authorisation Directive is annexed. This text, which reflects the results from the last WP and Coreper discussions, provides a consolidated version of the proposal for an amending Directive on the basis of the current Directive 2002/20/EC and includes all its provisions (from Article I to Annex II), even those for which no modifications were suggested.

2. The Coreper has reached a broad consensus on the essential features of the Commission proposal and has taken due account of the European Parliament's First Reading Opinion.

Remaining reservations

Linguistic reservations on the text are maintained by all delegations and the Commission has reserved its overall position on the Presidency compromise proposal.

Two delegations still maintain reservations on the specific provision of the granting of rights of use for radio frequencies and numbers (Article 5) (footnote 1).

III. THE TASK FOR COUNCIL

The Council is therefore invited to examine the question still under discussion in order to adopt a political agreement. The text should be sent to legal-linguists for finalisation in view of the adoption of Council's common position.

PRESIDENCY COMPROMISE PROPOSAL FOR THE

CONSOLIDATED VERSION OF THE PROPOSAL AMENDING DIRECTIVE 2002/20/EC (Authorisation Directive)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Acting in accordance with the procedure laid down in Article 251 of the Treaty

[Whereas:]

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective and scope

1. The aim of this Directive is to implement an internal market in electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions in order to facilitate their provision throughout the Community.
2. This Directive shall apply to authorisations for the provision of electronic communications networks and services.

Article 2

Definitions

1. For the purposes of this Directive, the definitions set out in Article 2 of Directive 2002/21/EC (Framework Directive) shall apply.
2. The following **definition** shall also apply:
 - (a) "general authorisation" means a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive.
 - (b) *moved to Framework Directive.*

Article 3

General authorisation of electronic communications networks and services

1. Member States shall ensure the freedom to provide electronic communications networks and services, subject to the conditions set out in this Directive. To this end, Member States shall not prevent an undertaking from providing electronic communications networks or services, except where this is necessary for the reasons set out in Article 46(1) of the Treaty.

2. The provision of electronic communications networks or the provision of electronic communications services may, without prejudice to the specific obligations referred to in Article 6(2) or rights of use referred to in Article 5, only be subject to a general authorisation. The undertaking concerned may be required to submit a notification but may not be required to obtain an explicit decision or any other administrative act by the national regulatory authority before exercising the rights stemming from the authorisation. Upon notification, when required, an undertaking may begin activity, where necessary subject to the provisions on rights of use in Articles 5, 6, and 7.

3. The notification referred to in paragraph 2 shall not entail more than a declaration by a legal or natural person to the national regulatory authority of the intention to commence the provision of electronic communication networks or services and the submission of the minimal information which is required to allow the national regulatory authority to keep a register or list of providers of electronic communications networks and services. This information must be limited to what is necessary for the identification of the provider, such as company registration numbers, and the provider's contact persons, the provider's address, a short description of the network or service, and an estimated date for starting the activity.

Article 4

Minimum list of rights derived from the general authorisation

1. Undertakings authorised pursuant to Article 3, shall have the right to:

(a) provide electronic communications networks and services;

(b) have their application for the necessary rights to install facilities considered in accordance with Article 11 of Directive 2002/21/EC (Framework Directive).

2. When such undertakings provide electronic communications networks or services to the public the general authorisation shall also give them the right to:

(a) negotiate interconnection with and where applicable obtain access to or interconnection from other providers of publicly available communications networks and services covered by a general authorisation anywhere in the Community under the conditions of and in accordance with Directive 2002/19/EC (Access Directive);

(b) be given an opportunity to be designated to provide different elements of a universal service and/or to cover different parts of the national territory in accordance with Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)(8).

Article 5

Rights of use for radio frequencies and numbers

¹1. Member States shall [...] **facilitate the usage of [...] radio frequencies [...] under general authorisations. Member States may grant individual rights of use in order to:**

- **avoid harmful interference;**
- **ensure technical quality of service;**
- **safeguard efficient use of spectrum; or**
- **fulfill other objectives of general interest as defined by Member States in conformity with Community law.**

(48) *Facilitating access to radio frequencies resources for market players will contribute to removing the barriers to market entry. Moreover, technological progress is reducing the risk of harmful interference in certain frequency bands and therefore reducing the need for individual rights of use. Conditions for using spectrum to provide electronic communication services should therefore normally be laid down in general authorisations unless individual rights are necessary, considering the use of the spectrum, to protect against harmful interference, **to ensure technical quality of service, to safeguard efficient use of spectrum** or to meet a specific general interest objective. Decisions on the need for individual rights should be made in a transparent and proportionate manner.*

2. Where it is necessary to grant individual rights of use for radio frequencies and numbers, Member States shall grant such rights, upon request, to any undertaking [...] **for the provision of networks or services under the general authorisation referred to in Article 3**, subject to the provisions of Articles 6, 7 and 11(1)(c) of this Directive and any other rules ensuring the efficient use of those resources in accordance with Directive 2002/21/EC (Framework Directive).

¹ SE and UK have a reservation on paragraph 1.

Without prejudice to specific criteria and procedures adopted by Member States to grant rights of use of radio frequencies to providers of radio or television broadcast content services with a view to pursuing general interest objectives in conformity with Community law, [...] **the rights of use for radio frequencies and numbers shall be granted through open, objective, transparent [...], non-discriminatory and proportionate procedures, and, in the case of radio frequencies, in accordance with the provisions of Article 9 of Directive 2002/21/EC (Framework Directive). An exception to the requirement of open procedures could apply in cases where the granting of individual rights of use of radio frequencies to the providers of radio or television broadcast content services is necessary for achieving a general interest objective as defined by Member States in conformity with Community law.**

When granting rights of use, Member States shall specify whether those rights can be transferred [...] **by the holder of the rights**, and under which conditions. In the case of radio frequencies, **such provision shall be** in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).

Where Member States grant rights of use for a limited period of time, the duration shall be appropriate for the service concerned **in view of the objective pursued and the necessary investments.**

Any individual right to use radio frequencies that is granted for more than ten years and that may not be transferred or leased between undertakings as allowed by Article 9b of the Framework Directive shall be subject to a review by the competent national authority in the light of the criteria in paragraph 1, in particular on a justified request of the holder of the right. If the criteria to grant individual rights of use are no longer applicable, the individual right of use shall be changed into a general authorisation for the use of radio frequencies, or made transferable or leaseable between undertakings in accordance with Article 9b of the Framework Directive.

(49) *The introduction of the 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. [...] **However**, certain general interest obligations imposed on broadcasters for the delivery of audiovisual media services **may require the [...] use of specific criteria [...] for the granting of rights of use [...], when it appears to be [...] essential to meet a [...] specific general interest objective set out [...] by Member States in conformity with Community law**. Procedures associated with the pursuit of general interest objectives should in all circumstances be transparent, objective, proportionate and non-discriminatory.*

Recital (50) is deleted.

(51) *Considering its restrictive impact on free access to radio frequencies, the validity of an individual right of use that is not tradable should be limited in time. Where rights of use contain provision for renewing their validity, [...] **competent national authorities** should first carry out a review, including a public consultation, taking into account market, coverage and technological developments. In view of spectrum scarcity, individual rights granted to undertakings should be regularly reviewed. In carrying out this review, [...] **competent national authorities** should balance the interests of the rights holders with the need to foster the introduction of spectrum trading as well as the more flexible use of spectrum through general authorisations where possible.*

3. Decisions on **the granting of** rights of use shall be taken, communicated and made public as soon as possible after receipt of the complete application by the national regulatory authority, within three weeks in the case of numbers that have been allocated for specific purposes within the national numbering plan and within six weeks in the case of radio frequencies that have been allocated [...] **to be used by electronic communications services** within the national frequency plan. The latter time limit shall be without prejudice to any applicable international agreements relating to the use of radio frequencies or of orbital positions.

4. Where it has been decided, after consultation with interested parties in accordance with Article 6 of Directive 2002/21/EC (Framework Directive), that rights for use of numbers of exceptional economic value are to be granted through competitive or comparative selection procedures, Member States may extend the maximum period of three weeks by up to **a further three weeks**.

With regard to competitive or comparative selection procedures for radio frequencies, Article 7 shall apply.

5. Member States shall not limit the number of rights of use to be granted except where this is necessary to ensure the efficient use of radio frequencies in accordance with Article 7.

6. Competent national authorities shall ensure that radio frequencies are efficiently and effectively used in accordance with Articles 8(2) and 9(2) of Directive 2002/21/EC (Framework Directive). They shall ensure competition is not distorted by any transfer or accumulation of radio frequencies usage rights. For such purposes, Member States may take appropriate measures such as mandating the sale or the lease of rights to use radio frequencies.

(52) *Competent national authorities should have the power to ensure effective use of spectrum [...] and, where spectrum [...] resources are left unused, to take action to prevent anti-competitive hoarding, which can hinder new market entry.*

Article 6

Conditions attached to the general authorisation and to the rights of use for radio frequencies and for numbers, and specific obligations

1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio frequencies and rights of use for numbers may be subject only to the conditions listed [...] in Annex I. Such conditions shall be [...] non-discriminatory, proportionate and transparent **and, in the case of rights of use for radio frequencies, shall be in accordance with Article 9 of Directive 2002/21/EC (Framework Directive).**

2. Specific obligations which may be imposed on providers of electronic communications networks and services under Articles 5(1), 5(2), 6 and 8 of Directive 2002/19/EC (Access Directive) and Article [...] 17 [...] of Directive 2002/22/EC (Universal Service Directive) or on those designated to provide universal service under the said Directive shall be legally separate from the rights and obligations under the general authorisation. In order to achieve transparency for undertakings, the criteria and procedures for imposing such specific obligations on individual undertakings shall be referred to in the general authorisation.

3. The general authorisation shall only contain conditions which are specific for that sector and are set out in Part A of the Annex I and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation.

4. Member States shall not duplicate the conditions of the general authorisation where they grant the right of use for radio frequencies or numbers.

Article 6a

Harmonisation measures

Deleted.

Article 6b

Common selection procedure for issuing rights

Deleted.

Article 7

Procedure for limiting the number of rights of use to be granted for radio frequencies

1. Where a Member State is considering whether to limit the number of rights of use to be granted for radio frequencies **or whether to extend the duration of existing rights other than in accordance with the terms specified in such rights**, it shall *inter alia*:

(a) give due weight to the need to maximise benefits for users and to facilitate the development of competition;

(b) give all interested parties, including users and consumers, the opportunity to express their views on any limitation in accordance with Article 6 of Directive 2002/21/EC (Framework Directive);

(c) publish any decision to limit the granting of rights of use **or the renewal of rights of use**, stating the reasons therefor;

(d) after having determined the procedure, invite applications for rights of use; and

(e) review the limitation at reasonable intervals or at the reasonable request of affected undertakings.

2. Where a Member State concludes that further rights of use for radio frequencies can be granted, it shall publish that conclusion and invite applications for such rights.

3. Where the granting of rights of use for radio frequencies needs to be limited, Member States shall grant such rights on the basis of selection criteria which must be objective, transparent, non-discriminatory and proportionate. Any such selection criteria must give due weight to the achievement of the objectives of Article 8 of Directive 2002/21/EC (Framework Directive) and of the requirements of Article 9 of that Directive [...].

4. Where competitive or comparative selection procedures are to be used, Member States may extend the maximum period of six weeks referred to in Article 5(3) for as long as necessary to ensure that such procedures are fair, reasonable, open and transparent to all interested parties, but by no longer than eight months.

These time limits shall be without prejudice to any applicable international agreements relating to the use of radio frequencies and satellite coordination.

5. This Article is without prejudice to the transfer of rights of use for radio frequencies in accordance with Article 9b of Directive 2002/21/EC (Framework Directive).

Article 8

Harmonised assignment of radio frequencies

Where the usage of radio frequencies has been harmonised, access conditions and procedures have been agreed, and undertakings to which the radio frequencies shall be assigned have been selected in accordance with international agreements and Community rules, Member States shall grant the right of use for such radio frequencies in accordance therewith. Provided that all national conditions attached to the right to use the radio frequencies concerned have been satisfied in the case of a common selection procedure, Member States shall not impose any further conditions, additional criteria or procedures which would restrict, alter or delay the correct implementation of the common assignment of such radio frequencies.

Recital (53) is deleted.

Recital (54) is deleted.

Recital (55) is deleted.

Article 9

Declarations to facilitate the exercise of rights to install facilities and rights of interconnection

At the request of an undertaking, national regulatory authorities shall, within one week, issue standardised declarations, confirming, where applicable, that the undertaking has submitted a notification under Article 3(2) and detailing under what circumstances any undertaking providing electronic communications networks or services under the general authorisation has the right to apply for rights to install facilities, negotiate interconnection, and/or obtain access or interconnection in order to facilitate the exercise of those rights for instance at other levels of government or in relation to other undertakings. Where appropriate such declarations may also be issued as an automatic reply following the notification referred to in Article 3(2).

Article 10

Compliance with the conditions of the general authorisation or of rights of use and with specific obligations

1. **National regulatory authorities shall monitor and supervise compliance with the conditions of the general authorisation or of rights of use and with the specific obligations referred to in Article 6(2), in accordance with Article 11.**

National regulatory authorities [...] **shall have the power to** require undertakings providing electronic communications networks or services covered by the general authorisation or enjoying rights of use for radio frequencies or numbers to provide **all** information necessary to verify compliance with the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article 6(2), in accordance with Article 11.

2. Where a national regulatory authority finds that an undertaking does not comply with one or more of the conditions of the general authorisation or of rights of use or with the specific obligations referred to in Article 6(2), it shall notify the undertaking of those findings and give the undertaking [...] **the opportunity to state its views, [...] within a reasonable time limit.**

[...]

3. [...] **The relevant authority shall have the power to require the cessation of the breach referred to in paragraph 2 either immediately or within a reasonable time limit and shall take appropriate and proportionate measures aimed at ensuring compliance.**

In this regard, Member States [...] **shall** empower the relevant authorities to impose financial penalties where appropriate. The measures and the reasons on which they are based shall be communicated to the undertaking concerned [...] **without delay** and shall stipulate a reasonable period for the undertaking to comply with the measure.

4. Notwithstanding the provisions of paragraphs 2 and 3, Member States [...] **shall** empower the relevant authority to impose financial penalties where appropriate on undertakings for failure to provide information in accordance with obligations imposed under Article 11(1)(a) or (b) of this Directive or Article 9 of Directive 2002/19/EC (Access Directive) within a reasonable period stipulated by the national regulatory authority.

5. In cases of serious and/or repeated breaches of the conditions of the general authorisation **or of the rights of use**, or specific obligations referred to in Article 6(2), where measures aimed at ensuring compliance as referred to in paragraph 3 of this Article have failed, national regulatory authorities may prevent an undertaking from continuing to provide electronic communications networks or services or suspend or withdraw rights of use. **Sanctions and penalties which are effective, proportionate and dissuasive may be applied to cover the period of any breach, even if the breach has subsequently been rectified.**

6. Irrespective of the provisions of paragraphs 2, 3 and 5, where the relevant authority has evidence of a breach of the conditions of the general authorisation rights of use or specific obligations referred to in Article 6(2) that represents an immediate and serious threat to public safety, public security or public health or will create serious economic or operational problems for other providers or users of electronic communications networks or services **or other users of the radio spectrum**, it may take urgent interim measures to remedy the situation in advance of reaching a final decision. The undertaking concerned shall thereafter be given a reasonable opportunity to state its views and propose any remedies. Where appropriate, the relevant authority may confirm the interim measures, **which shall be valid for a maximum of 3 months, but which may, in circumstances where enforcement procedures have not been completed, be extended for a further period of up to three months.**

7. Undertakings shall have the right to appeal against measures taken under this Article in accordance with the procedure referred to in Article 4 of Directive 2002/21/EC (Framework Directive).

(56) *National regulatory authorities should be able to take effective action to monitor and secure compliance with the terms and conditions of the general authorisation or of rights of use, including the power to impose effective financial penalties and/or administrative sanctions in the event of breaches of those terms and conditions.*

Article 11

Information required under the general authorisation, for rights of use and for the specific obligations

1. Without prejudice to information and reporting obligations under national legislation other than the general authorisation, national regulatory authorities may only require undertakings to provide information under the general authorisation, for rights of use or the specific obligations referred to in Article 6(2) that is proportionate and objectively justified for:

(a) systematic or case-by-case verification of compliance with conditions 1 and 2 of Part A, conditions **2 and 6** of Part B and conditions **2 and 7** of Part C of the Annex **I** and of compliance with obligations as referred to in Article 6(2);

(b) case-by-case verification of compliance with conditions as set out in the Annex I where a complaint has been received or where the national regulatory authority has other reasons to believe that a condition is not complied with or in case of an investigation by the national regulatory authority on its own initiative;

(c) procedures for and assessment of requests for granting rights of use;

(d) publication of comparative overviews of quality and/or price of services for the benefit of consumers;

(e) clearly defined statistical purposes;

(f) market analysis for the purposes of Directive 2002/19/EC (Access Directive) or Directive 2002/22/EC (Universal Service Directive);

(fa) safeguarding the efficient use and ensuring the effective management of radio frequencies;

(fb) evaluating future network or service developments that could have an impact on wholesale services made available to competitors.

The information referred to in points (a), (b), (d), (e), [...] (f), **(fa)** and **(fb)** of the first subparagraph may not be required prior to or as a condition for market access.

2. Where national regulatory authorities require undertakings to provide information as referred to in paragraph 1, they shall inform them of the specific purpose for which this information is to be used.

Article 12

Administrative charges

1. Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted shall:

(a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations as referred to in Article 6(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and

(b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.

2. Where national regulatory authorities impose administrative charges, they shall publish a yearly overview of their administrative costs and of the total sum of the charges collected. In the light of the difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.

Article 13

Fees for rights of use and rights to install facilities

Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 8 of Directive 2002/21/EC (Framework Directive).

Article 14

Amendment of rights and obligations

1. Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner, **taking into consideration, where appropriate, the specific conditions applicable to transferable rights of use for radio frequencies. Except where proposed amendments are minor and have been agreed with the holder of the rights or general authorisation, notice** shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.
2. Member States shall not restrict or withdraw rights to install facilities **or rights of use for radio frequencies** before expiry of the period for which they were granted except where justified and where applicable in conformity with **Annex I and** relevant national provisions regarding compensation for withdrawal of rights.

Article 14a

Committee

Deleted.

Article 15

Publication of information

1. Member States shall ensure that all relevant information on rights, conditions, procedures, charges, fees and decisions concerning general authorisations, [...] rights of use **and rights to install facilities** is published and kept up to date in an appropriate manner so as to provide easy access to that information for all interested parties.

2. Where information as referred to in paragraph 1 is held at different levels of government, in particular information regarding procedures and conditions on rights to install facilities, the national regulatory authority shall make all reasonable efforts, bearing in mind the costs involved, to create a user-friendly overview of all such information, including information on the relevant levels of government and the responsible authorities, in order to facilitate applications for rights to install facilities.

Article 16

Review procedures

The Commission shall periodically review the functioning of the national authorisation systems and the development of cross-border service provision within the Community and report to the European Parliament and to the Council on the first occasion not later than three years after the date of application of this Directive referred to in Article 18(1), second subparagraph. For this purpose, the Commission may request from the Member States information, which shall be supplied without undue delay.

Article 17

Existing authorisations

1. **Without prejudice to Article 9a of Directive 2002/21/EC (Framework Directive),** Member States shall bring **general authorisations and individual rights of use** already in existence on [...] **[31 December 2009]** into [...] **conformity with Articles 5, 6, 7, and Annex I of this Directive [...] within two years from the date of entry into force of this Directive at the latest.**

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the obligations under **general authorisations and individual rights of use** already in existence, Member States may extend the validity of those rights and obligations [...] **till [30 September 2012] at the latest**, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefor.

3. Where the Member State concerned can prove that the abolition of an authorisation condition regarding access to electronic communications networks, which was in force before the date of entry into force of this Directive, creates excessive difficulties for undertakings that have benefited from mandated access to another network, and where it is not possible for these undertakings to negotiate new agreements on reasonable commercial terms before the date of application referred to in Article 18(1), second subparagraph, Member States may request a temporary prolongation of the relevant condition(s). Such requests shall be submitted by the date of application referred to in Article 18(1), second subparagraph, at the latest, and shall specify the condition(s) and period for which the temporary prolongation is requested.

The Member State shall inform the Commission of the reasons for requesting a prolongation. The Commission shall consider such a request, taking into account the particular situation in that Member State and of the undertaking(s) concerned, and the need to ensure a coherent regulatory environment at a Community level. It shall take a decision on whether to grant or reject the request, and where it decides to grant the request, on the scope and duration of the prolongation to be granted. The Commission shall communicate its decision to the Member State concerned within six months after receipt of the application for a prolongation. Such decisions shall be published in the Official Journal of the European Communities.

[Article 18

Transposition

Article 19

Entry into force

Article 20

Addressees]

ANNEX I

The conditions listed in this Annex provide the maximum list of conditions which may be attached to general authorisations (Part A), rights to use radio frequencies (Part B) and rights to use numbers (Part C) as referred to in Article 6(1) and Article 11(1)(a), **within the limits allowed under Articles 5, 6, 7, 8 and 9 of Directive 2002/21/EC (the Framework Directive).**

A. Conditions which may be attached to a general authorisation

1. Financial contributions to the funding of universal service in conformity with Directive 2002/22/EC (Universal Service Directive).
2. Administrative charges in accordance with Article 12 of this Directive.
3. Interoperability of services and interconnection of networks in conformity with Directive 2002/19/EC (Access Directive).
4. Accessibility **by end users** of numbers from the national numbering plan [...], **numbers from the European Telephone Numbering Space, the Universal International Freephone Numbers, and, where technically and economically feasible, from numbering plans of other Member States, and** conditions in conformity with Directive 2002/22/EC (Universal Service Directive).
5. Environmental and town and country planning requirements, as well as requirements and conditions linked to the granting of access to or use of public or private land and conditions linked to co-location and facility sharing in conformity with Directive 2002/22/EC (Framework Directive) and including, where applicable, any financial or technical guarantees necessary to ensure the proper execution of infrastructure works.
6. "Must carry" obligations in conformity with Directive 2002/22/EC (Universal Service Directive).

7. Personal data and privacy protection specific to the electronic communications sector in conformity with Directive [...] **2002/58/EC of the European Parliament and of the Council (Directive on Privacy and electronic communications)**.

8. Consumer protection rules specific to the electronic communications sector, including conditions in conformity with Directive 2002/22/EC (Universal Service Directive), **and conditions on accessibility for users with disabilities, in accordance with Article 7 of that Directive.**

9. Restrictions in relation to the transmission of illegal content, in accordance with Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market⁽²⁾ and restrictions in relation to the transmission of harmful content in accordance with Article 2a(2) of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

10. Information to be provided under a notification procedure in accordance with Article 3(3) of this Directive and for other purposes as included in Article 11 of this Directive.

11. Enabling of legal interception by competent national authorities in conformity with Directive [...] **2002/58/EC (Directive on Privacy and electronic communications)** and Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

11a. Terms of use for communications from public authorities to the general public for warning the public of imminent threats and for mitigating the consequences of major catastrophes.

12. Terms of use during major disasters **or national emergencies** to ensure communications between emergency services and authorities [...].

13. Measures regarding the limitation of exposure of the general public to electromagnetic fields caused by electronic communications networks in accordance with Community law.

14. Access obligations other than those provided for in Article 6(2) of this Directive applying to undertakings providing electronic communications networks or services, in conformity with Directive 2002/19/EC (Access Directive).

15. Maintenance of the integrity of public communications networks in accordance with Directive 2002/19/EC (Access Directive) and Directive 2002/22/EC (Universal Service Directive) including by conditions to prevent electromagnetic interference between electronic communications networks and/or services in accordance with Council Directive 89/336/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to electromagnetic compatibility.

16. Security of public networks against unauthorised access according to Directive [...] **2002/58/EC (Directive on Privacy and electronic communications).**

17. Conditions for the use of radio frequencies, in conformity with Article 7(2) of Directive 1999/5/EC, where such use is not made subject to the granting of individual rights of use in accordance with Article 5(1) of this Directive.

18. Measures designed to ensure compliance with the standards and/or specifications referred to in Article 17 of Directive 2002/21/EC (Framework Directive).

19. Transparency obligations on undertakings providing electronic communications services available to the public to ensure end-to-end connectivity, in conformity with the objectives and principles set out in Article 8 of Directive 2002/21/EC, disclosure regarding traffic management policies and, where necessary and proportionate, access by national regulatory authorities to such information needed to verify the accuracy of such disclosure.

B. Conditions which may be attached to rights of use for radio frequencies

1. [...] **Obligation to provide a service or to use a type of technology** for which the rights of use for the frequency has been granted, including, where [...] **appropriate, coverage and quality requirements.**
2. Effective and efficient use of frequencies in conformity with Directive 2002/21/EC (Framework Directive) [...].
3. Technical and operational conditions necessary for the avoidance of harmful interference and for the limitation of exposure of the general public to electromagnetic fields, where such conditions are different from those included in the general authorisation.
4. Maximum duration in conformity with Article 5 of this Directive, subject to any changes in the national frequency plan.
5. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with Directive 2002/21/EC (Framework Directive).
6. Usage fees in accordance with Article 13 of this Directive.
7. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
8. Obligations under relevant international agreements relating to the use of frequencies.
9. **Obligations specific to an experimental use of radio frequencies.**

C. Conditions which may be attached to rights of use for numbers

1. Designation of service for which the number shall be used, including any requirements linked to the provision of that service **and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC (Framework Directive).**
2. Effective and efficient use of numbers in conformity with Directive 2002/21/EC (Framework Directive).
3. Number portability requirements in conformity with Directive 2002/22/EC (Universal Service Directive).
4. Obligation to provide public directory subscriber information for the purposes of Articles 5 and 25 of Directive 2002/22/EC (Universal Service Directive).
5. Maximum duration in conformity with Article 5 of this Directive, subject to any changes in the national numbering plan.
6. Transfer of rights at the initiative of the right holder and conditions for such transfer in conformity with Directive 2002/21/EC (Framework Directive).
7. Usage fees in accordance with Article 13 of this Directive.
8. Any commitments which the undertaking obtaining the usage right has made in the course of a competitive or comparative selection procedure.
9. Obligations under relevant international agreements relating to the use of numbers.

(57) *The conditions that may be attached to authorisations should cover specific conditions governing accessibility for users with disabilities and the need of public authorities to communicate with the general public before, during and after major disasters. Also, considering the importance of technical innovation, Member States should be able to issue authorisations to use spectrum for experimental purposes, subject to specific restrictions and conditions strictly justified by the experimental nature of such rights.*

ANNEX II

Deleted.
