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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.2.2009
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2007/ 0247/ 0248 / 0249 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

**pursuant to the second subparagraph of Article 251(2) of the EC Treaty
concerning the common positions of the Council on the adoption of**

**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;**

**a Directive of the European Parliament and of the Council amending Directives
2002/22/EC on universal service and users' rights relating to electronic communications
networks and services and 2002/58/EC concerning the processing of personal data and
the protection of privacy in the electronic communications sector and Regulation (EC)
No 2006/2004 on cooperation between national authorities responsible for the
enforcement of consumer protection laws; and**

**a Regulation of the European Parliament and of the Council establishing the Group of
European Regulators in Telecoms**

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a Directive of the European Parliament and of the Council amending Directives 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sectors and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws; and

a Regulation of the European Parliament and of the Council establishing the Group of European Regulators in Telecoms

1. BACKGROUND

The Commission adopted its proposals for Directives COM(2007) 697 – 2007/0247 (COD) ('Better Regulation Directive'), COM(2007) 698 – 2007/0248 (COD) ('Citizens' Rights Directive') and its proposal for a Regulation COM (2007) 699 – 2007/0249 (COD) on 13 November 2007 and submitted them to the European Parliament and to the Council on 13, 15 and 16 November 2007.

The Commission adopted its amended proposals incorporating in whole or in part many of the amendments voted by the European Parliament in its first reading on 24 September 2008, in accordance with Article 250 of the EC Treaty, on 5/6 November 2008¹.

The Council, in accordance with Article 251 of the EC Treaty, adopted its common positions on these proposals on [...].²

2. AIM OF THE COMMISSION'S PROPOSALS

The aim of the Commission's proposals is to adjust the regulatory framework for e-communications, i.e.

¹ COM(2008) 724, 723 and 720 final, respectively.

² OJ C.

- the Framework³, Authorisation⁴ and Access Directives⁵, to improve their effectiveness, reduce the administrative resources needed for implementing economic regulation and make access to radio frequencies simpler and more efficient, and
- the Universal Service Directive⁶ and the Directive on privacy and electronic communications⁷, to strengthen certain consumer and user rights and to ensure that electronic communications are trustworthy, secure and reliable and provide a high level of protection for individuals' privacy and personal data;

and to establish an independent expert body that would make an effective contribution to furthering the completion of the internal market by assisting the Commission and the national regulatory authorities in implementing the EU regulatory framework.

In the Commission's view, its position as set out in its amended proposals COM(2008) 720, 723 and 724 represent a substantial step towards a converged position on the part of the three institutions.

3. COMMENTS ON THE COUNCIL'S COMMON POSITION

The Commission notes that the Council's position departs substantially from those of the Commission and 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 that constitute a substantial barrier to a satisfactory settlement.

The Commission also notes that the Council's position diverges from those of the Commission and European Parliament on a number of supplementary issues falling under both proposals for directives to amend the regulatory framework. Nonetheless, the Commission considers that the divergences relating to the proposed Citizens' Rights Directive are not of the same magnitude as those relating to the proposed Better Regulation Directive and the proposed Regulation setting up a regulatory body.

4. CONCLUSION

In its comments above, the Commission draws attention to the divergences that exist between its proposals, as amended, and the Council's common positions.

³ 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).

⁴ 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).

⁵ 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).

⁶ 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 (OJ L 108, 24.4.2002, p. 51).

⁷ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (OJ L 201, 31.7.2002, p. 37).

Nonetheless, and subject to its statement attached to the minutes of the Council of 27 November 2008, the Commission affirms its belief that its amended proposals can contribute to a balanced agreement between the institutions that represents an advance for citizens and businesses in the European single market. Accordingly, the Commission stands ready to facilitate an agreement between the co-legislators.

COMMISSION STATEMENT

The Commission takes note of the Common Position 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 Position departs substantially from those 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 Position diverges from those 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.