

# EUROPEAN PARLIAMENT

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**A5-0433/2001**

28 November 2001

**\*\*\*II**

## **RECOMMENDATION FOR SECOND READING**

on the Council common position for adopting a European Parliament and Council directive on the authorisation of electronic communications networks and services (Authorisation Directive)  
(10419/1/2001 – C5-0417/2001 – 2000/0188(COD))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Angelika Niebler

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

At the sitting of 1 March 2001 Parliament adopted its position at first reading on the amended proposal for a European Parliament and Council directive on the authorisation of electronic communications networks and services (Authorisation Directive) (COM(2000) 386 - 2000/0188 (COD)).

At the sitting of 19 September 2001 the President of Parliament announced that the common position had been received and referred to the Committee on Industry, External Trade, Research and Energy (10419/1/2001 - C5-0417/2001).

The committee had appointed Angelika Niebler rapporteur at its meeting of 22 June 2001.

It considered the common position and draft recommendation for second reading at its meetings of 10 October 2001, 5, 21 and 27 November 2001.

At the last meeting it adopted the draft legislative resolution unanimously with 2 abstentions.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Renato Brunetta, and Nuala Ahern, vice-chairmen; Konstantinos Alyssandrakis, María del Pilar Ayuso González (for Christian Foldberg Rovsing), Guido Bodrato, Carmen Cerdeira Morterero (for François Zimeray, pursuant to Rule 153(2)), Giles Bryan Chichester, Harlem Désir, Raina A. Mercedes Echerer (for Caroline Lucas), Christos Folias, Neena Gill (for Mechtild Rothe), Norbert Glante, Michel Hansenne, Malcolm Harbour (for Dominique Vlasto), Roger Helmer, Hans Karlsson, Bernd Lange (for Rolf Linkohr), Werner Langen, Eryl Margaret McNally, Erika Mann, Marjo Matikainen-Kallström, Angelika Niebler, Reino Paasilinna, Yves Piétrasanta, Elly Plooij-van Gorsel, Samuli Pohjamo, John Purvis, Godelieve Quisthoudt-Rowohl, Imelda Mary Read, Konrad K. Schwaiger, Esko Olavi Seppänen, Anna Terrón i Cusí (for Massimo Carraro), Astrid Thors, Antonios Trakatellis (for Umberto Scapagnini), Claude Turmes (for Nelly Maes), Jaime Valdivielso de Cué, W.G. van Velzen, Adriaan Vermeer (for Willy C.E.H. De Clercq, pursuant to Rule 153(2)), Alejo Vidal-Quadras Roca, Anders Wijkman, Myrsini Zorba, Olga Zrihen Zaari.

The recommendation for second reading was tabled on 28 November 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## DRAFT LEGISLATIVE RESOLUTION

### **European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on the authorisation of electronic communications networks and services (Authorisation Directive) (10419/1/2001 – C5-0417/2001 – 2000/0188(COD))**

#### **(Codecision procedure: second reading)**

*The European Parliament,*

- having regard to the Council common position (10419/1/2001 – C5-0417/2001),
  - having regard to its position at first reading<sup>1</sup> on the Commission proposal to Parliament and the Council (COM(2000) 386<sup>2</sup>),
  - having regard to the Commission's amended proposal (COM(2001) 372<sup>3</sup>),
  - having regard to Article 251(2) of the EC Treaty,
  - having regard to Rule 80 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Industry, External Trade, Research and Energy (A5-0433/2001),
1. Amends the common position as follows;
  2. Instructs its President to forward its position to the Council and Commission.

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<sup>1</sup> OJ C 277, 1.10.2001, p.18, 116, 123.

<sup>2</sup> OJ C 365, 19.12.2000, p. 230.

<sup>3</sup> OJ C 270 E, 25.9.2001, pp.182-198.

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Amendment 1  
Recital 32

(32) In addition to administrative charges, usage fees may be levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Such fees should not hinder the development of innovative services and competition in the market. This Directive is without prejudice to the purpose for which fees for rights of use are employed. Such fees may for instance be used to finance activities of national regulatory authorities that cannot be covered by administrative charges.

(32) In addition to administrative charges, usage fees may be levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Such fees should not hinder the development of innovative services and competition in the market. This Directive is without prejudice to the purpose for which fees for rights of use are employed. Such fees may for instance be used to finance activities of national regulatory authorities that cannot be covered by administrative charges.

*Where, in case of comparative selection procedures, fees for rights of use for radio frequencies consist entirely or partly of a one-off amount, appropriate payment arrangements shall be offered to ensure that such fees do not in practice lead to selection on the basis of criteria unrelated to the objective of ensuring optimal use of radio frequencies.*

*The European Commission may on a regular basis publish benchmark studies with regard to best practices of allocation of radio frequencies, assigning of numbers or rights of way.*

*Justification*

*This amendment is intended to guarantee that the power to grant numbers and rights of way by the public authorities is not treated primarily as a source of revenue. Fees should be charged only to cover administrative costs or to comply with a regulatory policy requirement.*

Amendment 2  
Article 12, paragraph 1, point (a)

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

(a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme;

#### *Justification*

*One purpose of the new directive should be to ensure that authorisation charges cover only the administrative costs incurred in administering general authorisations. That is the only way to approximate authorisation charges across Member States and prevent disproportionately high charges from being levied. It therefore appears urgently necessary for such charges to be differentiated in the directive itself from other charges by means of which other administrative services might, where appropriate, be financed.*

#### Amendment 3 Article 13

Fees for rights of use and rights to install facilities

Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 7

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of Directive 2001/.../EC (Framework Directive).

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***Measures taken according to this article which relate to the rights of use for radiofrequencies shall be subject to the procedure set out in [article 6b] of Directive 2001/.../EC [Framework Directive].***

*Justification*

*To ensure consistency and avoid discrimination in the Single Market.*

Amendment 4

Article 14

Amendments of rights and obligations

Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner. Notice shall be given in an appropriate manner of the intention to make such amendments and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances.

Member States shall ensure that the rights, conditions and procedures concerning general authorisations and rights of use or rights to install facilities may only be amended in objectively justified cases and in a proportionate manner. Notice shall be given in an appropriate manner of the intention to make such amendments, and interested parties, including users and consumers, shall be allowed a sufficient period of time to express their views on the proposed amendments, which shall be no less than four weeks except in exceptional circumstances. ***Measures taken according to this article shall be subject to the procedure set out in article 6 of Directive 2001/.../EC (Framework Directive).***

*Justification*

*In order to guarantee a harmonised set of conditions.*



Amendment 5  
Article 14, paragraph 2a (new)

*(2a) Member States should not restrict or withdraw rights to install facilities before expiry of the period for which they were granted except in justified cases and, where appropriate, in conformity with relevant national provisions regarding compensation for withdrawal of rights. Members should withdraw rights of use already granted only where special circumstances have arisen.*

*Justification*

*In the especially sensitive area of rights of use and rights of way, changes should as far as possible be avoided or compensation paid, in view of the need to protect the investments made by the undertakings concerned.*

Amendment 6  
Article 15, paragraph 2

2. Where information as referred to in paragraph 1 is held at different levels of government, in particular information regarding procedures and conditions on rights to install facilities, the national regulatory authority shall make all reasonable efforts to create a user friendly overview of all such information, *where the relevant authority deems this possible at proportionate costs*, in order to facilitate applications for rights to install facilities.

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

*Justification*

*Article 15(2) embodies an important new step towards increased transparency on granting rights of way. Transposition of that objective should not be left to the discretion of national regulatory authorities.*

Amendment 7

Article 17, paragraph 2

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the obligations under authorisations already in existence, Member States may extend the validity of those rights and obligations until at the latest **12 months** after the date of application referred to in Article 18(1), second subparagraph, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefore.

2. Where application of paragraph 1 results in a reduction of the rights or an extension of the obligations under authorisations already in existence, Member States may extend the validity of those rights and obligations until at the latest **9 months** after the date of application referred to in Article 18(1), second subparagraph, provided that the rights of other undertakings under Community law are not affected thereby. Member States shall notify such extensions to the Commission and state the reasons therefore.

*Justification*

*The original proposal by the European Commission mentions a de facto limit of 6 months. Even if this may prove insufficient in some cases, a full year goes beyond what is necessary in commercial practice for the undertakings concerned.*

## EXPLANATORY STATEMENT

1. The Commission adopted the proposal for a directive that is the subject of this procedure on 12 July 2000 and submitted it to the European Parliament. It is based on the Treaty establishing the European Community, and in particular Article 95 thereof. On 1 March 2001 the European Parliament adopted a legislative resolution in which it proposed amendments to the Commission text. On 4 July 2001 the Commission adopted an amended proposal into which it had incorporated the substance of the amendments adopted at first reading (COM(2001)372 final)). The Council drew up its common position on 18 September 2001 and forwarded it to the European Parliament on 19 September 2001.
2. At first reading the European Parliament adopted 28 amendments to the proposal for a directive. 16 of those were incorporated into the common position, for the greater part in full.
3. It seems appropriate to re-table 4 of Parliament's amendments that are in part also supported by the Commission but that were not taken into account by the Council. These apply essentially to the granting of rights of way and numbers.
4. In the area of rights of way, Member States or their regulatory authorities should publish a register of charges, fees, conditions and procedures applicable to rights of way if different levels of government are responsible for ruling on rights of way, as provided for in the original Commission proposal and approved by the European Parliament. That register should, in accordance with the European Parliament's Amendment 23, also indicate the authorities responsible in each case.
5. In the matter of the arrangements applied to rights of way and number assignment, the objectives of Parliament's Amendments 8 and 21 should be adhered to more closely. On that basis, numbers and rights of way that affect public property should be assigned without charge or at a fee not exceeding administrative costs actually incurred. Exceptions can be made here for so-called 'golden numbers', where the figure sequences are especially easy to memorise, putting them at a commercial premium: the granting of such numbers should be subject to an appropriate fee.
6. Parliament's Amendment 28 should also be re-tabled in a somewhat modified form. It is important that Member States should be authorised to withdraw user rights or rights of way before expiry of the period for which they have been granted only in exceptional cases; in the case of rights of way, that should only be in return for appropriate compensation. That arrangement is essential if the investments made by undertakings operating on the market and the confidence expressed by them are to be adequately protected.

7. The success of the new authorisation directive will depend in the first instance on action being taken to streamline authorisation procedures and the conditions actually applied for market access and the activities of network and service providers. That must in particular mean that the arrangements for granting rights of way and charging fees will be more transparently structured, and that the fees charged for the authorisation of network and services providers and for granting numbers, rights of way and frequency-user rights will not place too heavy a burden on undertakings. Those objectives are not pursued consistently enough by the common position. The amendments proposed will help to redress the balance.