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Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012**

(Text with EEA relevance)

{SWD(2013) 331 }

{SWD(2013) 332 }

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### 1.1. Objectives of the proposal

Europe must tap into new sources of growth to restore competitiveness, drive innovation and create new jobs. The global economy is evolving towards an Internet economy, and ICT should be fully recognised as a source of smart, sustainable and inclusive growth. Europe cannot afford to renounce the benefits of connected technologies which account for 50% of productivity gains in recent years, across all sectors; which create five jobs for every two lost; which is a driver of innovative new services which can quickly reach global scale if enabled to grow. This is the key for Europe to emerge stronger from the crisis, if we address impediments to growth arising from ongoing fragmentation. This has been fully acknowledged by the Spring European Council of 2013, the Conclusions of which foresaw that the Commission should report by October 2013 on the remaining obstacles to the completion of a fully functioning Digital Single Market, and present concrete measures to establish the single market in information and telecommunications technology as early as possible.

The general objective of the proposal is to move towards a single market for electronic communications in which:

- citizens and businesses can access electronic communications services wherever they are provided in the Union, without cross-border restrictions or unjustified additional costs;
- companies providing electronic communications networks and services can operate and provide them wherever they are established or their customers are situated in the EU.

This ambitious goal is important in itself, after over a decade of Union legislative interventions to liberalise and integrate these markets. Urgent and decisive measures to achieve it, as laid down in this proposal, are all the more vital because some of them will take time, after adoption, to produce all of their effects. A single market for electronic communications would promote competition, investment and innovation in networks and services by fostering market integration and the cross-border investment in networks and the provision of services. The specific measures proposed should lead to greater levels of competition on infrastructure quality as well as price, stronger innovation and differentiation, including in business models, and to easier planning of the commercial and technical elements of investment decisions regarding entry or expansion on wireless or fixed markets. It will thus underpin other measures taken to promote the ambitious broadband targets set out in the Digital Agenda for Europe as well as the establishment of a genuine Digital Single Market where content, application and other digital services can freely circulate. Enhanced levels of infrastructure competition and integration across the Union should also lead to a reduction in bottlenecks and thus in the need for *ex ante* regulation of electronic communications markets, making this over time a sector like any other economic sector subject to horizontal regulation and competition rules.

The growing availability of digital infrastructures and services would in turn increase consumer choice and quality of service, and contribute to territorial and social cohesion, as well as facilitate mobility across the EU; while for the digital economy at large, a better functioning electronic communications sector throughout the Union should lead to greater choice and quality of business inputs, enabling the attainment of productivity gains associated with ICT use as well as from modernised public services. The ultimate goal is to underpin

European competitiveness in a world which increasingly depends on the digital economy to function and to grow.

Outstanding single market integration challenges include: first, to remove unnecessary obstacles in the authorisation regime and in the rules applying to service provision so that an authorisation obtained in one Member State is valid in all Member States, and that operators can provide services on the basis of consistent and stable application of regulatory obligations. Second, to ensure greater harmonisation for accessing essential inputs: by guaranteeing mobile operators predictable assignment conditions and coordinated timeframes to access spectrum for wireless broadband across the EU; by harmonising ways to access European fixed networks so that providers can more easily offer their services across the single market. Third, to guarantee common high levels of consumer protection across the Union and common commercial conditions in this respect, including measures to gradually end mobile roaming surcharges and safeguarding access to the open internet. These are distinct challenges, to which this proposal brings distinct solutions, but all are vital to commercial and investment decision-making in this sector and for consumers' benefit, all must be addressed together now to unleash the single market. These sit alongside the wider challenges of building a digital single market, such as the rules that apply to on line content.

For Europeans to be able to enjoy new innovative high quality services, investment in next generation infrastructure needs to speed up. The right regulatory environment is crucial to contribute to a dynamic and competitive market. It must provide the right balance of risk and reward for those prepared to invest. And it can bring fragmentation of services provision to an end, so that their full benefits are available to all industries and users across the EU. In order to support these objectives, the Commission is adopting together with this proposal a Recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment.<sup>1</sup> This Recommendation will promote competition and enhance investments in high-speed networks by providing long-term stability of copper access prices, ensuring access seekers equal access to the incumbent operators' networks thereby ensuring a level playing field, and by setting out the conditions under which price regulation of NGA networks is no longer warranted, in order that investors in such networks would have greater freedom to discover appropriate pricing strategies to secure a return in the presence of competing infrastructures such as regulated copper, as well as cable in some areas and, increasingly, 4<sup>th</sup> generation mobile networks.

This proposal must also be considered in the context of other recent or impending initiatives in the field. The proposal builds upon and advances the main directives of 2002 governing the provision of electronic communications, as amended in 2009, by introducing directly applicable legislative provisions which shall operate in conjunction with the provisions of the directives on subjects such as authorisation, spectrum assignment and access to networks. The proposal is adopted against the background of the Commission proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks<sup>2</sup>, which already took the approach of addressing in a single instrument a number of distinct regulatory cost elements at various stages of the network investment process which, taken together, allow reductions in broadband roll-out costs of up to 30%. This proposal is also adopted in the knowledge that the Commission Recommendation on relevant markets<sup>3</sup> is to be reviewed in 2014, and that preparatory work is well advanced; rapid adoption and implementation of this proposal could allow a reduction in

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<sup>1</sup> COM [insert final reference]

<sup>2</sup> COM(2013) 147.

<sup>3</sup> OJ L 344, 28.12.2007, p. 65.

the number or scope of markets subject to *ex ante* regulation as part of the prospective analysis of the development of competition in a single market.

## 1.2. General context

In today's world, many new digital services and applications are coming online within the EU's single market. Today's innovation and growth opportunities are often digital in virtually every sector of the economy, ranging from the automotive sector (connected cars) to energy (smart grids), from public administrations (e-government) to general services (e-health). Running almost any kind of business, from small start-ups to large enterprises, requires access to state of the art services and infrastructure. This entire ecosystem depends on the connectivity provided by electronic communications networks.

Today, Europe is fragmented into 28 separate national communications markets, each with a limited number of players. As a consequence, while no operator is present in more than half of the Member States, most in far fewer, overall more than 200 operators serve a market of 510 million of customers. EU rules on, for example, authorisations, regulatory conditions, spectrum assignment and consumer protection are implemented in diverging ways. This patchy scenario raises barriers to entry and increases the costs for operators wanting to provide cross-border services thereby impeding their expansion. This stands in stark contrast with the US or China who have one single market of 330 and 1400 million customers respectively, served by four to five large operators, with one legislation, one licensing system, and one spectrum policy.

Economies of scale and new growth opportunities can improve the returns on investment in high-speed networks and can at the same time drive competition and global competitiveness. Yet within the EU, operators cannot benefit sufficiently from them. Other parts of the world are making significant digital efforts and investments - these investments are paying off for both investors and consumers, but in Europe such upgrades are not happening fast enough.

At the same time, due to fragmented national markets, consumers face less choice, services which are less innovative and of lower quality, and they still pay a high price to make calls across borders or 'roam' within the EU. This means they are unable to make the most of digital services potentially available today.

As a result, Europe is losing out on a major potential source of growth. In a world where ICT is pervasive, a fragmented electronic communications market undermines efficiency and productivity across the economy. The untapped potential of an EU single market in electronic communications is estimated at up to 0.9% GDP, or €110 billion per year.<sup>4</sup> The benefits from a single market for business communication services alone amount to almost €90 billion per year.<sup>5</sup>

A sound telecommunications market underpins a wider digital economy, whose dynamism of is reflected in its sustained employment growth. To give some idea of the scale and robustness of that wider economy, there are more than 4 million ICT specialists working in the EU, a number which keeps on growing despite the recession. In the wider economy, increasing ICT investment, improving e-skills in the labour force and reforming the conditions for the

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<sup>4</sup> *Steps towards a truly internal market for e-communications in the run-up to 2020*, Ecorys, TU Delft and TNO, 2012.

<sup>5</sup> *Business communications, economic growth and the competitive challenge*, WIK, 2012.

Internet economy could boost GDP by an additional 5% up to 2020,<sup>6</sup> and create 3.8 million jobs.<sup>7</sup>

Market barriers for electronic communications impede the benefits of cross-European services: better quality, economies of scale, greater investment, increased efficiency and stronger bargaining positions. This negatively affects the wider digital eco-system including EU equipment manufacturers, and content and application providers, from start-ups to governments. It also has an impact on economic sectors such as banking, automotive, logistics, retail, health, energy or transport that rely on connectivity to enhance productivity, for instance, through cloud computing, connected objects and integrated service provision.

### 1.3. Political background

The Digital Agenda for Europe (DAE), a flagship initiative of the EU's Europe 2020 Strategy, has already signalled this vital role of ICT and network connectivity. It sets out many initiatives to promote investment, enhance competition and reduce the cost of rolling out high-speed networks, to ensure that all Europeans have access to fast broadband. The Commission has also launched a Grand Coalition for Digital Jobs, to address the employment potential of this sector.

The Commission is also implementing initiatives to ensure a "Digital Single Market", and to promote online content, including e-commerce and e-government. It has also proposed a reformed EU Data Protection Regulation, to protect citizens' privacy while facilitating innovation and business within a single market; and a strategy to promote cyber-security and defend EU critical infrastructures and networks, including a draft Directive on Network and Information Security,<sup>8</sup> which is a vital support to the confidence of citizens and consumers in the online environment.

Moving towards a single market in electronic communications would support the Digital Single Market ecosystem. Such a market would imply, not just modern infrastructure, but also innovative and secure digital services.

Recognising this, the 2013 Spring European Council stressed the importance of the digital single market for growth and called for the Commission to present (in time for the October European Council) concrete measures to establish a Single Market in ICT as early as possible. This proposal, together with the Commission Recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment, forms a set of balanced measures aimed at moving towards a Single Market in Telecommunications and fostering investment.

## 2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENT

### 2.1. Views of stakeholders

Since the Spring European Council set out in its conclusions the need for concrete proposals to be presented before its October European Council, public consultations had to be conducted within this challenging time-table. In addition to specific formal consultations and consultative events, the Commission has engaged extensively with a wide range of

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<sup>6</sup> *Capturing the ICT dividend*, Oxford Economics Research, 2011.

<sup>7</sup> *Quantitative estimates of the demand for cloud computing in Europe and the likely barriers to takeup*, IDC, 2012.

<sup>8</sup> COM(2013) 48.

stakeholder organisations to assess the general state of the electronic communications market and how to establish a single market. It has met and received submissions from stakeholders representing all industry segments, consumer organisations, civil society, and national regulators and governments.

On top of that, the Commission organised several consultative events attended by stakeholders representing all segments of the industry, consumers and civil society<sup>9</sup>. These consultations have shown that a large majority of stakeholders share the Commission's problem analysis and recognise that urgent action is needed.

Furthermore, discussions were held in the European Parliament and in the Council of Ministers (TTE Council). In Council, most delegations shared the problem analysis and the need for taking measures to move towards a single market, with a view to safeguard or improve competition and consumer choice, to address net neutrality and roaming and to avoid regulatory arbitrage whilst ensuring more regulatory consistency, including in spectrum management and at the same time avoiding excessive centralisation of competences. Discussions in the European Parliament showed strong support for the thrust of the Commission's proposals and highlighted in particular the urgency of eliminating roaming as part of a single market for electronic communications as well as of introducing a high level of consumer protection and clear rules on net neutrality.

## 2.2. Expertise

A major study was completed in 2012 on 'Steps towards a truly internal market for e-communications', also known as the "cost of non-Europe in telecoms".<sup>10</sup> The study assessed the state of the EU's single market for electronic communications and estimated the economic potential of a single market.

The Commission also used many other sources of evidence, such as the annual Digital Agenda Scoreboard and economic studies conducted by DG ECFIN, for instance on fragmentation of the telecommunications market in Europe.<sup>11</sup> The EU consultation mechanism under the regulatory framework has also highlighted inconsistent practices by national regulatory authorities (NRAs) when regulating relevant markets. Furthermore, in the context of the Radio Spectrum Policy Programme, the Commission detected a considerable lack of coherence across Member States regarding the authorisation and the opening of spectrum bands for technology-neutral use especially in terms of conditions attached and timing.

## 2.3. Assessment of the impact of the proposed Regulation

In line with its "Better Regulation" policy, the Commission services carried out an impact assessment of policy alternatives.

The main sources for regulatory fragmentation are linked to the main sector-specific requirements for the provision of electronic communications which are subject to EU law (authorisation, access to fixed and wireless inputs, compliance with end-user protection rules). While each of these elements has very distinct features, and the solutions to fragmentation will necessarily be very different, they are all vital if the main barriers to integrated provision

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<sup>9</sup> In particular, a public information session was held in Brussels on 17 June 2013. A further event took place as part of the Annual Digital Agenda Assembly, held on 19 June in Dublin.

<sup>10</sup> *Steps towards a truly internal market for e-communications in the run-up to 2020*, Ecorys, TU Delft and TNO, 2012.

<sup>11</sup> *European Commission, European Economy Occasional Papers 129: Market Functioning in Network Industries - Electronic Communications, Energy and Transport, 2013.*

of electronic communications networks and services in the Union are to be overcome. In particular, the assessment of solutions has been broken down by reference to a) barriers due to national authorisation regimes linked with inconsistency in regulatory approaches implemented by NRAs; b) lack of co-ordination in spectrum assignments and conditions as well as regulatory uncertainty as to the availability of frequencies; c) lack of wholesale products which allow the provision of services using the network of another operator with consistent service interoperability levels, in the framework of market remedies or reciprocal negotiations; d) fragmentation of consumer protection rules leading to uneven levels of consumer protection and varying commercial conditions, including high costs of roaming and international calls as well as blocking or throttling of services.

In order to tackle these sources of fragmentation, three policy options were selected for further analysis. The first option was based on the regulatory framework for electronic communications as it stands. The second option considered a single legislative instrument (a Regulation) adjusting the regulatory framework only where necessary for a single EU market for electronic communications, based on enhanced EU coordination. The third option included the substance of the second option, but replaced the current governance structure by a single EU regulator in order to achieve full regulatory coordination.

Each policy option was assessed against its effectiveness to achieve the policy objectives, focusing on the costs and benefits for demand and supply sides, including the impact on the structure of the EU electronic communications industry, the economy, jobs, consumer surplus and the environment.

The impact assessment report concludes that the second option is the best available. First of all, a single European authorisation aims at reducing the administrative burden for European operators and would ensure consistency of their regulatory treatment.

The coordination of use of radio spectrum within the Single market will ensure a synchronised availability of spectrum input and the application of consistent conditions attached to its use across Europe, thereby ensuring an efficient use of spectrum. At the same time, this would support a predictable investment environment for high-speed networks, including their wide territorial coverage, which is also a long-term end-user interest.

The availability of standardised wholesale access products at EU level as a potential remedy for significant market power will allow fixed operators to provide their connectivity services to their customers throughout the Union, with a high quality of service. Such availability is expected to have a positive effect on investments, especially across Member State borders, making it easier for companies to enter new markets to follow customer demand and allowing them to do so with access products of a high quality standard, thus enhancing competition and requiring operators to improve their offer by investing in infrastructure and services.

Common rules on quality of services will ensure the freedom of users to have access to services and applications of their choice and on the basis of clear contractual terms throughout the Union, without their internet access being unduly throttled or blocked. They will at the same time ensure the possibility to acquire specialised services for the provision of specific content, applications and services with an enhanced quality of services. Strengthened transparency and contractual rights would ensure the consumers' interest in high quality and reliable services and will strengthen the competitive dynamics of the market.

Finally measures on unjustifiable price differences between domestic and intra-EU calls and those facilitating the provision of Roaming Like At Home offers through roaming agreements aim at abolishing unjustified additional costs for electronic communications services provided across borders.

In conclusion this option would enhance legal predictability and transparency in the most efficient and timely manner. In particular, greater contestability of markets, more common operating conditions (input access, consumer-specific rules) as well as the pass-on of scale advantages due to customer price elasticity or competitive pressure, should lead to greater convergence. Greater competitive pressure, leading to incentives to differentiate, plus greater scale advantages, greater regulatory predictability, and a better environment for mass distribution of innovative services, should all in due course improve the investment environment. While these proposals are expected to have a positive impact on job creation, the precise social and employment impacts are difficult to assess at this stage. The Commission will pay special attention to this aspect during its monitoring and evaluation of the legislation.

Compared to the preferred option, 3 to 5 years more would be needed to achieve the desired result under options 1 (applying the current framework) and 3 (complete change of the regulatory governance for pan-EU services), with foregoing potential additional GDP up to 3.7% over the period 2015 – 2020.

It also takes least time to produce its effects and deliver all the specific objectives, thus achieving the highest possible economic and social benefits of all the options considered.

The Impact Assessment Board delivered an opinion on the draft impact assessment on 6 September 2013.

The report and its executive summary are published with the proposal.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union, as it relates to the internal market for electronic communications and its functioning.

#### **3.2. Subsidiarity**

The current regulatory framework has not been able to fully deliver its objective to establish a single market for electronic communications. The differences in national rules, while compatible with the existing EU regulatory framework, nevertheless create barriers to operating and acquiring services across borders, thereby limiting the freedom to provide electronic communications, as guaranteed under EU law. This has a direct effect on the functioning of the internal market. Member States have neither the competence nor the incentive to change the current regulatory landscape.

Measures at EU level are needed to tackle the underlying causes of the problem. First, the current fragmentation resulting from the national dimension of the general authorisation systems is countered by introducing a single EU authorisation. A single EU authorisation mechanism coupled with the home-country control on the withdrawal and/or suspension of such authorisation would facilitate registration of EU operators and the coordination of the most serious enforcement measures applicable to them. The proposal guarantees greater regulatory consistency and predictability to such companies by granting the Commission the power to require national regulators to withdraw proposed remedies which would be incompatible with EU law. The proposal would ensure much greater convergence in regulated conditions of access to fixed and wireless inputs which facilitate the provision of pan-European services. The full harmonisation of end-users' rights ensures that citizens and

providers across the EU have similar rights and obligations, in particular the possibility to market and acquire services across borders under the same conditions.

The principle of subsidiarity is respected as EU intervention will be limited to the extent necessary to remove specified internal market barriers.

First of all, the single EU authorisation is available to operators intending to carry out their activities on a pan-EU dimension and the regulatory obligations inherently linked to the place where a network is located or a service is provided remain to be decided by the national regulator of that Member State. Revenues levied from spectrum assignments will remain with the Member State concerned, while more detailed regulatory principles on spectrum use complementing the high level objectives framed in the EU Regulatory framework still leave a large margin of discretion on details to Member States. Similarly, with regard to the notification procedure to the Commission on spectrum, this is based on a legal compatibility check, rather than substitution of Commission discretion for that of Member States, and is subject to further safeguards such as the examination procedure under comitology. The extension of the benefit of general authorisation to use of small-area wireless access points is confined to unobtrusive, low-power deployments strictly defined by implementing measures. Finally, the imposition of European virtual access products remains with the national regulatory authority of the Member State where the network is located, following a market analysis based on the existing framework; at the same time, the harmonisation of virtual access products uses the same mechanism as for physical wholesale access products foreseen already under the existing framework.

### 3.3. Proportionality

EU action is limited to what is necessary to achieve the objectives identified. Measures will focus on tackling clear bottlenecks to the Single Market, with the minimum necessary amendments to the existing regulatory framework needed in order to create the conditions for new cross-border electronic communications markets to develop at EU level. In doing so it would allow meeting the two-fold Single Market objective of freedom of provision and freedom of consumption of electronic communications services. At the same time, by leaving the existing regulatory framework largely untouched, including in the way that national regulatory authorities supervise markets, it avoids disrupting operations of those providers that would opt for keeping a national (or sub-national) footprint.

Moreover the development of new cross-border markets should take place under the 'better regulation' principle, i.e. by progressively decreasing regulatory pressure if markets are proven to be competitive within a more integrated European context but in accordance with the supervisory competences of national regulatory authorities and subject to *ex post* competition control. That is beneficial as the national regulatory authorities would also be the best placed to take account of the national specificities when (i) regulating access to physical infrastructures that by their nature remain geographically confined to national or regional level; and (ii) addressing consumer questions in a national context (notably in their language).

Accordingly, the proposed measures will not involve significant changes to governance or shift competences to the European level such as through an EU regulator or pan-European spectrum licensing.

The solutions will enable relevant stakeholders to exploit the synergies of a large single market and reduce inefficiencies in their operations and investments, in the most timely and effective manner. At the same time, the proposal ensures to those operators who opt to provide services in a single Member States continuity of the current rules while benefitting

from improved and clearer rules concerning end-users rights, and a more predictable environment for access to spectrum inputs and to high-quality fixed network access products.

### 3.4. Fundamental rights

The proposal's impact on fundamental rights such as the freedom of expression and information, the freedom to conduct a business, non-discrimination, consumer protection and the protection of personal data, has been analysed. In particular, the Regulation will safeguard access to the open internet; it sets a high standard for fully harmonised end-user rights, increases business freedom at European scale and should lead to a reduction in sector-specific regulation over time.

### 3.5. Choice of the instrument

The Commission proposes a Regulation as it ensures the removal of single market barriers by complementing the existing regulatory framework for electronic communications. This includes specific, directly-applicable rights and obligations for providers and end users; it also includes coordinating mechanisms regarding certain inputs at European level to facilitate the provision of electronic communications services across borders. A Regulation is important, for example, in a field such as open Internet and traffic management, where a truly common approach is necessary to avoid from the outset the current tendency towards divergent national solutions and to enable both integrated network management and the development of online content, applications and services which can be made available in a common way throughout the Union.

### 3.6. Structure of the proposal and main rights and obligations

#### **General provisions (Chapter I, Article 1 and 2)**

Chapter 1 contains the general provisions, including relevant definitions. It establishes regulatory principles pursuant to which the regulatory bodies involved shall act when applying this regulation in conjunction with the provisions of the existing framework

#### **Single EU authorisation (Chapter II, Article 3 to 7)**

Operators wanting to provide services in several Member States must currently be authorised in each of them. The Regulation introduces a single EU authorisation based on a single notification system in the Member State of main establishment of the European electronic communication provider (the home country) and sets out the conditions applicable to it. The withdrawal and/or suspension of the Single EU authorisation are subject to home-country control. Holders of a single EU authorisation are entitled to equal regulatory treatment in similar situations within and across Member States and new entrants and smaller cross-border operators are exempted from administrative charges and contributions to the universal service financing in Member States other than the home country (host countries). Holders of a single EU authorisation will further provide services throughout Europe on the basis of greater consistent application of regulatory obligations

The single European authorisation will thereby reduce unnecessary administrative hurdles and guarantee European providers more consistent rights and obligations to operate across the EU and achieve scale.

#### **European inputs (Chapter III)**

##### Section 1 (Articles 8 to 16)

Mobile providers in Europe today lack the necessary predictability regarding spectrum availability across the EU and must deal with diverging assignment conditions. It is thus more difficult to plan long-term, to invest across borders and eventually to gain scale. Such a patchy

situation means that device manufacturers design their products for other markets with greater scale and growth prospects. To put an end to this unsustainable situation, harmonisation of spectrum inputs must be ensured by:

- Defining common regulatory principles applicable to Member State when defining conditions on the use of spectrum which is harmonised for wireless broadband communications.
- Empowering the Commission to adopt implementing acts to harmonise spectrum availability, the timing of assignments and the duration of rights of use for spectrum.
- A consultation mechanism enabling the Commission to review draft national measures concerning the assignment and the use of spectrum.
- Simplifying conditions for the deployment and provision of low-power wireless broadband access ('Wi-Fi', small cells) to enhance competition and reduce network congestion.

### Section 2 (Articles 17 to 20)

Harmonised, high-quality virtual access to fixed networks would facilitate market entry and the provision of cross-border services both to end-users and businesses, and would help drive competition and investment. Today, virtual fixed access products are defined in a variety of manners across the EU. Virtual access to fixed networks to provide cross-border services is harmonised through:

- Defining common features of EU-harmonised virtual broadband access products (virtual unbundling, IP bit-stream and terminating segments of leased lines) when mandated on operators with significant market power.
- Accordingly, national regulators are required to take into account the introduction of such harmonised access products when imposing regulatory remedies, with due regard for existing infrastructure competition and investments and overarching proportionality requirements. The proposal also reflects decisional practice in a provision linking consideration of wholesale price control obligations on NGA networks with competitive constraints from alternative infrastructures, effective guarantees of non-discriminatory access and the level of retail competition in terms of price, choice and quality.
- A right for electronic communications providers to offer and access on reasonable terms harmonised connectivity products with assured service quality to enable new types of online services.

### **Rights of end-users (Chapter IV, Articles 21 to 29)**

In Europe, both electronic communications providers and end-users face inconsistent rules regarding rights of end-users, leading to uneven levels of protection and a variety of diverging rules to comply with in different Member States. This fragmentation is costly for operators, unsatisfactory for end-users and eventually hinders the provision of services across borders and negatively impacts end-users' willingness to consume them. To guarantee an appropriate level of consumer protection across the EU, rules defining the rights of end-users are harmonised, including:

- non-discrimination between certain domestic and intra-EU (international) communications (unless differences are objectively justified),
- mandatory pre-contractual and contractual information,

- increased transparency and facilities to avoid "bill shocks",
- the right to terminate the contract after six months without costs (excluding the residual value of any subsidised equipment or other promotions),
- the obligation on providers to provide unhindered connection to all content, applications or services being accessed by end-users – also referred to as Net Neutrality - while regulating the use of traffic management measures by operators in respect of general internet access. At the same time, the legal framework for specialised services with enhanced quality is clarified.

### **Facilitating change of provider (Chapter V, Article 30)**

Improved switching rules promote market entry and competition between electronic communication providers and allow end-users to choose more easily the provider which best meets their specific needs. Harmonised principles applicable to switching procedures are provided, such as cost-orientation, receiving provider-led process, automatic termination of contract with the transferring provider.

### **Organisational and final provisions (Chapter VI, Articles 31 to 40)**

This Chapter contains first general provisions concerning sanctioning powers of the competent national authorities and rules on the Commission's power to adopt delegated or implementing acts.

Modifications to the Framework Directives as well as to the Roaming and BEREC Regulations are also set out. In particular, with regard to *ex ante* market regulation and given that each NRA is still responsible for its respective (national) markets, the modifications aim to foster greater consistency and stability across the EU with regard to NRAs' assessment of markets and imposition of regulatory obligations on holders of a single EU authorisation in order to avoid they face diverging obligations for the same market failure in each Member State where they are present. To this end, the provisions envisage a Commission power to require withdrawal of remedies imposed on companies with a single EU authorisation, as well as legal certainty concerning the criteria for identifying markets subject to such *ex ante* remedies, taking also into account competitive constraints from equivalent services provided by "over-the-top" (OTT) players.

While the Roaming III Regulation with its structural measures will inject greater competition into the market it is not expected of its own to create a situation where customers can confidently replicate their consumption behaviour in their home Member State when travelling abroad and thereby to end roaming surcharges overall in Europe. Article 37, therefore, builds on the Roaming Regulation, providing incentives to operators to provide roaming at domestic price levels. The proposal introduces a voluntary mechanism for mobile operators to enter into bilateral or multilateral roaming agreements which allow them to internalise the wholesale roaming costs and to gradually introduce roaming services at domestic price levels up to July 2016 while limiting the risk of price arbitrage. Such roaming agreements as such are not a novelty in the market. Roaming agreements already exist allowing their participants (subject to compliance with competition law) to realise economies of scale in the provision of roaming services as between contracting parties. The proposal however requires they are notified to improve their transparency. The proposed voluntary regime is designed to induce the pass-on of such legitimate scale economies to consumers through the provision of roaming services at domestic price levels, under conditions which ensure that roaming throughout the Union is covered and that consumers throughout the Union benefit in due course from such offers. At the same time, the proposal provides the necessary balance to allow operators to adjust their retail offers and to gradually ensure all of

their customer base benefits from them. Without bilateral or multilateral roaming agreements it is unrealistic to imagine that an operator alone would be able to provide roaming at domestic price levels throughout the whole Union in the envisaged time frame.

Finally, changes in the BEREC Regulation are necessary to provide more stability to the body and allow it to play a more strategic role, in particular through the appointment of a professional three-year Chair.

#### **4. BUDGETARY IMPLICATIONS**

The proposed Regulation has no implications for the budget of the Union.

In particular, the proposal to amend the Regulation (EC) No 1211/2009 has no impact on either the number of establishment plan posts or the EU financial contribution to the BEREC Office and is in line with the figures set out in the Communication to the European Parliament and the Council (COM(2013)519 final).

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>12</sup>,

Having regard to the opinion of the Committee of the Regions<sup>13</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Europe has to tap all sources of growth to exit the crisis, create jobs and regain its competitiveness. Restoring growth and job creation in the Union is the aim of the Europe 2020 Strategy. The 2013 Spring European Council stressed the importance of the digital single market for growth and called for concrete measures, in order to establish a single market in information and communications technology (ICT) as early as possible. In line with the objectives of the Europe 2020 Strategy and with this call, this regulation aims at establishing a single market for electronic communications by completing and adapting the existing Union Regulatory Framework for Electronic Communications.
- (2) The Digital Agenda for Europe (DAE), one of the flagship initiatives of Europe 2020 Strategy, has already recognised the role of ICT and network connectivity as an indispensable basis for the development of our economy and society. For Europe to reap the benefits of digital transformation, the Union needs a dynamic single market in electronic communications for all sectors and across all of Europe. Such a truly single communications market will be the backbone of an innovative and 'smart' digital economy and a foundation of the digital single market where online services can freely flow across borders.

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<sup>12</sup> OJ C , , p. .

<sup>13</sup> OJ C , , p. .

- (3) In a seamless single market in electronic communications, the freedom to provide electronic communications networks and services to every customer in the Union and the right of each end-user to choose the best offer available on the market should be ensured and should not be hindered by the fragmentation of markets along national borders. The current regulatory framework for electronic communications does not fully address such fragmentation, with national, rather than Union-wide general authorisation regimes, national spectrum assignment schemes, differences of access products available for electronic communications providers in different Member States, and different sets of sector-specific consumer rules applicable. The Union rules in many cases merely define a baseline, and are often implemented in diverging ways by the Member States.
- (4) A truly single market for electronic communications should promote competition, investment and innovation in new and enhanced networks and services by fostering market integration and cross-border service offerings. It should thus help to achieve the ambitious high-speed broadband targets set out in the DAE. The growing availability of digital infrastructures and services should in turn increase consumer choice, quality of service and diversity of content, and contribute to territorial and social cohesion, as well as facilitating mobility across the Union.
- (5) The benefits arising from a single market for electronic communications should extend to the wider digital ecosystem that includes Union equipment manufacturers, content and application providers and the wider economy, covering sectors such as banking, automotive, logistics, retail, energy and transport, which rely on connectivity to enhance their productivity through, for example, ubiquitous cloud applications, connected objects and possibilities for integrated service provision for different parts of the company. Public administrations and the health sector should also benefit from a wider availability of e-government and e-health services. The offer of cultural content and services, and cultural diversity in general, may be also enhanced in a single market for electronic communications. The provision of connectivity through electronic communications networks and services is of such importance to the wider economy and society that unjustified sector-specific burdens, whether regulatory or otherwise, should be avoided.
- (6) This Regulation aims at the completion of the single electronic communications market through action on three broad, inter-related axes. First, it should secure the freedom to provide electronic communications services across borders and networks in different Member States, building on the concept of a single EU authorisation which puts in place the conditions for ensuring greater consistency and predictability in the content and implementation of sector-specific regulation throughout the Union. Second, it is necessary to enable access on much more convergent terms and conditions to essential inputs for the cross-border provision of electronic communications networks and services, not only for wireless broadband communications, for which both licensed and unlicensed spectrum is key, but also for fixed line connectivity. Third, in the interests of aligning business conditions and building the digital confidence of citizens, this Regulation should harmonise rules on the protection of end-users, especially consumers. This includes rules on non-discrimination, contractual information, termination of contracts and switching, in addition to rules on access to online content, applications and services and on traffic management which not only protect end-users but simultaneously guarantee the continued functioning of the Internet ecosystem as an engine of innovation. In addition, further reforms in the field of roaming should give end-users the confidence

to stay connected when they travel in the Union, and should become over time a driver of convergent pricing and other conditions in the Union.

- (7) This Regulation should therefore complement the existing Union regulatory framework (Directive 2002/19/EC of the European Parliament and of the Council<sup>14</sup>, Directive 2002/20/EC of the European Parliament and of the Council<sup>15</sup>, Directive 2002/21/EC of the European Parliament and of the Council<sup>16</sup>, Directive 2002/22/EC of the European Parliament and of the Council<sup>17</sup>, Directive 2002/58/EC of the European Parliament and of the Council<sup>18</sup>, Commission Directive 2002/77/EC<sup>19</sup>, as well as Regulation (EC) No 1211/2009 of the European Parliament and of the Council<sup>20</sup>, Regulation (EU) No 531/2012 of the European Parliament and of the Council<sup>21</sup> and Decision No 243/2012/EU of the European Parliament<sup>22</sup>) and the applicable national legislations adopted in conformity with Union law, by establishing specific rights and obligations for both electronic communications providers and end-users, by making consequential amendments to the existing Directives and to Regulation (EU) No 531/2012 in order to secure greater convergence as well as some substantive changes consistent with a more competitive Single Market.
- (8) The measures provided in this Regulation respect the principle of technological neutrality, that is to say they neither impose nor discriminate in favour of the use of a particular type of technology.
- (9) The provision of cross-border electronic communications is still subject to greater burdens than those confined to the national borders. In particular, cross-border providers still need to notify and pay fees in individual host Member States. Holders of a single EU authorisation should be subject to a single notification system in the Member State of their main establishment (home Member State), which will reduce the administrative burden for cross-border operators. The single EU authorisation should apply to any undertaking that provides or intends to provide electronic communications services and networks in more than one Member State, thereby

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<sup>14</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 (Access Directive) (OJ L 108, 24.4.2002, p. 7).

<sup>15</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 (Authorisation Directive) (OJ L 108, 24.4.2002, p. 21).

<sup>16</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 (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

<sup>17</sup> 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) (OJ L 108, 24.4.2002, p. 51).

<sup>18</sup> 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 (E-Privacy Directive) (OJ L 201, 31.7.2002, p. 37)

<sup>19</sup> Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and service (OJ L 249, 17.9.2002, p. 21.)

<sup>20</sup> Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ L 337, 18.12.2009, p. 1).

<sup>21</sup> Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10.)

<sup>22</sup> Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7)

entitling it to enjoy the rights attached to the freedom to provide electronic communications services and networks in accordance with this Regulation in any Member State. A single EU authorisation defining the legal framework applicable to electronic communications operators providing services across Member States on the basis of a general authorisation in the home Member State should ensure the effectiveness of the freedom to provide electronic communications services and networks in the whole Union.

- (10) The provision of electronic communications services or networks across borders may take different forms, depending on several factors such as the kind of network or services provided, the extent of the physical infrastructure needed or the number of subscribers in the different Member States. The intention to provide electronic communications services cross-border or to operate an electronic communications network in more than one Member State may be demonstrated by activities such as negotiation of agreements on access to networks in a given Member State or marketing via an internet site in the language of the targeted Member State.
- (11) Irrespective of how the provider chooses to operate electronic communications networks or provide electronic communications services across borders, the regulatory regime applicable to a European electronic communications provider should be neutral vis-à-vis the commercial choices which underlie the organisation of functions and activities across Member States. Therefore, regardless of the corporate structure of the undertaking, the home Member State of a European electronic communications provider should be considered to be the Member State where the strategic decisions concerning the provision of electronic communications networks or services are taken.
- (12) The single EU authorisation should be based on the general authorisation in the home Member State. It should not be made subject to conditions which are already applicable by virtue of other existing national law which is not specific to the electronic communications sector. In addition, the provisions of this Regulation and Regulation (EU) No. 531/2012 should also apply to European electronic communications providers.
- (13) Most sector-specific conditions, for example concerning access to or security and integrity of networks or access to emergency services, are strongly linked to the place where such network is located or the service is provided. Consequently a European electronic communications provider may be subject to conditions applicable in the Member States where it operates, to the extent that this Regulation does not provide otherwise.
- (14) Where Member States require contribution from the sector in order to finance universal service obligations and to the administrative costs of the national regulatory authorities, the criteria and procedures for apportioning contributions should be proportionate and non-discriminatory with regard to European electronic communications providers, so as not to hinder cross-border market entry, in particular of new entrants and smaller operators; individual undertakings' contributions should therefore take into account the contributor's market share in terms of turnover realised in the relevant Member State and should be subject to the application of a *de minimis* threshold.
- (15) It is necessary to ensure that in similar circumstances there is no discrimination in the treatment of any European electronic communications provider by different Member States and that consistent regulatory practices are applied in the single market, in particular as regards measures falling within the scope of Articles 15 or 16 of

Directive 2002/21/EC, or Articles 5 or 8 of Directive 2002/19/EC. European electronic communications providers should therefore have a right to equal treatment by the different Member States in objectively equivalent situations in order to enable more integrated multi-territorial operations. Furthermore, there should be specific procedures at Union level for the review of draft decisions on remedies within the meaning of Article 7a of Directive 2002/21/EC in such cases, in order to avoid unjustified divergences in obligations applicable to European electronic communications providers in different Member States.

- (16) An allocation of regulatory and supervisory competences should be established between the home and any host Member State of European electronic communications providers with a view to reducing the barriers to entry while ensuring that the applicable conditions for the provision of electronic communications services and networks by these providers are properly enforced. Therefore, while each national regulatory authority should supervise compliance with the conditions applicable in its territory in accordance with Union legislation, including by means of sanctions and interim measures, only the national regulatory authority in the home Member State should be entitled to suspend or withdraw the rights of a European electronic communications provider to provide electronic communications networks and services in the whole Union or part thereof.
- (17) Radio spectrum is a public good and an essential resource for the internal market for mobile, wireless broadband and satellite communications in the Union. Development of wireless broadband communications contributes to the implementation of the Digital Agenda for Europe and in particular to the aim of securing access to broadband at a speed of no less than 30 Mbps by 2020 for all Union citizens and of providing the Union with the highest possible broadband speed and capacity. However, the Union has fallen behind other major global regions - North America, Africa and parts of Asia - in terms of the roll-out and penetration of the latest generation of wireless broadband technologies that are necessary to achieve those policy goals. The piecemeal process of authorising and making available the 800 MHz band for wireless broadband communications, with over half of the Member States seeking a derogation or otherwise failing to do so by the deadline laid down in the Radio Spectrum Policy Programme (RSPP) Decision 243/2012 of the European Parliament and the Council,<sup>23</sup> testifies to the urgency of action even within the term of the current RSPP. Union measures to harmonise the conditions of availability and efficient use of radio spectrum for wireless broadband communications pursuant to Decision 676/2002/EC of the European Parliament and the Council<sup>24</sup> have not been sufficient to address this problem.
- (18) The application of various national policies creates inconsistencies and fragmentation of the internal market which hamper the roll-out of Union-wide services and the completion of the internal market for wireless broadband communications. It could in particular create unequal conditions for access to such services, hamper competition between undertakings established in different Member States and stifle investments in more advanced networks and technologies and the emergence of innovative services,

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<sup>23</sup> Decision 243/2012/EU of the European Parliament and the Council of 14 March 2012, establishing a multiannual radio spectrum policy programme, OJ L 81 of 21.3.2012

<sup>24</sup> Decision 676/2002/EC of the European Parliament and the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002, p. 1).

thereby depriving citizens and businesses of ubiquitous integrated high-quality services and wireless broadband operators of increased efficiency gains from large-scale more integrated operations. Therefore, action at Union level regarding certain aspects of radio spectrum assignment should accompany the development of wide integrated coverage of advanced wireless broadband communications services throughout the Union. At the same time, Member States should retain the right to adopt measures to organise their radio spectrum for public order, public security purposes and defence.

- (19) Electronic communications services providers, including mobile operators or consortia of such operators, should be able to collectively organise the efficient and affordable coverage of a vast part of the Union's territory to the long-term benefit of end users, and therefore use radio spectrum across several Member States with similar conditions, procedures, costs, timing, duration in harmonised bands, and with complementary radio spectrum packages, such as a combination of lower and higher frequencies for coverage of densely and less densely populated areas. Initiatives in favour of greater coordination and consistency would also enhance the predictability of the network investment environment. Such predictability would also be greatly favoured by a clear policy in favour of long-term duration of rights of use related to radio spectrum, without prejudice to the indefinite character of such rights in some Member States, and linked in its turn to clear conditions for the transfer, lease or sharing of part of all of the radio spectrum subject to such an individual right of use.
- (20) Coordination and consistency of rights of use for radio spectrum should be improved, at least for the bands which have been harmonised for wireless fixed, nomadic and mobile broadband communications. This includes the bands identified at ITU level for International Mobile Telecommunications (IMT) Advanced systems, as well as bands used for radio local area networks (RLAN) such as 2.4 GHz and 5 GHz. It should also extend to bands that may be harmonised in the future for wireless broadband communications, as envisaged in Article 3(b) of the RSPD and in the RSPG Opinion on "Strategic challenges facing Europe in addressing the growing radio spectrum demand for wireless broadband" adopted on 13 June 2013, such as, in the near future, the 700 MHz, 1.5 GHz and 3.8-4.2 GHz bands.
- (21) Consistency between the different national radio spectrum assignment procedures would be favoured by more explicit provisions on the criteria relevant to the timing of authorisation procedures; the duration for which the rights of use are granted, fees and their payment modalities; capacity and coverage obligations; definition of the range of radio spectrum and spectrum blocks subject to a granting procedure; objective threshold requirements for the promotion of effective competition; conditions for the tradability of rights of use, including sharing conditions.
- (22) Limitation of the burden of fees to what is required by optimal radio spectrum management, with a balance between immediate payments and periodic fees, would encourage investment in infrastructure and technology roll-out, and pass-on of the attendant cost advantages to end users.
- (23) More synchronised radio spectrum assignments and consequential wireless broadband roll-out across the Union should support the achievement of scale effects in related industries such as for network equipment and terminal devices. Such industries could in turn take into account Union initiatives and policies regarding radio spectrum use, to a greater extent than has recently been the case. A harmonisation procedure for the

timetables for assignment and minimum or common duration of rights of use in such bands should therefore be established.

- (24) As regards the other main substantive conditions which may be attached to rights of use of radio spectrum for wireless broadband, the convergent application by individual Member States of the regulatory principles and criteria set down in this Regulation would be favoured by a coordination mechanism whereby the Commission and the competent authorities of the other Member States have an opportunity to comment in advance of the granting of rights of use by a given Member State and whereby the Commission has an opportunity, taking into account the views of the Member States, to forestall implementation of any proposal which appears to be non-compliant with Union law.
- (25) Considering the massive growth in radio spectrum demand for wireless broadband, solutions for alternative spectrally efficient access to wireless broadband should be promoted. This includes the use of low-power wireless access systems with a small-area operating range such as so called 'hotspots' of radio local area networks (RLAN, also known as 'Wi-Fi'), as well as networks of low-power small size cellular access points (also called femto-, pico- or metrocells).
- (26) Complementary wireless access systems such as RLAN, in particular publicly accessible RLAN access points, increasingly allow access to the internet for end users and allow mobile traffic off-loading by mobile operators, using harmonised radio spectrum resources without requiring an individual authorisation or right of use of the radio spectrum.
- (27) Most RLAN access points are so far used by private users as a local wireless extension of their fixed broadband connection. If end users, within the limits of their own internet subscription, choose to share access to their RLAN with others, the availability of a large number of such access points, particularly in densely populated areas, should maximise wireless data capacity through radio spectrum re-use and create a cost-effective complementary wireless broadband infrastructure accessible to other end users. Therefore, unnecessary restrictions for end users to share access to their own RLAN access points with other end users or to connect to such access points, should be removed or prevented.
- (28) In addition, unnecessary restrictions to the deployment and interlinkage of RLAN access points should also be removed. Public authorities or providers of public services increasingly use RLAN access points in their premises for their own purposes, for example for use by their personnel, to better facilitate cost-effective on-site access by citizens to e-Government services, or to support provision of smart public services with real-time information, such as for public transport or traffic management. Such bodies could also provide access to such access points for citizens in general as an ancillary service to services offered to the public on such premises, and should be enabled to do so in conformity with competition and public procurement rules. The making available of local access to electronic communications networks within or around a private property or a limited public area as an ancillary service to another activity that is not dependant on such an access, such as RLAN hotspots made available to customers of other commercial activities or to the general public in that area, should not qualify such a provider as an electronic communications provider.
- (29) Low power small-area wireless access points are very small and unobtrusive equipment similar to domestic Wi-Fi routers, for which technical characteristics

should be specified at Union level for their deployment and use in different local contexts subject to general authorisation, without undue restrictions from individual planning or other permits. The proportionality of measures specifying the technical characteristics for such use to benefit from general authorisation should be ensured through characteristics which are significantly more restrictive than the applicable maximum thresholds in Union measures regarding parameters such as power output.

- (30) Member States should ensure that the management of radio spectrum at national level does not prevent other Member States from using the radio spectrum to which they are entitled, or from complying with their obligations as regards bands for which the use is harmonised at Union level. Building on the existing activities of the RSPG, a coordination mechanism is necessary to ensure that each Member State has equitable access to radio spectrum and that the outcomes of coordination are consistent and enforceable.
- (31) Experience in the implementation of the Union's regulatory framework indicates that existing provisions requiring the consistent application of regulatory measures together with the goal of contributing to the development of the internal market have not created sufficient incentives to design access products on the basis of harmonised standards and processes, in particular in relation to fixed networks. When operating in different Member States, operators have difficulties in finding access inputs with the right quality and network and service interoperability levels, and when they are available, such inputs exhibit different technical features. This increases costs and constitutes an obstacle to the provision of services across national borders.
- (32) The integration of the single market for electronic communications would be accelerated through establishment of a framework to define certain key European virtual products, which are particularly important for providers of electronic communication services to provide cross-border services and to adopt a pan-Union strategy in an increasingly all-IP environment, based on key parameters and minimum characteristics.
- (33) The operational needs served by various virtual products should be addressed. European virtual broadband access products should be available in cases where an operator with significant market power has been required under the terms of the Framework Directive and the Access Directive to provide access on regulated terms at a specific access point in its network. First, efficient cross-border entry should be facilitated by harmonised products that enable initial provision by cross-border providers of services to their end customers without delay and with a predictable and sufficient quality, including services to business customers with multiple sites in different Member States, where this would be necessary and proportionate pursuant to market analysis. These harmonised products should be available for a sufficient period in order to allow access seekers and providers to plan medium and long term investments.
- (34) Secondly, sophisticated virtual access products that require a higher level of investment by access seekers and allow them a greater level of control and differentiation, particularly by providing access at a more local level, are key to creating the conditions for sustainable competition across the internal market. Hence, these key wholesale access products to next-generation access (NGA) networks should also be harmonised to facilitate cross-border investment. Such virtual broadband access products should be designed to have equivalent functionalities to physical unbundling, in order to broaden the range of potential wholesale remedies available for

consideration by national regulatory authorities under the proportionality assessment pursuant to Directive 2002/19/EC.

- (35) Thirdly, it is also necessary to harmonise a wholesale access product for terminating segments of leased lines with enhanced interfaces, in order to enable cross-border provision of mission-critical connectivity services for the most demanding business users.
- (36) In a context of progressive migration to 'all IP networks', the lack of availability of connectivity products based on the IP protocol for different classes of services with assured service quality that enable communication paths across network domains and across network borders, both within and between Member States, hinders the development of applications that rely on access to other networks, thus limiting technological innovation. Moreover, this situation prevents the diffusion on a wider scale of efficiencies which are associated with the management and provision of IP-based networks and connectivity products with an assured service quality level, in particular enhanced security, reliability and flexibility, cost-effectiveness and faster provisioning, which benefit network operators, service providers and end users. A harmonised approach to the design and availability of these products is therefore necessary, on reasonable terms including, where requested, the possibility of cross-supply by the electronic communications undertakings concerned.
- (37) The establishment of European virtual broadband access products under this Regulation should be reflected in the assessment by national regulatory authorities of the most appropriate access remedies to the networks of operators designated as having significant market power, while avoiding over-regulation through the unnecessary multiplication of wholesale access products, whether imposed pursuant to market analysis or provided under other conditions. In particular, the introduction of the European virtual access products should not, in and of itself, lead to an increase in the number of regulated access products imposed on a given operator. Moreover, the need for national regulatory authorities, following the adoption of this Regulation, to assess whether a European virtual broadband access product should be imposed instead of existing wholesale access remedies, and to assess the appropriateness of imposing a European virtual broadband access product in the context of future market reviews where they find significant market power, should not affect their responsibility to identify the most appropriate and proportionate remedy to address the identified competition problem in accordance with Article 16 of Directive 2002/21/EC.
- (38) In the interests of regulatory predictability, key elements of evolving decisional practice under the current legal framework which affect the conditions under which wholesale access products, including European virtual broadband access products, are made available for NGA networks, should also be reflected in the legislation. These should include provisions reflecting the importance, for the analysis of wholesale access markets and in particular of whether there is a need for price controls on such access to NGA networks, of the relationship between competitive constraints from alternative fixed and wireless infrastructures, effective guarantees of non-discriminatory access, and the existing level of competition in terms of price, choice and quality at retail level. The latter consideration ultimately determines the benefits to end users. For example, in the conduct of their case-by-case assessment pursuant to Article 16 of Directive 2002/21/EC and without prejudice to the assessment of significant market power and the application of EU competition rules, national regulatory authorities may consider that in the presence of two fixed NGA networks,

market conditions are competitive enough to be able to drive network upgrades and to evolve towards the provision of ultra-fast services, which is one important parameter of retail competition.

- (39) It is to be expected that intensified competition in a single market will lead to a reduction over time in sector-specific regulation based on market analysis. Indeed, one of the results of completing the Single Market should be a greater tendency towards effective competition on relevant markets, with *ex post* application of competition law increasingly being seen as sufficient to ensure market functioning. In order to ensure legal clarity and predictability of regulatory approaches across borders, clear and binding criteria should be provided on how to assess whether a given market still justifies the imposition of *ex-ante* regulatory obligations, by reference to the durability of bottlenecks and the prospects of competition, in particular infrastructure-based competition, and the conditions of competition at retail level on parameters such as price, choice and quality, which are ultimately what is relevant to end users and to the global competitiveness of the EU economy. This should underpin successive reviews of the list of markets susceptible to *ex ante* regulation and help national regulators to focus their efforts where competition is not yet effective and to do so in a convergent manner. The establishment of a true single market for electronic communications may in addition affect the geographical scope of markets, for the purposes of both sector-specific regulation based on competition principles and the application of competition law itself.
- (40) Disparities in the national implementation of sector-specific end-user protection rules create significant barriers to the single digital market, in particular in the form of increased compliance costs for providers of electronic communications to the public wishing to offer services across Member States. Moreover, fragmentation and uncertainty as to the level of protection granted in different Member States undermines end-users' trust and dissuades them from purchasing electronic communications services abroad. In order to achieve the Union's objective to remove barriers to the internal market it is necessary to replace existing, divergent national legal measures with a single and fully harmonised set of sector-specific rules which create a high common level of end-user protection. Such full harmonisation of the legal provisions should not prevent providers of electronic communications to the public from offering end-users contractual arrangements which go beyond that level of protection.
- (41) As this Regulation harmonises only certain sector-specific rules, it should be without prejudice to the general consumer protection rules, as established by Union acts and national legislation implementing them.
- (42) Where the provisions in Chapters 4 and 5 of this Regulation refer to end-users, such provisions should apply not only to consumers but also to other categories of end-users, primarily micro enterprises. At their individual request, end-users other than consumers should be able to agree, by individual contract, to deviate from certain provisions.
- (43) The completion of the single market for electronic communications also requires the removal of barriers for end-users to have access to electronic communications services across the Union. Public authorities should therefore not raise or maintain obstacles to the cross-border purchase of such services. Providers of electronic communications to the public should not deny or restrict access or discriminate against end-users on the basis of their nationality or Member State of residence. Differentiation should,

however, be possible on the basis of objectively justifiable differences in costs, risks and market conditions such as demand variations and pricing by competitors.

- (44) Very significant price differences continue to prevail, both for fixed and mobile communications, between domestic voice and SMS communications and those terminating in another Member State. While there are substantial variations between countries, operators and tariff packages, and between mobile and fixed services, this continues to affect more vulnerable customer groups and to pose barriers to seamless communication within the Union. This occurs in spite of a very significant reduction, and convergence in absolute terms, of termination rates in the different Member States, and low prices on transit markets. Moreover, the transition to an "all-IP" electronic communications environment should in due course bring additional cost reductions. Any significant retail tariff differences between domestic fixed long-distance communications which are communications other than those within one local area identified by a geographic area code in the national numbering plan, and fixed communications terminating in another Member State, should therefore be justified by reference to objective criteria. Retail tariffs for international mobile communications should not exceed the euro-voice and euro-SMS tariffs for regulated roaming calls and SMS messages, respectively, provided for in Regulation (EU) No 531/2012 unless justified by reference to objective criteria. Such criteria may include additional costs and a reasonable related margin. Other objective factors may include differences in related price elasticity and the easy availability to all end users of alternative tariffs from providers of electronic communications to the public which offer cross-border communications within the Union at little or no extra charge, or of information society services with comparable functionalities, provided that end users are actively informed of such alternatives by their providers.
- (45) The internet has developed over the past decades as an open platform for innovation with low access barriers for end-users, content and application providers and internet service providers. The existing regulatory framework aims at promoting the ability of end-users to access and distribute information or run applications and services of their choice. Recently, however, the report of the Body of European Regulators for Electronic Communications (BEREC) on traffic management practices published in May 2012 and a study, commissioned by the Executive Agency for Consumers and Health and published in December 2012, on the functioning of the market of internet access and provision from a consumer perspective, showed that a significant number of end-users are affected by traffic management practices which block or slow down specific applications. These tendencies require clear rules at the Union level to maintain the open internet and to avoid fragmentation of the single market resulting from individual Member States' measures.
- (46) The freedom of end-users to access and distribute information and lawful content, run applications and use services of their choice is subject to the respect of Union and compatible national law. This Regulation defines the limits for any restrictions to this freedom by providers of electronic communications to the public but is without prejudice to other Union legislation, including copyright rules and Directive 2000/31/EC.
- (47) In an open internet, providers of electronic communications to the public should, within contractually agreed limits on data volumes and speeds for internet access services, not block, slow down, degrade or discriminate against specific content, applications or services or specific classes thereof except for a limited number of reasonable traffic management measures. Such measures should be transparent,

proportionate and non-discriminatory. Reasonable traffic management encompasses prevention or impediment of serious crimes, including voluntary actions of providers to prevent access to and distribution of child pornography. Minimising the effects of network congestion should be considered reasonable provided that network congestion occurs only temporarily or in exceptional circumstances.

- (48) Volume-based tariffs should be considered compatible with the principle of an open internet as long as they allow end-users to choose the tariff corresponding to their normal data consumption based on transparent information about the conditions and implications of such choice. At the same time, such tariffs should enable providers of electronic communications to the public to better adapt network capacities to expected data volumes. It is essential that end-users are fully informed before agreeing to any data volume or speed limitations and the tariffs applicable, that they can continuously monitor their consumption and easily acquire extensions of the available data volumes if desired.
- (49) There is also end-user demand for services and applications requiring an enhanced level of assured service quality offered by providers of electronic communications to the public or by content, applications or service providers. Such services may comprise inter alia broadcasting via Internet Protocol (IP-TV), video-conferencing and certain health applications. End-users should therefore also be free to conclude agreements on the provision of specialised services with an enhanced quality of service with either providers of electronic communications to the public or providers of content, applications or services.
- (50) In addition, there is demand on the part of content, applications and services providers, for the provision of transmission services based on flexible quality parameters, including lower levels of priority for traffic which is not time-sensitive. The possibility for content, applications and service providers to negotiate such flexible quality of service levels with providers of electronic communications to the public is necessary for the provision of specialised services and is expected to play an important role in the development of new services such as machine-to-machine (M2M) communications. At the same time such arrangements should allow providers of electronic communications to the public to better balance traffic and prevent network congestion. Providers of content, applications and services and providers of electronic communications to the public should therefore be free to conclude specialised services agreements on defined levels of quality of service as long as such agreements do not substantially impair the general quality of internet access services.
- (51) National regulatory authorities play an essential role in ensuring that end-users are effectively able to exercise this freedom to avail of open internet access. To this end national regulatory authorities should have monitoring and reporting obligations, and ensure compliance of providers of electronic communications to the public and the availability of non-discriminatory internet access services of high quality which are not impaired by specialised services. In their assessment of a possible general impairment of internet access services, national regulatory authorities should take account of quality parameters such as timing and reliability parameters (latency, jitter, packet loss), levels and effects of congestion in the network, actual versus advertised speeds, performance of internet access services compared with specialised services, and quality as perceived by end-users. National regulatory authorities should be empowered to impose minimum quality of service requirements on all or individual providers of electronic communications to the public if this is necessary to prevent general impairment/degradation of the quality of service of internet access services.

- (52) The measures to ensure better transparency and comparability of prices, tariffs, terms and conditions, and quality of service parameters including those specific to the provision of internet access services, should increase the ability of end-users to optimise their selection of providers and thus benefit fully from competition.
- (53) End-users should be adequately informed of the price and the type of service offered before they purchase a service. This information should also be provided immediately prior to connection of the call when a call to a specific number or service is subject to particular pricing conditions, such as calls to premium rate services which are often subject to a special rate. Where such an obligation is disproportionate in view of the duration and cost of the tariff information for the service provider compared to the average call duration and the cost risk to which the end-user is exposed, national regulatory authorities may grant a derogation. End-users should also be informed if a free-phone number is subject to additional charges.
- (54) Providers of electronic communications to the public should inform end-users adequately *inter alia* on their services and tariffs, quality of service parameters, access to emergency services and any limitation, and the choice of services and products designed for disabled consumers. This information should be provided in a clear and transparent manner and be specific to the Member States where the services are provided, and in the event of any change, be updated. Providers should be exempted from such information requirements as regards those offers which are individually negotiated.
- (55) Availability of comparable information on products and services is paramount to the ability of end-users to make an independent evaluation of offers. Experience shows that availability of reliable and comparable information increases end-user confidence in the use of services and enhances the willingness to exercise their choice.
- (56) Contracts are an important means of giving end-users a high level of transparency of information and legal certainty. Providers of electronic communications to the public should give end-users clear and comprehensible information on all essential elements of the contract before the end-user is bound by the contract. The information should be mandatory and not be altered except by subsequent agreement of the end-user and the provider. The Commission and several national regulatory authorities recently found considerable discrepancies between the advertised speed of internet access services and the speed actually available to end-users. Providers of electronic communications to the public should therefore inform end-users, prior to the conclusion of the contract, of the speed and other quality of service parameters which they can realistically deliver at the end-user's main location.
- (57) With respect to terminal equipment, contracts should specify any restrictions imposed by the provider on the use of the equipment, for example by way of 'SIM-locking' mobile devices, and any charges due on termination of the contract prior to the agreed expiry date. No charges should be due after expiry of the agreed contract duration.
- (58) In order to avoid bill shocks, end-users should be able to define maximum financial limits for the charges related to their usage of calls and internet access services. This facility should be available free of charge, with an appropriate notification that can be consulted again subsequently, when the limit is being approached. Upon reaching the maximum limit, end-users should no longer receive or be charged for those services unless they specifically request the continued provision as agreed with the provider.

- (59) Experience from Member States and from a recent study commissioned by the Executive Agency for Consumers and Health has shown that long contract periods and automatic or tacit extensions of contracts constitute significant obstacles to changing a provider. It is thus desirable that end-users should be able to terminate, without incurring any costs, a contract six months after its conclusion. In such a case, end-users may be requested to compensate their providers for the residual value of subsidised terminal equipment or for the *pro rata temporis* value of any other promotions. Contracts which have been tacitly extended should be subject to termination with a one-month notice period.
- (60) Any significant changes to the contractual conditions imposed by providers of electronic communications services to the public to the detriment of the end-user, for example in relation to charges, tariffs, data volume limitations, data speeds, coverage, or the processing of personal data, should be considered as giving rise to the right of the end-user to terminate the contract without incurring any costs.
- (61) Bundles comprising electronic communications and other services such as linear broadcasting have become increasingly widespread and are an important element of competition. Where divergent contractual rules on contract termination and switching apply to the different services composing such bundles, end-users are effectively prevented from switching to competitive offers for the entire bundle or parts of it. The provisions of this Regulation regarding contract termination and switching should, therefore, apply to all elements of such a bundle.
- (62) In order to take full advantage of the competitive environment, end-users should be able to make informed choices and switch providers when it is in their interests. End-users should therefore be able to switch without being hindered by legal, technical or procedural obstacles, including contractual conditions and charges. Number portability is a key facilitator of consumer choice and effective competition. It should be implemented within a minimum delay so that the number is effectively activated within one working day of concluding an agreement to port a number. Settlement of outstanding bills should not be a condition for execution of a porting request.
- (63) In order to support the provision of one-stop-shops and to facilitate a seamless switching experience for end-users, the switching process should be led by the receiving provider of electronic communications to the public. The transferring provider of electronic communications to the public should not delay or hamper the switching process. Automated processes should be used as widely as possible and a high level of protection of personal data should be ensured. Availability of transparent, accurate and timely information on switching should increase the end-users' confidence in switching and make them more willing to engage actively in the competitive process.
- (64) Contracts with transferring providers of electronic communications to the public should be cancelled automatically after switching without any additional steps being required from end-users. In the case of pre-paid services any credit balance which has not been spent should be refunded to the switching consumer.
- (65) End-users need to experience continuity when changing important identifiers such as email addresses. To this end, and to ensure that email communications are not lost, end-users should be given the opportunity to opt, free of charge, for an email forwarding facility offered by the transferring internet access service provider in cases where the end-user has an email address provided by the transferring provider.

- (66) Competent national authorities may prescribe the global processes of porting numbers and switching, taking into account technological development and the need to ensure a swift, efficient and consumer-friendly switching process. Competent national authorities should be able to impose proportionate measures to protect end-users adequately throughout the switching process including appropriate sanctions that are necessary to minimise risks of abuse or delays and of end-users being switched to another provider without their consent. They should also be able to set an automatic compensation mechanism for end-users in such instances.
- (67) National regulatory authorities should be able to take effective action to monitor and secure compliance with the provisions of this Regulation, including the power to impose effective financial or administrative penalties in the event of any breach thereof.
- (68) In order to take account of market and technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of adapting the Annexes. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (69) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the decision requiring Member States to adapt their plans for compliance with a common timetable for granting rights of use and allowing actual use.
- (70) The implementing powers relating to the harmonisation and coordination of authorisation of radio spectrum, characteristics of small-area wireless access points, coordination between Member States regarding allocation of radio spectrum, more detailed technical and methodological rules concerning European virtual access products and the safeguarding of internet access and of reasonable traffic management and quality of service, should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.<sup>25</sup>
- (71) In order to ensure consistency between the objective and the measures needed to complete the single market for electronic communications pursuant to this Regulation and some specific existing legislative provisions and to reflect key elements of evolving decisional practice, Directive 2002/21/EC, the Directives 2002/20/EC and 2002/22/EC and Regulation No 531/2012 should be amended. This includes making provision for Directive 2002/21/EC and the related Directives to be read in conjunction with this Regulation, the introduction of strengthened powers of the Commission in order to ensure consistency of remedies imposed on European electronic communications providers having significant market power in the context of the European consultation mechanism, harmonisation of the criteria adopted in assessing the definition and competitiveness of relevant markets, the adaptation of the notification system under Directive 2002/20/EC in view of the single EU authorisation as well as the repeal of provisions on minimum harmonisation of end-users rights

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<sup>25</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

provided in Directive 2002/22/EC made redundant by the full harmonisation provided in this Regulation.

- (72) The mobile communications market remains fragmented in the Union, with no mobile network covering all Member States. As a consequence, in order to provide mobile communications services to their domestic customers travelling within the Union, roaming providers have to purchase wholesale roaming services from operators in a visited Member State. These wholesale charges constitute an important impediment to providing roaming services at price levels corresponding to domestic mobile services. Therefore further measures should be adopted to facilitate lowering these charges. Commercial or technical agreements among roaming providers which allow a virtual extension of their network coverage across the Union provide a means to internalise wholesale costs. To provide appropriate incentives, certain regulatory obligations laid down in Regulation (EC) No 531/2012 of the European Parliament and the Council<sup>26</sup> should be adapted. In particular, when roaming providers, through their own networks or through bilateral or multilateral roaming agreements ensure that all customers in the Union are offered by default roaming tariffs at the level of domestic tariffs, the obligation of domestic providers to enable their customers to access voice, SMS and data roaming services of any alternative roaming provider should not apply to such providers, subject to a transitional period where such access has already been granted.
- (73) Bilateral or multilateral roaming agreements can allow a mobile operator to treat roaming by its domestic customers on the networks of partners as being to a significant degree equivalent to providing services to such customers on its own networks, with consequential effects on its retail pricing for such virtual on-net coverage across the Union. Such an arrangement at the wholesale level could allow the development of new roaming products and therefore increase choice and competition at retail level.
- (74) The Digital Agenda for Europe and Regulation No 531/2012 establish the policy objective that the difference between roaming and domestic tariffs should approach zero. In practical terms, this requires that consumers falling into any of the broad observable categories of domestic consumption, identified by reference to a party's various domestic retail packages, should be in a position to confidently replicate the typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union, without additional costs to those incurred in a domestic setting. Such broad categories may be identified from current commercial practice by reference, for example, to the differentiation in domestic retail packages between pre-paid and post-paid customers; GSM-only packages (i.e. voice, SMS); packages adapted for different volumes of consumption; packages for business and consumer use respectively; retail packages with prices per unit consumed and those which provide "buckets" of units (e.g. voice minutes, megabytes of data) for a standard fee, irrespective of actual consumption. The diversity of retail tariff plans and packages available to customers in domestic mobile markets across the Union accommodates varying user demands associated with a competitive market. That flexibility in domestic markets should also be reflected in the intra-Union roaming environment, while bearing in mind that the need of roaming providers for wholesale inputs from independent network operators in different

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<sup>26</sup> Regulation (EU) No 531/2012 of the European Parliament and the Council of 13 June 2012 on roaming on public mobile communications networks within the Union (OJ L 172, 30.6.2012, p. 10).

Member States may still justify the imposition of limits by reference to reasonable use if domestic tariffs are applied to such roaming consumption.

- (75) While it is in the first place for roaming providers to assess themselves the reasonable character of the volumes of roaming voice calls, SMS and data to be covered at domestic rates under their various retail packages, national regulatory authorities should supervise the application by roaming providers of such reasonable use limits and ensure that they are specifically defined by reference to detailed quantified information in the contracts in terms which are clear and transparent to customers. In so doing, national regulatory authorities should take utmost account of relevant guidance from BEREC. In its guidance, BEREC should identify various usage patterns substantiated by the underlying voice, data and SMS usage trends at the Union level, and the evolution of expectations as regards in particular wireless data consumption.
- (76) In addition, the significant reduction in mobile termination rates throughout the Union in the recent past should now allow the elimination of additional roaming charges for incoming calls.
- (77) In order to provide stability and strategic leadership to BEREC activities, BEREC Board of Regulators should be represented by a full-time Chairperson appointed by the Board of Regulators, on the basis of merit, skills, knowledge of electronic communication market participants and markets, and of experience relevant to supervision and regulation, following an open selection procedure organised and managed by the Board of Regulators assisted by the Commission. For the designation of the first Chairperson of the Board of Regulators, the Commission should, inter alia, draw up a shortlist of candidates on the basis of merit, skills, knowledge of electronic communication market participants and markets, and of experience relevant to supervision and regulation. For the subsequent designations, the opportunity of having a shortlist drawn up by the Commission should be reviewed in a report to be established pursuant to this Regulation. The Office of BEREC should therefore comprise the Chairperson of the Board of Regulators, a Management Committee and an Administrative Manager.
- (78) Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012 should therefore be amended accordingly.
- (79) The Commission may always seek BEREC's opinion in accordance with Regulation (EC) No 1211/2009, when it considers it necessary for the implementation of the provisions of this Regulation.
- (80) This Regulation respects fundamental rights and observes the rights and principles enshrined in the Charter of Fundamental Rights of the European Union, notably Article 8 (the protection of personal data), Article 11 (freedom of expression and information), Article 16 (freedom to conduct a business), Article 21 (non-discrimination) and Article 38 (consumer protection).
- (81) Since the objective of this Regulation, namely to establish the regulatory principles and detailed rules necessary to complete a European single market for electronic communications, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

## **Chapter I**

### **General provisions**

#### *Article 1 – Objective and scope*

1. This Regulation establishes the regulatory principles and detailed rules necessary to complete a European single market for electronic communications where:

(a) providers of electronic communications services and networks have the right, the ability and the incentive to develop, extend and operate their networks and to provide services irrespective of where the provider is established or its customers are situated in the Union,

(b) citizens and businesses have the right and the possibility to access competitive, secure and reliable electronic communications services, irrespective of where they are provided from in the Union, without being hampered by cross-border restrictions or unjustified additional costs.

2. This Regulation establishes in particular regulatory principles pursuant to which the Commission, the Body of European Regulators for Electronic Communications (BEREC) and the national competent authorities shall act, each within its own competences, in conjunction with the provisions of Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC:

a) to secure simplified, predictable and convergent regulatory conditions regarding key administrative and commercial parameters, including as regards the proportionality of individual obligations which may be imposed pursuant to market analysis;

b) to promote sustainable competition within the single market and the global competitiveness of the Union, and to reduce sector-specific market regulation accordingly as and when these objectives are achieved;

c) to favour investment and innovation in new and enhanced high-capacity infrastructures which reach throughout the Union and which can cater for evolving end-user demand;

d) to facilitate innovative and high-quality service provision;

e) to ensure the availability and highly efficient use of radio spectrum, whether subject to general authorisation or to individual rights of use, for wireless broadband services in support of innovation, investment, jobs and end-user benefits;

f) to serve the interests of citizens and end-users in connectivity by fostering the investment conditions for an increase in the choice and quality of network access and of service, and by facilitating mobility across the Union and both social and territorial inclusion.

3. In order to ensure implementation of the overarching regulatory principles set out in paragraph 2, this Regulation furthermore establishes the necessary detailed rules for:

(a) a single EU authorisation for European electronic communications providers;

(b) further convergence of regulatory conditions as regards the necessity and proportionality of remedies imposed by national regulatory authorities on European electronic communications providers;

(c) the harmonised provision at Union level of certain wholesale products for broadband under convergent regulatory conditions;

(d) a coordinated European framework for the assignment of harmonised radio spectrum for wireless broadband communications services, thereby creating a European wireless space;

(e) the harmonisation of rules related to rights of end-users and the promotion of effective competition in retail markets, thereby creating a European consumer space for electronic communications;

(f) the phasing out of unjustified surcharges for intra-Union communications and roaming communications within the Union.

### *Article 2 – Definitions*

For the purposes of this Regulation, the definitions set out in Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC and 2002/77/EC shall apply.

The following definitions shall also apply:

(1) "European electronic communications provider" means an undertaking established in the Union providing or intending to provide electronic communications networks or services, whether directly or by means of one or more subsidiaries, directed to more than one Member State and which cannot be considered a subsidiary of another electronic communications provider;

(2) "provider of electronic communications to the public" means an undertaking providing public electronic communications networks or publicly available electronic communications services;

(3) "subsidiary" means an undertaking in which another undertaking directly or indirectly:

(i) has the power to exercise more than half the voting rights, or

(ii) has the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or

(iii) has the right to manage the undertaking's affairs;

(4) "single EU authorisation" means the legal framework applicable to a European electronic communications provider in the whole Union based on the general authorisation in the home Member State and in accordance with this Regulation;

(5) "home Member State" means the Member State where the European electronic communications provider has its main establishment;

(6) "main establishment" means the place of establishment in the Member State where the main decisions are taken as to the investments in and conduct of the provision of electronic communications services or networks in the Union;

(7) "host Member State" means any Member State different from the home Member State where a European electronic communications provider provides electronic communications networks or services;

(8) "harmonised radio spectrum for wireless broadband communications" means radio spectrum for which the conditions of availability and efficient use are harmonised at Union level, in particular pursuant to Decision 676/2002/EC of the European Parliament and the Council,<sup>27</sup> and which serves for electronic communications services other than broadcasting;

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<sup>27</sup> Decision 676/2002/EC of the European Parliament and the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision) (OJ L 108, 24.4.2002, p. 1).

(9) "small-area wireless access point" means a low power wireless network access equipment of small size operating within a small range, which may or may not be part of a public terrestrial mobile communications network, and be equipped with one or more low visual impact antennas, which allows wireless access by the public to electronic communications networks regardless of the underlying network topology;

(10) "radio local area network" (RLAN) means a low power wireless access system, operating within a small range, with a low risk of interference to other such systems deployed in close proximity by other users, using on a non-exclusive basis spectrum for which the conditions of availability and efficient use for this purpose are harmonised at Union level;

(11) "virtual broadband access" means a type of wholesale access to broadband networks that consists of a virtual access link to the customer premises over any access network architecture, excluding physical unbundling, together with a transmission service to a defined set of points of handover, and including specific network elements, specific network functionalities and ancillary IT systems;

(12) "assured service quality (ASQ) connectivity product" means a product that is made available at the internet protocol (IP) exchange, which enables customers to set up an IP communication link between a point of interconnection and one or several fixed network termination points, and enables defined levels of end to end network performance for the provision of specific services to end users on the basis of the delivery of a specified guaranteed quality of service, based on specified parameters;

(13) "long-distance communications" means voice or messages services terminating outside the local exchange and regional charging areas as identified by a geographic area code in the national numbering plan;

(14) "internet access service" means a publicly available electronic communications service that provides connectivity to the internet, and thereby connectivity between virtually all end points connected to the internet, irrespective of the network technology used;

(15) "specialised service" means an electronic communications service or any other service that provides the capability to access specific content, applications or services, or a combination thereof, and whose technical characteristics are controlled from end-to-end or provides the capability to send or receive data to or from a determined number of parties or endpoints; and that is not marketed or widely used as a substitute for internet access service;

(16) "receiving provider of electronic communications to the public" means the provider of electronic communications to the public to which the telephone number or service is transferred;

(17) "transferring provider of electronic communications to the public" means the provider of electronic communications to the public from which a telephone number or service is transferred.

## **Chapter II**

### **Single EU authorisation**

#### *Article 3 – Freedom to provide electronic communications across the Union*

1. A European electronic communications provider has the right to provide electronic communications networks and services in the whole Union and to exercise the rights linked to the provision of such networks and services in each Member State where it operates pursuant

to a single EU authorisation which is subject only to the notification requirements provided in Article 4.

2. The European electronic communications provider is subject to the rules and conditions applied in each Member State concerned in compliance with Union law unless otherwise provided in this Regulation and without prejudice to Regulation (EU) No 531/2012.

3. By way of derogation from Article 12 of Directive 2002/20/EC, a European electronic communications provider may be subject to administrative charges applicable in the host Member State only if it has an annual turnover for electronic communications services in that Member State above 0,5% of the total national electronic communications turnover. In levying these charges only the turnover for electronic communications services in the Member State concerned shall be taken into account.

4. By way of derogation from Article 13(1)(b) of Directive 2002/22/EC a European electronic communications provider may be subject to the contributions imposed to share the net cost of universal service obligations in the host Member State only if it has an annual turnover for electronic communications services in that Member State above 3% of the total national electronic communications turnover. In levying any such contribution only the turnover in the Member State concerned shall be taken into account.

5. A European electronic communications provider shall be entitled to equal treatment by the national regulatory authorities of different Member States in objectively equivalent situations.

6. In the event of a dispute between undertakings involving a European electronic communications provider regarding obligations applicable in accordance with Directives 2002/19/EC, 2002/20/EC, 2002/21/EC and 2002/22/EC, this Regulation or Regulation (EU) No 531/2012 in a host Member State, the European electronic communications provider may consult the national regulatory authority in the home Member State, which may deliver an opinion with a view to ensuring the development of consistent regulatory practices. The national regulatory authority in the host Member State shall take utmost account of the opinion issued by the national regulatory authority of the home Member State when deciding the dispute.

7. European electronic communications providers who, at the date of entry into force of this Regulation, have the right to provide electronic communications networks and services in more than one Member State shall submit the notification provided for in Article 4 at the latest by 1 July 2016.

#### *Article 4 - Notification procedure for European electronic communications providers*

1. A European electronic communications provider shall submit a single notification in accordance with this Regulation to the national regulatory authority of the home Member State, before beginning activity in at least one Member State.

2. The notification shall contain a declaration of the provision or the intention to commence the provision of electronic communications networks and services and shall be accompanied by the following information only:

(a) the name of the provider, his legal status and form, registration number, where the provider is registered in trade or other similar public register, the geographical address of the main establishment, a contact person, a short description of the networks or services provided or intended to be provided, including identification of the home Member State;

(b) the host Member State(s) where the services and the networks are provided or intended to be provided directly or by subsidiaries and, in the latter case, the name, his legal status and

form, geographical address, registration number, where the provider is registered in trade or other similar public register in the host Member State, and contact point of any subsidiary concerned and the respective operating areas. Where a subsidiary is controlled jointly by two or more electronic communications providers with their main establishments in different Member States the subsidiary shall indicate the relevant home Member State among those of the parent companies for the purpose of this Regulation and shall be notified by the parent company of that home Member State accordingly.

The notification shall be submitted in the language or languages applicable in the home Member State and in any host Member State.

3. Any change to the information submitted in accordance with paragraph 2 shall be made available to the national regulatory authority of the home Member State within one month following the change. In the event that the change to be notified concerns the intention to provide electronic communications networks or services in a host Member State that is not covered by a previous notification, the European electronic communications provider may begin activity in that host Member State upon notification.

4. Non-compliance with the notification requirement laid down in this Article shall constitute a breach of the common conditions applicable to the European electronic communications provider in the home Member State.

5. The national regulatory authority of the home Member State shall forward the information received in accordance with paragraph 2 and any change to that information in accordance with paragraph 3 to the national regulatory authorities of the concerned host Member States and to the BEREC Office within one week following reception of such information or any change.

The BEREC Office shall maintain a publicly accessible registry of notifications made in accordance with this Regulation.

6. At the request of a European electronic communications provider, the national regulatory authority of the home Member State shall issue a declaration in accordance with Article 9 of Directive 2002/20/EC, specifying that the undertaking in question is subject to the single EU authorisation.

7. In the event that one or more national regulatory authorities in different Member States consider that the identification of the home Member State in a notification made in accordance with paragraph 2 or any change to the provided information made available in accordance with paragraph 3 does not correspond or no longer corresponds to the main establishment of the undertaking pursuant to this Regulation, it shall refer the issue to the Commission, substantiating the grounds on which it bases its assessment. A copy of the referral shall be communicated to the BEREC Office for information. The Commission, having given the relevant European electronic communications provider and the national regulatory authority of the disputed home Member State the opportunity to express their views, shall issue a decision determining the home Member State of the undertaking in question pursuant to this Regulation within three months following the referral of the issue.

#### *Article 5 – Compliance with the single EU authorisation*

1. The national regulatory authority of each concerned Member State shall monitor and ensure, in accordance with its national legislation implementing the procedures provided for in Article 10 of Directive 2002/20/EC, that European electronic communications providers comply with the rules and conditions applicable in its territory in accordance with Article 3.

2. The national regulatory authority of a host Member State shall transmit to the national regulatory authority of the home Member State any relevant information concerning individual measures adopted in relation to a European electronic communications provider with a view to ensuring compliance with the rules and conditions applicable in its territory in accordance with Article 3.

*Article 6 – Suspension and withdrawal of the rights to provide electronic communications of European electronic communications providers*

1. Without prejudice to measures concerning suspension or withdrawal of rights of use for spectrum or numbers granted by any concerned Member State and interim measures adopted in accordance with paragraph 3, only the national regulatory authority of the home Member State may suspend or withdraw the rights of a European electronic communications provider to provide electronic communications networks and services in the whole Union or part thereof in accordance with national legislation implementing Article 10(5) of Directive 2002/20/EC.

2. In cases of serious or repeated breaches of the rules and conditions applicable in a host Member State in accordance with Article 3, where measures aimed at ensuring compliance taken by the national regulatory authority in the host Member State in accordance with Article 5 have failed, it shall inform the national regulatory authority in the home Member State and request that it adopts the measures provided for in paragraph 1.

3. Until a final decision on a request submitted in accordance with paragraph 2 is adopted by the national regulatory authority of the home Member State, the national regulatory authority of the host Member State may take urgent interim measures in accordance with national legislation implementing Article 10(6) of Directive 2002/20/EC where it has evidence of a breach of the rules and conditions applicable in its territory in accordance with Article 3. By way of derogation from the three months time-limit provided for in Article 10(6) of Directive 2002/20/EC, such interim measures may be valid until the national regulatory authority of the home Member State adopts a final decision.

The Commission, BEREC and the national regulatory authorities of the home Member State and other host Member States shall be informed of the interim measure adopted in due time.

4. Where the national regulatory authority of the home Member State considers taking a decision to suspend or withdraw rights of a European electronic communications provider in accordance with paragraph 1 either on its own initiative or at the request of the national regulatory authority of a host Member State, it shall notify its intention to the national regulatory authorities of any host Member State affected by such a decision. The national regulatory authority of a host Member State may deliver an opinion within one month.

5. Taking utmost account of any opinion of the national regulatory authority of the host Member States concerned, the national regulatory authority of the home Member State shall adopt a final decision and shall communicate it to the Commission, BEREC and the national regulatory authorities of the host Member States affected by such a decision within one week after its adoption.

6. Where the national regulatory authority of the home Member State has decided to suspend or withdraw rights of a European electronic communications provider in accordance with paragraph 1, the national regulatory authority of any host Member State concerned shall take appropriate measures to prevent the European electronic communications provider from further providing services or networks concerned by this decision within its territory.

### *Article 7 – Coordination of enforcement measures*

1. When applying Article 6, the national regulatory authority of the home Member State shall take supervisory or enforcement measures related to an electronic communications service or network provided in another Member State or which has caused damage in another Member State with the same diligence as if the electronic communications service or network concerned was provided in the home Member State.
2. The Member States shall ensure that within their territories it is possible to serve the legal documents relating to measures taken in accordance with Articles 5 and 6.

## **Chapter III**

### **European inputs**

#### *Section 1 - Coordination of use of radio spectrum within the single market*

#### *Article 8 – Scope of application and general provisions*

1. This section shall apply to harmonised radio spectrum for wireless broadband communications.
2. This section shall be without prejudice to the right of the Member States to benefit from fees imposed to ensure the optimal use of radio spectrum resources in accordance with Article 13 of Directive 2002/20/EC and to organise and use their radio spectrum for public order, public security and defence.
3. In the exercise of powers conferred in this section, the Commission shall take utmost account of any relevant opinion issued by the Radio Spectrum Policy Group (RSPG) established by Commission Decision 2002/622/EC<sup>28</sup>.

#### *Article 9 – Radio Spectrum use for wireless broadband communications: regulatory principles*

1. The national competent authorities for radio spectrum shall contribute to the development of a wireless space where investment and competitive conditions for high-speed wireless broadband communications converge and which enables planning and provision of integrated multi-territorial networks and services and economies of scale, thereby fostering innovation, economic growth and the long-term benefit of end users.

The national competent authorities shall refrain from applying procedures or imposing conditions for the use of radio spectrum which may unduly impede European electronic communications providers from providing integrated electronic communications networks and services in several Member States or throughout the Union.

2. The national competent authorities shall apply the least onerous authorisation system possible for allowing the use of radio spectrum, on the basis of objective, transparent, non-discriminatory and proportionate criteria, in such a way as to maximise flexibility and efficiency in radio spectrum use and to promote comparable conditions throughout the Union for integrated multi-territorial investments and operations by European electronic communications providers.

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<sup>28</sup> Commission Decision 2002/622/EC of 26 July 2002 establishing a Radio Spectrum Policy Group (OJ L 198, 27.07.2002, p. 49).

3. When establishing authorisation conditions and procedures for the use of radio spectrum, national competent authorities shall have regard in particular to equal treatment between existing and potential operators and between European electronic communications providers and other undertakings.

4. Without prejudice to paragraph 5, the national competent authorities shall take into account and, where necessary, shall reconcile the following regulatory principles when establishing authorisation conditions and procedures for rights of use for radio spectrum:

a) maximisation of end user interest, including end users' interest in both efficient long-term investment and innovation in wireless networks and services and in effective competition;

b) ensuring the most efficient use and effective management of radio spectrum;

c) ensuring predictable and comparable conditions to enable the planning of network investments and services on a multi-territorial basis and the achievement of scale economies;

d) ensuring the necessity and proportionality of the conditions imposed, including through an objective assessment of whether it is justified to impose additional conditions which could be in favour of or to the detriment of certain operators;

e) ensuring wide territorial coverage of high-speed wireless broadband networks and a high level of penetration and consumption of related services.

5. When considering whether to impose any of the specific conditions in respect of rights of use of radio spectrum referred to in Article 10, national competent authorities shall have particular regard to the criteria laid down in that Article.

*Article 10 –Relevant criteria to be taken in account for use of radio spectrum*

1. When determining the amount and type of radio spectrum to be assigned in a given procedure for granting rights of use for radio spectrum, the national competent authorities shall have regard to the following:

(a) the technical characteristics of different available radio spectrum bands,

(b) the possible combination in a single procedure of complementary bands; and

(c) the relevance of coherent portfolios of radio spectrum rights of use in different Member States to the provision of networks or services to the entire Union market or a significant part thereof.

2. When determining whether to specify any minimum or maximum amount of radio spectrum, which would be defined in respect of a right of use in a given band or in a combination of complementary bands, national competent authorities shall ensure:

(a) the most efficient use of the radio spectrum in accordance with Article 9(4)(b), taking into account the characteristics of the band or bands concerned;

(b) efficient network investment in accordance with Article 9(4)(a).

This paragraph shall be without prejudice to the application of paragraph 5 as regards conditions defining maximum amounts of radio spectrum.

3. National competent authorities shall ensure that the fees for rights of use for radio spectrum, if any:

(a) appropriately reflect the social and economic value of the radio spectrum, including beneficial externalities;

- (b) avoid under-utilisation and foster investment in the capacity, coverage and quality of networks and services;
- (c) avoid discrimination and ensure equality of opportunity between operators, including between existing and potential operators;
- (d) achieve an optimal distribution between immediate and, if any, periodic payments, having regard in particular to the need to incentivise rapid network roll-out and radio spectrum utilisation in accordance with Article 9(4)(b) and (e).

This paragraph shall be without prejudice to the application of paragraph 5 as regards any conditions resulting in differentiated fees between operators which are laid down with a view to promoting effective competition.

4. National competent authorities may impose obligations to reach minimum territorial coverage only when they are necessary and proportionate, in accordance with Article 9(4)(d), to achieve specific objectives of general interest determined at national level. When imposing such obligations, the national competent authorities shall have regard to the following:

- (a) any pre-existing coverage of the national territory by the relevant services, or by other electronic communications services;
- (b) the minimisation of the number of operators potentially subject to such obligations;
- (c) the possibility of burden sharing and reciprocity among various operators, including providers of other electronic communications services;
- (d) the investments required to achieve such coverage and the need to reflect these in the applicable fees;
- (e) the technical suitability of the relevant bands for efficient provision of wide territorial coverage.

5. When determining whether to impose any of the measures to promote effective competition provided for in Article 5(2) of Decision No 243/2012/EC of the European Parliament and the Council,<sup>29</sup> national competent authorities shall base their decision on an objective, prospective assessment of the following, taking into account market conditions and available benchmarks:

- (a) whether or not effective competition is likely to be maintained or achieved in the absence of such measures, and
- (b) the likely effect of such temporary measures on existing and future investments by market operators.

6. National competent authorities shall determine conditions under which undertakings may transfer or lease part or all of their individual rights to use radio spectrum to other undertakings, including the sharing of such radio spectrum. When determining those conditions, national competent authorities shall have regard to the following:

- (a) optimisation of efficient radio spectrum use in accordance with Article 9(4)(b);
- (b) enabling the exploitation of beneficial sharing opportunities;
- (c) reconciliation of the interests of existing and potential right-holders;
- (d) creation of a better-functioning, more liquid market for access to radio spectrum.

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<sup>29</sup> Decision No 243/2012/EU of the European Parliament and the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme (OJ L 81, 21.3.2012, p. 7).

This paragraph shall be without prejudice to the application of competition rules to undertakings.

7. National competent authorities shall authorise the sharing of passive and active infrastructure and the joint roll-out of infrastructure for wireless broadband communications, taking into account:

- (a) the state of infrastructure-based competition and any additional service-based competition;
- (b) the requirements of efficient radio spectrum use;
- (c) increased choice and a higher quality of service for end users;
- (d) technological innovation.

This paragraph shall be without prejudice to the application of competition rules to undertakings.

*Article 11 – Additional provisions related to conditions for use of radio spectrum*

1. Where the technical conditions for the availability and efficient use of harmonised radio spectrum for wireless broadband communications make it possible to use the relevant radio spectrum under a general authorisation regime, national competent authorities shall avoid imposing any additional condition and shall prevent any alternative use from impeding the effective application of such harmonised regime.

2. National competent authorities shall establish authorisation conditions whereby an individual authorisation or right of use may be revoked or cancelled in case of persistent failure to use the relevant radio spectrum. The revocation or cancellation may be subject to appropriate compensation when the failure to use the radio spectrum is due to grounds beyond the control of the operator, and is objectively justified.

3. National competent authorities shall consider the need to establish, in conformity with competition rules, and with a view to the timely freeing up or sharing of sufficient harmonised radio spectrum in cost-efficient bands for high-capacity wireless broadband services:

- (a) appropriate compensation or incentive payments to existing users or radio spectrum usage right holders, *inter alia* through incorporation in the bidding system or fixed amount for rights of use; or
- (b) incentive payments to be paid by existing users or radio spectrum usage right holders.

4. The national competent authorities shall consider the need to fix appropriate minimum technology performance levels for different bands in accordance with Article 6(3) of Decision No 243/2012/EC with a view to improving spectral efficiency and without prejudice to measures adopted under Decision No 676/2002.

When fixing those levels, they shall in particular:

- (a) have regard to the cycles of technology development and of renewal of equipment, in particular terminal equipment; and
- (b) apply the principle of technology neutrality to achieve the specified performance level, in accordance with Article 9 of Directive 2002/21/EC.

*Article 12- Harmonisation of certain authorisation conditions relative to wireless broadband communications*

1. National competent authorities shall establish timetables for the granting or reassignment of rights of use, or for the renewal of those rights under the terms of existing rights, which shall apply to radio spectrum harmonised for wireless broadband communications.

The duration of the rights of use or the dates for subsequent renewal shall be set well in advance of the relevant procedure included in the timetable referred to in the first subparagraph. The timetables, durations and renewal cycles shall take account of the need for a predictable investment environment, the effective possibility to release any relevant new radio spectrum bands harmonised for wireless broadband communications and of the period for amortisation of related investments under competitive conditions.

2. In order to ensure a coherent implementation of paragraph 1 throughout the Union and in particular to enable the synchronised availability of wireless services within the Union, the Commission may, by way of implementing acts:

(a) establish a common timetable for the Union as a whole, or timetables appropriate to the circumstances of different categories of Member States, the date or dates by which individual rights of use for a harmonised band, or a combination of complementary harmonised bands, shall be granted and actual use of the radio spectrum shall be allowed for exclusive or shared provision of wireless broadband communications throughout the Union;

(b) determine a minimum duration for the rights granted in the harmonised bands;

(c) determine, in the case of rights which are not indefinite in character, a synchronised expiry or renewal date for the Union as a whole;

(d) define the date of expiry of any existing rights of use of harmonised bands other than for wireless broadband communications, or, in the case of rights of indefinite duration, the date by which the right of use shall be amended, in order to allow the provision of wireless broadband communications.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

3. The Commission may also adopt implementing acts harmonising the date of expiry or renewal of individual rights to use radio spectrum for wireless broadband in harmonised bands, which already exist at the date of adoption of such acts, with a view to synchronising throughout the Union the date for renewal or reassignment of rights of use for such bands, including possible synchronisation with the date of renewal or reassignment of other bands harmonised by implementing measures adopted in accordance with paragraph 2 or with this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

Where implementing acts provided for in this paragraph define a harmonised date for renewal or reassignment of rights of use of radio spectrum which falls after the date of expiry or renewal of any existing individual rights of use of such radio spectrum in any of the Member States, the national competent authorities shall extend the existing rights until the harmonised date under the same previously applicable substantive authorisation conditions, including any applicable periodic fees.

Where the extension period granted in accordance with the second subparagraph is significant in comparison with the original duration of the rights of use, national competent authorities may subject the extension of rights to any adaptations of the previously applicable authorisation conditions which are necessary in the light of the changed circumstances,

including the imposition of additional fees. These additional fees shall be based on an application *pro rata temporis* of any initial fee for the original rights of use which was expressly calculated by reference to the originally foreseen duration.

The implementing acts provided for in this paragraph shall not require the shortening of the duration of existing rights of use in any Member State except in accordance with Article 14(2) of Directive 2002/20/EC and shall not apply to existing rights of indefinite duration.

Where the Commission adopts an implementing act pursuant to paragraph 2, it may apply the provisions of this paragraph *mutatis mutandis* to any rights of use of the harmonised band concerned for wireless broadband.

4. When adopting the implementing acts provided for in paragraphs 2 and 3, the Commission shall have regard to:

- (a) the regulatory principles set out in Article 9 ;
- (b) objective variations across the Union in the needs for additional radio spectrum for wireless broadband provision, while taking into account common radio spectrum needs for integrated networks covering several Member States;
- (c) the predictability of operating conditions for existing radio spectrum users;
- (d) the take-up, development and investment cycles of successive generations of wireless broadband technologies;
- (e) end-user demand for high-capacity wireless broadband communications.

In determining timetables for different categories of Member States which have not already granted individual rights of use and allowed actual use of the harmonised band in question, the Commission shall have due regard to any submissions made by Member States regarding the way radio spectrum rights have been historically granted, the grounds of restriction provided for in Article 9(3) and (4) of Directive 2002/21/EC, the possible need to vacate the band in question, the effects on competition or geographical or technical constraints, taking into account the effect on the internal market. The Commission shall ensure that implementation is not unduly deferred and that any variation in timetables between Member States does not result in undue differences in the competitive or regulatory situations between Member States.

5. Paragraph 2 shall be without prejudice to the right of the Member States to grant rights of use for and to allow actual use of a harmonised band before the adoption of an implementing act in respect of that band, subject to compliance with the second subparagraph of this paragraph, or in advance of the harmonised date established by an implementing act for that band.

Where national competent authorities grant rights of use in a harmonised band before the adoption of an implementing act in respect of that band, they shall define the conditions of such grant, and in particular those relative to duration, in such a way that beneficiaries of the rights of use are made aware of the possibility that the Commission would adopt implementing acts in accordance with paragraph 2 establishing a minimum duration of such rights or a synchronised expiry or renewal cycle for the Union as a whole. This subparagraph shall not apply to the grant of rights of indefinite duration.

6. For the harmonised bands for which a common timetable for granting rights of use and allowing actual use has been established in an implementing act adopted in accordance with paragraph 2, national competent authorities shall provide timely and sufficiently detailed information to the Commission on their plans to ensure compliance. The Commission may

adopt implementing acts defining the format and procedures for the provision of such information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

Where the Commission considers, upon reviewing such detailed plans provided by a Member State, that it is unlikely that the Member State in question will be able to comply with the timetable applicable to it, the Commission may adopt a decision by means of implementing act requiring that Member State to adapt its plans in an appropriate way to ensure such compliance.

*Article 13 – Coordination of authorisation procedures and conditions for the use of radio spectrum for wireless broadband in the internal market*

1. Where a national competent authority intends to subject the use of radio spectrum to a general authorisation or to grant individual rights of use of radio spectrum, or to amend rights and obligations in relation to the use of radio spectrum in accordance with Article 14 of Directive 2002/20/EC, it shall make accessible its draft measure, together with the reasoning thereof, simultaneously to the Commission and the competent authorities for radio spectrum of the other Member States, upon completion of the public consultation referred to in Article 6 of Directive 2002/21/EC, if applicable, and in any event only at a stage in its preparation which allows it to provide to the Commission and the competent authorities of the other Member States sufficient and stable information on all relevant matters.

The national competent authority shall provide information which shall include at least the following matters, where applicable:

- (a) the type of authorisation process;
- (b) the timing of the authorisation process;
- (c) the duration of the rights of use;
- (d) the type and amount of radio spectrum available, as a whole or to any given undertaking;
- (e) the amount and structure of any fees to be paid;
- (f) compensation or incentives regarding the vacation or sharing of radio spectrum by existing users;
- (g) coverage obligations;
- (h) wholesale access, national or regional roaming requirements;
- (i) the reservation of radio spectrum for certain types of operators, or the exclusion of certain types of operators;
- (j) conditions related to the assignment, transfer or accumulation of rights of use;
- (k) the possibility to use radio spectrum on a shared basis;
- (l) infrastructure sharing;
- (m) minimum technology performance levels;
- (n) restrictions applied in accordance with Articles 9(3) and 9(4) of Directive 2002/21/EC;
- (o) a revocation or withdrawal of one or several rights of use or an amendment of rights or conditions attached to such rights which cannot be considered as minor within the meaning of Article 14(1) of Directive 2002/20/EC.

2. National competent authorities and the Commission may make comments to the competent authority concerned within a period of two months. The two-month period shall not be extended.

When assessing the draft measure in accordance with this Article, the Commission shall have regard in particular to:

- (a) the provisions of Directives 2002/20/EC and 2002/21/EC and Decision No. 243/2012/EC;
- (b) the regulatory principles set out in Article 9;
- (c) the relevant criteria for certain specific conditions set out in Article 10 and the additional provisions set out in Article 11;
- (d) any implementing act adopted in accordance with Article 12;
- (e) coherence with recent, pending or planned procedures in other Member States, and possible effects on trade between Member States.

If, within this period, the Commission notifies the competent authority that the draft measure would create a barrier to the internal market or that it has serious doubts as to its compatibility with Union law, the draft measure shall not be adopted for an additional period of two months. The Commission shall also inform the competent authorities of the other Member States of the position it has taken on the draft measure in such a case.

3. Within the additional two-month period referred to in paragraph 2, the Commission and the competent authority concerned shall cooperate closely to identify the most appropriate and effective measure in the light of the criteria referred to in paragraph 2, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice.

4. At any stage during the procedure, the competent authority may amend or withdraw its draft measure taking utmost account of the Commission's notification referred to in paragraph 2.

5. Within the additional two-month period referred in paragraph 2, the Commission may:

- a) present a draft decision to the Communications Committee requiring the competent authority concerned to withdraw the draft measure. The draft decision shall be accompanied by a detailed and objective analysis of why the Commission considers that the draft measure should not be adopted as notified, together where necessary with specific proposals for amending the draft measure; or
- b) take a decision changing its position in relation to the draft measure concerned.

6. Where the Commission has not presented a draft decision referred to in paragraph 5(a) or takes a decision referred to in paragraph 5(b), the competent authority concerned may adopt the draft measure.

Where the Commission has presented a draft decision referred to in accordance with paragraph 5(a), the draft measure shall not be adopted by the competent authority for a period not exceeding six months from the notification sent to the competent authority pursuant to paragraph 2.

The Commission may decide to change its position in relation to the draft measure concerned at any stage of the procedure, including after the submission of a draft decision to the Communications Committee.

7. The Commission shall adopt any decision requiring the competent authority to withdraw its draft measure by means of implementing acts. Those implementing act shall be adopted in accordance with the examination procedure referred to in Article 33(2).

8. Where the Commission has adopted a decision in accordance with paragraph 7, the competent authority shall amend or withdraw the draft measure within six months of the date of notification of the Commission's decision. When the draft measure is amended, the competent authority shall undertake a public consultation where appropriate, and shall make the amended draft measure accessible to the Commission in accordance with paragraph 1.

9. The competent authority concerned shall take the utmost account of any comments of competent authorities of the other Member States and the Commission and may, except in cases covered by the third sub-paragraph of paragraph 2, by the second sub-paragraph of paragraph 6 and by paragraph 7, adopt the resulting draft measure and where it does so, shall communicate it to the Commission.

10. The competent authority shall inform the Commission of the results of the procedure to which its measure relates once that procedure has been concluded.

#### *Article 14 – Access to radio local area networks*

1. National competent authorities shall allow the provision of access through radio local area networks to the network of a provider of electronic communications to the public as well as the use of the harmonised radio spectrum for such provision, subject only to general authorisation.

2. National competent authorities shall not prevent providers of electronic communications to the public from allowing access for the public to their networks, through radio local area networks, which may be located at an end user's premises, subject to compliance with the general authorisation conditions and the prior informed agreement of the end user.

3. Providers of electronic communications to the public shall not unilaterally restrict:

a) the right of end users to accede to radio local area networks of their choice provided by third parties;

b) the right of end users to allow reciprocally or more generally access to the networks of such providers by other end users through radio local area networks, including on the basis of third-party initiatives which federate and make publicly accessible the radio local area networks of different end users.

4. National competent authorities shall not restrict the right of end users to allow reciprocally or more generally access to their radio local area networks by other end users, including on the basis of third-party initiatives which federate and make publicly accessible the radio local area networks of different end users.

5. National competent authorities shall not restrict the provision of public access to radio local area networks:

(a) by public authorities on or in the immediate vicinity of premises occupied by such public authorities, when it is ancillary to the public services provided on such premises;

(b) by initiatives of non-governmental organisations or public authorities to federate and make reciprocally or more generally accessible the radio local area networks of different end users, including, where applicable, the radio local area networks to which public access is provided in accordance with sub-point (a).

6. An undertaking, public authority or other end user shall not be deemed to be a provider of electronic communications to the public solely by virtue of the provision of public access to radio local area networks, where such provision is not commercial in character, or is merely ancillary to another commercial activity or public service which is not dependent on the conveyance of signals on such networks.

*Article 15 – Deployment and operation of small-area wireless access points*

1. National competent authorities shall allow the deployment, connection and operation of unobtrusive small-area wireless access points under the general authorisation regime and shall not unduly restrict that deployment, connection or operation through individual town planning permits or in any other way, whenever such use is in compliance with implementing measures adopted pursuant to paragraph 2.

This paragraph is without prejudice to the authorisation regime for the radio spectrum employed to operate small-area wireless access points.

2. For the purposes of the uniform implementation of the general authorisation regime for the deployment, connection and operation of small-area wireless access points pursuant to paragraph 1, the Commission may, by means of an implementing act, specify technical characteristics for the design, deployment and operation of small-area wireless access points, compliance with which shall ensure their unobtrusive character when in use in different local contexts. The Commission shall specify those technical characteristics by reference to the maximum size, power and electromagnetic characteristics, as well as the visual impact, of the deployed small-area wireless access points. Those technical characteristics for use of small-area wireless access points shall at a minimum comply with the requirements of Directive 2013/35/EU<sup>30</sup> and with the thresholds defined in Council Recommendation No 1999/519/EC.<sup>31</sup>

The characteristics specified in order for the deployment, connection and operation of small-area wireless access point to benefit from paragraph 1 shall be without prejudice to the essential requirements of Directive 1999/5/EC of the European Parliament and the Council relative to the placing on the market of such products.<sup>32</sup>

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

*Article 16 – Radio spectrum coordination among Member States*

1. Without prejudice to their obligations under relevant international agreements including ITU Radio Regulations, the national competent authorities shall ensure that the use of radio spectrum is organised on their territory, and shall in particular take all necessary radio spectrum allocation or assignment measures, in order that no other Member State is impeded

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<sup>30</sup> Directive 2013/35/EU of the European Parliament and of the Council of 26 June 2013 on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) (20th individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) and repealing Directive 2004/40/EC (OJ L 179, 29.6.2013, p. 1).

<sup>31</sup> Recommendation 1999/519/EC of the Council of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ L 1999, 30.7.1999, p. 59).

<sup>32</sup> Directive 1999/5/EC of the European Parliament and the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ L 91, 7.4.1999, p. 10).

from allowing on its territory the use of a specific harmonised band in accordance with Union legislation.

2. Member States shall cooperate with each other in the cross-border coordination of the use of radio spectrum in order to ensure compliance with paragraph 1 and to ensure that no Member State is denied equitable access to radio spectrum.

3. Any concerned Member State may invite the Radio Spectrum Policy Group to use its good offices to assist it and any other Member State in complying with this Article.

The Commission may adopt implementing measures to ensure that coordinated outcomes respect the requirement of equitable access to radio spectrum among the relevant Member States, to resolve any practical inconsistencies between distinct coordinated outcomes between different Member States, or to ensure the enforcement of coordinated solutions under Union law. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

## *Section 2 – European virtual access products*

### *Article 17 – European virtual broadband access product*

1. The provision of a virtual broadband access product imposed in accordance with Article 8 and 12 of Directive 2002/19/EC shall be considered as the provision of a European virtual broadband access product if it is supplied in accordance with the minimum parameters listed in one of the Offers set out in Annex I and cumulatively meets the following substantive requirements:

- (a) ability to be offered as a high quality product anywhere in the Union;
- (b) maximum degree of network and service interoperability and non-discriminatory network management between operators consistently with network topology;
- (c) capacity to serve end-users on competitive terms;
- (d) cost-effectiveness, taking into account the capacity to be implemented on existing and newly built networks and to co-exist with other access products that may be provided on the same network infrastructure;
- (e) operational effectiveness, in particular in respect of limiting to the extent possible implementation obstacles and deployment costs for virtual broadband access providers and virtual broadband access seekers;
- (f) respect of the rules on protection of privacy, personal data, security and integrity of networks and transparency in conformity with Union law.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex I in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 1.

### *Article 18 – Regulatory conditions related to European virtual broadband access product*

1. A national regulatory authority which has previously imposed on an operator in accordance with Articles 8 and 12 of Directive 2002/19/EC any obligation to provide wholesale access to a next-generation network shall assess whether it would be appropriate and proportionate to impose instead an obligation to supply a European virtual broadband access product which provides at least equivalent functionalities to the currently imposed wholesale access product.

National regulatory authorities referred to in the first subparagraph shall conduct the requisite assessment of existing wholesale access remedies as soon as possible after the entry into force of this Regulation, irrespective of the timing of the analysis of relevant markets in accordance with Article 16(6) of Directive 2002/21/EC.

Where a national regulatory authority which has previously imposed an obligation to provide virtual broadband access considers, following its assessment pursuant to the first subparagraph, that a European virtual broadband access product is not appropriate in the specific circumstances, it shall provide a reasoned explanation in its draft measure in accordance with the procedure set out in Articles 6 and 7 of Directive 2002/21/EC.

2. Where a national regulatory authority intends to impose on an operator an obligation to provide wholesale access to a next-generation network in accordance with Articles 8 and 12 of Directive 2002/19/EC, it shall assess in particular, in addition to the factors set out in Article 12(2) of that Directive, the respective merits of imposing

(i) a passive wholesale input, such as physical unbundled access to the local loop or the sub-loop;

(ii) a non-physical or virtual wholesale input offering equivalent functionalities, and in particular a European virtual broadband access product that satisfies the substantive requirements and parameters set out in Article 17(1) and in Annex I, point 1, of this Regulation.

3. By way of derogation from Article 12(3) of Directive 2002/19/EC, where a national regulatory authority intends to impose on an operator an obligation to provide virtual broadband access in accordance with Articles 8 and 12 of that Directive, it shall impose an obligation to supply a European virtual broadband access product which has the most relevant functionalities to meet the regulatory need identified in its assessment. Where a national regulatory authority considers that a European virtual broadband access product would not be appropriate in the specific circumstances, it shall provide a reasoned explanation in its draft measure in accordance with the procedure set out in Articles 6 and 7 of Directive 2002/21/EC.

4. When assessing pursuant to paragraphs 1, 2 or 3 whether to impose a European virtual broadband access product instead of any other possible wholesale access product, the national regulatory authority shall have regard to the interest in convergent regulatory conditions throughout the Union for wholesale access remedies, the current and prospective state of infrastructure-based competition and the evolution of market conditions towards provision of competing next-generation networks, to investments made respectively by the operator designated as having significant market power and by access-seekers, and to the amortisation period for such investments.

The national regulatory authority shall set a transitional period for replacing an existing wholesale access product by a European virtual broadband access product if necessary.

5. By way of derogation from Article 9(3) of Directive 2002/19/EC, where an operator has obligations under Articles 8 and 12 of that Directive to provide a European virtual broadband access product, national regulatory authorities shall ensure the publication of a reference offer containing at least the elements set out in Annex I, point 1, point 2 or point 3, as the case may be.

6. By way of derogation from Article 16(3) of Directive 2002/21/EC, a national regulatory authority shall not impose a mandatory period of notice before withdrawing a previously imposed obligation to offer a European virtual broadband access product that satisfies the substantive requirements and parameters set out in Article 17(1) and in Annex I, point 2 of

this Regulation, if the operator concerned voluntarily commits to make such product available at the request of third parties on fair and reasonable terms for a further period of three years.

7. Where a national regulatory authority is considering, in the context of an assessment pursuant to paragraphs 2 or 3, whether or not to impose or maintain price controls in accordance with Article 13 of Directive 2002/19/EC for wholesale access to next-generation networks, whether by means of one of the European virtual broadband access products or otherwise, it shall consider the state of competition in respect of the prices, choice and quality of products offered at retail level. It shall have regard to the effectiveness of protection against discrimination at wholesale level and to the state of infrastructure-based competition from other fixed line or wireless networks, giving due weight to the role of existing infrastructure-based competition between next-generation networks in driving further improvements in quality for end users, in order to determine whether price controls for wholesale access would not be necessary or proportionate in the specific case.

#### *Article 19 – Assured service quality (ASQ) connectivity product*

1. Any operator shall have the right to provide a European ASQ connectivity product as specified in paragraph 4.

2. Any operator shall meet any reasonable request to provide a European ASQ connectivity product as specified in paragraph 4 submitted in writing by an authorised provider of electronic communications services. Any refusal to provide a European ASQ product shall be based on objective criteria. The operator shall state the reasons for any refusal within one month from the written request.

It shall be deemed to be an objective ground of refusal that the party requesting the supply of a European ASQ connectivity product is unable or unwilling to make available, whether within the Union or in third countries, a European ASQ connectivity product to the requested party on reasonable terms, if the latter so requests.

3. Where the request is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the written request, either party is entitled to refer the issue to the relevant national regulatory authority pursuant to Article 20 of Directive 2002/21/EC. In such a case, Article 3(6) of this Regulation may apply.

4. The provision of a connectivity product shall be considered as the provision of a European ASQ connectivity product if it is supplied in accordance with the minimum parameters listed in Annex II and cumulatively meets the following substantive requirements:

- (a) ability to be offered as a high quality product anywhere in the Union;
- (b) enabling service providers to meet the needs of their end-users;
- (c) cost-effectiveness, taking into account existing solutions that may be provided on the same networks;
- (d) operational effectiveness, in particular in respect of limiting to the extent possible implementation obstacles and deployment costs for customers; and
- (e) ensuring that the rules on protection of privacy, personal data, security and integrity of networks and transparency in accordance with Union law are respected.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex II in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 4.

### *Article 20 – Measures relating to European access products*

1. The Commission shall adopt by 1 January 2016 implementing acts laying down uniform technical and methodological rules for the implementation of a European virtual broadband access product within the meaning of Article 17 and of Annex I, point 1, in accordance with the criteria and parameters specified therein and in order to ensure the equivalence of the functionality of such a virtual wholesale access product to next-generation networks with that of a physical unbundled access product. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).
2. The Commission may adopt implementing acts laying down uniform technical and methodological rules for the implementation of one or more of the European access products within the meaning of Articles 17 and 19 and of Annex I, points 2 and 3, and Annex II, in accordance with the respective criteria and parameters specified therein. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

## **Chapter IV**

### **Harmonised rights of end-users**

#### *Article 21 – Elimination of restrictions and discrimination*

1. The freedom of end-users to use public electronic communications networks or publicly available electronic communications services provided by an undertaking established in another Member State shall not be restricted by public authorities.
2. Providers of electronic communications to the public shall not apply any discriminatory requirements or conditions of access or use to end-users based on the end-user's nationality or place of residence unless such differences are objectively justified.
3. Providers of electronic communications to the public shall not apply tariffs for intra-Union communications terminating in another Member State which are higher, unless objectively justified:
  - a) as regards fixed communications, than tariffs for domestic long-distance communications;
  - b) as regards mobile communications, than the euro-tariffs for regulated voice and SMS roaming communications, respectively, established in Regulation (EC) No 531/2012.

#### *Article 22 - Cross-border dispute resolution*

1. The out-of-court procedures set up in accordance with Article 34 (1) of Directive 2002/22/EC shall also apply to disputes related to contracts between consumers, and other end-users to the extent that such out-of-court procedures are available also for them, and providers of electronic communications to the public which are established in another Member State. For disputes within the scope of Directive 2013/11/EU<sup>33</sup>, the provisions of that Directive shall apply.

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<sup>33</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, OJ L 165 of 18 June 2013, p.63.

*Article 23 - Freedom to provide and avail of open internet access, and reasonable traffic management*

1. End-users shall be free to access and distribute information and content, run applications and use services of their choice via their internet access service.

End-users shall be free to enter into agreements on data volumes and speeds with providers of internet access services and, in accordance with any such agreements relative to data volumes, to avail of any offers by providers of internet content, applications and services.

2. End-users shall also be free to agree with either providers of electronic communications to the public or with providers of content, applications and services on the provision of specialised services with an enhanced quality of service.

In order to enable the provision of specialised services to end-users, providers of content, applications and services and providers of electronic communications to the public shall be free to enter into agreements with each other to transmit the related data volumes or traffic as specialised services with a defined quality of service or dedicated capacity. The provision of specialised services shall not impair in a recurring or continuous manner the general quality of internet access services.

3. This Article is without prejudice to Union or national legislation related to the lawfulness of the information, content, application or services transmitted.

4. The exercise of the freedoms provided for in paragraphs 1 and 2 shall be facilitated by the provision of complete information in accordance with Article 25(1), Article 26 (2), and Article 27 (1) and (2).

5. Within the limits of any contractually agreed data volumes or speeds for internet access services, providers of internet access services shall not restrict the freedoms provided for in paragraph 1 by blocking, slowing down, degrading or discriminating against specific content, applications or services, or specific classes thereof, except in cases where it is necessary to apply reasonable traffic management measures. Reasonable traffic management measures shall be transparent, non-discriminatory, proportionate and necessary to:

- a) implement a legislative provision or a court order, or prevent or impede serious crimes;
- b) preserve the integrity and security of the network, services provided via this network, and the end-users' terminals;
- c) prevent the transmission of unsolicited communications to end-users who have given their prior consent to such restrictive measures;
- d) minimise the effects of temporary or exceptional network congestion provided that equivalent types of traffic are treated equally.

Reasonable traffic management shall only entail processing of data that is necessary and proportionate to achieve the purposes set out in this paragraph.

*Article 24 - Safeguards for quality of service*

1. National regulatory authorities shall closely monitor and ensure the effective ability of end-users to benefit from the freedoms provided for in Article 23 (1) and (2), compliance with Article 23 (5), and the continued availability of non-discriminatory internet access services at levels of quality that reflect advances in technology and that are not impaired by specialised

services. They shall, in cooperation with other competent national authorities, also monitor the effects of specialised services on cultural diversity and innovation. National regulatory authorities shall report on an annual basis to the Commission and BEREC on their monitoring and findings.

2. In order to prevent the general impairment of quality of service for internet access services or to safeguard the ability of end-users to access and distribute content or information or to run applications and services of their choice, national regulatory authorities shall have the power to impose minimum quality of service requirements on providers of electronic communications to the public.

National regulatory authorities shall, in good time before imposing any such requirements, provide the Commission with a summary of the grounds for action, the envisaged requirements and the proposed course of action. This information shall also be made available to BEREC. The Commission may, having examined such information, make comments or recommendations thereupon, in particular to ensure that the envisaged requirements do not adversely affect the functioning of the internal market. The envisaged requirements shall not be adopted during a period of two months from the receipt of complete information by the Commission unless otherwise agreed between the Commission and the national regulatory authority, or the Commission has informed the national regulatory authority of a shortened examination period, or the Commission has made comments or recommendations. National regulatory authorities shall take the utmost account of the Commission's comments or recommendations and shall communicate the adopted requirements to the Commission and BEREC.

3. The Commission may adopt implementing acts defining uniform conditions for the implementation of the obligations of national competent authorities under this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33 (2).

#### *Article 25 - Transparency and publication of information*

1. Providers of electronic communications to the public shall, save for offers which are individually negotiated, publish transparent, comparable, adequate and up-to-date information on:

a) their name, address and contact information;

b) for each tariff plan the services offered and the relevant quality of service parameters, the applicable prices (for consumers including taxes) and any applicable charges (access, usage, maintenance and any additional charges), as well as costs with respect to terminal equipment;

c) applicable tariffs regarding any number or service subject to particular pricing conditions;

d) the quality of their services, in accordance with implementing acts provided for in paragraph 2;

e) internet access services, where offered, specifying the following:

(i) actually available data speed for download and upload in the end-user's Member State of residence, including at peak-hours;

- (ii) the level of applicable data volume limitations, if any; the prices for increasing the available data volume on an ad hoc or lasting basis; the data speed, and its cost, available after full consumption of the applicable data volume, if limited; and the means for end-users to monitor at any moment the current level of their consumption;
- (iii) a clear and comprehensible explanation as to how any data volume limitation, the actually available speed and other quality parameters, and the simultaneous use of specialised services with an enhanced quality of service, may practically impact the use of content, applications and services;
- (iv) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and on how those procedures could affect service quality and the protection of personal data;
- f) measures taken to ensure equivalence in access for disabled end-users, including regularly updated information on details of products and services designed for them;
- g) their standard contract terms and conditions, including any minimum contractual period, the conditions for and any charges due on early termination of a contract, the procedures and direct charges related to switching and portability of numbers and other identifiers, and compensation arrangements for delay or abuse of switching;
- h) access to emergency services and caller location information for all services offered, any limitations on the provision of emergency services under Article 26 of Directive 2002/22/EC, and any changes thereto;
- i) rights as regards universal service, including, where appropriate, the facilities and services mentioned in Annex I to Directive 2002/22/EC.

The information shall be published in a clear, comprehensive and easily accessible form in the official language(s) of the Member State where the service is offered, and be updated regularly. The information shall, on request, be supplied to the relevant national regulatory authorities in advance of its publication. Any differentiation in the conditions applied to consumers and other end-users shall be made explicit.

2. The Commission may adopt implementing acts specifying the methods for measuring the speed of internet access services, the quality of service parameters and the methods for measuring them, and the content, form and manner of the information to be published, including possible quality certification mechanisms. The Commission may take into account the parameters, definitions and measurement methods set out in Annex III of the Directive 2002/22/EC. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

3. End-users shall have access to independent evaluation tools allowing them to compare the performance of electronic communications network access and services and the cost of alternative usage patterns. To this end Member States shall establish a voluntary certification scheme for interactive websites, guides or similar tools. Certification shall be granted on the basis of objective, transparent and proportionate requirements, in particular independence from any provider of electronic communications to the public, the use of plain language, the provision of complete and up-to-date information, and the operation of an effective complaints handling procedure. Where certified comparison facilities are not available on the market free of charge or at a reasonable price, national regulatory authorities or other competent national authorities shall make such facilities available themselves or through third

parties in compliance with the certification requirements. The information published by providers of electronic communications to the public shall be accessible, free of charge, for the purposes of making available comparison facilities.

4. Upon request of the relevant public authorities, providers of electronic communications to the public shall distribute public interest information free of charge to end-users, where appropriate, by the same means as those ordinarily used by them in their communications with end-users. In such a case, that information shall be provided by the relevant public authorities to the providers of electronic communications to the public in a standardised format and may, inter alia, cover the following topics:

(a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where it may prejudice respect for the rights and freedoms of others, including infringements of data protection rights, copyright and related rights, and their legal consequences; and

(b) the means of protection against risks to personal security and unlawful access to personal data when using electronic communications services.

#### *Article 26 - Information requirements for contracts*

1. Before a contract on the provision of connection to a public electronic communications network or publicly available electronic communications services becomes binding providers of electronic communications to the public shall provide consumers, and other end-users unless they have explicitly agreed otherwise, at least the following information:

(a) the identity, address and contact information of the provider and, if different, the address and contact information for any complaints;

(b) the main characteristics of the services provided, including in particular:

(i) for each tariff plan the types of services offered, the included volumes of communications and all relevant quality of service parameters, including the time for the initial connection;

(ii) whether and in which Member States access to emergency services and caller location information is being provided and any limitations on the provision of emergency services in accordance with Article 26 of Directive 2002/22/EC;

(iii) the types of after-sales services, maintenance services and customer support services provided, the conditions and charges for these services, and the means of contacting these services;

(iv) any restrictions imposed by the provider on the use of terminal equipment supplied, including information on unlocking the terminal equipment and any charges involved if the contract is terminated before the end of the minimum contract period;

(c) details of prices and tariffs (for consumers including taxes and possibly due additional charges) and the means by which up-to-date information on all applicable tariffs and charges are made available;

(d) payment methods offered and any cost differences due to the payment method, and available facilities to safeguard bill transparency and monitor the level of consumption ;

(e) the duration of the contract and the conditions for renewal and termination, including:

(i) any minimum usage or duration required to benefit from promotional terms;

- (ii) any charges related to switching and portability of numbers and other identifiers, including compensation arrangements for delay or abuse of switching;
- (iii) any charges due on early termination of the contract, including any cost recovery with respect to terminal equipment (on the basis of customary depreciation methods) and other promotional advantages (on a *pro rata temporis* basis);
- (f) any compensation and refund arrangements, including an explicit reference to statutory rights of the end-user, which apply if contracted service quality levels are not met;
- (g) where an obligation exists in accordance with Article 25 of Directive 2002/22/EC, the end-users' options as to whether or not to include their personal data in a directory, and the data concerned;
- (h) for disabled end-users, details of products and services designed for them;
- (i) the means of initiating procedures for the settlement of disputes, including cross-border disputes, in accordance with Article 34 of Directive 2002/22/EC and Article 22 of this Regulation;
- (j) the type of action that might be taken by the provider in reaction to security or integrity incidents or threats and vulnerabilities.

2. In addition to paragraph 1, providers of electronic communications to the public shall provide end-users, unless otherwise agreed by an end-user who is not a consumer, at least the following information with respect to their internet access services:

- (a) the level of applicable data volume limitations, if any; the prices for increasing the available data volume on an ad hoc or lasting basis; the data speed, and its cost, available after full consumption of the applicable data volume, if limited; and how end-users can at any moment monitor the current level of their consumption;
- (b) the actually available data speed for download and upload at the main location of the end-user, including actual speed ranges, speed averages and peak-hour speed, including the potential impact of allowing access to third parties through a radio local area network ;
- (c) other quality of service parameters;;
- (d) information on any procedures put in place by the provider to measure and shape traffic so as to avoid congestion of a network, and information on how those procedures could impact on service quality and protection of personal data;
- (e) a clear and comprehensible explanation as to how any volume limitation, the actually available speed and other quality of service parameters, and the simultaneous use of specialised services with an enhanced quality of service, may practically impact the use of content, applications and services.

3. The information referred to in paragraphs 1 and 2 shall be provided in a clear, comprehensive and easily accessible manner and in an official language of the end-user's Member State of residence, and shall be updated regularly. It shall form an integral part of the contract and shall not be altered unless the contracting parties expressly agree otherwise. The end-user shall receive a copy of the contract in writing.

4. The Commission may adopt implementing acts specifying the details of the information requirements listed in paragraph 2. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

5. The contract shall also include, upon request by the relevant public authorities, any information provided by these authorities for this purpose on the use of electronic

communications networks and services to engage in unlawful activities or to disseminate harmful content, and on the means of protection against risks to personal security and unlawful processing of personal data, referred to in Article 25(4) and relevant to the service provided.

#### *Article 27 – Control of consumption*

1. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge, for a facility which provides information on the accumulated consumption of different electronic communications services expressed in the currency in which the end-user is billed. Such a facility shall guarantee that, without the end-user's consent, the accumulated expenditure over a specified period of use does not exceed a specified financial limit set by the end-user.
2. Providers of electronic communications to the public shall ensure that an appropriate notification is sent to the end-user when the consumption of services has reached 80% of the financial limit set in accordance with paragraph 1. The notification shall indicate the procedure to be followed to continue the provision of those services, including their cost. The provider shall cease to provide the specified services and to charge the end-user for it if the financial limit would otherwise be exceeded, unless and until the end-user requests the continued or renewed provision of those services. After having reached the financial limit end-users shall continue to be able to receive calls and SMS messages and access free-phone numbers and emergency services by dialling the European emergency number 112 free of charge until the end of the agreed billing period.
3. Providers of electronic communications to the public shall, immediately prior to connecting the call, enable end-users to access easily and without incurring any costs information on applicable tariffs regarding any number or service subject to particular pricing conditions unless the national regulatory authority has granted a prior derogation for reasons of proportionality. Any such information shall be provided in a comparable fashion for all such numbers or services.
4. Providers of electronic communications to the public shall offer end-users the opportunity to opt, free of charge for receiving itemised bills.

#### *Article 28 - Contract termination*

1. Contracts concluded between consumers and providers of electronic communications to the public shall not provide for a minimum duration that exceeds 24 months. Providers of electronic communications to the public shall offer end-users the possibility to conclude a contract with a maximum duration of 12 months.
2. Consumers, and other end-users unless they have otherwise agreed, shall have the right to terminate a contract with a one-month notice period, where six months or more have elapsed since conclusion of the contract. No compensation shall be due other than for the residual value of subsidised equipment bundled with the contract at the moment of the contract conclusion and a *pro rata temporis* reimbursement for any other promotional advantages marked as such at the moment of the contract conclusion. Any restriction on the usage of terminal equipment on other networks shall be lifted, free of charge, by the provider at the latest upon payment of such compensation.
3. Where the contracts or national law provide for contract periods to be extended tacitly, the provider of electronic communications to the public shall inform the end-user in due time so that the end-user has at least one month to oppose a tacit extension. If the end-user does not

oppose, the contract shall be deemed to be a permanent contract which can be terminated by the end-user at any time with a one-month notice period and without incurring any costs.

4. End-users shall have the right to terminate their contract without incurring any costs upon notice of changes in the contractual conditions proposed by the provider of electronic communications to the public unless the proposed changes are exclusively to the benefit of the end-user. Providers shall give end-users adequate notice, not shorter than one month, of any such change, and shall inform them at the same time of their right to terminate their contract without incurring any costs if they do not accept the new conditions. Paragraph 2 shall apply *mutatis mutandis*.

5. Any significant and non-temporary discrepancy between the actual performance regarding speed or other quality parameters and the performance indicated by the provider of electronic communications to the public in accordance with Article 26 shall be considered as non-conformity of performance for the purpose of determining the end-user's remedies in accordance with national law.

6. A subscription to additional services provided by the same provider of electronic communications to the public shall not re-start the initial contract period unless the price of the additional service(s) significantly exceeds that of the initial services or the additional services are offered at a special promotional price linked to the renewal of the existing contract.

7. Providers of electronic communications to the public shall apply conditions and procedures for contract termination which do not raise obstacles to or disincentives against changing service provider.

#### *Article 29 - Bundled offers*

If a bundle of services offered to consumers comprises at least a connection to an electronic communications network or one electronic communications service, Articles 28 and 30 of this Regulation shall apply to all elements of the bundle.

## **Chapter V**

### **Facilitating change of providers**

#### *Article 30 - Switching and portability of numbers*

1. All end-users with numbers from a national telephone numbering plan who so request shall have the right to retain their number(s) independently of the provider of electronic communications to the public providing the service in accordance with Part C of Annex I to Directive 2002/22/EC, provided the provider is an electronic communications provider in the Member State to which the national numbering plan relates or is a European electronic communications provider which has notified to the competent regulatory authority of the home Member State the fact that it provides or intends to provide such services in the Member State to which the national numbering plan relates.

2. Pricing between providers of electronic communications to the public related to the provision of number portability shall be cost-oriented, and direct charges to end-users, if any, shall not act as a disincentive for end-users against changing provider.

3. Porting of numbers and their activation shall be carried out within the shortest possible time. For end-users who have concluded an agreement to port a number to a new provider that

number shall be activated within one working day from the conclusion of such agreement. Loss of service during the process of porting, if any, shall not exceed one working day.

4. The receiving provider of electronic communications to the public shall lead the switching and porting process. End-users shall receive adequate information on switching before and during the switching process, and also immediately after it is concluded. End-users shall not be switched to another provider against their will.

5. The end-users' contracts with transferring providers of electronic communications to the public shall be terminated automatically after conclusion of the switch. Transferring providers of electronic communications to the public shall refund any remaining credit to the consumers using pre-paid services.

6. Providers of electronic communications to the public which delay or abuse switching, including by not making available information necessary for porting in a timely manner, shall be obliged to compensate end-users who are exposed to such delay or abuse.

7. In the event that an end-user switching to a new provider of internet access services has an email address provided by the transferring provider, the latter shall, upon request by the end-user, forward to any email address indicated by the end-user, free of charge, all email communications addressed to the end-user's previous email address for a period of 12 months. This email forwarding service shall include an automatic response message to all email senders alerting them about the end-user's new email address. The end-user shall have the option of requesting that the new email address should not be disclosed in the automatic response message.

Following the initial 12-month period, the transferring provider of electronic communications to the public shall give the end-user an option to extend the period for email forwarding, at a charge if required. The transferring provider of electronic communications to the public shall not allocate the end-users' initial email address to another end-user before a period of two years following contract termination, and in any case during the period for which the email forwarding has been extended.

8. The competent national authorities may establish the global processes of switching and porting, including provision of appropriate sanctions on providers and compensations for end-users. They shall take into account necessary end-user protection throughout the switching process and the need to ensure efficiency of such process.

## **Chapter VI**

### **Organisational and final provisions**

#### *Article 31 - Penalties*

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 1 July 2016 at the latest and shall notify it without delay of any subsequent amendment affecting them.

With regard to European electronic communications providers, penalties shall be imposed in accordance with Chapter II regarding the respective competences of national regulatory authorities in the home and host Member States.

### *Article 32 – Delegation of powers*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 17(2) and 19(5) shall be conferred on the Commission for an indeterminate period of time from the [date entry into force of the Regulation]
3. The delegation of power referred to in Articles 17(2) and 19(5) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 17(2) and 19(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

### *Article 33 – Committee procedure*

1. The Commission shall be assisted by the Communications Committee established by Article 22(1) of Directive 2002/21/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

### *Article 34 – Amendments to Directive 2002/20/EC*

In Article 3(2), the second subparagraph is deleted.

### *Article 35 – Amendments to Directive 2002/21/EC*

Directive 2002/21/EC is amended as follows:

- (1) In Article 1, the following paragraph 6 is added:

*‘This Directive and the Specific Directives shall be interpreted and applied in conjunction with the provisions of Regulation No [XX/2014].’*

- (2) Article 7a is amended as follows:

– (a) in paragraph 1, the first sub-paragraph is replaced by the following:

*‘1. Where an intended measure covered by Article 7(3) aims at imposing, amending or withdrawing an obligation on an operator in application of Article 16 of this Directive in conjunction with Article 5 and Articles 9 to 13 of Directive 2002/19/EC (Access Directive), and Article 17 of Directive 2002/22/EC (Universal Service Directive), the Commission may, within the period of one month provided for by Article 7(3) of this Directive, notify the national regulatory authority concerned and BEREC of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its*

*compatibility with Union law, taking into account as appropriate any Recommendation adopted pursuant to Article 19(1) of this Directive concerning the harmonised application of specific provisions of this Directive and the Specific Directives. In such a case, the draft measure shall not be adopted for a further three months following the Commission's notification.'*

– (b) paragraph 2 is replaced by the following:

*'2. Within the three-month period referred to in paragraph 1, the Commission, BEREC and the national regulatory authority concerned shall cooperate closely to identify the most appropriate and effective measure in the light of the objectives laid down in Article 8, whilst taking due account of the views of market participants and the need to ensure the development of consistent regulatory practice. When the intended measure aims at imposing, amending or withdrawing an obligation on a European electronic communications provider within the meaning of Regulation [XXX/2014] in a host Member State, the national regulatory authority of the home Member State may also participate in the cooperation process.'*

– (c) in paragraph 5 the following point (aa) is inserted:

*'(aa) take a decision requiring the national regulatory authority concerned to withdraw the draft measure, together with specific proposals for amending it, when the intended measure aims at imposing, amending or withdrawing an obligation on a European electronic communications provider within the meaning of Regulation [XXX/2014].'*

– (d) in paragraph 6 the following sub-paragraph is added:

*'Article 7(6) shall apply in the cases where the Commission takes a decision in accordance with paragraph 5 point (aa).'*

(3) Article 15 is amended as follows:

– (a) the following sub-paragraph is inserted between the first and second sub-paragraphs of paragraph 1:

*'In assessing whether a given market has characteristics which may justify the imposition of ex-ante regulatory obligations, and therefore has to be included in the Recommendation, the Commission shall have regard in particular to the need for convergent regulation throughout the Union, to the need to promote efficient investment and innovation in the interests of end users and of the global competitiveness of the Union economy, and to the relevance of the market concerned, alongside other factors such as existing infrastructure-based competition at retail level, to competition on the prices, choice and quality of products offered to end users. The Commission shall consider all relevant competitive constraints, irrespective of whether the networks, services or applications which impose such constraints are deemed to be electronic communications networks, electronic communications services, or other types of service or application which are comparable from the perspective of the end-user, in order to determine whether, as a general matter in the Union or a significant part thereof, the following three criteria are cumulatively met:*

*(a) the presence of high and non-transitory structural, legal or regulatory barriers to entry;*

*(b) the market structure does not tend towards effective competition within the relevant time horizon, having regard to the state of infrastructure-based and other competition behind the barriers to entry;*

*(c) competition law alone is insufficient to adequately address the identified market failure(s).'*

– (b) in paragraph 3 the following sub-paragraph is added:

*'In the exercise of its powers pursuant to Article 7, the Commission shall verify whether the three criteria set out in paragraph 1 are cumulatively met when reviewing the compatibility with Union law of a draft measure that concludes:*

- (a) that a given market that is not identified in the Recommendation has characteristics justifying the imposition of regulatory obligations, in the specific national circumstances; or*
- b) that a market identified in the Recommendation does not require regulation in the specific national circumstances.'*

(4) The first paragraph of Article 19 is amended as follows:

*'Without prejudice to Article 9 of this Directive and Articles 6 and 8 of Directive 2002/20/EC (Authorisation Directive), where the Commission finds that divergences in the implementation by the national regulatory authorities of the regulatory tasks specified in this Directive, and the Specific Directives and Regulation No [XX/2014] may create a barrier to the internal market, the Commission may, taking the utmost account of the opinion of BEREC, issue a recommendation or a decision on the harmonised application of the provisions in this Directive, the Specific Directives and Regulation No [XX/2014] in order to further the achievement of the objectives set out in Article 8.'*

#### *Article 36 – Amendments to Directive 2002/22/EC*

1. With effect from 1 July 2016, Directive 2002/22/EC is amended as follows:

- (1) In Article 1 (3), the first sentence is deleted.
- (2) Articles 20, 21, 22 and 30 are deleted.

2. Member States shall maintain in force until 1 July 2016 all measures transposing the provisions referred to in paragraph 1.

#### *Article 37 – Amendments to Regulation (EU) No 531/2012*

Regulation (EU) No 531/2012 is amended as follows:

(1) In Article 1(1), the following third subparagraph is inserted:

*'This Regulation shall apply to roaming services provided in the Union to end users whose domestic provider is a provider of electronic communications to the public in a Member State.'*

(2) In Article 2 (2), the following point (r) is inserted:

*'(r) "bilateral or multilateral roaming agreement" means one or more commercial or technical agreements among roaming providers that allow the virtual extension of the home network coverage and the sustainable provision by each roaming provider of regulated retail roaming services at the same price level as their respective domestic mobile communications services.'*

(3) In Article 4, the following paragraph 7 is added:

*'7. This Article shall not apply to roaming providers that provide regulated retail roaming services in accordance with Article 4a.'*

(4) The following Article 4a is inserted:

*'Article 4a*

*1. This Article shall apply to roaming providers which:*

*(a) apply, by default and in all their respective retail packages that include regulated roaming services, the applicable domestic service rate to both domestic services and regulated roaming services throughout the Union, as if the regulated roaming services were consumed on the home network; and*

*(b) ensure, whether through their own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the provisions of point (a) are complied with by at least one roaming provider in all Member States.*

*2. Paragraphs 1, 6 and 7 shall not preclude the limitation by a roaming provider of consumption of regulated retail roaming services at the applicable domestic service rate by reference to a reasonable use criterion. Any reasonable use criterion shall be applied in such a way that consumers availing of the roaming provider's various domestic retail packages are in a position to confidently replicate the typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union. A roaming provider availing of this possibility shall publish, in accordance with Article 25(1)(b) of Regulation XXX/2014, and include in its contracts, in accordance with Article 26(1)(b) and (c) of that Regulation, detailed quantified information on how the reasonable use criterion is applied, by reference to the main pricing, volume or other parameters of the retail package in question.*

*By 31 December 2014, BEREC shall, after consulting stakeholders and in close cooperation with the Commission, lay down general guidelines for the application of reasonable use criteria in the retail contracts provided by roaming providers availing of this Article. BEREC shall develop such guidelines by reference to the overall objective set out in the first subparagraph, and shall have regard in particular to the evolution of pricing and consumption patterns in the Member States, to the degree of convergence of domestic price levels across the Union, to any observable effect of roaming at domestic service rates on the evolution of such rates, and to the evolution of wholesale roaming rates for unbalanced traffic between roaming providers.*

*The competent national regulatory authority shall monitor and supervise the application of reasonable use criteria, taking utmost account of the BEREC general guidelines once they are adopted, and shall ensure that unreasonable terms are not applied.*

*3. Individual end-users served by a roaming provider availing of this Article may, upon their own request, make a deliberate and explicit choice to renounce the benefit of the application to regulated roaming services of the applicable domestic service rate under a given retail package in return for other advantages offered by that provider. The roaming provider shall remind those end users of the nature of the roaming advantages which would thereby be lost. National regulatory authorities shall monitor in particular whether roaming providers availing of this Article engage in business practices which would amount to circumvention of the default regime.*

*4. Regulated retail roaming charges laid down in Articles 8, 10 and 13 shall not apply to roaming services offered by a roaming provider availing of this Article to the extent that these are charged at the level of the applicable domestic service rate.*

*Where a roaming provider availing of this Article applies charges which are different from the applicable domestic service rate for consumption of regulated roaming services going beyond reasonable use of such services in accordance with paragraph 2, or where an individual end user explicitly renounces the benefit of domestic service rates for regulated*

*roaming services in accordance with paragraph 3, the charges for those regulated roaming services shall not exceed the retail roaming charges laid down in Articles 8, 10 and 13.*

*5. A roaming provider wishing to avail of this Article shall notify its own declaration and any bilateral or multilateral agreements by virtue of which it fulfills the conditions of paragraph 1, and any changes thereto, to the BEREC Office. The notifying roaming provider shall include in its notification proof of agreement to such notification by any contractual partners to notified bilateral or multilateral roaming agreements.*

*6. In the period from 1 July 2014 until 30 June 2016, this Article shall apply to roaming providers which do not fulfill the conditions set out in paragraph 1, when they respect the following conditions:*

*(a) the roaming provider notifies its own declarataion and any relevant bilateral or multilateral roaming agreements to the BEREC Office in accordance with paragraph 5, making specific reference to this paragraph;*

*(b) the roaming provider ensures, whether through its own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the conditions of points (c),(d) and (e) are complied with in at least 17 Member States representing 70% of the population of the Union;*

*(c) the roaming provider and any contractual partners within the meaning of point (b) each undertakes to make available and actively offer, at the latest as from 1 July 2014, or as from the date of notification, whichever is the later, at least one retail package with a tariff option according to which the applicable domestic service rate applies to both domestic services and regulated roaming services throughout the Union, as if those regulated roaming services were consumed on the home network;*

*(d) the roaming provider and any contractual partners within the meaning of point (b) each undertakes to make available and actively offer, at the latest as from 1 July 2015, or as from the date of notification, whichever is the later, such tariff options in retail packages which, on 1 January of that year, were used by at least 50% of their respective customer base;*

*(e) the roaming provider and any contractual partners within the meaning of point (b) each undertakes to comply, at the latest as from 1 July 2016, with paragraph 1(b) in all of their respective retail packages.*

*The roaming provider availing of this Article and any contractual partners within the meaning of point (b) may, as an alternative to the undertaking referred to in point (d), undertake, as from 1 July 2015, or as from the date of notification, whichever is the later, that any roaming surcharges applied in addition to the applicable domestic service rate in its various retail packages are, in aggregate, no more than 50% of those applicable in those packages on 1 January 2015, irrespective of whether such surcharges are calculated on the basis of units such as voice minutes or megabytes, of periods such as days or weeks of roaming, or by any other means or combination thereof. Roaming providers invoking this point shall demonstrate compliance with the requirement of a 50% reduction to the national regulatory authority and shall supply all necessary supporting evidence requested of them.*

*Where the roaming provider availing of this Article notifies its own declaration and any relevant bilateral or multilateral roaming agreements to the BEREC Office pursuant to point (a) of the first subparagraph and thereby falls under this paragraph, the notifying roaming provider and any contractual partners within the meaning of point (b) shall each be bound to comply with their respective undertakings in accordance with points (c), (d) and (e) of the first subparagraph, including any alternative undertaking to that provided for in point (d) of that subparagraph, until at least 1 July 2018.*

7. In the period from 1 July 2014 until 30 June 2016, this Article shall apply to roaming providers which do not fulfill the conditions set out in paragraph 1, when they respect the following conditions:

(a) the roaming provider notifies its own declarataion and any relevant bilateral or multilateral roaming agreements to the BEREC Office in accordance with paragraph 5, making specific reference to this paragraph;

(b) the roaming provider ensures, whether through its own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the conditions of paragraph 1(a) are complied with in at least 10 Member States representing 30% of the population of the Union, at the latest as from 1 July 2014, or as from the date of notification, whichever is the later;

(c) the roaming provider ensures, whether through its own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the conditions of paragraph 1(a) are complied with in at least 14 Member States representing 50% of the population of the Union, at the latest as from 1 July 2015, or as from the date of notification, whichever is the later;

(d) the roaming provider ensures, whether through its own networks or by virtue of bilateral or multilateral roaming agreements with other roaming providers, that the conditions of paragraph 1(a) are complied with in at least 17 Member States representing 70% of the population of the Union, at the latest as from 1 July 2016.

Where a roaming provider availing of this Article notifies its own declaration and any relevant bilateral or multilateral roaming agreements to the BEREC Office pursuant to point (a) of the first subparagraph and thereby falls under this paragraph, the notifying roaming provider and any contractual partners within the meaning of point (b) shall each be bound to comply with their respective undertakings to comply with the conditions of paragraph 1(a), until at least 1 July 2018.

8. Roaming providers shall negotiate in good faith the arrangements towards establishing bilateral or multilateral roaming agreements, on fair and reasonable terms having regard to the objective that such agreements with other roaming providers should allow the virtual extension of the home network coverage and the sustainable provision by each of the roaming providers availing of this Article of regulated retail roaming services at the same price level as their respective domestic mobile communications services.

9. By way of exception to paragraph 1, after 1 July 2016, this Article shall apply to roaming providers availing of this Article when those roaming providers demonstrate that they have sought in good faith to establish or extend a bilateral or multilateral roaming agreements on the basis of fair and reasonable terms in all Member States where they do not yet fulfill the requirements of 1 and have been unable to secure any bilateral or multilateral roaming agreement with a roaming provider in one or more Member States, provided they comply with the minimum coverage referred to in paragraph 6(b) and with all other relevant provisions of this Article. In those cases, roaming providers availing of this Article shall continue to seek to establish reasonable terms for conclusion of a roaming agreement with a roaming provider from any unrepresented Member State.

10. Where an alternative roaming provider has already been granted access to a domestic provider's customers pursuant to Article 4(1) and has already made the necessary investments to serve those customers, Article 4(7) shall not apply to such a domestic provider during a transitional period of three years. The transitional period is without prejudice to the need to respect any longer contractual period agreed with the alternative roaming provider.

*11. This Article is without prejudice to the application of Union competition rules to bilateral and multilateral roaming agreements.'*

(5) In Article 8, paragraph 2 is amended as follows:

(a) the first subparagraph is replaced by the following:

*'2. With effect from 1 July 2013, the retail charge (excluding VAT) for a euro-voice tariff which a roaming provider may levy on its roaming customer for the provision of a regulated roaming call may vary for any roaming call but shall not exceed EUR 0,24 per minute for any call made or EUR 0,07 per minute for any call received. The maximum retail charge for calls made shall decrease to EUR 0,19 on 1 July 2014. As of 1 July 2014, roaming providers shall not levy any charge on their roaming customers for calls received, without prejudice to measures taken to prevent anomalous or fraudulent usage. Without prejudice to Article 19 those maximum retail charges for the euro-voice tariff shall remain valid until 30 June 2017.'*

(b) the third subparagraph is replaced by the following:

*'Every roaming provider shall charge its roaming customers for the provision of any regulated roaming call to which a euro-voice tariff applies on a per-second basis.'*

(6) In Article 14, the following paragraph 1a is inserted:

*'1a. When the consumption of regulated retail roaming services at the applicable domestic service rate is limited by reference to a reasonable use criterion in accordance with Article 4a(2), roaming providers shall alert roaming customers when the consumption of roaming calls and SMS messages has reached the reasonable use limit and at the same time shall provide roaming customers with basic personalised pricing information on the roaming charges applicable to making a voice call or sending an SMS message outside the domestic service rate or package in accordance with the second, fourth and fifth sub-paragraphs of paragraph 1 of this Article.'*

(7) In Article 15, the following paragraph 2a is inserted:

*'2a. When the consumption of regulated retail roaming services at the applicable domestic service rate is limited by reference to a reasonable use criterion in accordance with Article 4a(2), roaming providers shall alert roaming customers when the consumption of data roaming services has reached the reasonable use limit and at the same time shall provide roaming customers with basic personalised pricing information on the roaming charges applicable to data roaming outside the domestic service rate or package in accordance with paragraph 2 of this Article. Paragraph 3 of this Article shall apply to data roaming services consumed outside the applicable domestic service rates or packages referred to in Article 4a(2).'*

(8) Article 19 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) the first sentence is replaced by the following:

*'The Commission shall review the functioning of this regulation and, after a public consultation, shall report to the European Parliament and the Council by 31 December 2016 at the latest.'*

(ii) point (g) is replaced by the following:

*'(g) the extent to which the implementation of the structural measures provided for in Articles 3 and 4 and of the alternative regime provided for in Article 4a has produced results in*

*developing competition in the internal market for roaming services to the extent that there is no effective difference between roaming and domestic tariffs;'*

(iii) the following point (i) is inserted:

*'(i) the extent, if any, to which the evolution of domestic retail prices is observably affected by the application by roaming providers of the domestic service rate to both domestic services and regulated roaming services throughout the Union.'*

(b) Paragraph 2 is amended as follows:

(i) The first sentence is replaced by the following:

*'If the report shows that tariff options, in which the domestic service rate applies both to domestic and regulated roaming services, are not provided in all retail packages for reasonable use by at least one roaming provider in each Member State, or that the offers by alternative roaming providers have not made substantially equivalent retail roaming tariffs easily available to consumers throughout the Union, the Commission shall by the same date make appropriate proposals to the European Parliament and the Council to address the situation and ensure that there is no difference between national and roaming tariffs within the internal market.'*

(ii) Point (d) is replaced by the following:

*'(d) to change the duration or reduce the level of maximum wholesale charges provided for in Articles 7, 9 and 12 with a view to reinforcing the ability of all roaming providers to make available in their respective retail packages for reasonable use tariff options in which the applicable domestic service rate applies to both domestic services and regulated roaming services, as if the latter were consumed on the home network.'*

#### *Article 38 – Amendments to Regulation (EC) No 1211/2009*

Regulation (EC) No 1211/2009 is amended as follows:

(1) In Article 1, paragraph 2 is replaced by the following:

*'2. BEREC shall act within the scope of Directive 2002/21/EC (Framework Directive) and Directives 2002/19/EC, 2002/20/EC, 2002/22/EC and 2002/58/EC (Specific Directives), and of Regulations (EU) No 531/2012 and No XX/2014'*

(2) In Article 4, paragraphs 4 and 5 are deleted

(3) The following Article 4a is inserted:

#### *'Article 4a – Appointment and tasks of the Chairperson*

*1. The Board of Regulators shall be represented by a Chairperson, who shall be a full-time independent professional.*

*The Chairperson shall be engaged as a temporary agent of the Office under Article 2(a) of the Conditions of Employment of Other servants.*

*The Chairperson shall be responsible for preparing the work of the Board of Regulators and shall chair without the right to vote the meetings of the Board of Regulators and the Management Committee.*

*Without prejudice to the role of the Board of Regulators in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor accept any instruction from any government or NRA, from the Commission, or from any other public or private entity.*

2. *The Chairperson shall be appointed by the Board of Regulators on the basis of merit, skills, knowledge of electronic communication market participants and markets, and of experience relevant to supervision and regulation, following an open selection procedure.*

*Before appointment, the candidate selected by the Board of Regulators may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.*

*The appointment of the Chairperson is effective only after approval of the Management Committee.*

*The Board of Regulators shall also elect, from among its members, a Vice-Chair who shall carry out the functions of the Chairperson in his absence.*

3. *The Chairperson's term of office shall be 3 years and may be extended once.*

4. *In the course of the 9 months preceding the end of the 3-year term of office of the Chairperson, the Board of Regulators shall evaluate:*

*(a) the results achieved in the first term of office and the way they were achieved;*

*(b) the Board of Regulators' duties and requirements in the coming years.*

*The Board of Regulators shall inform the European Parliament if it intends to extend the Chairperson's term of office. Within one month before any such extension, the Chairperson may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.*

5. *The Chairperson may be removed from office only upon a decision of the Board of Regulators acting on a proposal from the Commission and after approval of the Management Committee.*

*The Chairperson shall not prevent the Board of Regulators and the Management Committee from discussing matters relating to the Chairperson, in particular the need for his removal, and shall not be involved in deliberations concerning such a matter.'*

(4) Article 6 is amended as follows:

(a) Paragraph 2, indent 4 is deleted.

(b) Paragraph 3 is amended as follows:

*'3. The Office shall comprise:*

*(a) a Chairperson of the Board of Regulators;*

*(b) a Management Committee;*

*(c) an Administrative Manager.'*

(5) Article 7 is amended as follows:

(a) Paragraph 2 is amended as follows:

*'2. The Management Committee shall appoint the Administrative Manager and, where relevant, extend his/her term of office or remove him/her from office in accordance with Article 8. The Administrative Manager designated shall not participate in the preparation of, or vote on, such a decision.'*

(b) Paragraph 4 is deleted.

(6) Article 8 paragraphs 2, 3, 4, are deleted and replaced as follows:

*'2. The Administrative Manager shall be engaged as a temporary agent of the Office under Article 2(a) of the Conditions of Employment of Other servants.*

*3. The Administrative Manager shall be appointed by the Management Committee from a list of candidates proposed by the Commission, following an open and transparent selection procedure.*

*For the purpose of concluding the contract with the Administrative Manager, the Office shall be represented by the Chairperson of the Management Committee.*

*Before appointment, the candidate selected by the Management Committee may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.*

*4. The term of office of the Administrative Manager shall be five years. By the end of that period, the Commission shall undertake an assessment that takes into account an evaluation of the Administrative Manager's performance and the Office's future tasks and challenges.*

*5. The Management Committee, acting on a proposal from the Commission that takes into account the assessment referred to in paragraph 4, may extend the term of office of the Administrative Manager once, for no more than five years.*

*6. The Management Committee shall inform the European Parliament if it intends to extend the Administrative Manager's term of office. Within one month before any such extension, the Administrative Manager may be invited to make a statement before the competent committee of the Parliament and answer questions put by its members.*

*7. An Administrative Manager whose term of office has been extended may not participate in another selection procedure for the same post at the end of the overall period.*

*8. The Administrative Manager may be removed from office only upon a decision of the Management Committee acting on a proposal from the Commission.*

*9. The Management Committee shall reach decisions on appointment, extension of the term of office or removal from office of the Administrative Manager on the basis of a two-thirds majority of its members with voting rights.'*

(7) In Article 9, paragraph 2 is amended as follows:

*'2. The Administrative Manager shall assist the Chairperson of the Board of Regulators with the preparation of the agenda of the Board of Regulators, the Management Committee and the Expert Working Groups. The Administrative Manager shall participate, without having the right to vote, in the work of the Board of Regulators and the Management Committee.'*

(8) Article 10 is amended as follows:

*'1. The Staff Regulations and the Conditions of Employment of Other Servants and the rules adopted by agreement between the institutions of the Union for giving effect to those Staff Regulations and the Conditions of Employment of Other Servants shall apply to the staff of the Office, including the Chairperson of the Board of Regulators and the Administrative Manager.*

*2. The Management Committee shall adopt appropriate implementing rules for giving effect to the Staff Regulations and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations.*

*3. The Management Committee shall, in accordance with paragraph 4, exercise with respect to the staff of the Office the powers conferred by the Staff Regulations on the Appointing*

*Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to Conclude a Contract of Employment ("the appointing authority powers").*

*4. The Management Committee shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2.(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Administrative Manager and defining the conditions under which this delegation of powers can be suspended. The Administrative Manager shall be authorised to sub-delegate those powers.*

*Where exceptional circumstances so require, the Management Committee may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Administrative Manager and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Administrative Manager.'*

(9) The following Article 10a is inserted:

*'Article 10a – Seconded national experts and other staff'*

*1. The Office may make use of Seconded national experts or other staff not employed by the Office.*

*2. The Management Committee shall adopt a decision laying down rules on the secondment of national experts to the Office.'*

#### *Article 39 – Review clause*

The Commission shall submit reports on the evaluation and review of this Regulation to the European Parliament and the Council at regular intervals. The first report shall be submitted no later than 1 July 2018 . Subsequent reports shall be submitted every four years thereafter. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation, and aligning other legal instruments, taking account in particular of developments in information technology and of the state of progress in the information society. The reports shall be made public.

#### *Article 40 – Entry into force*

1. This Regulation shall enter into force the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from 1 July 2014.

However, Articles 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 shall apply from 1 July 2016.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

*For the European Parliament  
The President*

*For the Council  
The President*

## ANNEX I

### MINIMUM PARAMETERS FOR OFFERS OF EUROPEAN VIRTUAL BROADBAND ACCESS PRODUCTS

**1. OFFER 1 - Fixed network wholesale access product offered over next generation networks at Layer 2 of the International Standards Organisation seven layer model for communications protocols ('Data Link Layer'), that offers equivalent functionalities to physical unbundling, with handover points at a level that is closer to the customer premises than the national or regional level.**

#### 1.1 Network elements and related information:

- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
- (b) the locations at which network access will be provided;
- (c) any relevant technical standards for network access, including any usage restrictions and other security issues;
- (d) technical specifications for the interface at handover points and network termination points (customer premises);
- (e) specifications of equipment to be used on the network; and
- (f) details of interoperability tests.

#### 1.2 Network functionalities:

- (a) flexible allocation of VLANs based on common technical specification;
- (b) service-agnostic connectivity, enabling control of download and upload traffic speeds;
- (c) security enabling;
- (d) flexible choice of customer premises equipment (as long as technically possible);
- (e) remote access to the customer premise equipment; and
- (f) multicast functionality, where there is demand and such functionality is necessary to ensure technical replicability of competing retail offers.

#### 1.3 Operational and business process:

- (a) eligibility requirement processes for ordering and provisioning;
- (b) billing information;
- (c) procedures for migration, moves and ceases; and
- (d) specific time scales for repair and maintenance.

#### 1.4 Ancillary services and IT Systems:

- (a) information and conditions concerning the provision of co-location and backhaul;
- (b) specifications for access to and use of ancillary IT systems for operational support systems, information systems and databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, including their usage restrictions and procedures to access those services.

**2. OFFER 2: Fixed network wholesale access product offered at Layer 3 of the International Standards Organisation seven layer model for communications protocols ('Network Layer'), at the IP level bit-stream level with handover points offering a higher degree of resource aggregation such as at national and/or regional level**

2.1 Network elements and related information:

- (a) the characteristics of the connection link provided at the handover points (in terms of speed, Quality of Service, etc.);
- (b) a description of the broadband network connecting the customer premise to the handover points, in terms of backhaul and access network architectures;
- (c) the location of the handover point(s); and
- (d) the technical specifications for interfaces at handover points.

2.2 Network functionalities:

Ability to support different quality of service levels (e.g. QoS 1, 2 and 3) with regard to:

- (i) delay;
- (ii) jitter;
- (iii) packet loss; and
- (iv) contention ratio.

2.3 Operational and business process:

- (a) eligibility requirement processes for ordering and provisioning;
- (b) billing information;
- (c) procedures for migration, moves and ceases; and
- (d) specific time scales for repair and maintenance.

2.4 Ancillary IT Systems:

Specifications for access to and use of ancillary IT systems for operational support systems, information systems and databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, including their usage restrictions and procedures to access those services.

**3. OFFER 3: Wholesale terminating segments of leased lines with enhanced interface for the exclusive use of the access seeker providing permanent symmetric capacity without restriction as regards usage and with service level grade agreements, by means of a point-to-point connection and with Layer 2 of the International Standards Organisation (ISO) seven layer model for communications protocols ('Data Link Layer') network interfaces.**

3.1 Network elements and related information:

- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
- (b) the locations at which network access will be provided;
- (c) the different speeds and maximum length offered;

- (d) any relevant technical standards for network access (including any usage restrictions and other security issues);
- (e) details of interoperability tests;
- (f) specifications of equipment allowed on the network;
- (g) network-to-network (NNI) interface available;
- (h) maximum frame size allowed, in bytes.

### 3.2 Network and product functionalities:

- (a) uncontended and symmetrical dedicated access;
- (b) service-agnostic connectivity, enabling control of traffic speed and symmetry;
- (c) protocol transparency, flexible allocation of VLANs based on common technical specification;
- (d) Quality of Service parameters (delay, jitter, packet loss) enabling business-critical performance.

### 3.3 Operational and business process:

- (a) eligibility requirement processes for ordering and provisioning;
- (b) procedures for migration, moves and ceases;
- (c) specific time scales for repair and maintenance;
- (d) changes to IT systems (to the extent that it impacts alternative operators); and
- (e) relevant charges, terms of payment and billing procedures.

### 3.4 Service level agreements

- (a) the amount of compensation payable by one party to another for failure to perform contractual commitments, including provisioning and repair time, as well as the conditions for eligibility to compensations;
- (b) a definition and limitation of liability and indemnity;
- (c) procedures in the event of alterations being proposed to- the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (d) details of any relevant intellectual property rights;
- (e) details of duration and renegotiation of agreements.

### 3.5 Ancillary IT systems:

specifications for access to and use of ancillary IT systems for operational support systems, information systems and databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, including their usage restrictions and procedures to access those services.

## ANNEX II

### MINIMUM PARAMETERS OF EUROPEAN ASQ CONNECTIVITY PRODUCTS

#### Network elements and related information

- A description of the connectivity product to be provided over a fixed network, including technical characteristics and adoption of any relevant standards.

#### Network functionalities:

- connectivity agreement ensuring end-to-end Quality of Service, based on common specified parameters that enable the provision of at least the following classes of services:

- voice and video calls;
- broadcast of audio-visual content; and
- data critical applications.